JUDICIAL COUNCIL OF CALIFORNIA

LEGAL SERVICES

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

Telephone 415-865-7446 • Fax 415-865-7664 • TDD 415-865-4272

MEMORANDUM

Date
March 2, 2022

To
Rules Committee

From
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Subject
Addition of Project to Annual Agenda and Formation of New Ad Hoc Subcommittee to Carry Out this Project

Action Requested
Approve Addition to Annual Agenda and Formation of New Ad Hoc Subcommittee

Deadline
N/A

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

Executive Summary

The Appellate Advisory Committee (AAC) requests approval to add a project to its 2022 annual agenda to consider possible rule amendments and form revisions for improving efficiencies in the appellate process. Court leaders and judicial officers care deeply about minimizing case delay and work tirelessly to afford court users quality dispositions in a fair and timely manner. Appellate Advisory Committee members believe more can be done to improve efficiencies and that the matter deserves immediate attention. The committee would like to begin work this year because the project is complex, broad in scope, and will require substantial time and effort by a new ad hoc subcommittee to develop recommendations.

Action Requested

The Appellate Advisory Committee asks that the Rules Committee:

1. Approve adding to the 2022 Annual Agenda of the Appellate Advisory Committee a project to consider rule amendments and form revisions to improve efficiencies in the appellate process.

2. Approve the formation of an ad hoc subcommittee to work on this project comprised of members of the Appellate Advisory Committee.

Basis for Request

Background

Over the past year, the subject of appellate delay has been referenced in the legal community and has received coverage in the legal press. On October 21, 2021, the California Academy of Appellate Lawyers (CAAL) provided to the Judicial Council a letter entitled Recommendations to the California Judicial Council to Increase the Efficiency of the Appellate Process. The Administrative Presiding Justices Advisory Committee (APJAC) referred several of the recommendations regarding rules and forms to the Appellate Advisory Committee. The Committee on Appellate Courts of the California Lawyers Association's Litigation Section has also expressed support for efforts to consider improving appellate efficiencies.

The project would involve considering various options for improving efficiencies in the appellate process, from the filing of the notice of appeal and record preparation through disposition of the matter. The subject matter is within the AAC's expertise and charge under rule 10.40(a): "The committee makes recommendations to the council for improving the administration of justice in appellate proceedings."

Annual Agenda

The Appellate Advisory Committee proposes that Rule Amendments to Improve Efficiencies in the Appellate Process be added to its annual agenda and assigned priority 1(e). The specifications for the item would be:

- Origin of Project: Suggestions from an appellate attorney organization forwarded to the committee by the Administrative Presiding Justices Advisory Committee
- Resources: Committee staff
- Proposed Completion Date: January 1, 2024

Formation of New Subcommittee

The AAC proposes formation of a new ad hoc subcommittee to develop recommendations because the project is complex, broad in scope, and will require in-depth consideration to thoroughly understand the issues, research possible alternatives, obtain stakeholder input, and draft possible rule amendments. The subcommittee would be comprised of members of the advisory committee. It is expected that the subcommittee would have at least 6 members. Meetings would be by videoconference or teleconference. The subcommittee would be supported

by current committee staff. It is expected that the subcommittee will remain in existence until any approved rule or form proposals take effect.

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MEMORANDUM

Date
March 31, 2022

To
Rules Committee

From
Anne M. Ronan
Supervising Attorney, Legal Services

Subject
Joint Request to Amend Annual Agendas to Reflect Assignments from Post Pandemic Working Group

Action Requested
Review for April 6 meeting

Deadline
April 6, 2022

Contact
Anne M. Ronan
415-865-8933 phone
anne.ronan@jud.ca.gov

Executive Summary

In September 2021, the Judicial Council's Ad Hoc Workgroup on Post-Pandemic Initiatives (P3 Workgroup) asked the council's advisory committees to include a placeholder item on their annual agendas, to reserve time and resources for the advisory committee to work on any project or proposal P3 might refer to them over the coming year. All of the advisory committees under the oversight of the Rules Committee included the requested placeholder on the annual agendas that this committee approved in November 2021. The P3 Workgroup has now assigned three of those advisory committees concepts to work on, and the annual agendas of each should be amended to include that work.

Amendments to Annual Agendas

For the past year, the P3 Workgroup has been examining promising policies and practices implemented by the courts during the pandemic for possible statewide implementation. After hearing from a wide variety of stakeholders, the workgroup has identified various concepts

which it would like to see developed into concrete proposals, whether as rules, potential legislation, pilot projects, or guidance on best practices, and has assigned each to an appropriate advisory committee. Three of those concepts have been assigned to advisory committees over which Rules Committee has oversight. They are as follows:

- Civil and Small Claims Advisory Committee—Increased Use of Settlement Conferences in Unlawful Detainer Cases.

- Family and Juvenile Advisory Committee—Virtual Visitation.

- Traffic Advisory Committee—Streamline Traffic Infraction Process.

On March 15, the P3 Workgroup sent letters to the chairs of each of those advisory committees describing the concepts to be developed by each committee, and requesting that the chairs and staff develop more specific language reflecting these concepts to revise the placeholder items currently on their annual agendas. Each committee has done so.

Copies of the letters from the chair of the P3 Workgroup to each advisory committee are attached. Each letter is followed with the revised project description that committee wants to add to its annual agenda to reflect the assignment form the P3 Workgroup. Note that each committee annual agenda item includes the goal of circulating any proposed rules or forms in the next comment cycle.

By this memo, the committees are jointly requesting that the Rules Committee approve these revisions to the Civil and Small Claims, Family and Juvenile Law, and Traffic Advisory Committees' annual agendas.

Attachments

1. P3 Workgroup letter to Civil and Small Claims Advisory Committee and revised item 12 for its annual agenda.
2. P3 Workgroup letter to Family and Juvenile Law Advisory Committee and revised item 9 for its annual agenda.
3. P3 Workgroup letter to Traffic Advisory Committee and revised item 1 for its annual agenda.

ATTACHMENT 1

JUDICIAL COUNCIL OF CALIFORNIA

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

March 15, 2022

Hon. Tamara L. Wood
Judge of the Superior Court of California,
County of Shasta
1500 Court Street
Redding, California 96001

Dear Judge Wood:

As chair of the Ad Hoc Workgroup on Post-Pandemic Initiatives (P3), I want to express our appreciation for your willingness to consider and provide feedback on the various draft concepts the workgroup generated after hearing from a wide variety of stakeholders. Your feedback was particularly useful in helping us analyze the strength of various concepts and the appropriate timing for when to move forward with these. At this time, we are asking advisory committees to take the lead in developing these concepts into concrete proposals, whether rules, possible legislation, pilot projects, or guidance on good practices.

We now request that the Civil and Small Claims Advisory Committee take the lead in developing the following concept:

- ***Increased Use of Settlement Conferences in Unlawful Detainer Cases***
  P3 recommends that settlement conferences be held more frequently in unlawful detainer (UD) cases, to encourage landlords and tenants to work on solutions not requiring trials. Courts are authorized to set mandatory settlement conferences (MSCs) now, under rule 3.1380 of the California Rules of Court, but are not required to hold them. Potential changes in this area could include requiring or encouraging settlement conferences in all UD actions, amending the current rule to allow for less formal MSCs in UD cases, or encouraging that MSCs be held remotely or set for the day of trial.

In September 2021, we requested that you include placeholder language on your annual agenda to account for additional work that may flow to your advisory committee out of the workgroup's efforts. Now that this work has solidified, I request that you work with advisory committee staff to revise this placeholder on your annual agenda and forward to Anne Ronan, staff to the Rules Committee, who will coordinate submission to the oversight committee for approval.

We have also asked P3 Workgroup members to serve as liaisons to the advisory committees working on these concepts. Your P3 liaisons are Hon. Kevin C. Brazile, Judge of the Superior Court of Los Angeles County, and Kevin Harrigan, Court Executive Officer of the Superior Court of Tehama County. These members, along with workgroup staff, will be available to assist you throughout this process. If you have any questions, please feel free to reach out to our P3 Workgroup staff contact, Deirdre Benedict at deirdre.benedict@jud.ca.gov. Our workgroup members and staff look forward to working with you.

Sincerely,

Marsha G. Slough
Associate Justice of the Court of Appeal
Fourth Appellate District, Division Two

MGS/db
cc: Hon. Donald J. Proietti, Vice-Chair, Judge of the Superior Court of Merced County
Hon. Kevin C. Brazile, Judge of the Superior Court of Los Angeles County
Kevin Harrigan, Court Executive Officer, Superior Court of Tehama County
Millicent Tidwell, Chief Deputy Director, Judicial Council
Shelley Curran, Chief Policy & Research Officer, Judicial Council
Deirdre Benedict, Supervising Analyst, Criminal Justice Services, Judicial Council
Deborah Brown, Chief Counsel, Legal Services, Judicial Council
James Barolo, Attorney, Legal Services, Judicial Council
Anne Ronan, Supervising Attorney, Legal Services, Judicial Council

12.	**Increased Use of Settlement Conferences in Unlawful Detainer Cases**	***Priority 1(e)***
		Strategic Plan Goal I and III

Project Summary: Develop proposals as appropriate to further the Ad Hoc Workgroup on Post-Pandemic Initiatives recommendation that settlement conferences be held more frequently in unlawful detainer cases, to encourage landlords and tenants to work on solutions not requiring trials. Courts are currently authorized to set mandatory settlement conferences under rule 3.1380 of the California Rules of Court, but are not required to hold them. Potential proposals may include requiring or encouraging settlement conferences in all unlawful detainer actions, amending the current rule to allow for less formal settlement conferences in such cases, or encouraging remote settlement conferences set for the day of trial.

Status/Timeline: Goal for any rule or form proposal developed is September 1, 2023, following circulation in next Winter comment cycle.

Fiscal Impact/Resources: TBD

☐ *This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.*

Internal/External Stakeholders: All draft proposals will circulate to seek comments from legal service groups, bar organizations, and court executives and presiding judges throughout the state.

AC Collaboration: N/A

ATTACHMENT 2

JUDICIAL COUNCIL OF CALIFORNIA

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

March 15, 2022

Hon. Stephanie E. Hulsey
Judge of the Superior Court of California,
County of Monterey
240 Church Street
Salinas, California 93901

Hon. Amy M. Pellman
Judge of the Superior Court of California,
County of Los Angeles
111 North Hill Street
Los Angeles, California 90012-3117

Dear Judge Hulsey and Judge Pellman:

As chair of the Ad Hoc Workgroup on Post-Pandemic Initiatives (P3), I want to express our appreciation for your willingness to consider and provide feedback on the various draft concepts the workgroup generated after hearing from a wide variety of stakeholders. Your feedback was particularly useful in helping us analyze the strength of various concepts and the appropriate timing for when to move forward with these. At this time, we are asking advisory committees to take the lead in developing these concepts into concrete proposals, whether rules, possible legislation, pilot projects, or guidance on good practices.

We now request that the Family and Juvenile Law Advisory Committee take the lead in developing the following concept:

- ***Virtual Visitation***
  Court-ordered virtual visitation promotes numerous familial relationships when families are not living under one roof, whether because the parents are not cohabitating or because

> the child has been removed from the parents, and when in-person visitation is not feasible. Virtual visitation can promote relationships between parents and children and between children and their siblings. Virtual visitation can also help improve (1) co-parenting relationships between foster caregivers and parents working to reunify with their children in the dependency system, (2) co-parenting relationships between parents who have children involved in the juvenile justice system, and (3) co-parenting relationships with parents involved in family court matters.

In September 2021, we requested that you include placeholder language on your annual agenda to account for additional work that may flow to your advisory committee out of the workgroup's efforts. Now that this work has solidified, I request that you work with advisory committee staff to revise this placeholder on your annual agenda and forward to Anne Ronan, staff to the Rules Committee, who will coordinate submission to the oversight committee for approval.

We have also asked P3 Workgroup members to serve as liaisons to the advisory committees working on these concepts. Your P3 liaison is Hon. Ann C. Moorman, Presiding Judge of the Superior Court of Mendocino County. Judge Moorman, along with workgroup staff, will be available to assist you throughout this process. If you have any questions, please feel free to reach out to our P3 Workgroup staff contact, Deirdre Benedict at deirdre.benedict@jud.ca.gov. Our workgroup members and staff look forward to working with you.

Sincerely,

Marsha G. Slough
Associate Justice of the Court of Appeal
Fourth Appellate District, Division Two

MGS/db
cc: Hon. Ann C. Moorman, Presiding Judge, Superior Court of Mendocino County
Millicent Tidwell, Chief Deputy Director, Judicial Council
Shelley Curran, Chief Policy & Research Officer, Judicial Council
Charlene Depner, Director, Center for Families, Children & the Courts, Judicial Council
Deirdre Benedict, Supervising Analyst, Criminal Justice Services, Judicial Council
John Henzl, Attorney, Center for Families, Children & the Courts, Judicial Council
Tracy Kenny, Attorney, Center for Families, Children & the Courts, Judicial Council
Anne Ronan, Supervising Attorney, Legal Services, Judicial Council

Revised Item 9 for Family and Juvenile Law Advisory Committee Annual Agenda

Information Form on Use of Virtual Visitation in Family and Juvenile Law Matters

***Priority*: 1**
Strategic Plan Goals: I, IV

Project Summary: As directed by the Ad Hoc Workgroup on Post-Pandemic Initiatives (P3), develop materials to ensure that use of court ordered virtual visitation is used effectively when in person visitation is not feasible. As P3 has noted:

> Virtual visitation can promote relationships between parents and children and between children and their siblings. Virtual visitation can also help improve (1) co-parenting relationships between foster caregivers and parents working to reunify with their children in the dependency system, (2) co-parenting relationships between parents who have children involved in the juvenile justice system, and (3) co-parenting relationships with parents involved in family court matters.

To support the effective use of virtual visitation the committee will review all the current content developed by the judicial branch in training and self-help materials to ensure that it is robust and effective, and based on that content, will draft an information form on virtual visitation, and review relevant parenting time (custody and visitation) forms for potential revisions, to be circulated for public comment.

Status/Timeline: Proposed new and/or revised forms to be circulated for public comment in the Winter 2023 Rules Cycle with an effective date of September 1, 2023.

Fiscal Impact/Resources: CFCC staff, in consultation with staff from Legal Services will prepare the proposed form.

Internal/External Stakeholders: The draft proposal will circulate for public comment to a list of family and juvenile law related stakeholders as well as all court executives and presiding judges.

AC Collaboration: The committee will work with the Ad Hoc Workgroup on Post-Pandemic Initiatives to ensure that the proposal is consistent with their expectations and the feedback that they received from court users and stakeholders.

ATTACHMENT 3

JUDICIAL COUNCIL OF CALIFORNIA

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

March 15, 2022

Hon. Gail Dekreon
Judge of the Superior Court of California,
County of San Francisco
400 McAllister Street
San Francisco, California 94102-4514

Dear Judge Dekreon:

As chair of the Ad Hoc Workgroup on Post-Pandemic Initiatives (P3), I want to express our appreciation for your willingness to consider and provide feedback on the various draft concepts the workgroup generated after hearing from a wide variety of stakeholders. Your feedback was particularly useful in helping us analyze the strength of various concepts and the appropriate timing for when to move forward with these. At this time, we are asking advisory committees to take the lead in developing these concepts into concrete proposals, whether rules, possible legislation, pilot projects, or guidance on good practices.

We now request that the Traffic Advisory Committee take the lead in developing the following concept:

- ***Streamline Traffic Infraction Process***
  Standardizing and streamlining remote appearances for infractions would benefit court users. Collaboration should be encouraged between courts and law enforcement to expand the use of remote appearance technology and, where possible, dedicate a space from which officers and potentially others may make appearances. Additionally, we ask that the Traffic Advisory Committee identify and address any California Rules of Court that may hinder the remote appearance of law enforcement in traffic court; this will include continuing the committee's work on a rule of court that addresses consistency for remote infraction appearances.

In September 2021, we requested that you include placeholder language on your annual agenda to account for additional work that may flow to your advisory committee out of the workgroup's efforts. Now that this work has solidified, I request that you work with advisory committee staff to revise this placeholder on your annual agenda and forward to Anne Ronan, staff to the Rules Committee, who will coordinate submission to the oversight committee for approval.

We have also asked P3 Workgroup members to serve as liaisons to the advisory committees working on these concepts. Your P3 liaisons are Hon. Kyle S. Brodie, Judge of the Superior Court of San Bernardino County, and Rebecca Fleming, Court Executive Officer of the Superior Court of Santa Clara County. These members, along with workgroup staff, will be available to assist you throughout this process. If you have any questions, please feel free to reach out to our P3 workgroup staff contact, Deirdre Benedict at deirdre.benedict@jud.ca.gov. Our workgroup members and staff look forward to working with you.

Sincerely,

Marsha G. Slough
Associate Justice of the Court of Appeal
Fourth Appellate District, Division Two

MGS/db
cc: Hon. Kyle S. Brodie, Judge of the Superior Court of California, San Bernardino County
Rebecca J. Fleming, Court Executive Officer, Superior Court of Santa Clara County
Millicent Tidwell, Chief Deputy Director, Judicial Council
Shelley Curran, Chief Policy & Research Officer, Judicial Council
Deirdre Benedict, Supervising Analyst, Criminal Justice Services, Judicial Council
Jamie Schechter, Attorney, Criminal Justice Services, Judicial Council
Anne Ronan, Supervising Attorney, Legal Services, Judicial Council

1	***Streamline Traffic Infraction Process***	***Priority 1(b)*** [1] ***Strategic Plan Goal 3*** [2]

Project Summary [3]***:*** Develop proposals as appropriate to further the Ad Hoc Workgroup on Post-Pandemic Initiatives concept that remote infraction appearances be standardized and streamlined. Potential proposals or guidance may include collaborating with law enforcement to expand the use of remote appearance technology and, where possible, dedicate a space from which officers and potentially others may make appearances. Further, the committee will identify and address any California Rules of Court that may hinder the remote appearance of law enforcement in traffic court.

Status/Timeline: Goal for any rule or form proposal developed is September 1, 2023, following circulation in next Winter comment cycle.

Fiscal Impact/Resources: Committee Staff.

☐ *This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.*

Internal/External Stakeholders: California Highway Patrol and other law enforcement agencies. All draft proposals will circulate to seek comments from legal service groups, bar organizations, and court executives and presiding judges throughout the state.

AC Collaboration: ITAC, TCPJAC/CEAC

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

[2] Indicate which goal number of The Strategic Plan for California's Judicial Branch the project most closely aligns.

[3] A key objective is a strategic aim, purpose, or "end of action" to be achieved for the coming year.

Item number: 03

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 4/6/2022

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

Title of proposal: Criminal Procedure: Motion and Order to Vacate Conviction or Sentence

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Revise forms CR-187 and CR-188

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:
Annual agenda approved by Rules Committee on (*date*): 11/2/2021
Project description from annual agenda: Review recently enacted legislation that may have an impact on criminal court administration - revise form CR-187 (motion to vacate conviction or sentence) to reflect that relief is available to convictions and sentences under AB 1259

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*
Requesting the proposal go to the September council meeting with an immediate effective date. This proposal implements a statutory change that became effective 1/1/22, and the form does not comply with the change.

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)
This proposal previously circulated for public comment in Feb - March 2022. The committee recommends substantive changes, requiring recirculation of the proposal.

Additional Information for JC Staff (provide with reports to be submitted to JC)**:**

- **Form Translations** (check all that apply)
  This proposal:
  ☒ includes forms that have been translated.
  ☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
  ☐ includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)
  ☐ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
  ☐ This proposal may require changes or additions to self-help web content.

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR22-30

Title
Criminal Procedure: Motion and Order to Vacate Conviction or Sentence

Action Requested
Review and submit comments by May 13, 2022

Proposed Rules, Forms, Standards, or Statutes
Revise forms CR-187 and CR-188

Proposed Effective Date
September 21, 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 revisions to two optional Judicial Council forms relating to vacating a conviction or sentence to implement recent amendments to Penal Code section 1473.7(a)(1) that became effective January 1, 2022, and to reflect case law interpreting that statute. The committee circulated proposed revisions from February to March 2022 and is proposing further revisions in light of the comments received.

Background

Optional forms *Motion to Vacate Conviction or Sentence* (form CR-187) and *Order on Motion to Vacate Conviction or Sentence* (form CR-188) were adopted by the Judicial Council, effective January 1, 2018, to implement the provisions of Assembly Bill 813 (Stats. 2016, ch. 739) and help individuals and the courts adhere to the procedural requirements of Penal Code sections 1016.5 and 1473.7. The forms were last amended effective January 1, 2020, in response to Assembly Bill 2867 (Stats. 2018, ch. 825), which clarified the timing and procedural requirements of Penal Code section 1473.7.

Prior Circulation

In February 2022, a proposal to amend the forms circulated for public comment.[1] Those proposed revisions were to allow a moving party to seek relief based on a prejudicial error that interfered with the party's ability to meaningfully understand, defend against, or knowingly

[1] See Invitation to Comment, SP22-04, *Criminal Procedure: Motion and Order to Vacate Conviction or Sentence*, available online at *https://www.courts.ca.gov/documents/sp22-04.pdf*.

accept the actual or potential adverse immigration consequences of a conviction or sentence. Additionally, that proposal included forms revisions to implement recent case law and clarify the forms by (1) clarifying the out-of-custody requirement (see *People v. Rodriguez* (2021) 68 Cal.App.5th 301); (2) including a request for appointment of counsel (see *People v. Fryhaat* (2019) 35 Cal.App.5th 969); (3) adding provisions around timeliness of the motion; and (4) simplifying the language in the motion to aid self-represented petitioners.

Six comments were received—from the Superior Courts of Los Angeles and Orange Counties, the Los Angeles County Public Defender's Office, the Orange County Bar Association, a staff attorney for an appellate court, and a member of the public. One commenter agreed with the proposal and five commenters agreed if modified. The committee incorporated several substantive changes from the comments and is now circulating the further revised forms for comment.

Proposal

The proposal would further revise the originally proposed *Motion to Vacate Conviction or Sentence* (form CR-187) to incorporate the following:

- On item 3, for motions under section 1473.7(a)(1):
    - Change the section heading to "Legal Invalidity With Actual or Potential Immigration Consequences";
    - Restructure and rephrase the reasonable diligence questions for clarity;
    - Add language that the reasonable diligence questions may be skipped if the moving party is requesting appointment of counsel;
    - Clarify that both notices in section 1473.7(b)(2)(A) and (B) must be received before the reasonable diligence element applies; and
    - Incorporate elements of the holding of *People v. Alatorre* (2021) 70 Cal.App.5th 747 by adding questions about when a moving party who received both notices before section 1473.7(a)(1) went into effect heard of the law and to explain what happened to give the moving party a reason to seek conviction relief.
- On item 6, add an option stating that the person is out of the United States and lacks permission to enter as a reason for a request to proceed without the party's personal presence.

The proposal would further revise *Order on Motion to Vacate Conviction or Sentence* (form CR-188) to incorporate the following:

- Move the provision in item 2 to renumbered items 3 and 4, with additional language stating that the court finds good cause to grant a request to have a hearing without the personal presence of the moving party.
- On renumbered item 3, for orders related to section 1473.7(a)(1):

- Replace all references to "find" to "deem";
- Revise the item on reasonable diligence to allow the court to deem the motion untimely after a hearing; and
- Replace the cite to *People v. Perez* with a cite to *People v. Alatorre*.

- On renumbered item 4, for orders related to section 1473.7(a)(2):

  - Separate the provisions for filing or failing to file a motion without undue delay; and
  - Add an option for the court to dismiss after a hearing if the moving party failed to file a motion without undue delay.

These revisions are proposed for the reasons summarized below.

Changes to form CR-187

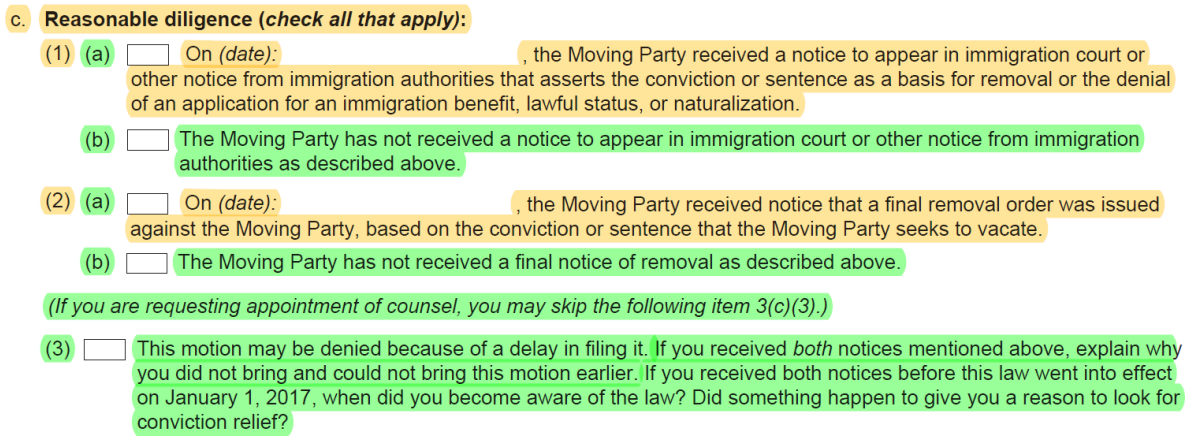
Change heading from "Legal Invalidity With Immigration Consequences" to "Legal Invalidity With Actual or Potential Immigration Consequences" (item 3)

The committee recommends revising the heading of item 3 to "Legal Invalidity With Actual or Potential Immigration Consequences" in response to a comment suggesting revising the heading to "Legal Invalidity With Actual or Potential Adverse Immigration Consequences" to conform to the statutory text, which states that "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 conviction or sentence." (Pen. Code, § 1473.7(a)(1).) The commenter's concern was that "[t]he absence of the word 'potential' … could mislead petitioners into incorrectly inferring that an actual adverse consequence must be shown."

The committee recommends adopting the change minus the word adverse, for brevity and because the adverseness of the consequences is implied.

Modify questions regarding filing of a motion under Penal Code section 1473.7(a)(1) with reasonable diligence (item 3c)

In response to comments, the committee recommends revising item 3c regarding filing a motion under Penal Code section 1473.7(a)(1) with reasonable diligence to (1) state that the reasonable diligence questions may be skipped if the person is requesting appointment of counsel; (2) restructure and rephrase the questions for clarity; (3) clarify that both notices described in section 1473.7(b)(2)(A) and (B) must be received before the reasonable diligence element applies; and (4) incorporate elements of the holding of *People v. Alatorre*, a recent case from the Fourth Appellate District of the Court of Appeal addressing reasonable diligence. The revised version of item 3(c) is below, with the committee's previously circulated changes highlighted in yellow and the recommended changes highlighted in green:



Two commenters expressed concern that an unrepresented and indigent person should have the opportunity to consult with counsel before making a statement regarding why the petition could not have been brought earlier. The committee agreed in part and recommends adding a statement that if the party is requesting appointment of counsel, the party may skip the item about reasonable diligence. This way, the court may assess whether the person has made a prima facie case for appointment of counsel based on the party's response to item 3b, Supporting Facts, and then appointed counsel may respond to the reasonable diligence questions, because the questions may be complex and reasonable diligence does not appear to be required to make a prima facie case for relief. Because the form is designed for use by self-represented parties requesting appointment of counsel, other self-represented parties, and counsel, the committee recommends this approach as a workable option to address how all three types of parties should approach the question.

Add options to the request to proceed without the party's personal presence (item 6)

In response to a comment, the committee recommends adding a checkbox stating that the person is outside of the United States and lacks permission to enter as a reason for a request to proceed without the party's personal presence.

Changes to form CR-188

Request to hold hearing without the personal presence of the moving party

The committee recommends moving item 2 from its original proposal, the order on the request to hold the hearing without the personal presence of the moving party, to renumbered items 3 and 4, motions under Penal Code section 1473.7(a)(1) and (a)(2), respectively, because this provision relates to motions brought under Penal Code section 1473.7. The committee also recommends adding language that the court "finds good cause to grant" a request to have the hearing without the personal presence of the moving party to conform to Penal Code section 1473.7(d).

Dismissal based on untimeliness (item 4b and 5b)
The invitation to comment requested specific comments, asking the following questions:

> Item 4 on CR-188 allows the court to find a motion filed under Penal Code section 1473.7(a)(1) as untimely. Should it be revised to allow the court to also dismiss the motion on that basis?
>
> Item 5 on CR-188 allows the court to find that the Moving Party failed to timely file a motion filed under Penal Code section 1473.7(a)(2). Should it be revised to allow the court to dismiss the motion on that basis?

Two courts recommended adding dismissal language for clarity, while another commenter opposed it because given that "[a]ll motions shall be entitled to a hearing" (Pen. Code, § 1473.7(d)), courts may not summarily dismiss a motion under Penal Code section 1473.7 without a hearing. Additionally, a member of the public commented that courts should not be able to immediately dismiss due to untimeliness due to the lack of understanding of court procedures by self-represented petitioners.

The committee recommends incorporating all comments by adding an option to dismiss after a hearing to renumbered items 3 and 4.

On the option to find the motion untimely, a commenter recommended adding, after the cite to *People v. Perez* (2021) 67 Cal.App.5th 1008, a cite to *People v. Alatorre*, stating that the *Alatorre* opinion clarified that relief "extends to persons who seek vacatur of convictions that predate section 1473.7." The committee recommends replacing the cite to *Perez* with a cite to *Alatorre*, because it draws on *Perez*.

The committee also recommends replacing references to the court finding the motion timely or untimely to deeming the motion timely or untimely, to conform to the statutory language.

Alternatives Considered

The committee did not consider the alternative of taking no action, determining that it was important for the forms conform to the legislative change and case law.

Fiscal and Operational Impacts

Expected costs are limited to training, possible case management system updates, and the production of revised 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?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Forms CR-187 and CR-188, at pages 7–11 (original revisions highlighted in yellow, with new proposed revisions in green)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	***FOR COURT USE ONLY*** DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	***FOR COURT USE ONLY*** DATE: TIME: DEPARTMENT:

MOTION TO VACATE CONVICTION OR SENTENCE

☐ Pen. Code, § 1016.5 ☐ Pen. Code, § 1473.7(a)(1) ☐ Pen. Code, § 1473.7(a)(2)

Instructions—Read carefully if you are filing this motion for yourself

- The term "Moving Party" as used in this form refers to the person asking for relief.
- This motion must be clearly handwritten in ink or typed. Make sure all answers are true and correct. If you make a statement that you know is false, you could be convicted of perjury (lying under oath).
- You must file a separate motion for each separate case number.
- Fill in the requested information. If you need more space, add an extra page and note that your answer is "continued on added page," or use *Attachment to Judicial Council Form* (form MC-025) as your additional page.
- Serve the motion on the prosecuting agency.
- **File the motion in the superior court in the county where the conviction or sentence was imposed.** Only the original motion needs to be filed unless local rules require additional copies.
- Notify the clerk of the court in writing if you change your address after filing your motion.

1. This motion concerns a conviction or sentence in case number . On (*date):* , the Moving Party was convicted of a violation of the following offenses *(list all offenses included in the conviction)*:

CODE	SECTION	TYPE OF OFFENSE *(felony, misdemeanor, or infraction)*

If you need more space to list offenses, use *Attachment to Judicial Council Form* (form MC-025) or any other additional page.

Form Approved for Optional Use
Judicial Council of California
CR-187 [Rev. September 21, 2022]

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

2. ☐ **MOTION UNDER PENAL CODE SECTION 1016.5**

a. **GROUNDS FOR RELIEF: The Moving Party requests relief based on the following:**

(1) Before acceptance of a plea of guilty or nolo contendere to the offense, the court failed to advise the Moving Party that the conviction might have immigration consequences, as required under Penal Code section 1016.5(a).

(2) The conviction that was based on the plea of guilty or nolo contendere may result in immigration consequences for the Moving Party, including possible deportation, exclusion from admission to the United States, or denial of naturalization.

(3) The Moving Party likely would not have pleaded guilty or nolo contendere if the court had advised the Moving Party of the immigration consequences of the plea. *(People v. Arriaga* (2014) 58 Cal.4th 950.)

b. **Supporting Facts**

Tell your story briefly. Describe the facts you allege regarding (1) the court's failure to advise you of the immigration consequences, (2) the possible immigration consequences, and (3) the likelihood that you would not have pleaded guilty or nolo contendere if you had been advised of the immigration consequences by the court. (*If necessary, attach additional pages.You may use* Attachment to Judicial Council Form *(form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting the claim.*)

3. ☐ **MOTION UNDER PENAL CODE SECTION 1473.7(a)(1), Legal Invalidity With Actual or Potential Immigration Consequences**

The Moving Party is not currently in criminal custody in the case referred to in item 1 (criminal custody includes in jail or prison; on bail, probation, mandatory supervision, postrelease community supervision (PRCS), or parole).

a. **GROUNDS FOR RELIEF: Moving Party requests relief based on the following:**

The conviction or sentence is legally invalid due to a prejudicial error (a mistake that causes harm) that damaged the Moving Party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence. (Note: A determination of legal invalidity may, *but is not required to*, include a finding of ineffective assistance of counsel.) If you are claiming that your conviction or sentence is invalid due to ineffective assistance of counsel, before the hearing is held on this motion you (or the prosecutor) must give timely notice to the attorney who you are claiming was ineffective in representing you.

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

3. b. **Supporting Facts**

Tell your story briefly. What facts show prejudicial error? Include information that shows that the conviction or sentence you are challenging is currently causing or has the possibility of causing your removal from the United States, or the denial of your application for an immigration benefit, lawful status, or naturalization.

CAUTION: You must *state facts, not conclusions.* For example, if claiming ineffective assistance of counsel, you must state facts detailing what the attorney did or failed to do and how that affected your conviction or sentence.

Note: The court presumes your conviction or sentence is not legally valid if
(1) you pleaded guilty or nolo contendere based on a law that provided that the arrest and conviction would be deemed never to have occurred if specific requirements were completed;
(2) you completed those specific requirements; and
(3) despite completing those requirements, your guilty or nolo contendere plea has been, or possibly could be, used as a basis for adverse immigration consequences.

(*If necessary, attach additional pages. You may use* Attachment to Judicial Council Form *(form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting the claim.)*

c. **Reasonable Diligence (*check all that apply*):**

(1) (a) ☐ On *(date):* , the Moving Party received a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence as a basis for removal or the denial of an application for an immigration benefit, lawful status, or naturalization.

(b) ☐ The Moving Party has not received a notice to appear in immigration court or other notice from immigration authorities as described above.

(2) (a) ☐ On *(date):* , the Moving Party received notice that a final removal order was issued against the Moving Party, based on the conviction or sentence that the Moving Party seeks to vacate.

(b) ☐ The Moving Party has not received a final notice of removal as described above.

(If you are requesting appointment of counsel, you may skip the following item, 3c(3).)

(3) ☐ This motion may be denied because of a delay in filing it. If you received *both* notices mentioned above, explain why you did not bring and could not bring this motion earlier. If you received both notices before this law went into effect on January 1, 2017, when did you become aware of the law? Did something happen to give you a reason to look for conviction relief?

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

4. ☐ **MOTION UNDER PENAL CODE SECTION 1473.7(a)(2), Newly Discovered Evidence of Actual Innocence**

The Moving Party is not currently in criminal custody in the case referred to in item 1 (criminal custody includes in jail or prison; or on bail, probation, mandatory supervision, postrelease community supervision (PRCS), or parole).

a. **GROUNDS FOR RELIEF: Moving Party requests relief based on the following:**

(1) Newly discovered evidence of actual innocence exists that requires vacating the conviction or sentence as a matter of law or in the interests of justice.

(2) The Moving Party discovered the new evidence of actual innocence on *(date):*

b. **Supporting Facts**

Tell your story briefly. Describe the newly discovered evidence and how it proves your actual innocence. Explain why you could not discover this evidence at the time of your trial. Explain why you did not bring and could not bring this motion earlier. (*If necessary, attach additional pages. You may use* Attachment to Judicial Council Form *(form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting the claim.)*

5. ☐ **REQUEST FOR COUNSEL (*People v. Fryhaat* (2019) 35 Cal.App.5th 969, 981.)**

a. The Moving Party requests appointment of counsel upon a finding by the court that there is a prima facie case for relief.

b. The Moving Party is indigent and has completed and attached *Defendant's Financial Statement* (form CR-105) showing that the Moving Party cannot afford to hire a lawyer. Form CR-105 is available online at www.courts.ca.gov/forms.

6. ☐ The Moving Party requests that the court hold the hearing on this motion without the Moving Party's personal presence because the Moving Party is *(check one)*

a. ☐ in federal custody awaiting deportation.

b. ☐ otherwise in custody at *(facility):*

c. ☐ outside of the United States and lacks permission to enter.

d. ☐ other *(specify):*

7. The Moving Party requests that the court vacate the conviction or sentence in the above-captioned matter.

8. If the Moving Party entered a plea of guilty or nolo contendere, the Moving Party requests that the court allow the withdrawal of the plea of guilty or nolo contendere in the above-captioned matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are 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:

(NAME OF MOVING PARTY OR ATTORNEY FOR MOVING PARTY)

(SIGNATURE OF MOVING PARTY OR ATTORNEY)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	DRAFT Not approved by the Judicial Council
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
ORDER ON MOTION TO VACATE CONVICTION OR SENTENCE ☐ **Pen. Code, § 1016.5** ☐ **Pen. Code, § 1473.7(a)(1)** ☐ **Pen. Code, § 1473.7(a)(2)**	*FOR COURT USE ONLY* DATE: TIME: DEPARTMENT:

1. The court
   a. ☐ grants the request for appointment of counsel.
   b. ☐ denies the request for appointment of counsel because the Moving Party has not shown *(choose all that apply)*:
      ☐ a prima facie case ☐ indigency.

2. **FOR PURPOSES OF PENAL CODE SECTION 1016.5 RELIEF, THE COURT**
   ☐ grants ☐ denies the Moving Party's request to vacate the judgment and to permit the Moving Party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.

3. **FOR PURPOSES OF PENAL CODE SECTION 1473.7(a)(1) RELIEF, THE COURT**
   a. ☐ finds good cause to grant ☐ denies the request that the court hold the hearing without the personal presence of the Moving Party.
   b. ☐ deems the motion timely because the Moving Party did not receive, or acted with reasonable diligence after receiving, notice from immigration authorities.
      ☐ exercises its discretion to deem the motion timely.
      ☐ deems the motion untimely and dismisses the motion after a hearing (*People v. Alatorre* (2021) 70 Cal.App.5th 747).
   c. ☐ grants ☐ denies the Moving Party's request to vacate the conviction or sentence on the basis that the conviction or sentence is legally invalid due to a 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 conviction or sentence.
   d. ☐ permits the Moving Party to withdraw the plea of guilty or nolo contendre and enter a plea of not guilty.

4. **FOR PURPOSES OF PENAL CODE SECTION 1473.7(a)(2) RELIEF, THE COURT**
   a. ☐ finds good cause to grant ☐ denies the request that the court hold the hearing without the personal presence of the Moving Party.
   b. ☐ finds that the Moving Party filed without undue delay from the date the Moving Party discovered, or could have discovered through the exercise of due diligence, the evidence of actual innocence.
   c. ☐ finds that the Moving Party failed to file the motion without undue delay from the date the Moving Party discovered, or could have discovered through the exercise of due diligence, the evidence of actual innocence, and dismisses the motion after a hearing.
   d. ☐ grants ☐ denies the Moving Party's request to vacate the conviction or sentence based on newly discovered evidence of actual innocence. The court's basis for this ruling is specified below:

   e. ☐ permits the Moving Party to withdraw the plea of guilty or nolo contendre and enter a plea of not guilty.

Date:

_____
(JUDICIAL OFFICER)

Item number: 04

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 4/6/2022

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

Title of proposal: Criminal Procedure: Mental Competency Proceedings

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend rule 4.130

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:
Annual agenda approved by Rules Committee on (*date*): 11/2/2021
Project description from annual agenda: Review recently enacted legislation that may have an impact on criminal court administration - Amending rule 4.130 (mental competency proceedings) to reflect changes to misdemeanor incompetent to stand trial cases under SB 317

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

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

Additional Information for JC Staff (provide with reports to be submitted to JC)**:**

- **Form Translations** (check all that apply)
  This proposal:
  ☐ includes forms that have been translated.
  ☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
  ☐ includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)
  ☐ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
  ☐ This proposal may require changes or additions to self-help web content.

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-095
For business meeting on: May 13, 2022

Title
Criminal Procedure: Mental Competency Proceedings

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 4.130

Recommended by
Criminal Law Advisory Committee
Hon. Brian. M. Hoffstadt, Chair

Agenda Item Type
Action Required

Effective Date
May 13, 2022

Date of Report
March 29, 2022

Contact
Sarah Fleischer-Ihn, 415-865-7702
sarah.fleischer-ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends amendments to California Rules of Court, rule 4.130, to reflect statutory changes to Penal Code section 1370 and new Welfare and Institutions Code section 4335.2 authorizing the Department of State Hospitals to conduct a reevaluation of a defendant found to be incompetent to stand trial in specified circumstances, and statutory changes to Penal Code section 1370.01 regarding defendants found incompetent to stand trial in a misdemeanor criminal proceeding.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council amend rule 4.130 of the California Rules of Court, effective May 13, 2022. The proposal would:

- Clarify that a placement recommendation from the court-appointed expert only applies to felonies;
- Add a subdivision requiring the expert competency report to contain an opinion as to whether a misdemeanor defendant is "gravely disabled";
- Clarify that restoration only applies to felonies and those found incompetent to stand trial due to developmental disabilities;

- Add a new subdivision to state posttrial options provided in the amended statute when a defendant is found incompetent to stand trial in a misdemeanor criminal proceeding;
- Delete provisions that duplicate statutes on mental health diversion;
- Amend the title to subdivision (h) to clarify that the contents apply to posttrial hearings on competence under Penal Code section 1370; and
- Add references to reevaluations done by Department of State Hospitals.

The proposed amended rule is attached at pages 6–9.

Relevant Previous Council Action

Rule 4.130 was adopted effective January 1, 2007. It was most recently amended, effective September 1, 2020, to reflect legislative changes by deleting an advisory committee comment stating that expert reports are publicly accessible court documents (Senate Bill 55; Stats. 2019, ch. 251), and replacing outdated terminology to describe mental health disorders (Assembly Bill 46; Stats. 2019, ch. 9).

Analysis/Rationale

The recommended amendments to rule 4.130, regarding mental competency proceedings, reflect statutory changes to Penal Code sections 1370 and 1370.01.

Penal Code section 1370, which applies to felony cases in which a defendant is found to be mentally incompetent, was amended, in relevant part, to authorize the Department of State Hospitals to conduct a competency reevaluation of a defendant in county custody if the defendant has been committed to and awaiting admission to the department for 60 days or more (Assembly Bill 133; Stats. 2021, ch. 143). This reevaluation procedure is further detailed in Welfare and Institutions Code section 4335.2. The recommendation includes amending subdivision (h) on posttrial hearings on competence to reference competency reevaluations conducted by the Department State Hospitals as a basis for a posttrial hearing on competence.

Penal Code section 1370.01, which applies to misdemeanor cases in which a defendant is found to be incompetent, was amended, in relevant part, to repeal provisions regarding the restoration of competency for a person charged with a misdemeanor, or a violation of probation for a misdemeanor, and, on finding the defendant incompetent to stand trial, requiring a court to suspend the proceedings and take certain actions, including granting diversion not to exceed one year or dismissing the charges (Senate Bill 317; Stats. 2021, ch. 599).

Based on these statutory changes to section 1370.01, the recommendation adds a new subpart to subdivision (f) to state posttrial options provided in the amended statute when a defendant is found incompetent to stand trial in a misdemeanor criminal proceeding. It also clarifies, in subdivision (f)(2), that restoration to competency only applies to felonies or those found incompetent to stand trial due to developmental disabilities, as misdemeanor defendants found incompetent to stand trial under section 1370.01 are no longer restored to competence. The recommendation also clarifies that a placement recommendation from the court-appointed expert

only applies to felonies, and eliminates portions of subdivision (g) on mental health diversion that are duplicative of statutory language as unnecessary.

The recommendation includes adding new subdivision (d)(2)(h) to require the expert competency report to contain an opinion as to whether a misdemeanor defendant is "gravely disabled," to incorporate statutory changes allowing a court to refer misdemeanor defendants ineligible for diversion to the county conservatorship investigator for possible conservatorship proceedings. This provision is responsive to the fact that a determination as to grave disability will need to be made within the statutory timeframe if a defendant found incompetent under section 1370.01 is ineligible for diversion or is found unsuitable or terminated from diversion. Requiring the evaluator to assess the defendant for grave disability contemporaneously with the competency evaluation affords the court and responsible county agencies the information needed to change courses swiftly, should diversion be denied.

Policy implications

This proposal has no major policy implications because the recommendation is to implement new legislation. It aligns with the Judicial Council's policy to keep the California Rules of Court consistent with related statutes.

Comments

This proposal circulated for comment from February 4, 2022, to March 18, 2022. Three comments were received. The Superior Court of Los Angeles County agreed with the proposal, and the Superior Court of Orange County and Orange County Bar Association agreed with the proposal if modified.

Clearer language as to posttrial procedure in subdivision (f)(2)

The invitation to comment offered an alternative along with the proposed language for subdivision (f)(2) regarding posttrial procedures. This language states posttrial options when a defendant is found incompetent under section 1370 or 1370.1, clarifying that restoration only applies in these contexts. Two commenters recommended the alternative as clearer. The committee agreed and has incorporated the alternative language into the recommended revisions.

Diversion for persons found incompetent to stand trial under Penal Code section 1370.1 (developmental disability)

Subdivision (f)(2) on posttrial procedures outlines two options for a defendant found incompetent to stand trial: (1) restoration treatment for persons found incompetent to stand trial under Penal Code section 1370 (felonies) or section 1370.1 (developmental disabilities), or (2) mental health diversion for persons found incompetent to stand trial under Penal Code section 1370.

The Orange County Bar Association commented that it was not clear whether a person found incompetent to stand trial due to a developmental disability was ineligible for diversion, and that the reference to Penal Code section 1370.1 should be removed. The committee declined to incorporate the commenter's suggestion, as Penal Code section 1370.1 does not include a section

on mental health diversion, unlike Penal Code section 1370. The committee also finds the reference to section 1370.1 in subdivision (f)(2) appropriate.

Add language that finding of grave disability not be a basis to deny diversion
The committee proposed and circulated a new provision (subdivision (d)(2)(H)) in the evaluator's report section:

> [The report must include the following:] [¶] … [¶] If the defendant is charged only with a misdemeanor offense, an opinion based on present clinical impressions and available historical data as to whether the defendant, regardless of custody status, appears to be gravely disabled, as defined in Welfare and Institutions Code section 5008(h)(1)(A).

The proposed language reflects Penal Code section 1370.01(b)(1)(D), which outlines three options for the court to pursue if a misdemeanor defendant who is incompetent to stand trial is ineligible for mental health diversion. One option is for the court to refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings if, based on the opinion of a qualified mental health expert, the defendant appears to be gravely disabled, as defined in Welfare and Institutions Code section 5008(h)(1)(A).

The Orange County Bar Association submitted a comment to add the following language to proposed subdivision (d)(2)(H): "Any opinion that the defendant appears to be gravely disabled shall not be a basis to deny the defendant diversion pursuant to Penal Code section 1001.36."

The committee declined to add the commenter's suggested language. It is the committee's position that the proposed language in subdivision (d)(2)(H), requiring an evaluator to provide an opinion as to whether a misdemeanor defendant is gravely disabled, does not suggest that the defendant, if gravely disabled, cannot be diverted under section 1001.36. The rule is responsive to the fact that a determination as to grave disability will need to be made within the statutory timeframe if a person found incompetent under section 1370.01 is ineligible for diversion or is found unsuitable or terminated from diversion. Requiring the evaluator to assess the defendant for grave disability contemporaneously with the competency evaluation affords the court and responsible county agencies the information needed to change courses swiftly, should diversion be denied.

Procedures following reevaluation by Department of State Hospitals
The Superior Court of Orange County posed questions regarding the procedures following reevaluation by the Department of State Hospitals as contemplated by Assembly Bill 133. The committee notes that the questions address points in the relevant statutes around reevaluation, and are outside the scope of this proposal.

Alternatives considered
The committee did not consider the alternative of taking no action, because the rules would be inaccurate if not revised to reflect the recently enacted laws. The committee considered waiting

for the regular Judicial Council cycle, which would have resulted in the amended rule not going into effective until January 1, 2023, but decided the amendments should take effect immediately to ensure that the rules of court are consistent with statute.

The committee considered adding a new subdivision on mental health diversion for a defendant found incompetent to stand trial in a misdemeanor criminal proceeding under Penal Code section 1370.01. However, since the new subdivision in the rule would largely duplicate the statutory requirements already stated in Penal Code section 1370.01, the committee decided not to propose a new subdivision. Instead, the committee added posttrial options for when a defendant is found incompetent to stand trial in a misdemeanor criminal proceeding to the existing subdivision on posttrial procedures.

Fiscal and Operational Impacts

The statutory changes to Penal Code section 1370.01 include an evaluation by a qualified mental health expert on whether specified defendants are gravely disabled as defined by Welfare and Institutions Code section 5008(h)(1)(A). The proposed rule suggests this evaluation be conducted as part of the initial competency examination to increase efficiencies and streamline procedures, when appropriate, by having one court-appointed expert provide all the relevant mental health information regarding the defendant rather than requiring the appointment of a separate expert at a later time.

The Superior Court of Orange County commented that the proposed rule allowed the court to act more swiftly to assist defendants who have a mental illness or are gravely disabled.

Attachments and Links

1. Cal. Rules of Court, rule 4.130, at pages 6–9
2. Chart of comments, at pages 10–13

Rule 4.130 of the California Rules of Court is amended, effective May 13, 2022, to read:

Rule 4.130. Mental competency proceedings

(a)–(c) * * *

(d) Examination of defendant after initiation of mental competency proceedings

(1) * * *

(2) Any court-appointed experts must examine the defendant and advise the court on the defendant's competency to stand trial. Experts' reports are to be submitted to the court, counsel for the defendant, and the prosecution. The report must include the following:

(A)–(E) * * *

(F) A list of all sources of information considered by the examiner, including legal, medical, school, military, regional center, employment, hospital, and psychiatric records; the evaluations of other experts; the results of psychological testing; police reports; criminal history; the statement of the defendant; statements of any witnesses to the alleged crime; booking information, mental health screenings, and mental health records following the alleged crime; consultation with the prosecutor and defendant's attorney; and any other collateral sources considered in reaching his or her conclusion; ~~and~~

(G) If the defendant is charged with a felony offense, a recommendation, if possible, for a placement or type of placement or treatment program that is most appropriate for restoring the defendant to competency; and

(H) If the defendant is charged only with a misdemeanor offense, an opinion based on present clinical impressions and available historical data as to whether the defendant, regardless of custody status, appears to be gravely disabled, as defined in Welfare and Institutions Code section 5008(h)(1)(A).

(3) * * *

(e) * * *

(f) Posttrial procedure

(1) If the defendant is found mentally competent, the court must reinstate the criminal proceedings.

(2) If the defendant in a felony case is found to be mentally incompetent under section 1370 or the defendant in any criminal action is found to be mentally incompetent under section 1370.1 due to a developmental disability, the criminal proceedings remain suspended and the court ~~must~~ either:

(A) Must issue an order committing the person for restoration treatment under the provisions of the governing statute; or

(B) In the case of a person eligible for commitment under ~~Penal Code~~ sections ~~s~~ 1370 ~~or 1370.01~~, if the person is found incompetent due to a mental disorder, may consider placing the ~~committed~~ person on a program of diversion under section 1001.36 in lieu of commitment.

(3) If the defendant is found to be mentally incompetent in a misdemeanor case under section 1370.01, the criminal proceedings remain suspended, and the court may dismiss the case under section 1385 or conduct a hearing to consider placing the person on a program of diversion under section 1001.36.

(g) ~~Diversion of a person eligible for commitment under section 1370 or 1370.01~~ Reinstatement of felony proceedings under section 1001.36(d)

~~(1) After the court finds that the defendant is mentally incompetent and before the defendant is transported to a facility for restoration under section 1370(a)(1)(B)(i), the court may consider whether the defendant may benefit from diversion under Penal Code section 1001.36. The court may set a hearing to determine whether the defendant is an appropriate candidate for diversion. When determining whether to exercise its discretion to grant diversion under this section, the court may consider previous records of participation in diversion under section 1001.36.~~

~~(2) The maximum period of diversion after a finding that the defendant is incompetent to stand trial is the lesser of two years or the maximum time for restoration under Penal Code section 1370(c)(1) (for felony offenses) or 1370.01(c)(1) (for misdemeanor offenses).~~

~~(3) The court may not condition a grant of diversion for defendant found to be incompetent on either:~~

~~(A) The defendant's consent to diversion, either personally, or through counsel; or~~

~~(B) A knowing and intelligent waiver of the defendant's statutory right to a speedy trial, either personally, or through counsel.~~

~~(4) A finding that the defendant suffers from a mental health disorder or disorders rendering the defendant eligible for diversion, any progress reports concerning the defendant's treatment in diversion, or any other records related to a mental health disorder or disorders that were created as a result of participation in, or completion of, diversion or for use at a hearing on the defendant's eligibility for diversion under this section, may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in article I, section 28(f)(2) of the California Constitution.~~

~~(5)~~ If a defendant eligible for commitment under section 1370 is granted diversion under section 1001.36, and during the period of diversion~~,~~ the court determines that criminal proceedings should be reinstated under ~~Penal Code~~ section 1001.36(d), the court must, under ~~Penal Code~~ section 1369, appoint a psychiatrist, licensed psychologist, or any other expert the court may deem appropriate, to examine the defendant and return a report~~,~~ opining on the defendant's competence to stand trial. The expert's report must be provided to counsel for the People and to the defendant's counsel.

~~(A)~~(1) * * *

~~(B)~~(2) * * *

~~(C)~~(3) If the court finds by a preponderance of the evidence that the defendant is mentally incompetent, criminal proceedings must remain suspended, and the court must order that the defendant be committed~~, under Penal Code section 1370 (for felonies) or 1370.01 (for misdemeanors),~~ and placed for restoration treatment.

~~(D)~~(4) If the court concludes, based on substantial evidence, that the defendant is mentally incompetent and is not likely to attain competency within the time remaining before the defendant's maximum date for returning to court, and has reason to believe the defendant may be gravely disabled, within the meaning of Welfare and Institutions Code section 5008(h)(1), the court may, instead of issuing a commitment order under ~~Penal Code~~ sections 1370 ~~or 1370.01~~, refer the matter to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant under Welfare and Institutions Code section 5350 et seq.

~~(6) If the defendant performs satisfactorily and completes diversion, the case must be dismissed under the procedures stated in Penal Code section 1001.36, and the defendant must no longer be deemed incompetent to stand trial.~~

(h) Posttrial hearings on competence under section 1370

(1) * * *

(2) On receipt of ~~the~~ an evaluation report under (h)(1) or an evaluation by the State Department of State Hospitals under Welfare and Institutions Code section 4335.2, the court must direct the clerk to serve a copy on counsel for the People and counsel for the defendant. If, in the opinion of the appointed expert or the department's expert, the defendant has regained competence, the court must conduct a hearing~~,~~ as if a certificate of restoration of competence had been filed under ~~Penal Code~~ section 1372(a)(1), except that a presumption of competency does not apply. At the hearing, the court may consider any evidence, presented by any party, ~~which~~ that is relevant to the question of the defendant's current mental competency.

(A)–(C) * * *

SP22-03

Criminal Procedure: Mental Competency Proceedings (Amend Cal. Rules of Court, rule 4.130)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Daniel S. Robinson, President	AM	• Re (f)(2): the language in the comment box is more clear than the language in the proposed rule. • Re (f)(2), 1370.1: It is not clear that a person found incompetent pursuant to PC 1370.1 is ineligible for diversion pursuant to PC 1001.36. The reference to 1370.1 in in (f)(2) should be removed • Re (d)(2)(H): add the following language: "Any opinion that the defendant appears to be gravely disabled shall not be a basis to deny the defendant diversion pursuant to Penal Code section 1001.36."	The committee agrees and has incorporated the alternate language for subdivision (f)(2) in its recommendation to the Council. Penal Code section 1370.1 does not include a section on mental health diversion, unlike Penal Code section 1370. The reference to section 1370.1 in subdivision (f)(2) is appropriate. The proposed language in subdivision (d)(2)(H), requiring an evaluator to provide an opinion as to whether a misdemeanor defendant is gravely disabled does not suggest that the defendant, if gravely disabled, cannot be diverted under section 1001.36. The rule is responsive to the fact that a determination as to grave disability will need to be made within the statutory timeframe if a person found incompetent under section 1370.01 is ineligible for diversion or is found unsuitable or terminated from diversion. Requiring the evaluator to assess the defendant for grave disability contemporaneously with the competency evaluation affords the court and responsible county agencies the information needed to change courses swiftly, should diversion be denied.
2.	Superior Court of Los Angeles County by Bryan Borys	A	No specific comment.	No response required.

SP22-03

Criminal Procedure: Mental Competency Proceedings (Amend Cal. Rules of Court, rule 4.130)

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

	Commenter	Position	Comment	Committee Response
3.	Superior Court of Orange County by Elizabeth Flores, Operations Analyst	AM	In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following: • Does the proposal appropriately address the stated purpose? Response: The proposal does appropriately address the stated purpose.	No response required.
			• In subdivision (f)(2), would the following phrasing be clearer and more accurate than the proposed version? Response: Yes, the alternate phrasing is clearer than the proposed phrasing.	The committee agrees and has incorporated the alternate language for subdivision (f)(2) in its recommendation to the Council.
			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. Response: Not placing a mentally incompetent defendant with misdemeanor charges in the Department of State Hospitals would be efficient and low cost. The court would not spend additional monies having the Sheriff's Department transporting the defendant to and from the state hospital, housing in the county jail for the interim, or other supplemental reports. The initial competency examination of the defendant requiring competency findings and now placement recommendations eliminates the second part of the process. The defendant will no longer have to be interviewed	

	Commenter	Position	Comment	Committee Response
			by the doctors multiple times. The court can now act more swiftly to assist defendants who have a mental illness or are gravely disabled. Defendants with felony charges awaiting admission into a treatment facility under Penal Code Section 1370 and are in custody for 60 days or more is unclear as to their reevaluation. Once the court orders them committed, the facility has 90 days to submit a progress report to the court. Who will the court pay for reevaluations if the defendant has not been transported to a facility? The defendants are to be reevaluated by the doctors upon arrival at the facility. The given background of this proposal states the Department of State Hospital has been authorized to review the defendant before being admitted into the treatment facility. I am unclear as to who and where this is to take place. What will be the required time frame of noticing the facility that the defendant will not be admitted if found competent while currently in custody? The addition of subdivision (d)(2)(H) would assist the court in determining if the defendant should be referred for conservatorship upon making a finding of incompetence. This may reduce the number of subsequent reports and hearings. • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of	These questions are outside the scope of these rules. The court does not appoint or pay experts for reevaluations conducted by the Department of State Hospitals pending a committed individual's transportation to a treatment facility. Since the Department of State Hospitals conducts the reevaluation and would provide the opinion that the person has regained competence, no notice to a Department of State Hospitals facility would be necessary. (See Welf. and Inst. Code, § 4335.2.)

	Commenter	Position	Comment	Committee Response
			training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Response: -the court notifying the regional center, CONREP, Orange County Health Care Agency, and County Public Guardian; their services may be requested sooner -who is to notify the court the defendant was reevaluated, will not be admitted into a treatment facility or diversion program, and be returned to the court? -identifying the person responsible for contacting the treatment facility to advise the defendant will no longer be transported to their facility. -revising some of the functions will be necessary to combine because, as of now, some procedures are two steps -no docket codes or modifying our case management system are required • How well would this proposal work in courts of different sizes Response: This proposal does not depend on how big or small a court is. It assists judicial officers with clarity and directives on handling defendants with mental health issues.	This issued is addressed in statute. The Department of State Hospitals would notify the court if, in the opinion of the department's expert, the defendant has regained competence, and the court would proceed as if a certificate of restoration of competence was returned under Penal Code section 1372(a)(1), except a presumption of competency would not apply and a hearing would be held to determine whether competency has been restored. (Pen. Code, § 1370(a)(1)(H)(ii).)

Item number: 05

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 4/6/22

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

Title of proposal: Jury Instructions: Civil Jury Instructions (Release 41)

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Judicial Council of California Civil Jury Instructions (CACI), Add No. VF-2304; and revise Nos. VF-410, 1009B, 1306, 1621, VF-1604, 1810, 2334, 2522A, 2522B, 2522C, 2546, VF-2507A, VF-2507B, VF 2507C, VF-2513, 2754, 3714, 3905A, 3919 (renumbered from 3903Q), 4000, and 4002.

Committee or other entity submitting the proposal:
Advisory Committee on Civil Jury Instructions
Hon. Martin J. Tangeman, Chair

*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:
Annual agenda approved by Rules Committee on (*date*): 11/02/21
Project description from annual agenda: 1. Maintenance—Case Law; 2. Maintenance—Legislation; 3. New Instructions and Expansion into New Subject Matter Areas; 4. Maintenance—Comments from Users; 5. Maintenance—Sources and Authority; 5. Maintenance—Sources and Authority; 6. Maintenance—Secondary Sources

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

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

Additional Information for JC Staff (provide with reports to be submitted to JC)**:**

- **Form Translations** (check all that apply)
  This proposal:
  ☐ includes forms that have been translated.
  ☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
  ☐ includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)
  ☐ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
  ☐ This proposal may require changes or additions to self-help web content.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-032
For business meeting on: May 12–13, 2022

Title
Jury Instructions: Civil Jury Instructions (Release 41)

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 13, 2022

Date of Report
March 28, 2022

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

Executive Summary

The Advisory Committee on Civil Jury Instructions recommends approval of new and revised civil jury instructions prepared by the committee. These changes bring the instructions up to date with developments in the law over the previous six months. Upon Judicial Council approval, the instructions will be published in the official May supplement to the 2022 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 13, 2022, 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. Addition of 1 new verdict form: CACI No. VF-2304; and

2. Revisions to 21 instructions and verdict forms: CACI Nos. VF-410, 1009B, 1306, 1621, VF-1604, 1810, 2334, 2522A, 2522B, 2522C, 2546, VF-2507A, VF-2507B, VF-2507C, VF-2513, 2754, 3714, 3905A, 3919 (renumbered from 3903Q), 4000, and 4002.

A table of contents and the proposed new and revised civil jury instructions and verdict forms are attached at pages 7–87.

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 41 of *CACI*. The council approved release 40 at its November 2021 meeting.

Analysis/Rationale

A total of 22 instructions and verdict forms are presented in this release. The Judicial Council's Rules Committee has also approved, at its meeting on April 6, 2022, changes to 19 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, attorneys, and bar associations; 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.

New instructions and verdict forms

The committee proposes adding one new verdict form and deferring its consideration of new instructions under the Labor Code that were circulated for public comment.

CACI No. VF-2304, *Bad Faith (Third Party)—Refusal to Accept Reasonable Settlement Demand Within Liability Policy Limits*. Based on suggestions from commenters last year, the committee has developed a new verdict form based on CACI No. 2334. The committee received comments in support of the new verdict form, and a suggestion to add an option in question 7 for

[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.

damages specifically related to the amount of an excess judgment. The committee now recommends adding the optional item.

CACI series 2700. The committee circulated for public comment five new instructions under the Labor Code and the Industrial Welfare Commission's wage orders. Based on the complexity of the law in this area and the detailed comments received during public comment, the committee will continue considering its expansion into this area. If possible, the committee will recirculate new instructions in the next public comment cycle.

Revised instructions

CACI No. 1009B, *Liability to Employees of Independent Contractors for Unsafe Conditions—Retained Control*. In *Sandoval v. Qualcomm, Inc.*,[3] the California Supreme Court held that "hirers who fully and effectively delegate work to a contractor owe no tort duty to that contractor's workers." To make the instruction consistent with the meaning of the terms clarified in the court's opinion, the committee recommends removing one element and adding two requirements: (1) that the hirer retained some control over the manner of performing the work the contractor was engaged to perform, and (2) that the hirer actually exercised control over that work. Because ownership or control of the property, which had been included as element 1, are not required outside the context of concealed premises hazards, the committee has removed that requirement. With respect to the final element, the court clarified that "affirmatively contributed" is a different sort of inquiry than "substantial factor" causation, which the instruction had included. The committee has revised the causation element to convey the causation element as explained by the court in *Sandoval*.

Two commenters (a bar association and an attorney) agreed with the committee's proposed revisions. The Consumer Attorneys of California (CAOC) sent a comment requesting additional changes based on certain language used in the *Sandoval* opinion. With one exception, the committee thought that the language that circulated for public comment is consistent with the law and expresses the terms in a way more understandable to a jury, as compared to CAOC's suggestions. The committee concluded that the exact wording suggested by CAOC for retained control and causation are not compelled by the court's clarification of those elements. The committee, however, agreed with CAOC's suggestion to add the word "some" to new element 1 ("retained some control").

CAOC and the California Lawyers Association (CLA) both observed that the "retained control" element refers to a hirer's authority over work entrusted to the contractor. CLA proposed an additional new element specifically addressing whether part of the work had been entrusted to the contractor by the defendant. CAOC proposed adding an explanation in the Directions for Use. Because the committee believes that element 1 (with the refinement noted above) will address retained control in most cases, the committee prefers the second option. The Directions

[3] (2021) 12 Cal.5th 256, 283 [283 Cal.Rptr.3d 519, 494 P.3d 487].

for Use now state that the instruction should be modified if there is a question of fact regarding whether the defendant entrusted the work to the contractor.

CACI Nos. 1621 and VF-1604, *Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Bystander—Essential Factual Elements*. In the last release, the Rules Committee approved the addition of an excerpt from *Ko v. Maxim Healthcare Services, Inc.*[4] to the Sources and Authority of No. 1620. The court in *Ko* held that element 2 can be satisfied if plaintiffs are virtually present through technological means at the scene of an injury-producing event. The committee now recommends revising element 2 in light of this recent authority. Although the verdict form was not circulated for public comment, the committee also recommends making conforming changes to it as part of this release.

CACI No. 2334, *Bad Faith (Third Party)—Refusal to Accept Reasonable Settlement Demand Within Liability Policy Limits—Essential Factual Elements*. In November 2021, the committee recommended, and the council approved, revisions to this instruction based on *Pinto v. Farmers Insurance Exchange*.[5] The committee returned to the instruction because commenters in that public comment cycle raised issues that were beyond the scope of the proposal in the invitation to comment. The committee recommends several clarifying edits based on the comments received last year, including revising element 6 to offer alternative options for damages.[6] The comments on this change were generally positive, with two commenters offering minor feedback on formatting and the language of the Directions for Use. All comments disagreeing with content in No. 2334 were directed at content that the committee carefully considered in the last release. With respect to the comments that are beyond the scope of the invitation to comment, the committee will consider the proposed changes at its next meeting.

CACI Nos. 2522A, 2522B, 2522C, and related verdict forms (Fair Employment and Housing Act series). At the suggestion of an attorney preparing for a jury trial, the committee proposes revising these three work environment harassment instructions and the accompanying verdict forms to clarify that an individual defendant must be an employee of a covered entity to be liable personally for harassing someone in the workplace.[7] The committee has recommended an optional element addressing the individual defendant's status as an "employee" if it's in dispute. Based on comments asking the committee to be clearer about the parties identified in the instruction (for example, the individual defendant and the employer or other covered entity, who may also be a defendant), the committee has refined the bracketed names in these instructions.

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[4] (2020) 58 Cal.App.5th 1144, 1159 [272 Cal.Rptr.3d 906].

[5] (2021) 61 Cal.App.5th 676 [276 Cal.Rptr.3d 13].

[6] See Judicial Council of Cal., Advisory Com. Rep., *Jury Instructions: Civil Jury Instructions (Release 40)* (Nov. 19, 2021), https://jcc.legistar.com/View.ashx?M=F&ID=9932038&GUID=BAFAE3B4-EB72-4297-B851-A21E9005EA89.

[7] See Gov. Code, § 12940(j)(3).

The committee received additional comments from two organizations broadly addressing instructions in the Fair Employment and Housing Act series on work environment harassment. These comments did not concern the instructions that were circulated for comment in this release. The committee will consider these suggestions in a future release cycle.

CACI No. 3919, *Survival Damages*. Senate Bill 447,[8] effective January 1, 2022, amended Code of Civil Procedure section 377.34 to permit recovery of noneconomic damages in survival actions. As amended, section 377.34(a) preserves a longstanding prohibition on noneconomic damages for a decedent's pain, suffering, and disfigurement, but section 377.34(b) creates a four-year exception to that prohibition for actions filed between January 1, 2022, and January 1, 2026.[9]

CACI's damages series is largely divided into economic and noneconomic damages. The existing survival action damages instruction (No. 3903Q) is currently located in the economic damages part of the series. Because the statute now allows for noneconomic damages—at least for a four-year period—the committee recommends renumbering the existing instruction to move it out of economic damages section and adding an item of damages that covers a decedent's pain, suffering, and disfigurement. Although the exception is scheduled to expire, the committee recommends explaining the statutory sunset provision in the Directions for Use. The committee will revisit the issue in 2026 (or sooner if changes in the law so require).

Policy implications

Jury instructions endeavor to express the law in plain English; there are no policy implications.

Comments

The proposed additions and revisions in *CACI* circulated for comment from January 25 through March 7, 2022. Comments were received from 13 different commenters. Seven of those commenters submitted comments on multiple instructions and verdict forms.[10] New instructions on rest breaks, meal breaks, and rounding of time entries under the Labor Code generated a relatively large number of comments. In order to consider those detailed comments, the committee has withdrawn the five new instructions that circulated for comment.

For the 22 instructions and verdict forms in this release, the committee evaluated all comments and proposes refining some of the instructions in light of the comments received. A chart of the comments received on all instructions and the committee's responses is attached at pages 88–144.

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[8] Stats. 2021, ch. 448, *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB447*.

[9] The exception also applies if the action or proceeding was granted a preference under Code of Civil Procedure section 36 before January 1, 2022. (See Code Civ. Proc., § 337.34(b).)

[10] The committee received comments from California Employment Lawyers Association and Legal Aid at Work on work environment harassment that were beyond the scope of the invitation to comment. The committee will consider their comments in a future release cycle.

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 May 2022 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.

Attachments and Links

1. Jury instructions, at pages 7–87
2. Chart of comments, at pages 88–144

TABLE OF CONTENTS
CIVIL JURY INSTRUCTIONS
Release 41: May 2022

VF-410. Statute of Limitations—Delayed Discovery—Reasonable Investigation Would Not Have Disclosed Pertinent Facts

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We answer the questions submitted to us as follows:

1. **Did [***name of plaintiff***]'s claimed harm occur before [***insert date from applicable statute of limitations***]?**
   ____ 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. **Before [***insert date from applicable statute of limitations***], did [***name of plaintiff***] discover, or know of facts that would have caused a reasonable person to suspect, that [he/she/***nonbinary pronoun***/it] had suffered harm that was caused by someone's wrongful conduct?**
   ____ Yes ____ No

   [*or***]**

2. **Would a reasonable and diligent investigation have disclosed before [***insert date from applicable statute of limitations***] that [***specify factual basis for cause of action~~, e.g., "a medical device" or "inadequate medical treatment"~~***] contributed to [***name of plaintiff***]'s harm?**
   ____ Yes ____ No

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 December 2007; Revised December 2010, May 2022

Directions for Use

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.

This verdict form is based on CACI No. 454, *Affirmative Defense—Statute of Limitations,* and CACI No.

455, *Statute of Limitations—Delayed Discovery*. If the only issue is whether the plaintiff's harm occurred before or after the limitation date, omit question 2. If the plaintiff claims that the delayed-discovery rule applies to save the action, use the first option for question 2. If the plaintiff claims that a reasonable investigation would not have disclosed the pertinent information before the limitation date, use the second option for question 2. If both delayed discovery and nondiscovery despite reasonable investigation are at issue, use both options and renumber them as question 2 and question 3.

The date to be inserted throughout is the applicable limitation period before the filing date. For example, if the limitation period is two years and the filing date is August 31, 2007, the date is August 31, 2005.

In question 1, "claimed harm" refers to all of the elements of the cause of action, which must have occurred before the cause of action accrues and the limitation period begins. (*Glue-Fold, Inc. v. Slautterback Corp.* (2000) 82 Cal.App.4th 1018, 1029 [98 Cal.Rptr.2d 661].) In some cases, it may be necessary to modify this term to refer to specific facts that give rise to the cause of action.

The first option for question 2 may be modified to refer to specific facts that the plaintiff may have known.

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

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

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

~~2.~~ **That [***name of defendant***] retained some control over ~~safety conditions at the worksite~~ [***name of contractor***]'s manner of performance of [***specify nature of contracted work***];**

~~3~~2. **That [***name of defendant***] ~~negligently~~ actually exercised [his/her/***nonbinary pronoun***/its] retained control over ~~safety conditions by~~ that work by [***specify alleged ~~negligent acts or omissions~~ negligence of defendant***];**

~~4~~3. **That [***name of plaintiff***] was harmed; and**

~~5~~4. **That [***name of defendant***]'s negligent exercise of [his/her/***nonbinary pronoun***/its] retained control ~~over safety conditions was a substantial factor in causing~~ affirmatively contributed to [***name of plaintiff***]'s harm.**

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

Directions for Use

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

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.

The hirer's exercise of retained control must have "affirmatively contributed" to the plaintiff's injury. (*Hooker v. Department of Transportation* (2002) 27 Cal.4th 198, 202 [115 Cal.Rptr.2d 853, 38 P.3d 1081]; see *Sandoval, supra,* 12 Cal.5th at p. 277.) However, the affirmative contribution need not be active conduct but may be a failure to act. (*Hooker, supra,* 27 Cal.4th ~~*Id.*~~ at p. 212, fn. 3; see *Sandoval, supra,* 12 Cal.5th at p. 277.) "Affirmative contribution" means that there must be causation between the hirer's exercising retained control and the plaintiff's injury. Modification may be required if the defendant's failure to act is alleged pursuant to *Hooker*.~~But "affirmative contribution" might be construed by a jury to require active conduct rather than a failure to act. Element 5, the standard "substantial factor" element, expresses the "affirmative contribution." requirement. (See *Regalado v. Callaghan* (2016) 3 Cal.App.5th 582, 594–595 [207 Cal.Rptr.3d 712] [agreeing with committee's position that "affirmatively contributed" need not be specifically stated in instruction].)~~

Sources and Authority

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

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

- "Imposing tort liability on a hirer of an independent contractor when the hirer's conduct has affirmatively contributed to the injuries of the contractor's employee is consistent with the rationale of our decisions in *Privette*, *Toland* and *Camargo* because the liability of the hirer in such a case is not ' "in essence 'vicarious' or 'derivative' in the sense that it derives from the 'act or omission' of the hired contractor." ' To the contrary, the liability of the hirer in such a case is *direct* in a much stronger sense of that term." (*Hooker, supra,* 27 Cal.4th at pp. 211–212, original italics, internal citations and footnote omitted.)

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

- "Such affirmative contribution need not always be in the form of actively directing a contractor or contractor's employee. There will be times when a hirer will be liable for its omissions. For example, if the hirer promises to undertake a particular safety measure, then the hirer's negligent

failure to do so should result in liability if such negligence leads to an employee injury." (*Hooker, supra,* 27 Cal.4th at p. 212, fn. 3.)

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

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

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

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

- ~~"Although drawn directly from case law, [plaintiff]'s proposed Special Instructions Nos. 2 and 8 are somewhat misleading in that they suggest that in order for the hirer to 'affirmatively contribute' to the plaintiff's injuries, the hirer must have engaged in some form of active direction or conduct. However, 'affirmative contribution need not always be in the form of actively directing a contractor or contractor's employee. There will be times when a hirer will be liable for its omissions.' The Advisory Committee on Civil Jury Instructions recognized the potential to confuse the jury by including 'affirmative contribution' language in CACI No. 1009B. The committee's Directions for Use states: 'The hirer's retained control must have "affirmatively contributed" to the plaintiff's injury. [Citation.] However, the affirmative contribution need not be active conduct but may be in the form of an omission to act. [Citation.] The advisory committee believes that the "affirmative contribution" requirement simply means that there must be causation between the hirer's conduct and the plaintiff's injury. Because "affirmative contribution" might be construed by a jury to require active conduct rather than a failure to act, the committee believes that its standard "substantial factor" element adequately expresses the "affirmative contribution" requirement.' (Directions for Use for CACI No. 1009B.) [¶] We agree with the Advisory Committee on Civil Jury Instructions that CACI No. 1009B adequately covers the 'affirmative contribution' requirement set forth in *Hooker*." (*Regalado v. Callaghan* (2016) 3 Cal.App.5th 582,~~

~~594–595 [207 Cal.Rptr.3d 712].)~~

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

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

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

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

Secondary Sources

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*, ¶ 6:1 et seq. (The Rutter Group)

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

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

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

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

1306. Sexual Battery—Essential Factual Elements (Civ. Code, § 1708.5)

[*Name of plaintiff*] claims that [*name of defendant*] committed a sexual battery. To establish this claim, [*name of plaintiff*] must prove the following:

1. **[(a) That [*name of defendant*] intended to cause a harmful [or offensive] contact with [*name of plaintiff*]'s [sexual organ/anus/groin/buttocks/ [or] breast], and a sexually offensive contact with [*name of plaintiff*] resulted, either directly or indirectly;]**

   [OR]

   [(b) That [*name of defendant*] intended to cause a harmful [or offensive] contact with [*name of plaintiff*] by use of [*name of defendant*]'s [sexual organ/anus/groin/buttocks/ [or] breast], and a sexually offensive contact with [*name of plaintiff*] resulted, either directly or indirectly;]

   [OR]

   [(c) That [*name of defendant*] caused an imminent fear of a harmful [or offensive] contact with [[*name of plaintiff*]'s [sexual organ/anus/groin/buttocks/ [or] breast]/ [or] [*name of plaintiff*] by use of [*name of defendant*]'s [sexual organ/anus/groin/buttocks/ [or] breast]], and a sexually offensive contact with [*name of plaintiff*] resulted, either directly or indirectly;]

   [OR]

   [(d) That [*name of defendant*] caused contact between a sexual organ, from which a condom had been removed, and [*name of plaintiff*]'s [sexual organ/anus/groin/buttocks/ [or] breast];]

   [OR]

   [(e) That [*name of defendant*] caused contact between [a/an] [sexual organ/anus/groin/buttocks/ [or] breast] and [*name of plaintiff*]'s sexual organ from which [*name of defendant*] had removed a condom;]

AND

2. **That [*name of plaintiff*] did not [consent to the touching/verbally consent to the condom being removed]; and**

3. **That [*name of plaintiff*] was harmed [or offended] by [*name of defendant*]'s conduct.**

["Offensive contact" means contact that offends a reasonable sense of personal dignity.]

New October 2008; Revised May 2022

Directions for Use

Omit any of the options for element 1 that are not supported by the evidence. If more than one are at issue, include the word "OR" between them.

For sexual battery under Civil Code section 1708.5(d)(1) (defining "intimate part"), unconsented touching of a breast must involve the breast of a female. The instruction may require modification if there is a factual question on this issue.

Use the second bracketed alternative in element 2 only if option (d) or option (e) is at issue. (Compare Civ. Code, § 1708.5(a), (b), (c) with Civ. Code, § 1708.5(d), (e).) Modification of the instruction will be necessary if the plaintiff's claim involves any of options (a)–(c) and option (d) or option (e) because the consent requirement is not the same.

Give the bracketed words "or offensive" in element 1 and "or offended" in element 3 and include the optional last sentence if the offensive nature of the conduct is at issue. In most cases, it will be clear whether the alleged conduct was offensive. The offensive nature of the conduct will most likely not be at issue if the conduct was clearly harmful.

For a definition of "intent," see CACI No. 1320, *Intent*.

Sources and Authority

- Sexual Battery. Civil Code section 1708.5.
- Consent as Defense. Civil Code section 3515.
- "A cause of action for sexual battery under Civil Code section 1708.5 requires the batterer intend to cause a 'harmful or offensive' contact and the batteree suffer a 'sexually offensive contact.' Moreover, the section is interpreted to require that the batteree did not consent to the contact." (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1225 [44 Cal.Rptr.2d 197], internal citation omitted.)
- "The element of lack of consent to the particular contact is an essential element of battery." (*Rains v. Superior Court* (1984) 150 Cal.App.3d 933, 938 [198 Cal.Rptr. 249].)
- "As a general rule, one who consents to a touching cannot recover in an action for battery. ... However, it is well-recognized a person may place conditions on the consent. If the actor exceeds the terms or conditions of the consent, the consent does not protect the actor from liability for the excessive act." (*Ashcraft v. King* (1991) 228 Cal.App.3d 604, 609–610 [278 Cal.Rptr. 900].)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 452–488

3 Levy et al., California Torts, Ch. 41, *Assault and Battery*, § 41.01[3] (Matthew Bender)

6 California Forms of Pleading and Practice, Ch. 58, *Assault and Battery*, §§ 58.27, 58.55 (Matthew Bender)

2 California Points and Authorities, Ch. 21, *Assault and Battery,* § 21.27 (Matthew Bender)

California Civil Practice: Torts §§ 12:7–12:9, 12:36-12:39 (Thomson Reuters)

1621. Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Bystander—Essential Factual Elements

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[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] suffered serious emotional distress as a result of perceiving [an injury to/the death of] [***name of victim***]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] negligently caused [injury to/the death of] [***name of victim***];**

2. **That when the [***describe event, e.g., traffic accident***] that caused [injury to/the death of] [***name of victim***] occurred, [***name of plaintiff***] was [virtually] present at the scene [through [***specify technological means***]];**

3. **That [***name of plaintiff***] was then aware that the [***e.g., traffic accident***] was causing [injury to/the death of] [***name of victim***];**

4. **That [***name of plaintiff***] suffered serious emotional distress; and**

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

[*Name of plaintiff***] need not have been then aware that [***name of defendant***] had caused the [***e.g., traffic accident***].**

Emotional distress includes suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame. Serious emotional distress exists if an ordinary, reasonable person would be unable to cope with it.

New September 2003; Revised December 2013, June 2014, December 2014, December 2015, May 2022

Directions for Use

Use this instruction in a negligence case if the only damages sought are for emotional distress. The doctrine of "negligent infliction of emotional distress" is not a separate tort or cause of action. It simply allows certain persons to recover damages for emotional distress only on a negligence cause of action even though they were not otherwise injured or harmed. (See *Molien v. Kaiser Foundation Hospitals* (1980) 27 Cal.3d 916, 928 [167 Cal.Rptr. 831, 616 P.2d 813].)

A "bystander" case is one in which a plaintiff seeks recovery for damages for emotional distress suffered as a percipient witness of an injury to another person. If the plaintiff is a direct victim of tortious conduct, use CACI No. 1620, *Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Direct Victim—Essential Factual Elements.* For instructions for use for emotional distress arising from exposure to carcinogens, HIV, or AIDS, see CACI No. 1622, *Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Fear of Cancer, HIV, or AIDS—Essential Factual Elements*,

and CACI No. 1623, *Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Fear of Cancer, HIV, or AIDS—Malicious, Oppressive, or Fraudulent Conduct—Essential Factual Elements*.

This instruction should be read in conjunction with instructions in the Negligence series (see CACI No. 400 et seq.) to further develop element 1.

Whether the plaintiff had a sufficiently close relationship with the victim should be determined as an issue of law because it is integral to the determination of whether a duty was owed to the plaintiff.

Include the optional language in element 2 only if the plaintiff claims virtual presence at the scene through technological means, and specify the technology used to assist the jury in understanding the concept of "virtual" presence. (See *Ko v. Maxim Healthcare Services, Inc.* (2020) 58 Cal.App.5th 1144, 1159 [272 Cal.Rptr.3d 906].)

There is some uncertainty as to how the "event" should be defined in element 2 and then just exactly what the plaintiff must perceive in element 3. When the event is something dramatic and visible, such as a traffic accident or a fire, it would seem that the plaintiff need not know anything about why the event occurred. (See *Wilks v. Hom* (1992) 2 Cal.App.4th 1264, 1271 [3 Cal.Rptr.2d 803].) And the California Supreme Court has stated that the bystander plaintiff need not contemporaneously understand the defendant's conduct as *negligent,* as opposed to *harmful.* (*Bird v. Saenz* (2002) 28 Cal.4th 910, 920 [123 Cal.Rptr.2d 465, 51 P.3d 324], original italics.)

But what constitutes perception of the event is less clear when the victim is clearly in observable distress, but the cause of that distress may not be observable. It has been held that the manufacture of a defective product is the event, which is not observable, despite the fact that the result was observable distress resulting in death. (See *Fortman v. Förvaltningsbolaget Insulan AB* (2013) 212 Cal.App.4th 830, 843−844 [151 Cal.Rptr.3d 320].) In another observable-distress case, medical negligence that led to distress resulting in death was found to be perceivable because the relatives who were present observed the decedent's acute respiratory distress and were aware that defendant's *inadequate* response caused her death. (See *Keys v. Alta Bates Summit Medical Center* (2015) 235 Cal.App.4th 484, 489−490 [185 Cal.Rptr.3d 313], emphasis added.) It might be argued that observable distress is the event and that the bystanders need not perceive anything about the cause of the distress. However, these cases indicate that is not the standard. But if it is not necessary to comprehend that negligence is causing the distress, it is not clear what it is that the bystander must perceive in element 3. Because of this uncertainty, the Advisory Committee has elected not to try to express element 3 any more specifically.

The explanation in the last paragraph of what constitutes "serious" emotional distress comes from the California Supreme Court. (See *Molien, supra,* 27 Cal.3d at p. 928.) In *Wong v. Jing,* an appellate court subsequently held that serious emotional distress from negligence without other injury is the same as "severe" emotional distress for the tort of intentional infliction of emotional distress. (*Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1378 [117 Cal.Rptr.3d 747]; but see *Keys, supra,* 235 Cal.App.4th at p. 491 [finding last sentence of this instruction to be a correct description of the distress required].)

Sources and Authority

- "California's rule that plaintiff's fear for his own safety is compensable also presents a strong argument for the same rule as to fear for others; otherwise, some plaintiffs will falsely claim to have feared for themselves, and the honest parties unwilling to do so will be penalized. Moreover, it is incongruous and somewhat revolting to sanction recovery for the mother if she suffers shock from fear for her own safety and to deny it for shock from the witnessed death of her own daughter." (*Dillon v. Legg* (1968) 68 Cal.2d 728, 738 [69 Cal.Rptr. 72, 441 P.2d 912].)

- "As an introductory note, we observe that plaintiffs … framed both negligence and negligent infliction of emotional distress causes of action. To be precise, however, 'the [only] tort with which we are concerned is negligence. Negligent infliction of emotional distress is not an independent tort … .' " (*Catsouras v. Department of California Highway Patrol* (2010) 181 Cal.App.4th 856, 875–876 [104 Cal.Rptr.3d 352].)

- "In the absence of physical injury or impact to the plaintiff himself, damages for emotional distress should be recoverable only if the plaintiff: (1) is closely related to the injury victim, (2) is present at the scene of the injury-producing event at the time it occurs and is then aware that it is causing injury to the victim and, (3) as a result suffers emotional distress beyond that which would be anticipated in a disinterested witness." (*Thing v. La Chusa* (1989) 48 Cal.3d 644, 647 [257 Cal.Rptr. 865, 771 P.2d 814].)

- "[T]o satisfy the second *Thing* requirement the plaintiff must experience a contemporaneous sensory awareness of the causal connection between the defendant's infliction of harm and the injuries suffered by the close relative." (*Fortman, supra,* 212 Cal.App.4th at p. 836.)

- "Where plaintiffs allege they were virtually present at the scene of an injury-producing event sufficient for them to have a contemporaneous sensory awareness of the event causing injury to their loved one, they satisfy the second *Thing* requirement to state a cause of action for NIED. Just as the Supreme Court has ruled a 'plaintiff may recover based on an event perceived by other senses so long as the event is contemporaneously understood as causing injury to a close relative', so too can the [plaintiffs] pursue an NIED claim where, as alleged, they contemporaneously saw and heard [their child's] abuse, but with their senses technologically extended beyond the walls of their home." (*Ko ~~v. Maxim Healthcare Services, Inc.~~ (2020) , supra,* 58 Cal.App.5th ~~1144,~~ at p. 1159 ~~[272 Cal.Rptr.3d 906]~~, internal citation omitted.)

- "[A] plaintiff need not contemporaneously understand the defendant's conduct as *negligent,* as opposed to *harmful.* But the court confused awareness of negligence, a legal conclusion, with contemporaneous, understanding awareness of the event as causing harm to the victim." (*Bird, supra,* 28 Cal.4th at p. 920.)

- "*Bird* does not categorically bar plaintiffs who witness acts of medical negligence from pursuing NIED claims. 'This is not to say that a layperson can never perceive medical negligence or that one who does perceive it cannot assert a valid claim for NIED.' Particularly, a NIED claim may arise when … caregivers fail 'to respond significantly to symptoms obviously requiring immediate medical attention.' " (*Keys, supra,* 235 Cal.App.4th at p. 489.)

- "The injury-producing event here was defendant's lack of acuity and response to [decedent]'s inability

to breathe, a condition the plaintiffs observed and were aware was causing her injury." (*Keys, supra,* 235 Cal.App.4th at p. 490.)

- "*Thing* does not require that the plaintiff have an awareness of what caused the injury-producing event, but the plaintiff must have an understanding perception of the 'event as causing harm to the victim.' " (*Fortman, supra,* 212 Cal.App.4th at p. 841, fn. 4.)

- "[W]e also reject [plaintiff]'s attempt to expand bystander recovery to hold a product manufacturer strictly liable for emotional distress when the plaintiff observes injuries sustained by a close relative arising from an unobservable product failure. To do so would eviscerate the second *Thing* requirement." (*Fortman, supra,* 212 Cal.App.4th at pp. 843−844.)

- "Absent exceptional circumstances, recovery should be limited to relatives residing in the same household, or parents, siblings, children, and grandparents of the victim." (*Thing, supra,* 48 Cal.3d at p. 668, fn. 10.)

- "[A]n unmarried cohabitant may not recover damages for emotional distress based on such injury." (*Elden v. Sheldon* (1988) 46 Cal.3d 267, 273 [250 Cal.Rptr. 254, 758 P.2d 582].)

- "Although a plaintiff may establish presence at the scene through nonvisual sensory perception, 'someone who hears an accident but does not then know it is causing injury to a relative does not have a viable [bystander] claim for [negligent infliction of emotional distress], even if the missing knowledge is acquired moments later.' " (*Ra v. Superior Court* (2007) 154 Cal.App.4th 142, 149 [64 Cal.Rptr.3d 539], internal citation omitted.)

- "[I]t is not necessary that a plaintiff bystander actually have witnessed the infliction of injury to her child, provided that the plaintiff was at the scene of the accident and was sensorially aware, in some important way, of the accident and the necessarily inflicted injury to her child." (*Wilks, supra,* 2 Cal.App.4th at p. 1271.)

- " '[S]erious mental distress may be found where a reasonable man, normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case.' " (*Molien, supra,* 27 Cal.3d at pp. 927–928.)

- "In our view, this articulation of 'serious emotional distress' is functionally the same as the articulation of 'severe emotional distress' [as required for intentional infliction of emotional distress]. Indeed, given the meaning of both phrases, we can perceive no material distinction between them and can conceive of no reason why either would, or should, describe a greater or lesser degree of emotional distress than the other for purposes of establishing a tort claim seeking damages for such an injury." (*Wong, supra,* 189 Cal.App.4th at p. 1378.)

- "We have no reason to question the jury's conclusion that [plaintiffs] suffered serious emotional distress as a result of watching [decedent] 's struggle to breathe that led to her death. The jury was properly instructed, as explained in *Thing,* that '[s]erious emotional distress exists if an ordinary, reasonable person would be unable to cope with it.' The instructions clarify that 'Emotional distress includes suffering, anguish, fright, … nervousness, grief, anxiety, worry, shock … .' Viewed through

this lens there is no question that [plaintiffs'] testimony provides sufficient proof of serious emotional distress." (*Keys, supra,* 235 Cal.App.4th at p. 491, internal citation omitted.)

- "[W]here a participant in a sport has expressly assumed the risk of injury from a defendant's conduct, the defendant no longer owes a duty of care to bystanders with respect to the risk expressly assumed by the participant. The defendant can therefore assert the participant's express assumption of the risk against the bystanders' NIED claims." (*Eriksson v. Nunnink* (2015) 233 Cal.App.4th 708, 731 [183 Cal.Rptr.3d 234].)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1144–1158

Croskey et al., California Practice Guide: Insurance Litigation, Ch. 11-F, *Negligent Infliction Of Emotional Distress*, ¶ 11:101 (The Rutter Group)

1 Levy et al., California Torts, Ch. 5, *Negligent Infliction of Emotional Distress*, § 5.04 (Matthew Bender)

32 California Forms of Pleading and Practice, Ch. 362, *Mental Suffering and Emotional Distress*, § 362.11 (Matthew Bender)

15 California Points and Authorities, Ch. 153*, Mental Suffering and Emotional Distress*, §§ 153.31 et seq., 153.45 et seq. (Matthew Bender)

VF-1604. Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Bystander

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We answer the questions submitted to us as follows:

1. **Did [***name of defendant***] negligently cause [injury to/the death of] [***name of victim***]?**
   ____ 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. **When the [***describe event, e.g., traffic accident***] that caused [injury to/the death of] [***name of victim***] occurred, was [***name of plaintiff***] [virtually] present at the scene [through [***specify technological means***]]?**
   ____ 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 plaintiff***] then aware that the [***e.g., traffic accident***] was causing [injury to/the death of] [***name of victim***]?**
   ____ Yes ____ No

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

4. **Did [***name of plaintiff***] suffer serious emotional distress?**
   ____ Yes ____ No

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

5. **Was [***name of defendant***]'s conduct a substantial factor in causing [***name of plaintiff***]'s serious emotional distress?**
   ____ 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. **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: _____

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, June 2014, December 2016, May 2022

Directions for Use

This verdict form is based on CACI No. 1621, *Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Bystander—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 6 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.

1810. Distribution of Private Sexually Explicit Materials—Essential Factual Elements (Civ. Code, § 1708.85)

[*Name of plaintiff*] claims that [*name of defendant*] violated [his/her/*nonbinary pronoun*] right to privacy by distributing private sexually explicit materials. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of defendant*] intentionally distributed by [*specify means, e.g., posting online*] [a] [photograph(s)/film(s)/videotape(s)/recording(s)/[*specify other reproduction*]] of [*name of plaintiff*];**

2. **That [*name of plaintiff*] did not consent to the distribution of the [*specify, e.g., photographs*];**

3. **That [*name of defendant*] knew, or reasonably should have known, that [*name of plaintiff*] had a reasonable expectation that the [*e.g., photographs*] would remain private;**

4. **That the [*e.g., photographs*] [exposed an intimate body part of [*name of plaintiff*]/ [or] showed [*name of plaintiff*] engaging in an act of [intercourse/oral copulation/sodomy/ [or] [*specify other act of sexual penetration*]]];**

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.**

[An "intimate body part" is any part of the genitals[, and, in the case of a female, also includes any portion of the breast below the top of the areola,] that is uncovered or visible through less than fully opaque clothing.]

New December 2015; Revised May 2022

Directions for Use

This instruction is for use for an invasion-of-privacy cause of action for the dissemination of sexually explicit materials. (See Civ. Code, § 1708.85(a).) It may not be necessary to include the last definitional paragraph as the court may rule as a matter of law that an image of an intimate body part has been distributed. (See Civ. Code, § 1708.85(b).)

~~The plaintiff's harm (element 5) is~~ Plaintiff may recover general or special damages as defined in subdivision (d) of Civil Code section 48a. (Civ. Code, § 1708.85(a).) "General damages" are damages for loss of reputation, shame, mortification and hurt feelings. (Civ. Code, § 48a(d)(1).) "Special damages" are essentially economic loss. (Civ. Code, § 48a(d)(2.)

Sources and Authority

- Right of Action Against Distributor of Private Sexually Explicit Material. Civil Code section 1708.85

- General and Special Damages. Civil Code section 48a(d)(1), (2)

Secondary Sources

4 Levy et al., California Torts, Ch. 46, *Invasion of Privacy*, § 46.07 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 429, *Privacy*, § 429.36A (Matthew Bender)

18 California Points and Authorities, Ch. 184, *Privacy: Invasion of Privacy*, § 184.25B (Matthew Bender)

2334. Bad Faith (Third Party)—Refusal to Accept Reasonable Settlement Demand Within Liability Policy Limits—Essential Factual Elements

[*Name of plaintiff*] claims that [*name of defendant*] breached the obligation of good faith and fair dealing because [*name of defendant*] failed to accept a reasonable settlement demand for a claim against [*name of plaintiff*]. To establish ~~this~~ [*name of plaintiff*]'s claim against [*name of defendant*], [*name of plaintiff*] must prove all of the following:

1. **That [*name of plaintiff*] was insured under a policy of liability insurance issued by [*name of defendant*];**

2. **That [*name of ~~plaintiff in underlying case~~ claimant*] made a claim against [*name of plaintiff*] that was covered by [*name of defendant*]'s insurance policy;**

3. **That ~~[*name of defendant*] failed to accept~~ [*name of claimant*] made a reasonable ~~settlement~~ demand to settle [his/her/*nonbinary pronoun*] claim against [*name of plaintiff*] for an amount within policy limits;**

4. **That [*name of defendant*] failed to accept this settlement demand;**

~~4~~5. **That [*name of defendant*]'s failure to accept the settlement demand was the result of unreasonable conduct by [*name of defendant*]; and**

~~5~~

6. **[That a ~~monetary~~ judgment was entered against [*name of plaintiff*] for a sum of money greater than the policy limits.]**

[*or*]

[That [*name of defendant*]'s failure to accept the settlement demand was a substantial factor in causing [*name of plaintiff*]'s harm.]

"Policy limits" means the highest amount of insurance coverage available under the policy for the claim against [*name of plaintiff*].

A settlement demand for an amount within policy limits is reasonable if [*name of defendant*] knew or should have known at the time ~~the~~ it failed to accept the demand ~~was rejected~~ that a potential judgment against [*name of plaintiff*] was likely to exceed the amount of the demand based on [*name of ~~plaintiff in underlying case~~ claimant*]'s injuries or losses and [*name of plaintiff*]'s probable liability. However, the demand may be unreasonable for reasons other than the amount demanded.

An insurance company's unreasonable conduct may be shown by its action or by ~~the~~ its failure to act. An insurance company's conduct is unreasonable when, for example, it does not give at least as

much consideration to the interests of the insured as it gives to its own interests.

New September 2003; Revised December 2007, June 2012, December 2012, June 2016, November 2021, May 2022

Directions for Use

This instruction is for use in an "excess judgment" case; that is, one in which judgment was against the insured for an amount over the policy limits, after the insurer rejected a settlement demand within policy limits. Use the first option for element 6 if the plaintiff is seeking only the amount of the excess judgment. Use the second option for element 6 if the plaintiff is seeking damages separate from or in addition to the excess judgment. (See *Howard v. American National Fire Ins. Co.* (2010) 187 Cal.App.4th 498, 527 [115 Cal.Rptr.3d 42].) If there has been both an excess judgment and other damages, modify element 6 as appropriate to address all damages involved in the case.

The instructions in this series assume that 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. For example, if the plaintiff is the insured's assignee, modify the instruction as needed to reflect the underlying facts and relationship between the parties.

For instructions regarding general breach of contract issues, refer to the Contracts series (CACI No. 300 et seq.).

If it is alleged that a demand was made in excess of the policy limits and there is a claim that the defendant should have contributed the policy limits toward a settlement, then this instruction will need to be modified.

This instruction should also be modified if the insurer did not accept the policy-limits demand because of potential remaining exposure to the insured, such as a contractual indemnity claim or exposure to other claimants.

Sources and Authority

- "[T]he implied obligation of good faith and fair dealing requires the insurer to settle in an appropriate case although the express terms of the policy do not impose such a duty. [¶] The insurer, in deciding whether a claim should be compromised, must take into account the interest of the insured and give it at least as much consideration as it does to its own interest. When there is great risk of a recovery beyond the policy limits so that the most reasonable manner of disposing of the claim is a settlement which can be made within those limits, a consideration in good faith of the insured's interest requires the insurer to settle the claim." (*Comunale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654, 659 [328 P.2d 198], citation omitted.)

- "Liability is imposed not for a bad faith breach of the contract but for failure to meet the duty to accept reasonable settlements, a duty included within the implied covenant of good faith and fair dealing." (*Crisci v. Security Insurance Co. of New Haven, Connecticut* (1967) 66 Cal.2d 425, 430 [58

Cal.Rptr. 13, 426 P.2d 173].)

- "In determining whether an insurer has given consideration to the interests of the insured, the test is whether a prudent insurer without policy limits would have accepted the settlement offer." (*Crisci*, *supra,* 66 Cal.2d at p. 429.)

- "[I]n deciding whether or not to compromise the claim, the insurer must conduct itself as though it alone were liable for the entire amount of the judgment. ... [T]he only permissible consideration in evaluating the reasonableness of the settlement offer becomes whether, in light of the victim's injuries and the probable liability of the insured, the ultimate judgment is likely to exceed the amount of the settlement offer." (*Johansen v. California State Auto. Assn. Inter-Insurance Bureau* (1975) 15 Cal.3d 9, 16 [123 Cal.Rptr. 288, 538 P.2d 744], internal citation omitted.)

- "[A]n insurer is required to act in good faith in dealing with its insured. Thus, in deciding whether or not to settle a claim, the insurer must take into account the interests of the insured, and when there is a great risk of recovery beyond the policy limits, a good faith consideration of the insured's interests may require the insurer to settle the claim within the policy limits. An unreasonable refusal to settle may subject the insurer to liability for the entire amount of the judgment rendered against the insured, including any portion in excess of the policy limits." (*Hamilton v. Maryland Cas. Co.* (2002) 27 Cal.4th 718, 724–725 [117 Cal.Rptr.2d 318, 41 P.3d 128].)

- "The size of the judgment recovered in the personal injury action when it exceeds the policy limits, although not conclusive, furnishes an inference that the value of the claim is the equivalent of the amount of the judgment and that acceptance of an offer within those limits was the most reasonable method of dealing with the claim." (*Crisci*, *supra,* 66 Cal.2d at p. 431.)

- "The covenant of good faith and fair dealing implied in every insurance policy obligates the insurer, among other things, to accept a reasonable offer to settle a lawsuit by a third party against the insured within policy limits whenever there is a substantial likelihood of a recovery in excess of those limits. The insurer must evaluate the reasonableness of an offer to settle a lawsuit against the insured by considering the probable liability of the insured and the amount of that liability, without regard to any coverage defenses. An insurer that fails to accept a reasonable settlement offer within policy limits will be held liable in tort for the entire judgment against the insured, even if that amount exceeds the policy limits. An insurer's duty to accept a reasonable settlement offer in these circumstances is implied in law to protect the insured from exposure to liability in excess of coverage as a result of the insurer's gamble—on which only the insured might lose." (*Rappaport-Scott v. Interinsurance Exch. of the Auto. Club* (2007) 146 Cal.App.4th 831, 836 [53 Cal.Rptr.3d 245], internal citations omitted.)

- "An insured's claim for bad faith based on an alleged wrongful refusal to settle first requires proof the third party made a reasonable offer to settle the claims against the insured for an amount within the policy limits. The offer satisfies this first element if (1) its terms are clear enough to have created an enforceable contract resolving all claims had it been accepted by the insurer, (2) all of the third party claimants have joined in the demand, (3) it provides for a complete release of all insureds, and (4) the time provided for acceptance did not deprive the insurer of an adequate opportunity to investigate and evaluate its insured's exposure." (*Graciano v. Mercury General Corp.* (2014) 231 Cal.App.4th 414, 425 [179 Cal.Rptr.3d 717], internal citations omitted.)

- "An insurer's duty to accept a reasonable settlement offer is not absolute. ' "[I]n deciding whether or not to settle a claim, the insurer must take into account the interests of the insured, and when there is a great risk of recovery beyond the policy limits, a good faith consideration of the insured's interests *may* require the insurer to settle the claim within the policy limits. An *unreasonable* refusal to settle may subject the insurer to liability for the entire amount of the judgment rendered against the insured, including any portion in excess of the policy limits." ' [¶] Therefore, failing to accept a reasonable settlement offer does not necessarily constitute bad faith. '[T]he crucial issue is … the basis for the insurer's decision to reject an offer of settlement.' " *(Pinto v. Farmers Ins. Exchange* (2021) 61 Cal.App.5th 676, 688 [276 Cal.Rptr.3d 13], internal citations omitted, original italics.)

- "A claim for bad faith based on the wrongful refusal to settle thus requires proof the insurer unreasonably failed to accept an offer. [¶] Simply failing to settle does not meet this standard." (*Pinto, supra,* 61 Cal.App.5th at p. 688, internal citation omitted.)

- "To be liable for bad faith, an insurer must not only cause the insured's damages, it must act or fail to act without proper cause, for example by placing its own interests above those of its insured." (*Pinto, supra,* 61 Cal.App.5th at p. 692.)

- "A bad faith claim requires 'something beyond breach of the contractual duty itself, and that something more is ' "refusing, *without proper cause,* to compensate its insured for a loss covered by the policy … ." [Citation.] Of course, the converse of "without proper cause" is that declining to perform a contractual duty under the policy *with proper cause* is not a breach of the implied covenant.' " (*Graciano, supra,* 231 Cal.App.4th at p. 433, original italics.)

- "Determination of the reasonableness of a settlement offer for purposes of a reimbursement action is based on the information available to [the insurer] at the time of the proposed settlement." (*Isaacson v. California Ins. Guarantee Assn.* (1988) 44 Cal.3d 775, 793 [244 Cal.Rptr. 655, 750 P.2d 297].)

- "The third party is entitled to set a reasonable time limit within which the insurer must accept the settlement proposal … ." (*Graciano, supra,* 231 Cal.App.4th at p. 434.)

- "Whether [the insurer] 'refused' the 'offer,' and whether it could reasonably have acted otherwise in light of the 11-day deadline imposed by the offer's terms, were questions for the jury." (*Coe v. State Farm Mut. Auto. Ins. Co.* (1977) 66 Cal.App.3d 981, 994 [136 Cal.Rptr. 331].)

- "A cause of action for bad faith refusal to settle arises only after a judgment has been rendered in excess of the policy limits. ... Until judgment is actually entered, the mere possibility or probability of an excess judgment does not render the refusal to settle actionable." (*Safeco Ins. Co. of Am. v. Superior Court* (1999) 71 Cal.App.4th 782, 788 [84 Cal.Rptr.2d 43], internal citations omitted.)

- "An insurer's wrongful failure to settle may be actionable even without rendition of an excess judgment. An insured may recover for bad faith failure to settle, despite the lack of an excess judgment, where the insurer's misconduct goes beyond a simple failure to settle within policy limits or the insured suffers consequential damages apart from an excess judgment." (*Howard, supra, ~~v. American National Fire Ins. Co.~~* (2010) 187 Cal.App.4th ~~498,~~ at p. 527 ~~[115 Cal.Rptr.3d 42]~~, internal

citations omitted.)

- " 'An insurer who denies coverage *does so at its own risk and although its position may not have been entirely groundless,* if the denial is found to be wrongful it is liable for the full amount which will compensate the insured for all the detriment caused by the insurer's breach of the express and implied obligations of the contract.' Accordingly, contrary to the defendant's suggestion, an insurer's 'good faith,' though erroneous, belief in noncoverage affords no defense to liability flowing from the insurer's refusal to accept a reasonable settlement offer." (*Johansen, supra,* 15 Cal.3d at pp. 15−16, original italics, footnotes and internal citation omitted.)

- "[W]here the *kind* of claim asserted is not covered by the insurance contract (and not simply the *amount* of the claim), an insurer has no obligation to pay money in settlement of a noncovered claim, because 'The insurer does not … insure the entire range of an insured's well-being, outside the scope of and unrelated to the insurance policy, with respect to paying third party claims.' " (*Dewitt v. Monterey Ins. Co.* (2012) 204 Cal.App.4th 233, 244 [138 Cal.Rptr.3d 705], original italics.)

- "A good faith belief in noncoverage is not relevant to a determination of the reasonableness of a settlement offer." (*Samson v. Transamerica Insurance Co.* (1981) 30 Cal.3d 220, 243 [178 Cal.Rptr. 343, 636 P.2d 32], internal citation omitted.)

- "An insurer that breaches its duty of reasonable settlement is liable for all the insured's damages proximately caused by the breach, regardless of policy limits. Where the underlying action has proceeded to trial and a judgment in excess of the policy limits has been entered against the insured, the insurer is ordinarily liable to its insured for the entire amount of that judgment, excluding any punitive damages awarded." (*Hamilton, supra,* 27 Cal.4th at p. 725, internal citations omitted.)

- "[I]nsurers do have a 'selfish' interest (that is, one that is peculiar to themselves) in imposing a blanket rule which effectively precludes disclosure of policy limits, and that interest can adversely affect the possibility that an excess claim against a policyholder might be settled within policy limits. Thus, a palpable conflict of interest exists in at least one context where there is no formal settlement offer. We therefore conclude that a formal settlement offer is not an absolute prerequisite to a bad faith action in the wake of an excess verdict when the claimant makes a request for policy limits and the insurer refuses to contact the policyholder about the request." (*Boicourt v. Amex Assurance Co.* (2000) 78 Cal.App.4th 1390, 1398−1399 [93 Cal.Rptr.3d 763].)

- "For bad faith liability to attach to an insurer's failure to pursue settlement discussions, in a case where the insured is exposed to a judgment beyond policy limits, there must be, at a minimum, some evidence either that the injured party has communicated to the insurer an interest in settlement, or some other circumstance demonstrating the insurer knew that settlement within policy limits could feasibly be negotiated. In the absence of such evidence, or evidence the insurer by its conduct has actively foreclosed the possibility of settlement, there is no 'opportunity to settle' that an insurer may be taxed with ignoring." (*Reid v. Mercury Ins. Co.* (2013) 220 Cal.App.4th 262, 272 [162 Cal.Rptr.3d 894].)

- "[F]ailing to accept a reasonable settlement offer does not necessarily constitute bad faith. '[T]he crucial issue is … the basis for the insurer's decision to reject an offer of settlement.' '[M]ere errors

by an insurer in discharging its obligations to its insured " 'does not necessarily make the insurer liable in tort for violating the covenant of good faith and fair dealing; to be liable in tort, the insurer's conduct must also have been *unreasonable*.' " ' " (*Pinto, supra,* 61 Cal.App.5th at p. 688, internal citations omitted, original italics.)

- "In short, so long as insurers are not subject to a strict liability standard, there is still room for an honest, innocent mistake." (*Walbrook Ins. Co. Ltd. v. Liberty Mut. Ins. Co.* (1992) 5 Cal.App.4th 1445, 1460 [7 Cal.Rptr.2d 513, 521].)

Secondary Sources

2 Witkin, Summary of California Law (11th ed. 2017) Insurance, §§ 366–368

Croskey et al., California Practice Guide: Insurance Litigation, Ch. 12B-A, *Implied Covenant Liability—Introduction*, ¶¶ 12:202–12:224 (The Rutter Group)

Croskey et al., California Practice Guide: Insurance Litigation, Ch. 12B-B, *Bad Faith Refusal To Settle*, ¶¶ 12:226–12:548 (The Rutter Group)

Croskey et al., California Practice Guide: Insurance Litigation, Ch. 12B-C, *Bad Faith Liability Despite Settlement Of Third Party Claims*, ¶¶ 12:575–12:581.12 (The Rutter Group)

Croskey et al., California Practice Guide: Insurance Litigation, Ch. 12B-D, *Refusal To Defend Cases*, ¶¶ 12:582–12:686 (The Rutter Group)

2 California Liability Insurance Practice: Claims and Litigation (Cont.Ed.Bar) Actions for Failure to Settle, §§ 26.1–26.35

2 California Insurance Law and Practice, Ch. 13, *Claims Handling and the Duty of Good Faith*, § 13.07[1]–[3] (Matthew Bender)

26 California Forms of Pleading and Practice, Ch. 308, *Insurance*, § 308.24 (Matthew Bender)

12 California Points and Authorities, Ch. 120, *Insurance*, §§ 120.195, 120.199, 120.205, 120.207 (Matthew Bender)

VF-2304. Bad Faith (Third Party)—Refusal to Accept Reasonable Settlement Demand Within Liability Policy Limits

We answer the questions submitted to us as follows:

1. **Was [*name of plaintiff*] insured under a policy of liability insurance issued by [*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 claimant*] make a claim against [*name of plaintiff*] that was covered by [*name of defendant*]'s insurance policy?**
   ____ 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 claimant*] make a reasonable settlement demand to settle [his/her/*nonbinary pronoun*] claim against [*name of plaintiff*] for an amount within policy limits?**
   ____ Yes ____ No

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

4. **Did [*name of defendant*] fail to accept this settlement demand?**
   ____ Yes ____ No

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

5. **Was [*name of defendant*]'s failure to accept the settlement demand the result of unreasonable conduct by [*name of defendant*]?**
   ____ Yes ____ No

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

6. [Was a judgment entered against [*name of plaintiff*] for a sum of money greater than the policy limits?
____ Yes ____ No]

[*or*]

[Was [*name of defendant*]'s failure to accept the settlement demand a substantial factor in causing harm to [*name of plaintiff*]?]
____ 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. What are [*name of plaintiff*]'s damages?

[a. Amount of judgment entered against [*name of plaintiff*]
$ _____]

[b. Past economic loss
[lost earnings $ _____]
[lost profits $ _____]
[medical expenses $ _____]
[other past economic loss $ _____]
Total Past Economic Damages: $ _____]

[c. Future economic loss
[lost earnings $ _____]
[lost profits $ _____]
[medical expenses $ _____]
[other future economic loss $ _____]
Total Future Economic Damages: $ _____]

[d. Past noneconomic loss, including [physical pain/mental suffering:]
$ _____]

[e. 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 2022

Directions for Use

This verdict form is based on CACI No. 2334, *Bad Faith (Third Party)—Refusal to Accept Reasonable Settlement Demand Within Liability Policy Limits—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.

Question 6 should be tailored to the facts of the case as presented in element 6 of CACI No. 2334.

If specificity is not required, users do not have to itemize all the damages listed in question 7 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.

2522A. Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Individual Defendant (Gov. Code, §§ 12923, 12940(j))

[*Name of plaintiff***] claims that [***name of individual defendant***] subjected [him/her/***nonbinary pronoun***] to harassment based on [***describe protected status, e.g., race, gender, or age***] at [***name of ~~employer~~covered entity***] and that this harassment created a work environment that was hostile, intimidating, offensive, oppressive, or abusive.**

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

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

[2. That [*name of individual defendant***] was an employee of [***name of covered entity***];]**

~~2~~3. **That [***name of plaintiff***] was subjected to harassing conduct because [he/she/***nonbinary pronoun***] was [***protected status, e.g., a woman***];**

~~3~~4. **That the harassing conduct was severe or pervasive;**

~~4~~5. **That a reasonable [***e.g., woman***] in [***name of plaintiff***]'s circumstances would have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive;**

~~5~~6. **That [***name of plaintiff***] considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive;**

~~6~~7. **That [***name of individual defendant***] [participated in/assisted/ [or] encouraged] the harassing conduct;**

~~7~~8. **That [***name of plaintiff***] was harmed; and**

~~8~~9. **That the conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

Derived from former CACI No. 2522 December 2007; Revised June 2013, December 2015, May 2018, July 2019, May 2020, November 2021, May 2022

Directions for Use

This instruction is for use in a hostile work environment case if the plaintiff was the target of the harassing conduct and the defendant is ~~an individual such as the alleged harasser or plaintiff's coworker~~ also an employee of the covered entity. (Gov. Code, § 12940(j)(3).) Include optional element 2 if there is a dispute about the defendant's status as an employee and include optional question 2 on the verdict form. See CACI No. VF-2507A, *Work Environment Harassment—Conduct Directed at Plaintiff—Individual*

Defendant.

The relevant provision protects an employee, an applicant, an unpaid intern or volunteer, or a person providing services under a contract. (See Gov. Code, § 12940(j)(1).) If the alleged harassment did not occur in the workplace, the instruction should be modified as appropriate. (See *Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1051 [58 Cal.Rptr.2d 122] ["[A]s long as the harassment occurs in a work-related context, the employer is liable"].)

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

Modify element ~~2~~3 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 there are both employer and individual supervisor defendants (see CACI No. 2521A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant*) and both are found liable, they are both jointly and severally liable for any damages. Comparative fault and Proposition 51 do not apply to the employer's strict liability for supervisor harassment. (*State Dept. of Health Servs. v. Superior Court* (2003) 31 Cal.4th 1026, 1041–1042 [6 Cal.Rptr.3d 441, 79 P.3d 556]; see *Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 1000 [16 Cal.Rptr.2d 787], disapproved on other grounds in *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664 [25 Cal.Rptr.2d 109, 863 P.2d 179]; see also *Rashtian v. BRAC-BH, Inc.* (1992) 9 Cal.App.4th 1847, 1851 [12 Cal.Rptr.2d 411] [Proposition 51 cannot be applied to those who are without fault and only have vicarious liability by virtue of some statutory fiat].)

See also the Sources and Authority to CACI No. 2521A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant*.

Sources and Authority

- Legislative Intent With Regard to Application of the Laws About Harassment. Government Code section 12923.
- Harassment Prohibited Under Fair Employment and Housing Act. Government Code section 12940(j)(1).
- Employee Personal Liability for Harassment. Government Code section 12940(j)(3).
- "Employer" Defined for Harassment. Government Code section 12940(j)(4)(A).

- Harassment Because of Sex. Government Code section 12940(j)(4)(C).

- Person Providing Services Under Contract. Government Code section 12940(j)(5).

- Aiding and Abetting Fair Employment and Housing Act Violations. Government Code section 12940(i).

- Perception and Association. Government Code section 12926(o).

- "To establish a prima facie case of a hostile work environment, [the plaintiff] must show that (1) [plaintiff] is a member of a protected class; (2) [plaintiff] was subjected to unwelcome harassment; (3) the harassment was based on [plaintiff's] protected status; (4) the harassment unreasonably interfered with [plaintiff's] work performance by creating an intimidating, hostile, or offensive work environment; and (5) defendants are liable for the harassment." (*Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 581 [250 Cal.Rptr.3d 1].)

- "[T]he adjudicator's inquiry should center, dominantly, on whether the discriminatory conduct has unreasonably interfered with the plaintiff's work performance. To show such interference, 'the plaintiff need not prove that his or her tangible productivity has declined as a result of the harassment.' It suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to 'make it more difficult to do the job.' " (*Harris v. Forklift Sys.* (1993) 510 U.S. 17, 25 [114 S.Ct. 367, 126 L.Ed.2d 295], conc. opn. of Ginsburg, J.; see Gov. Code, § 12923(a) endorsing this language as reflective of California law.)

- "Under FEHA, an employee who harasses another employee may be held personally liable." (*Lewis v. City of Benicia* (2014) 224 Cal.App.4th 1519, 1524 [169 Cal.Rptr.3d 794].)

- "A supervisor who, without more, fails to take action to prevent sexual harassment of an employee is not personally liable as an aider and abettor of the harasser, an aider and abettor of the employer or an agent of the employer." (*Fiol v. Doellstedt* (1996) 50 Cal.App.4th 1318, 1331 [58 Cal.Rptr.2d 308].)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 363, 370

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

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

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

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 §§ 2:56–2:56.50 (Thomson Reuters)

2522B. Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Individual Defendant (Gov. Code, §§ 12923, 12940(j))

[*Name of plaintiff***] claims that coworkers at [***name of ~~employer~~covered entity***] were subjected to harassment based on [***describe protected status, e.g., race, gender, or age***] and that this harassment created a work environment for [***name of plaintiff***] that was hostile, intimidating, offensive, oppressive, or abusive.**

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

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

[2. That [*name of individual defendant***] was an employee of [***name of covered entity***];]**

2~~3~~. **That [***name of plaintiff***], although not personally subjected to harassing conduct, personally witnessed harassing conduct that took place in [his/her/***nonbinary pronoun***] immediate work environment;**

3~~4~~. **That the harassing conduct was severe or pervasive;**

4~~5~~. **That a reasonable [***describe member of protected group, e.g., woman***] in [***name of plaintiff***]'s circumstances would have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive;**

5~~6~~. **That [***name of plaintiff***] considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive toward [***e.g., women***];**

6~~7~~. **That [***name of individual defendant***] [participated in/assisted/ [or] encouraged] the harassing conduct;**

7~~8~~. **That [***name of plaintiff***] was harmed; and**

8~~9~~. **That the conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

Derived from former CACI No. 2522 December 2007; Revised June 2013, December 2015, May 2018, July 2019, November 2021, May 2022

Directions for Use

This instruction is for use in a hostile work environment case if the plaintiff was not the target of the harassing conduct and the defendant is ~~an individual such as the alleged harasser or plaintiff's coworker~~ also an employee of the covered entity. (Gov. Code, § 12940(j)(3).) Include optional element 2 if there is

a dispute about the defendant's status as an employee and include optional question 2 on the verdict form. See CACI No. VF-2507B, *Work Environment Harassment—Conduct Directed at Others—Individual Defendant*.

The relevant provision protects an employee, an applicant, an unpaid intern or volunteer, or a person providing services under a contract. (See Gov. Code, § 12940(j)(1).) If the alleged harassment did not occur in the workplace, the instruction should be modified as appropriate. (See *Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1051 [58 Cal.Rptr.2d 122] ["[A]s long as the harassment occurs in a work-related context, the employer is liable"].)

For an employer defendant, see CACI No. 2521B, *Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Employer or Entity Defendant.* For a case in which the plaintiff is the target of the harassment, see CACI No. 2522A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Individual Defendant.* For an instruction for use if the hostile environment is due to sexual favoritism, see CACI No. 2522C, *Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Individual Defendant.* Also read CACI No. 2523, *"Harassing Conduct" Explained*, and CACI No. 2524, *"Severe or Pervasive" Explained*.

If there are both employer and individual supervisor defendants (see CACI No. 2521B, *Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Employer or Entity Defendant*) and both are found liable, they are both jointly and severally liable for any damages. Comparative fault and Proposition 51 do not apply to the employer's strict liability for supervisor harassment. (*State Dep't of Health Servs. v. Superior Court* (2003) 31 Cal.4th 1026, 1041–1042 [6 Cal.Rptr.3d 441, 79 P.3d 556]; see *Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 1000 [16 Cal.Rptr.2d 787], disapproved on other grounds in *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664 [25 Cal.Rptr.2d 109, 863 P.2d 179]; see also *Rashtian v. BRAC-BH, Inc.* (1992) 9 Cal.App.4th 1847, 1851 [12 Cal.Rptr.2d 411] [Proposition 51 cannot be applied to those who are without fault and only have vicarious liability by virtue of some statutory fiat].)

See also the Sources and Authority to CACI No. 2521A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant.*

Sources and Authority

- Legislative Intent With Regard to Application of the Laws About Harassment. Government Code section 12923.
- Harassment Prohibited Under Fair Employment and Housing Act. Government Code section 12940(j)(1).
- Employee Personal Liability for Harassment. Government Code section 12940(j)(3).
- "Employer" Defined for Harassment. Government Code section 12940(j)(4)(A).
- Harassment Because of Sex. Government Code section 12940(j)(4)(C).

- Person Providing Services Under Contract. Government Code section 12940(j)(5).

- Aiding and Abetting Fair Employment and Housing Act Violations. Government Code section 12940(i).

- Perception and Association. Government Code section 12926(o).

- "The elements [of a prima facie claim of hostile-environment sexual harassment] are: (1) plaintiff belongs to a protected group; (2) plaintiff was subject to unwelcome sexual harassment; (3) the harassment complained of was based on sex; (4) the harassment complained of was sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment; and (5) respondeat superior." (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 608 [262 Cal.Rptr. 842], footnote omitted.)

- "[T]he adjudicator's inquiry should center, dominantly, on whether the discriminatory conduct has unreasonably interfered with the plaintiff's work performance. To show such interference, 'the plaintiff need not prove that his or her tangible productivity has declined as a result of the harassment.' It suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to 'make it more difficult to do the job.' " (*Harris v. Forklift Sys.* (1993) 510 U.S. 17, 25 [114 S.Ct. 367, 126 L.Ed.2d 295], conc. opn. of Ginsburg, J; see Gov. Code, § 12923(a) endorsing this language as reflective of California law.)

- "The plaintiff's work environment is affected not only by conduct directed at herself but also by the treatment of others. A woman's perception that her work environment is hostile to women will obviously be reinforced if she witnesses the harassment of other female workers." (*Beyda v. City of Los Angeles* (1998) 65 Cal.App.4th 511, 519 [76 Cal.Rptr.2d 547], internal citations omitted.)

- "Harassment against others in the workplace is only relevant to the plaintiff's case if she has personal knowledge of it. Unless plaintiff witnesses the conduct against others, or is otherwise aware of it, that conduct cannot alter the conditions of her employment and create an abusive working environment. Stated another way, a reasonable person in plaintiff's position would not find the environment hostile or abusive unless that person had knowledge of the objectionable conduct toward others." (*Beyda, supra,* 65 Cal.App.4th at p. 520.)

- "To state that an employee must be the direct victim of the sexually harassing conduct is somewhat misleading as an employee who is subjected to a hostile work environment is a victim of sexual harassment even though no offensive remarks or touchings are directed to or perpetrated upon that employee. Generally, however, sexual conduct that involves or is aimed at persons other than the plaintiff is considered less offensive and severe than conduct that is directed at the plaintiff. A hostile work environment sexual harassment claim by a plaintiff who was not personally subjected to offensive remarks and touchings requires 'an even higher showing' than a claim by one who had been sexually harassed without suffering tangible job detriment: such a plaintiff must 'establish that the sexually harassing conduct permeated [her] direct work environment.' [¶] To meet this burden, the plaintiff generally must show that the harassment directed at others was in her immediate work environment, and that she personally witnessed it. The reason for this is obvious: if the plaintiff does

not witness the incidents involving others, 'those incidents cannot affect ... her perception of the hostility of the work environment.' " (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 284–285 [42 Cal.Rptr.3d 2, 132 P.3d 211], internal citations omitted.)

- "[W]e conclude a nonharassing supervisor, who fails to take action to prevent sexual harassment, is not personally liable for sexual harassment under the Fair Employment and Housing Act (FEHA)." (*Fiol v. Doellstedt* (1996) 50 Cal.App.4th 1318, 1322 [58 Cal.Rptr.2d 308].)

- "A supervisor who, without more, fails to take action to prevent sexual harassment of an employee is not personally liable as an aider and abettor of the harasser, an aider and abettor of the employer or an agent of the employer." (*Fiol*, *supra,* 50 Cal.App.4th at p. 1331.)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 363, 370

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

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

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

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 §§ 2:56, 2:56.50 (Thomson Reuters)

2522C. Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Individual Defendant (Gov. Code, §§ 12923, 12940(j))

[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] was subjected to harassment based on sexual favoritism at [***name of ~~employer~~covered entity***] and that this harassment created a work environment that was hostile, intimidating, offensive, oppressive, or abusive. "Sexual favoritism" means that another employee has received preferential treatment with regard to promotion, work hours, assignments, or other significant employment benefits or opportunities because of a sexual relationship with an individual representative of the employer who was in a position to grant these preferences.**

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

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

[2. That [*name of individual defendant***] was an employee of [***name of covered entity***];]**

~~2~~3. That there was sexual favoritism in the work environment;

~~3~~4. That the sexual favoritism was severe or pervasive;

~~4~~5. That a reasonable [*describe member of protected group, e.g., woman***] in [***name of plaintiff***]'s circumstances would have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive because of the sexual favoritism;**

~~5~~6. That [*name of plaintiff***] considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive because of the sexual favoritism;**

~~6~~7. That [*name of individual defendant***] [participated in/assisted/ [or] encouraged] the sexual favoritism;**

~~7~~8. That [*name of plaintiff***] was harmed; and**

~~8~~9. That the conduct was a substantial factor in causing [*name of plaintiff***]'s harm.**

Derived from former CACI No. 2522 December 2007; Revised December 2015, May 2018, July 2019, May 2020, November 2021, May 2022

Directions for Use

This instruction is for use in a hostile work environment case involving sexual favoritism when the defendant is ~~an individual such as the alleged harasser or plaintiff's coworker~~ also an employee of the covered entity. (Gov. Code, § 12940(j)(3).) Include optional element 2 if there is a dispute about the

defendant's status as an employee and include optional question 2 on the verdict form. See CACI No. VF-2507C, *Work Environment Harassment—Sexual Favoritism—Individual Defendant.*

The relevant provision protects an employee, an applicant, an unpaid intern or volunteer, or a person providing services under a contract. (Gov. Code, § 12940(j)(1).) If the facts of the case support it, the instruction should be modified as appropriate to the applicant's circumstances.

For an employer defendant, see CACI No. 2521C, *Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Employer or Entity Defendant.* For a case in which the plaintiff is the target of harassment based on a protected status such as gender, race, or sexual orientation, see CACI No. 2522A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Individual Defendant.* For an instruction for use if the plaintiff is not the target of the harassment, see CACI No. 2522B, *Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Individual Defendant.* Also read CACI No. 2523, *"Harassing Conduct" Explained*, and CACI No. 2524, *"Severe or Pervasive" Explained*.

If there are both employer and individual supervisor defendants (see CACI No. 2521C, *Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Employer or Entity Defendant*) and both are found liable, they are both jointly and severally liable for any damages. Comparative fault and Proposition 51 do not apply to the employer's strict liability for supervisor harassment. (*State Dep't of Health Servs. v. Superior Court* (2003) 31 Cal.4th 1026, 1041–1042 [6 Cal.Rptr.3d 441, 79 P.3d 556]; see *Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 1000 [16 Cal.Rptr.2d 787], disapproved on other grounds in *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664 [25 Cal.Rptr.2d 109, 863 P.2d 179]; see also *Rashtian v. BRAC-BH, Inc.* (1992) 9 Cal.App.4th 1847, 1851 [12 Cal.Rptr.2d 411] [Proposition 51 cannot be applied to those who are without fault and only have vicarious liability by virtue of some statutory fiat].)

See also the Sources and Authority to CACI No. 2521A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant.*

Sources and Authority

- Declaration of Legislative Intent With Regard to Application of the Laws About Harassment. Government Code section 12923.
- Harassment Prohibited Under Fair Employment and Housing Act. Government Code section 12940(j)(1).
- Employee Personal Liability for Harassment. Government Code section 12940(j)(3).
- "Employer" Defined for Harassment. Government Code section 12940(j)(4)(A).
- Harassment Because of Sex. Government Code section 12940(j)(4)(C).
- Person Providing Services Under Contract. Government Code section 12940(j)(5).

- Aiding and Abetting Fair Employment and Housing Act Violations. Government Code section 12940(i).

- Perception and Association. Government Code section 12926(o).

- "The elements [of a prima facie claim of hostile-environment sexual harassment] are: (1) plaintiff belongs to a protected group; (2) plaintiff was subject to unwelcome sexual harassment; (3) the harassment complained of was based on sex; (4) the harassment complained of was sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment; and (5) respondeat superior." (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 608 [262 Cal.Rptr. 842], footnote omitted.)

- "[T]he adjudicator's inquiry should center, dominantly, on whether the discriminatory conduct has unreasonably interfered with the plaintiff's work performance. To show such interference, 'the plaintiff need not prove that his or her tangible productivity has declined as a result of the harassment.' It suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to 'make it more difficult to do the job.' " (*Harris v. Forklift Sys.* (1993) 510 U.S. 17, 25 [114 S.Ct. 367, 126 L.Ed.2d 295], conc. opn. of Ginsburg, J.; see Gov. Code, § 12923(a) endorsing this language as reflective of California law.)

- "Following the guidance of the EEOC, and also employing standards adopted in our prior cases, we believe that an employee may establish an actionable claim of sexual harassment under the FEHA by demonstrating that widespread sexual favoritism was severe or pervasive enough to alter his or her working conditions and create a hostile work environment." (*Miller v. Dept. of Corrections* (2005) 36 Cal.4th 446, 466 [30 Cal.Rptr.3d 797, 115 P.3d 77], internal citations omitted.)

- "[S]exual favoritism by a manager may be actionable when it leads employees to believe that 'they [can] obtain favorable treatment from [the manager] if they became romantically involved with him', the affair is conducted in a manner 'so indiscreet as to create a hostile work environment,' or the manager has engaged in 'other pervasive conduct … which created a hostile work environment.' " (*Miller, supra,* 36 Cal.4th at p. 465, internal citations omitted.)

- "[A] romantic relationship between a supervisor and an employee does not, without more, give rise to a sexual discrimination or sexual harassment claim either under the FEHA or the public policy of the state." (*Proksel v. Gattis* (1996) 41 Cal.App.4th 1626, 1631 [49 Cal.Rptr.2d 322].)
- "[W]e conclude a nonharassing supervisor, who fails to take action to prevent sexual harassment, is not personally liable for sexual harassment under the Fair Employment and Housing Act (FEHA)." (*Fiol v. Doellstedt* (1996) 50 Cal.App.4th 1318, 1322 [58 Cal.Rptr.2d 308].)

- "A supervisor who, without more, fails to take action to prevent sexual harassment of an employee is not personally liable as an aider and abettor of the harasser, an aider and abettor of the employer or an agent of the employer." (*Fiol*, *supra*, 50 Cal.App.4th at p. 1331.)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 363, 370

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

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

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

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[5] (Matthew Bender)

California Civil Practice: Employment Litigation §§ 2:56, 2:56.50 (Thomson Reuters)

2546. Disability Discrimination—Reasonable Accommodation—Failure to Engage in Interactive Process (Gov. Code, § 12940(n))

[*Name of plaintiff***] contends that [***name of defendant***] failed to engage in a good-faith interactive process with [him/her/***nonbinary pronoun***] to determine whether it would be possible to implement effective reasonable accommodations so that [***name of plaintiff***] [***insert job requirements requiring accommodation***]. In order to establish this claim, [***name of plaintiff***] must prove the following:**

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

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

3. That [*name of plaintiff***] had [a] [***select term to describe basis of limitations, e.g., physical condition***] that was known to [***name of defendant***];**

4. That [*name of plaintiff***] requested that [***name of defendant***] make reasonable accommodation for [his/her/***nonbinary pronoun***] [***e.g., physical condition***] so that [he/she/***nonbinary pronoun***] would be able to perform the essential job requirements;**

5. That [*name of plaintiff***] was willing to participate in an interactive process to determine whether reasonable accommodation could be made so that [he/she/***nonbinary pronoun***] would be able to perform the essential job requirements;**

6. That [*name of defendant***] failed to participate in a timely good-faith interactive process with [***name of plaintiff***] to determine whether reasonable accommodation could be made;**

[7. That [*name of defendant***] could have made a reasonable accommodation when the interactive process should have taken place;]**

~~7~~8. That [*name of plaintiff***] was harmed; and**

~~8~~9. That [*name of defendant***]'s failure to engage in a good-faith interactive process was a substantial factor in causing [***name of plaintiff***]'s harm.**

New December 2007; Revised April 2009, December 2009, May 2022

Directions for Use

In elements 3 and 4, select a term to describe the source of the plaintiff's limitations. It may be a statutory term such as "physical disability," "mental disability," or "medical condition." (See Gov. Code, § 12940(a).) Or it may be a general term such as "condition," "disease," or "disorder." Or it may be a specific health condition such as "diabetes."

Modify elements 3 and 4, as necessary, if the employer perceives the employee to have a disability. (See *Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 61, fn. 21 [43 Cal.Rptr.3d 874].)

In element 4, specify the position at issue and the reason why some reasonable accommodation was needed. In element 5, you may add the specific accommodation requested, though the focus of this cause of action is on the failure to discuss, not the failure to provide.

For an instruction on a cause of action for failure to make reasonable accommodation, see CACI No. 2541, *Disability Discrimination—Reasonable Accommodation—Essential Factual Elements*. For an instruction defining "reasonable accommodation," see CACI No. 2542, *Disability Discrimination—"Reasonable Accommodation" Explained*.

~~There is a split of authority as to whether the employee must also prove that reasonable accommodation was possible before there is a violation for failure to engage in the interactive process.~~ Bracketed element 7 reflects that there is a split of authority as to whether the employee must also prove that a reasonable accommodation was available. (Compare ~~*Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 424–425 [69 Cal.Rptr.3d 1] [jury's finding that no reasonable accommodation was possible is not inconsistent with its finding of liability for refusing to engage in interactive process] and *Claudio v. Regents of the University of California* (2005) 134 Cal.App.4th 224, 243 [35 Cal.Rptr.3d 837] with~~ *Shirvanyan v. Los Angeles Community College Dist.* (2020) 59 Cal.App.5th 82, 87 [273 Cal.Rptr.3d 312] ["the availability of a reasonable accommodation is an essential element of an interactive process claim"] and *Nadaf-Rahrov v. The ~~Nieman~~ Neiman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 980–985 [83 Cal.Rptr.3d 190] [employee who brings a section 12940(n) claim bears the burden of proving a reasonable accommodation was available before the employer can be held liable under the statute] with *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 424–425 [69 Cal.Rptr.3d 1] [jury's finding that no reasonable accommodation was possible is not inconsistent with its finding of liability for refusing to engage in interactive process] and *Claudio v. Regents of the University of California* (2005) 134 Cal.App.4th 224, 243 [35 Cal.Rptr.3d 837] [if the employer's failure to participate in good faith causes a breakdown in the interactive process, liability follows] ~~with~~; see ~~also~~ *Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1018–1019 [93 Cal.Rptr.3d 338] [attempting to reconcile conflict].) See also verdict form CACI No. VF-2513, *Disability Discrimination—Reasonable Accommodation—Failure to Engage in Interactive Process*.

Sources and Authority

- Good-Faith Interactive Process. Government Code section 12940(n).
- Federal Interpretive Guidance Incorporated. Government Code section 12926.1(e).
- Interactive Process. The Interpretive Guidance on title I of the Americans With Disabilities Act, title 29 Code of Federal Regulations Part 1630 Appendix.
- An employee may file a civil action based on the employer's failure to engage in the interactive process. (*Claudio, supra,* 134 Cal.App.4th at p. 243.)
- "Two principles underlie a cause of action for failure to provide a reasonable accommodation.

First, the employee must request an accommodation. Second, the parties must engage in an interactive process regarding the requested accommodation and, if the process fails, responsibility for the failure rests with the party who failed to participate in good faith." (*Gelfo, supra,* 140 Cal.App.4th at p. 54, internal citations omitted.)

- "While a claim of failure to accommodate is independent of a cause of action for failure to engage in an interactive dialogue, each necessarily implicates the other." (*Moore v. Regents of University of California* (2016) 248 Cal.App.4th 216, 242 [206 Cal.Rptr.3d 841].)

- "FEHA requires an informal process with the employee to attempt to identify reasonable accommodations, not necessarily ritualized discussions." (*Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 379 [184 Cal.Rptr.3d 9].)

- "The point of the interactive process is to find reasonable accommodation for a disabled employee, or an employee regarded as disabled by the employer, in order to *avoid* the employee's termination. Therefore, a pretextual termination of a perceived-as-disabled employee's employment in lieu of providing reasonable accommodation or engaging in the interactive process does not provide an employer a reprieve from claims for failure to accommodate and failure to engage in the interactive process." (*Moore, supra,* 248 Cal.App.4th at pp. 243−244, original italics.)

- "FEHA's reference to a 'known' disability is read to mean a disability of which the employer has become aware, whether because it is obvious, the employee has brought it to the employer's attention, it is based on the employer's own perception—mistaken or not—of the existence of a disabling condition or, perhaps as here, the employer has come upon information indicating the presence of a disability." (*Gelfo, supra,* 140 Cal.App.4th at p. 61, fn. 21.)

- "Typically, the employee must initiate the process 'unless the disability and resulting limitations are obvious.' " (*Featherstone v. Southern California Permanente Medical Group* (2017) 10 Cal.App.5th 1150, 1169 [217 Cal.Rptr.3d 258].)

- "Once initiated, the employer has a continuous obligation to engage in the interactive process in good faith. 'Both employer and employee have the obligation "to keep communications open" and neither has "a right to obstruct the process." [Citation.] "Each party must participate in good faith, undertake reasonable efforts to communicate its concerns, and make available to the other information which is available, or more accessible, to one party. Liability hinges on the objective circumstances surrounding the parties' breakdown in communication, and responsibility for the breakdown lies with the party who fails to participate in good faith." [Citation.]' " (*Swanson v. Morongo Unified School Dist.* (2014) 232 Cal.App.4th 954, 971−972 [181 Cal.Rptr.3d 553].)

- "[Employer] asserts that, if it had a duty to engage in the interactive process, the duty was discharged. 'If anything,' it argues, 'it was [employee] who failed to engage in a good faith interactive process.' [Employee] counters [employer] made up its mind before July 2002 that it would not accommodate [employee]'s limitations, and nothing could cause it reconsider that decision. Because the evidence is conflicting and the issue of the parties' efforts and good faith is factual, the claim is properly left for the jury's consideration." (*Gelfo, supra,* 140 Cal.App.4th at p.

62, fn. 23.)

- "None of the legal authorities that [defendant] cites persuades us that the Legislature intended that after a reasonable accommodation is granted, the interactive process continues to apply in a failure to accommodate context. … To graft an interactive process intended to apply to the determination of a reasonable accommodation onto a situation in which an employer failed to provide a reasonable, agreed-upon accommodation is contrary to the apparent intent of the FEHA and would not support the public policies behind that provision." (*A.M. v. Albertsons, LLC* (2009) 178 Cal.App.4th 455, 464 [100 Cal.Rptr.3d 449].)

- "[T]he verdicts on the reasonable accommodations issue and the interactive process claim are not inconsistent. They involve separate causes of action and proof of different facts. Under FEHA, an employer must engage in a good faith interactive process with the disabled employee to explore the alternatives to accommodate the disability. 'An employee may file a civil action based on the employer's failure to engage in the interactive process.' Failure to engage in this process is a separate FEHA violation independent from an employer's failure to provide a reasonable disability accommodation, which is also a FEHA violation. An employer may claim there were no available reasonable accommodations. But if it did not engage in a good faith interactive process, 'it cannot be known whether an alternative job would have been found.' The interactive process determines which accommodations are required. Indeed, the interactive process could reveal solutions that neither party envisioned." (*Wysinger, supra,* 157 Cal.App.4th at pp. 424–425, internal citations omitted.)

- "We disagree … with *Wysinger's* construction of section 12940(n). We conclude that the availability of a reasonable accommodation (i.e., a modification or adjustment to the workplace that enables an employee to perform the essential functions of the position held or desired) is necessary to a section 12940(n) claim. [¶] Applying the burden of proof analysis in *Green, supra,* 42 Cal.4th 254, we conclude the burden of proving the availability of a reasonable accommodation rests on the employee." (*Nadaf-Rahrov, supra,* 166 Cal.App.4th at pp. 984–985.)

- "We synthesize *Wysinger, Nadaf-Rahrov,* and *Claudio* with our analysis of the law as follows: To prevail on a claim under section 12940, subdivision (n) for failure to engage in the interactive process, an employee must identify a reasonable accommodation that would have been available at the time the interactive process should have occurred. An employee cannot necessarily be expected to identify and request all possible accommodations during the interactive process itself because ' " '[e]mployees do not have at their disposal the extensive information concerning possible alternative positions or possible accommodations which employers have. …' " ' However, as the *Nadaf-Rahrov* court explained, once the parties have engaged in the litigation process, to prevail, the employee must be able to identify an available accommodation the interactive process should have produced: 'Section 12940[, subdivision](n), which requires proof of failure to engage in the interactive process, is the appropriate cause of action where the employee is unable to identify a specific, available reasonable accommodation while in the workplace and the employer fails to engage in a good faith interactive process to help identify one, but the employee is able to identify a specific, available reasonable accommodation through the litigation process.' " (*Scotch, supra,* 173 Cal.App.4th at pp. 1018–1019.)

- "Well-reasoned precedent supports [defendant's] argument that, in order to succeed on a cause of action for failure to engage in an interactive process, 'an employee must identify a reasonable accommodation that would have been available at the time the interactive process should have occurred.' " (*Shirvanyan, supra,* 59 Cal.App.5th at p. 96.)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, § 1048

Chin, et al., California Practice Guide: Employment Litigation, Ch. 9-C, *Disability Discrimination—California Fair Employment and Housing Act (FEHA),* ¶¶ 9:2280–9:2285, 9:2345–9:2347 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, § 2.79

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.51[3][b] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.35[1][a] (Matthew Bender)

1 California Civil Practice: Employment Litigation, § 2:50 (Thomson Reuters)

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/an applicant for a position with/a person providing services under a contract with/an unpaid intern with/a volunteer with] [***name of ~~employer~~ covered entity***]?**
____ 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 defendant***] an employee of [***name of covered entity***]?**
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.]

~~2~~3. **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~~3 is yes, then answer question ~~3~~4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~3~~4. **Was the harassment severe or pervasive?**
____ Yes ____ No

If your answer to question ~~3~~4 is yes, then answer question ~~4~~5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~4~~5. **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~~5 is yes, then answer question ~~5~~6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~5~~6. Did [*name of plaintiff*] consider the work environment to be hostile, intimidating, offensive, oppressive, or abusive?
____ Yes ____ No

If your answer to question ~~5~~6 is yes, then answer question ~~6~~7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~6~~7. Did [*name of defendant*] [participate in/assist/ [or] encourage] the harassing conduct?
____ Yes ____ No

If your answer to question ~~6~~7 is yes, then answer question ~~7~~8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~7~~8. Was the harassing conduct a substantial factor in causing harm to [*name of plaintiff*]?
____ Yes ____ No

If your answer to question ~~7~~8 is yes, then answer question ~~8~~9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~8~~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:]
$ _____]

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-2507 December 2007; Revised December 2010, June 2013, December 2016, May 2020, May 2021, November 2021, May 2022

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.~~

Include optional question 2 only if optional element 2 is included in CACI No. 2522A.

Modify question ~~2~~3 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~~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.

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/an applicant for a position with/a person providing services under a contract with/an unpaid intern with/a volunteer with] [***name of ~~employer~~covered entity***]?**
____ 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 individual defendant***] an employee of [***name of covered entity***]?**
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.]

~~2~~3. 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~~3 is yes, then answer question ~~3~~4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~3~~4. Was the harassment severe or pervasive?
____ Yes ____ No

If your answer to question ~~3~~4 is yes, then answer question ~~4~~5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~4~~5. 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~~5 is yes, then answer question ~~5~~6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~5~~6. **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~~6 is yes, then answer question ~~6~~7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~6~~7. **Did [*name of individual defendant*] [participate in/assist/ [or] encourage] the harassing conduct?**
____ Yes ____ No

If your answer to question ~~6~~7 is yes, then answer question ~~7~~8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~7~~8. **Was the harassing conduct a substantial factor in causing harm to [*name of plaintiff*]?**
____ Yes ____ No

If your answer to question ~~7~~8 is yes, then answer question ~~8~~9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~8~~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:]

$ _____]

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-2507 December 2007; Revised December 2010, June 2013, December 2016, May 2020, May 2021, November 2021, May 2022

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.*~~
Include optional question 2 only if optional element 2 is included in CACI No. 2522B.

If specificity is not required, users do not have to itemize all the damages listed in question ~~8~~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.

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/an applicant for a position with/a person providing services under a contract with/an unpaid intern with/a volunteer with] [***name of ~~employer~~covered entity***]?**
____ 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 individual defendant***] an employee of [***name of covered entity***]?**
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.]

~~2~~3. Was there sexual favoritism in the work environment?
____ Yes ____ No

If your answer to question ~~2~~3 is yes, then answer question ~~3~~4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~3~~4. Was the sexual favoritism severe or pervasive?
____ Yes ____ No

If your answer to question ~~3~~4 is yes, then answer question ~~4~~5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~4~~5. 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~~5 is yes, then answer question ~~5~~6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~5~~6. 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~~6 is yes, then answer question ~~6~~7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~6~~7. Did [*name of individual defendant***] [participate in/assist/ [or] encourage] the sexual favoritism?**
____ Yes ____ No

If your answer to question ~~6~~7 is yes, then answer question ~~7~~8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~7~~8. Was the sexual favoritism a substantial factor in causing harm to [*name of plaintiff***]?**
____ Yes ____ No

If your answer to question ~~7~~8 is yes, then answer question ~~8~~9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~8~~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:]

$ _____]

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-2507 December 2007; Revised December 2010, December 2014, December 2016, May 2020, May 2021, November 2021, May 2022

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.~~
Include optional question 2 only if optional element 2 is included in CACI No. 2522C.

Depending on the facts of the case, other factual scenarios for employer liability can be substituted in question~~s 6 and~~ 7, as in element ~~6~~7 of the instruction.

If specificity is not required, users do not have to itemize all the damages listed in question ~~8~~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.

VF-2513. Disability Discrimination—Reasonable Accommodation—Failure to Engage in Interactive Process (Gov. Code, § 12940(n))

We answer the questions submitted to us as follows:

1. **Was [***name of defendant***] [an employer/[***other covered entity***]]?**
   ____ 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***] [an employee of [***name of defendant***]/an applicant to [***name of defendant***] for a job/[***other covered relationship to defendant***]]?**
   ____ Yes ____ No

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

3. **Did [***name of plaintiff***] have [a] [***select term to describe basis of limitations, e.g., physical condition***] [that limited [***insert major life activity***]]?**
   ____ Yes ____ No

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

4. **Did [***name of plaintiff***] request that [***name of defendant***] make reasonable accommodation for [his/her/***nonbinary pronoun***] [***e.g., physical condition***] so that [he/she/***nonbinary pronoun***] would be able to perform the essential job requirements?**
   ____ Yes ____ No

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

5. **Was [***name of plaintiff***] willing to participate in an interactive process to determine whether reasonable accommodation could be made so that [he/she/***nonbinary pronoun***] would be able to perform the essential job requirements?**
   ____ 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*] fail to participate in a timely, good-faith interactive process with [*name of plaintiff*] to determine whether reasonable accommodation could be made?

____ 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. Could [*name of defendant*] have made a reasonable accommodation when the interactive process should have taken place?

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.]

~~7~~8. Was [*name of defendant*]'s failure to participate in a good-faith interactive process a substantial factor in causing harm to [*name of plaintiff*]?

____ Yes ____ No

[If your answer to question ~~7~~8 is yes, then answer question ~~8~~9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

~~8~~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:]

$ _____]

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 April 2009; Revised December 2009, December 2010, December 2016, May 2022

Directions for Use

This verdict form is based on CACI No. 2546, *Disability Discrimination—Reasonable Accommodation—Failure to Engage in Interactive Process.*

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.

Select a term to use throughout to describe the source of the plaintiff's limitations. It may be a statutory term such as "physical disability," "mental disability," or "medical condition." (See Gov. Code, § 12940(a).) Or it may be a general term such as "condition," "disease," or "disorder." Or it may be a specific health condition such as "diabetes."

If medical-condition discrimination as defined by statute (see Gov. Code, § 12926(i)) is alleged, omit "that limited **[***insert major life activity***]**" in question 3. (Compare Gov. Code, § 12926(i) with Gov. Code, § 12926(j), (m) [no requirement that medical condition limit major life activity].)

Bracketed question 7 reflects that there is a split of authority as to whether the employee must also prove that a reasonable accommodation was available. (Compare *Shirvanyan v. Los Angeles Community College Dist.* (2020) 59 Cal.App.5th 82, 87 [273 Cal.Rptr.3d 312] ["the availability of a reasonable accommodation is an essential element of an interactive process claim"] and *Nadaf-Rahrov v. The Neiman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 980–985 [83 Cal.Rptr.3d 190] [employee who brings section 12940(n) claim bears burden of proving a reasonable accommodation was available before employer can be held liable under the statute] with *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 424–425 [69 Cal.Rptr.3d 1] [jury's finding that no reasonable accommodation was possible is not inconsistent with its finding of liability for refusing to engage in interactive process] and *Claudio v. Regents of the University of California* (2005) 134 Cal.App.4th 224,

243 [35 Cal.Rptr.3d 837]; see *Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1018–1019 [93 Cal.Rptr.3d 338] [attempting to reconcile conflict].)

Do not include the transitional language following question ~~7~~8 and question ~~8~~9 if the only damages claimed are also claimed under Government Code section 12940(m) on reasonable accommodation. Use CACI No. VF-2509, *Disability Discrimination—Reasonable Accommodation,* or CACI No. VF-2510, *Disability Discrimination—Reasonable Accommodation—Affirmative Defense—Undue Hardship,* to claim these damages.

If specificity is not required, users do not have to itemize all the damages listed in question ~~8~~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*.

~~There is a split of authority as to whether the employee must also prove that reasonable accommodation was possible before there is a violation for failure to engage in the interactive process. (Compare *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 424–425 [69 Cal.Rptr.3d 1 [jury's finding that no reasonable accommodation was possible is not inconsistent with its finding of liability for refusing to engage in interactive process] with *Nadaf-Rahrov v. The Nieman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 980–985 [83 Cal.Rptr.3d 190] [employee who brings a section 12940(n) claim bears the burden of proving that a reasonable accommodation was available before the employer can be held liable under the statute].)~~

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.

2754. Reporting Time Pay—Essential Factual Elements

[*Name of plaintiff*] claims that [*name of defendant*] scheduled or otherwise required [him/her/*nonbinary pronoun*] to [report to work/report to work for a second shift] but when [*name of plaintiff*] reported to work, [*name of defendant*] [failed to put [*name of plaintiff*] to work/furnished a shortened [workday/shift]]. To establish this claim, [*name of plaintiff*] must prove all of the following:

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

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

3. **That [*name of defendant*] required [*name of plaintiff*] to report to work for one or more [workdays/second shifts];**

4. **That [*name of plaintiff*] reported for work; and**

5. **That [*name of defendant*] [failed to put [*name of plaintiff*] to work/furnished less than [half of the usual day's work/two hours of work on a second shift]].**

If you find that [*name of plaintiff*] has proved all of the above elements, you must determine the amount of wages [*name of defendant*] must pay to [*name of plaintiff*]. For each workday when an employee reports to work, as required, but is either not put to work or furnished with less than half the usual day's ~~work~~hours, the employer must pay wages for half the usual or scheduled day's ~~work~~ hours at the employee's regular rate of pay (and in no event for less than two hours or more than four hours).

[*Name of plaintiff*]'s regular rate of pay in this case is [*specify amount*].

[For each occasion when an employee is required to report for a second shift in the same workday but is furnished less than two hours of work, the employer must pay wages for two hours at the employee's regular rate of pay.]

"Workday" means any consecutive 24-hour period beginning at the same time each calendar day.

New November 2021; Revised May 2022

Directions for Use

This instruction is intended to instruct the jury on factual determinations required for the judge to then calculate damages for the defendant's failure to pay reporting time under section 5 of the Industrial Welfare Commission's wage orders. (Cal. Code Regs., tit. 8, § 11010, subd. 5, § 11020, subd. 5, § 11030, subd. 5, § 11040, subd. 5, § 11050, subd. 5, § 11060, subd. 5, § 11070, subd. 5, § 11080, subd. 5, § 11090, subd. 5, § 11100, subd. 5, § 11110, subd. 5, § 11120, subd. 5, § 11130, subd. 5, § 11140, subd. 5, § 11150, subd. 5, and § 11160, subd. 5.)

Select the appropriate bracketed language in the introductory paragraph and elements 3 and 5, and indicate whether the plaintiff was not provided work at all or was provided a shortened shift, or both, in the introductory paragraph and element 5. If the case involves both first and second shifts, the instruction will need to be modified.

Element 1 may be omitted if there is no dispute regarding the defendant's status as an employer.

Modify the instruction as appropriate if the plaintiff claims that the defendant required telephonic reporting to work before the start of a potential shift. (See *Ward v. Tilly's, Inc.* (2019) 31 Cal.App.5th 1167, 1171 [243 Cal.Rptr.3d 461].)

Include the bracketed next to last paragraph only if the plaintiff claims that the defendant required the plaintiff to report for work a second time in a single workday.

Sources and Authority

- "Employee" and "Employer" Defined. Title 8 California Code of Regulations sections 11010–11160.
- "Person" Defined. Lab. Code section 18.
- Reporting Time Pay. Title 8 California Code of Regulations sections11010–11160 (subd. 5 of each section).
- "We conclude that the on-call scheduling alleged in this case triggers Wage Order 7's reporting time pay requirements. As we explain, on-call shifts burden employees, who cannot take other jobs, go to school, or make social plans during on-call shifts—but who nonetheless receive no compensation from [the defendant] unless they ultimately are called in to work. This is precisely the kind of abuse that reporting time pay was designed to discourage." (*Ward, supra,* 31 Cal.App.5th at p. 1171.)
- "[W]e conclude, contrary to the trial court, that an employee need not necessarily physically appear at the workplace to 'report for work.' Instead, 'report[ing] for work' within the meaning of the wage order is best understood as presenting oneself *as ordered*. 'Report for work,' in other words, does not have a single meaning, but instead is defined by the party who directs the manner in which the employee is to present himself or herself for work—that is, by the employer. [¶] As thus interpreted, the reporting time pay requirement operates as follows. If an employer directs employees to present themselves for work by physically appearing at the workplace at the shift's start, then the reporting time requirement is triggered by the employee's appearance at the jobsite. But if the employer directs employees to present themselves for work by logging on to a computer remotely, or by appearing at a client's jobsite, or by setting out on a trucking route, then the employee 'reports for work' by doing those things. And if, as plaintiff alleges in this case, the employer directs employees to present themselves for work by telephoning the store two hours prior to the start of a shift, then the reporting time requirement is triggered by the telephonic contact." (*Ward, supra,* 31 Cal.App.5th at p. 1185, original italics.)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, § 432

1 Wilcox, California Employment Law, Ch. 1, *Overview of Wage and Hour Laws*, § 1.05; Ch. 3, *Determining Compensable Hours and Proper Payment Amounts*, § 3.13 (Matthew Bender)

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

3714. Ostensible Agency—Physician-Hospital Relationship—Essential Factual Elements

[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] was harmed by [***name of physician***]'s [***insert tort theory, e.g., "negligence"***].**

[*Name of plaintiff***] also claims that [***name of hospital***] is responsible for the harm because [***name of physician***] was acting as [his/her/***nonbinary pronoun***/its] [agent/employee/[***insert other relationship***]] when the incident occurred.**

If you find that [*name of physician***]'s [***insert tort theory***] harmed [***name of plaintiff***], then you must decide whether [***name of hospital***] is responsible for the harm. [***Name of hospital***] is responsible if [***name of plaintiff***] proves ~~[***Name of plaintiff***] claims that [***name of hospital***] is responsible for [***name of physician***]'s conduct because [***name of physician***] was [***name of hospital***]'s apparent [employee/agent]. To establish this claim, [***name of plaintiff***] must prove~~ both of the following:**

1. **That [***name of hospital***] held itself out to the public as a provider of care; and**

2. **That [***name of plaintiff***] looked to [***name of hospital***] for services, rather than selecting [***name of physician***] for services.**

~~[~~**A hospital holds itself out to the public as a provider of care unless the hospital gives notice to a patient that a physician is not an [employee/agent] of the hospital. However, the notice may not be adequate if a patient in need of medical care cannot be expected to understand or act on the information provided. ~~In deciding whether [***name of plaintiff***] has proved element 1, y~~Y~~ou must take into consideration [***name of plaintiff***]'s condition at the time and decide whether any notice provided was adequate to give a reasonable person in [***name of plaintiff***]'s condition notice of the disclaimer.~~]~~

New November 2021; Revised May 2022

Directions for Use

Use this instruction only if a patient claims that a hospital defendant is responsible for a physician's negligence or other wrongful conduct as an ostensible agent. ~~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~~.

~~Include the bracketed paragraph only if the hospital claims it notified the plaintiff that the physician was not its employee or agent.~~

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.

- "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 (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 v. Rosner* (2016) 3 Cal.App.5th 1027, 1038 [208 Cal.Rptr.3d 363], internal citations omitted.)

- "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].)

- "[T]he 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].)

- "Effectively, all a patient needs to show is that he or she sought treatment at the hospital, which is precisely what plaintiff alleged in this case. Unless the evidence conclusively indicates that the patient should have known that the treating physician was not the hospital's agent, such as when the patient is treated by his or her personal physician, the issue of ostensible agency must be left to the trier of fact." (*Mejia v. Community Hospital of San Bernardino* (2002) 99 Cal.App.4th 1448, 1458 [122 Cal.Rptr.2d 233].)

- "Neither *Mejia*, *Whitlow*, nor *Markow* is factually on point with this case. Yet all three opinions inform our decision in this case. They rest on the same principle of California law, that although 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.)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 1–4

3 Levy et al., California Torts, Ch. 31, *Liability of Physicians and Other Medical Practitioners*, § 31.45 (Matthew Bender)

29 California Forms of Pleading and Practice, Ch. 295, *Hospitals*, § 295.13 et seq. (Matthew Bender)

3905A. Physical Pain, Mental Suffering, and Emotional Distress (Noneconomic Damage)

[*Insert number, e.g.,* "1."**] [Past] [and] [future] [physical pain/mental suffering/loss of enjoyment of life/disfigurement/physical impairment/inconvenience/grief/anxiety/humiliation/emotional distress/[***insert other damages***]].**

No fixed standard exists for deciding the amount of these noneconomic damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

[To recover for future [*insert item of pain and suffering***], [***name of plaintiff***] must prove that [he/she/***nonbinary pronoun***] is reasonably certain to suffer that harm.**

For future [*insert item of pain and suffering***], determine the amount in current dollars paid at the time of judgment that will compensate [***name of plaintiff***] for future [***insert item of pain and suffering***]. [This amount of noneconomic damages should not be further reduced to present cash value because that reduction should only be performed with respect to economic damages.]]**

New September 2003; Revised April 2008, December 2009, December 2011, May 2022

Directions for Use

Insert the bracketed terms that best describe the damages claimed by the plaintiff.

If future noneconomic damages are sought, include the last two paragraphs. Do not instruct the jury to further reduce the award to present cash value. (See CACI No. 3904A, *Present Cash Value*, and CACI No. 3904B, *Use of Present-Value Tables*.) 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].) Include the last sentence only if the plaintiff is claiming both future economic and noneconomic damages.

For actions or proceedings filed on or after January 1, 2022, and before January 1, 2026 (or if granted a preference under Code of Civil Procedure section 36 before January 1, 2022), the survival action statute allows for recovery of a decedent's noneconomic damages for pain, suffering, or disfigurement. (Code Civ. Proc., § 377.34(b).) (See CACI No. 3919, *Survival Damages*.) Insert only the bracketed terms that apply in a survival action, and modify the instruction to make clear that the damages are for the decedent's pre-death pain, suffering, or disfigurement.

Sources and Authority

- Term-Limited Exception for Survival Damages. Code of Civil Procedure section 377.34(b).

- "One of the most difficult tasks imposed on a fact finder is to determine the amount of money the plaintiff is to be awarded as compensation for pain and suffering. The inquiry is inherently subjective and not easily amenable to concrete measurement." (*Pearl v. City of Los Angeles* (2019) 36

Cal.App.5th 475, 491 [248 Cal.Rptr.3d 508], internal citations omitted.)

- "In general, courts have not attempted to draw distinctions between the elements of 'pain' on the one hand, and 'suffering' on the other; rather, the unitary concept of 'pain and suffering' has served as a convenient label under which a plaintiff may recover not only for physical pain but for fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal. Admittedly these terms refer to subjective states, representing a detriment which can be translated into monetary loss only with great difficulty. But the detriment, nevertheless, is a genuine one that requires compensation, and the issue generally must be resolved by the 'impartial conscience and judgment of jurors who may be expected to act reasonably, intelligently and in harmony with the evidence.' " (*Capelouto v. Kaiser Foundation Hospitals* (1972) 7 Cal.3d 889, 892–893 [103 Cal.Rptr. 856, 500 P.2d 880], internal citations and footnote omitted.)

- "[N]oneconomic damages do not consist of only emotional distress and pain and suffering. They also consist of such items as invasion of a person's bodily integrity (i.e., the fact of the injury itself), disfigurement, disability, impaired enjoyment of life, susceptibility to future harm or injury, and a shortened life expectancy." (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 300 [213 Cal.Rptr.3d 82].)

- " ' " '[T]here is no fixed or absolute standard by which to compute the monetary value of emotional distress,' " ' and a ' "jury is entrusted with vast discretion in determining the amount of damages to be awarded … ." [Citation.]' " (*Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1590, 1602 [146 Cal.Rptr.3d 585].)

- "Compensatory damages may be awarded for bodily harm without proof of pecuniary loss. The fact that there is no market price calculus available to measure the amount of appropriate compensation does not render such a tortious injury noncompensable. 'For harm to body, feelings or reputation, compensatory damages reasonably proportioned to the intensity and duration of the harm can be awarded without proof of amount other than evidence of the nature of the harm. There is no direct correspondence between money and harm to the body, feelings or reputation. There is no market price for a scar or for loss of hearing since the damages are not measured by the amount for which one would be willing to suffer the harm. The discretion of the judge or jury determines the amount of recovery, the only standard being such an amount as a reasonable person would estimate as fair compensation.' " (*Duarte v. Zachariah* (1994) 22 Cal.App.4th 1652, 1664–1665 [28 Cal.Rptr.2d 88], internal citations omitted.)

- "The general rule of damages in tort is that the injured party may recover for all detriment caused whether it could have been anticipated or not. In accordance with the general rule, it is settled in this state that mental suffering constitutes an aggravation of damages when it naturally ensues from the act complained of, and in this connection mental suffering includes nervousness, grief, anxiety, worry, shock, humiliation and indignity as well as physical pain." (*Crisci v. The Security Insurance Co. of New Haven, Connecticut* (1967) 66 Cal.2d 425, 433 [58 Cal.Rptr. 13, 426 P.2d 173], internal citations omitted.)

- "We note that there may be certain cases where testimony of an expert witness would be necessary to support all or part of an emotional distress damages claim. For example, expert testimony would be

required to the extent a plaintiff's damages are alleged to have arisen from a psychiatric or psychological disorder caused or made worse by a defendant's actions and the subject matter is beyond common experience. We are not addressing such a case here. In this case, the emotional distress damages arose from feelings of anxiety, pressure, betrayal, shock, and fear of others to which [plaintiff] herself could and did testify. Expert testimony was not required." (*Knutson v. Foster* (2018) 25 Cal.App.5th 1075, 1099 [236 Cal.Rptr.3d 473].)

- "The law in this state is that the testimony of a single person, *including the plaintiff,* may be sufficient to support an award of emotional distress damages." (*Knutson, supra,* 25 Cal.App.5th at p. 1096, original italics.)

- "[W]here a plaintiff has undergone surgery in which a herniated disc is removed and a metallic plate inserted, and the jury has expressly found that defendant's negligence was a cause of plaintiff's injury, the failure to award any damages for pain and suffering results in a damage award that is inadequate as a matter of law." (*Dodson v. J. Pacific, Inc.* (2007) 154 Cal.App.4th 931, 933 [64 Cal.Rptr.3d 920].)

- " 'To entitle a plaintiff to recover present damages for apprehended future consequences, there must be evidence to show such a degree of probability of their occurring as amounts to a reasonable certainty that they will result from the original injury.' " (*Bellman v. San Francisco High School Dist.* (1938) 11 Cal.2d 576, 588 [81 P.2d 894], internal citation omitted.)

- "To avoid confusion regarding the jury's task in future cases, we conclude that when future noneconomic damages are sought, the jury should be instructed expressly that they are to assume that an award of future damages is a present value sum, i.e., they are to determine the amount in current dollars paid at the time of judgment that will compensate a plaintiff for future pain and suffering. In the absence of such instruction, unless the record clearly establishes otherwise, awards of future damages will be considered to be stated in terms of their present or current value." (*Salgado, supra,* 19 Cal.4th at pp. 646–647.)

- "[R]ecovery for emotional distress caused by injury to property is permitted only where there is a preexisting relationship between the parties or an intentional tort." (*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 203 [147 Cal.Rptr.3d 41].)

- "[W]e uphold both the economic and emotional distress damages plaintiffs recovered for trespass to personal property arising from [defendant]'s act of intentionally striking [plaintiff's dog] with a bat." (*Plotnik, supra,* 208 Cal.App.4th at p. 1608 [under claim for trespass to chattels].)

- "Furthermore, 'the *negligent* infliction of emotional distress—anxiety, worry, discomfort—is compensable without physical injury in cases involving the tortious interference with *property rights* [citations].' Thus, if [defendant]'s failure to repair the premises constitutes a tort grounded on negligence, appellant is entitled to prove his damages for emotional distress because the failure to repair must be deemed to constitute an injury to his tenancy interest (right to habitable premises), which is a species of property." (*Erlach v. Sierra Asset Servicing, LLC* (2014) 226 Cal.App.4th 1281, 1299 [173 Cal.Rptr.3d 159], original italics, internal citation omitted.)

- "[U]nless the defendant has assumed a duty to plaintiff in which the emotional condition of the plaintiff is an object, recovery is available only if the emotional distress arises out of the defendant's breach of some other legal duty and the emotional distress is proximately caused by that breach of duty. Even then, with rare exceptions, a breach of the duty must threaten physical injury, not simply damage to property or financial interests." (*Wilson v. Southern California Edison Co.* (2015) 234 Cal.App.4th 123, 156 [184 Cal.Rptr.3d 26].)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1850–1854

Haning et al., California Practice Guide: Personal Injury, Ch. 3-C, *Specific Items Of Compensatory Damages*, ¶ 3:140 et seq. (The Rutter Group)

California Tort Damages (Cont.Ed.Bar) Bodily Injury, §§ 1.68–1.74

4 Levy et al., California Torts, Ch. 51, *Pain and Suffering*, §§ 51.01–51.14 (Matthew Bender)

15 California Forms of Pleading and Practice, Ch. 177, *Damages*, § 177.44 (Matthew Bender)

6 California Points and Authorities, Ch. 64, *Damages: Tort*, § 64.145 et seq. (Matthew Bender)

California Civil Practice: Torts § 5:10 (Thomson Reuters)

~~3903Q~~ 3919. Survival Damages ~~(Economic Damage)~~ (Code Civ. Proc, § 377.34)

If you decide that [*name of plaintiff*] has proved [his/her/*nonbinary pronoun*] claim against [*name of defendant*] for the death of [*name of decedent*], you must also decide the amount of damages that [*name of decedent*] sustained before death and that [he/she/*nonbinary pronoun*] would have been entitled to recover because of [*name of defendant*]'s conduct[, including any [penalties/ [or] punitive damages] as explained in the other instructions that I will give you].

[*Name of plaintiff*] may recover the following damages:

[1. The reasonable cost of reasonably necessary medical care that [*name of decedent*] received;]

[2. The amount of [income/earnings/salary/wages] that [he/she/*nonbinary pronoun*] lost before death;]

[3. The reasonable cost of health care services that [*name of decedent*] would have provided to [*name of family member*] before [*name of decedent*]'s death;]

[4. [*Specify other recoverable economic damage.*][;]]

[5. The [pain/ [,/or] suffering/ [,/or] disfigurement] [*name of decedent*] suffered before [his/her/*nonbinary pronoun*] death.]

You may not award damages for any loss for [*name of decedent*]'s shortened life span attributable to [his/her/*nonbinary pronoun*] death.

New May 2019; Revised November 2019, May 2020; Renumbered from CACI No. 3903Q and revised May 2022

Directions for Use

Give this instruction if a deceased person's estate claims survival damages for harm that the decedent incurred in the decedent's lifetime. This instruction addresses survival damages in a claim against a defendant who is alleged to have caused the decedent's death. However, survival damages are available for any claim incurred while alive, not just a claim based on the decedent's death. (See *County of Los Angeles v. Superior Court* (1999) 21 Cal.4th 292, 294 [87 Cal.Rptr.2d 441, 981 P.2d 68].) In a case that does not involve conduct that caused the decedent's death, modify the instruction to include the damages recoverable under the particular claim rather than the damages attributable to the death.

Survival damages can include punitive damages and penalties. (See Code Civ. Proc., § 377.34.) Include the bracketed language in the last sentence of the opening paragraph if either or both are sought. If punitive damages are claimed, give the appropriate instruction from CACI Nos. 3940–3949.

If items 1 and 2 are given, do not also give CACI No. 3903A, *Medical Expenses—Past and Future (Economic Damages)*, and CACI No. 3903C, *Past and Future Lost Earnings (Economic Damages)*, as

the future damages parts of those instructions are not applicable. Other 3903 group instructions may be omitted if their items of damages are included under item 3 and must not be given if they include future damages.

Though ~~D~~damages for pain, suffering, or disfigurement are generally not recoverable in a survival action (except at times in an elder abuse case), Code of Civil Procedure section 337.34(b) permits the recovery of these noneconomic damages by the decedent's personal representative or successor in interest for those actions or proceedings filed on or after January 1, 2022, and before January 1, 2026 (or if granted a preference under Code of Civil Procedure section 36 before January 1, 2022). (Code Civ. Proc., § 377.34; see *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1265 [45 Cal.Rptr.3d 222]; see also instructions in the 3100 Series, Elder Abuse and Dependent Adult Civil Protection Act.)

For actions or proceedings covered by section 337.34(b), and depending on the case, include item 5 (an item of noneconomic damages) and give CACI No. 3905, *Items of Noneconomic Damage*, with a version of CACI No. 3905A, *Physical Pain, Mental Suffering, and Emotional Distress (Noneconomic Damage)*, that includes only pain, suffering, or disfigurement. Note that many Sources and Authority below do not recognize the availability of noneconomic damages as a result of this temporary change in law. (Sen. Bill 447; Stats. 2021, ch. 448.)

Sources and Authority

- Survival Damages. Code of Civil Procedure section 377.34.
- Term-Limited Exception for Survival Damages. Code of Civil Procedure section 377.34(b).

- "In California, 'a cause of action for or against a person is not lost by reason of the person's death' and no 'pending action . . . abate[s] by the death of a party . . .' In a survival action by the deceased plaintiff's estate, the damages recoverable expressly exclude 'damages for pain, suffering, or disfigurement.' They do, however, include all 'loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages.' Thus, under California's survival law, an estate can recover not only the deceased plaintiff's lost wages, medical expenses, and any other pecuniary losses incurred before death, but also punitive or exemplary damages." (*County of L.A., supra,* 21 Cal.4th at pp. 303–304, internal citations omitted.)

- "The first category consists of the reasonable value of nursing and other services that Decedent would have provided to his wife prior to his death, but was unable to provide due to his illness (replacement care). Again, [defendant] does not contest the recoverability of such damages here. Nor did it below. Such damages are recoverable. (See … CACI No. 3903E ["Loss of Ability to Provide Household Services (Economic Damage)"].)" (*Williams v. The Pep Boys Manny Moe & Jack of California* (2018) 27 Cal.App.5th 225, 238 [238 Cal.Rptr.3d 809], internal citations omitted.)

- "The second category requires more discussion. That consists of the reasonable value of 24-hour

nursing care that Decedent *would have provided* to his wife *after* his death and before she passed away in 2014, nearly four years later. As appellants explain this claim, 'to the extent his children were forced to provide gratuitous home health care and other household services to [wife] up to the time of her death, [Decedent's] estate is also entitled to recover those costs as damages since he had been providing those services for his wife before he died.' … The parties disagree as to whether such damages are recoverable. Appellants contend that they are properly recovered as ' "lost years" damages,' representing economic losses the decedent incurred during the period by which his life expectancy was shortened; [defendant], in contrast, contends that they are not recoverable because they were not 'sustained or incurred before death,' as required by section 377.34. We conclude that [defendant] has the better argument." (*Williams, supra,* 27 Cal.App.5th at p. 238, original italics.)

- "By expressly authorizing recovery of only penalties or punitive damages that the decedent would have been entitled to recover had the decedent lived, the Legislature necessarily implied that *other* categories of damages that the decedent would have been entitled to recover had the decedent lived would not be recoverable in a survival action." (*Williams, supra,* 27 Cal.App.5th at p. 239, original italics.)

- "In survival actions, … damages are narrowly limited to 'the loss or damage that the decedent sustained or incurred before death', which by definition *excludes* future damages. For a trial court to award ' "lost years" damages' in a survival action—that is, damages for 'loss of future economic benefits that [a decedent] would have earned during the period by which his life expectancy was shortened'—would collapse this fundamental distinction and render the plain language of 377.34 meaningless." (*Williams, supra,* 27 Cal.App.5th at p. 240, original italics, internal citations omitted.)

- "The same conclusion [that they are not recoverable in a survival action] would seem to follow as to the trial court's award of damages for the value of Decedent's lost pension benefits and Social Security benefits." (*Williams, supra,* 27 Cal.App.5th at p. 240, fn. 21.)

- "[T]here is at least one exception to the rule that damages for the decedent's predeath pain and suffering are not recoverable in a survivor action. Such damages are expressly recoverable in a survivor action under the Elder Abuse Act if certain conditions are met." (*Quiroz, supra,* 140 Cal.App.4th at p. 1265.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, § 27

4 Levy et al., California Torts, Ch. 55, *Death and Survival Actions*, § 55.21 (Matthew Bender)

15 California Forms of Pleading and Practice, Ch. 181, *Death and Survival Actions*, § 181.45 (Matthew Bender)

6 California Points and Authorities, Ch. 66, *Death and Survival Actions*, § 66.63 et seq. (Matthew Bender)

4000. Conservatorship—Essential Factual Elements

[*Name of petitioner*] claims that [*name of respondent*] is gravely disabled due to [a mental disorder/impairment by chronic alcoholism] and therefore should be placed in a conservatorship. In a conservatorship, a conservator is appointed to oversee, under the direction of the court, the care of persons who are gravely disabled due to a mental disorder or chronic alcoholism. To succeed on this claim, [*name of petitioner*] must prove beyond a reasonable doubt ~~all~~ both of the following:

1. **That [*name of respondent*] [has a mental disorder/is impaired by chronic alcoholism]; ~~[~~and~~]~~**

2. **That [*name of respondent*] is gravely disabled as a result of the [mental disorder/chronic alcoholism]~~[; and/.]~~**

~~[3. That [*name of respondent*] is unwilling or unable voluntarily to accept meaningful treatment.]~~

New June 2005; Revised June 2016, May 2022

Directions for Use

~~There is a split of authority as to whether element 3 is required. (Compare *Conservatorship of Symington* (1989) 209 Cal.App.3d 1464, 1467 [257 Cal.Rptr. 860] ["[M]any gravely disabled individuals are simply beyond treatment."] with *Conservatorship of Davis* (1981) 124 Cal.App.3d 313, 328 [177 Cal.Rptr. 369] [jury should be allowed to consider all factors that bear on whether person should be on LPS conservatorship, including willingness to accept treatment].)~~ Give CACI No. 4002, *"Gravely Disabled" Explained*, with this instruction.

Sources and Authority

- Right to Jury Trial. Welfare and Institutions Code section 5350(d).
- "Gravely Disabled" Defined. Welfare and Institutions Code section 5008(h).
- "The Lanterman-Petris-Short Act (the act) governs the involuntary treatment of the mentally ill in California. Enacted by the Legislature in 1967, the act includes among its goals ending the inappropriate and indefinite commitment of the mentally ill, providing prompt evaluation and treatment of persons with serious mental disorders, guaranteeing and protecting public safety, safeguarding the rights of the involuntarily committed through judicial review, and providing individualized treatment, supervision and placement services for the gravely disabled by means of a conservatorship program." (*Conservatorship of Susan T.* (1994) 8 Cal.4th 1005, 1008–1009 [36 Cal.Rptr.2d 40, 884 P.2d 988].)

- "LPS Act commitment proceedings are subject to the due process clause because significant liberty interests are at stake. But an LPS Act proceeding is civil. '[T]he stated purposes of the LPS Act foreclose any argument that an LPS commitment is equivalent to criminal punishment in its design or purpose.' Thus, not all safeguards required in criminal proceedings are required in LPS Act proceedings." (*Conservatorship of P.D.* (2018) 21 Cal.App.5th 1163, 1167 [231 Cal.Rptr.3d 79], internal citations omitted.)

- "The clear import of the LPS Act is to use the involuntary commitment power of the state sparingly and only for those truly necessary cases where a 'gravely disabled' person is incapable of providing for his basic needs either alone or with help from others." (*Conservatorship of K.W.* (2017) 13 Cal.App.5th 1274, 1280 [221 Cal.Rptr.3d 622].)

- "The right to a jury trial upon the establishment of conservatorship is fundamental to the protections afforded by the LPS. As related, that right is expressly extended to the reestablishment of an LPS conservatorship." (*Conservatorship of Benvenuto* (1986) 180 Cal.App.3d 1030, 1037 [226 Cal.Rptr. 33], internal citations omitted.)

- "[T]he trial court erred in accepting counsel's waiver of [conservatee]'s right to a jury trial … . (*Estate of Kevin A.* (2015) 240 Cal.App.4th 1241, 1253 [193 Cal.Rptr.3d 237].)

- " 'The due process clause of the California Constitution requires that proof beyond a reasonable doubt and a unanimous jury verdict be applied to conservatorship proceedings under the LPS Act.' An LPS commitment order involves a loss of liberty by the conservatee. Consequently, it follows that a trial court must obtain a waiver of the right to a jury trial from the person who is subject to an LPS commitment." (*Conservatorship of Heather W.* (2016) 245 Cal.App.4th 378, 382−383 [199 Cal.Rptr.3d 689].)

- "We … hold that capacity or willingness to accept treatment is a relevant factor to be considered on the issue of grave disability but is not a separate element that must be proven to establish a conservatorship." (*Conservatorship of K.P.* (2021) 11 Cal.5th 695, 703 [280 Cal.Rptr.3d 298, 489 P.3d 296].)

- "We ... hold that a person sought to be made an LPS conservatee subject to involuntary confinement in a mental institution, is entitled to have a unanimous jury determination of all of the questions involved in the imposition of such a conservatorship, and not just on the issue of grave disability in the narrow sense of whether he or she can safely survive in freedom and provide food, clothing or shelter unaided by willing, responsible relatives, friends or appropriate third persons." (*Conservatorship of Davis, supra,* 124 Cal.App.3d at p. 328, disapproved on other grounds in *Conservatorship of K.P., supra,* 11 Cal.5th at p. 717.)

- "The jury should determine if the person voluntarily accepts meaningful treatment, in which case no conservatorship is necessary. If the jury finds the person will not accept treatment, then it must determine if the person can meet his basic needs on his own or with help, in which case a conservatorship is not justified." (*Conservatorship of Walker* (1987) 196 Cal.App.3d 1082, 1092–1093 [242 Cal.Rptr. 289].)

- "Our research has failed to reveal any authority for the proposition [that] without a finding that the proposed conservatee is unable or unwilling to voluntarily accept treatment, the court must reject a conservatorship in the face of grave disability. ... Some persons with grave disabilities are beyond treatment. Taken to its logical conclusion, they would be beyond the LPS Act's reach, according to the argument presented in this appeal." (*Conservatorship of Symington, supra,* 209 Cal.App.3d at p. 1469.)

- "The party seeking imposition of the conservatorship must prove the proposed conservatee's grave disability beyond a reasonable doubt and the verdict must be issued by a unanimous jury." (*Conservatorship of Susan T., supra,* 8 Cal.4th at p. 1009, internal citation omitted.)

- "Although there is no private right of action for a violation of section 5152, 'aggrieved individuals can enforce the [LPS] Act's provisions through other common law and statutory causes of action, such as negligence, medical malpractice, false imprisonment, assault, battery, declaratory relief, United States Code section 1983 for constitutional violations, and Civil Code section 52.1. [Citations.]' " (*Swanson v. County of Riverside* (2019) 36 Cal.App.5th 361, 368 [248 Cal.Rptr.3d 476].)

Secondary Sources

15 Witkin, Summary of California Law (11th ed. 2017) Wills and Probate, § 1007

3 Witkin, California Procedure (5th ed. 2008) Actions, § 97

2 California Conservatorship Practice (Cont.Ed.Bar) Ch. 23

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.30 et seq. (Matthew Bender)

4002. "Gravely Disabled" Explained

The term "gravely disabled" means that a person is presently unable to provide for the person's basic needs for food, clothing, or shelter because of [a mental health disorder/impairment by chronic alcoholism]. [The term "gravely disabled" does not include persons with intellectual disabilities by reason of the disability alone.]

[[*Insert one or more of the following*:**] [psychosis/bizarre or eccentric behavior/delusions/hallucinations/[***insert other***]] [is/are] not enough, by [itself/themselves], to find that [***name of respondent***] is gravely disabled. [He/She/***Nonbinary pronoun***] must be unable to provide for the basic needs of food, clothing, or shelter because of [a mental disorder/impairment by chronic alcoholism].]**

[If you find [*name of respondent***] will not take [his/her/***nonbinary pronoun***] prescribed medication without supervision and that a mental disorder makes [him/her/***nonbinary pronoun***] unable to provide for [his/her/***nonbinary pronoun***] basic needs for food, clothing, or shelter without such medication, then you may conclude [***name of respondent***] is ~~presently~~ gravely disabled.**

In determining whether [*name of respondent***] is ~~presently~~ gravely disabled, you may consider evidence that [he/she/***nonbinary pronoun***] did not take prescribed medication in the past. You may also consider evidence of [his/her/***nonbinary pronoun***] lack of insight into [his/her/***nonbinary pronoun***] mental condition.]**

In considering whether [*name of respondent***] is ~~presently~~ gravely disabled, you may not consider the likelihood of future deterioration or relapse of a condition.**

In determining whether [*name of respondent***] is gravely disabled, you may consider whether [he/she/***nonbinary pronoun***] is unable or unwilling to voluntarily accept meaningful treatment.**

New June 2005; Revised January 2018, May 2019, May 2020, May 2022

Directions for Use

This instruction provides the definition of "gravely disabled" from Welfare and Institutions Code section 5008(h)(1)(A), which will be the applicable standard in most cases. The instruction applies to both adults and minors. (*Conservatorship of M.B.* (2018) 27 Cal.App.5th 98, 107 [237 Cal.Rptr.3d 775].)

Read the bracketed sentence at the end of the first paragraph if appropriate to the facts of the case. There is a second standard in Welfare and Institutions Code section 5008(h)(1)(B) involving a finding of mental incompetence under Penal Code section 1370. A different instruction will be required if this standard is alleged.

The ~~last~~ next to last paragraph regarding the likelihood of future deterioration may not apply if the respondent has no insight into the respondent's mental disorder. (*Conservatorship of Walker* (1989) 206

Cal.App.3d 1572, 1576–1577 [254 Cal.Rptr. 552].)

If there is evidence concerning the availability of third parties that are willing to provide assistance to the proposed conservatee, see CACI No. 4007, *Third Party Assistance*.

Sources and Authority

- "Gravely Disabled" Defined. Welfare and Institutions Code section 5008(h).

- "The enactment of the LPS and with it the substitution of 'gravely disabled' for 'in need of treatment' as the basis for commitment of individuals not dangerous to themselves or others reflects a legislative determination to meet the constitutional requirements of precision. The term 'gravely disabled' is sufficiently precise to exclude unusual or nonconformist lifestyles. It connotes an inability or refusal on the part of the proposed conservatee to care for basic personal needs of food, clothing and shelter." (*Conservatorship of Chambers* (1977) 71 Cal.App.3d 277, 284 [139 Cal.Rptr. 357], footnotes omitted.)

- "[T]he public guardian must prove beyond a reasonable doubt that the proposed conservatee is gravely disabled." (*Conservatorship of Jesse G.* (2016) 248 Cal.App.4th 453, 461 [203 Cal.Rptr.3d 667].)

- "The stricter criminal standard is used because the threat to the conservatee's individual liberty and personal reputation is no different than the burdens associated with criminal prosecutions." (*Conservatorship of Smith* (1986) 187 Cal.App.3d 903, 909 [232 Cal.Rptr. 277] internal citations omitted.)

- "Bizarre or eccentric behavior, even if it interferes with a person's normal intercourse with society, does not rise to a level warranting conservatorship except where such behavior renders the individual helpless to fend for herself or destroys her ability to meet those basic needs for survival." (*Conservatorship of Smith, supra,* 187 Cal.App.3d at p. 909.)

- "Under [Welfare and Institutions Code] section 5350, subdivision (e)(1), 'a person is not "gravely disabled" if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter.' " (*Conservatorship of Jesse G., supra,* 248 Cal.App.4th at p. 460.)

- "While [third person] may not have shown that he could manage appellant's mental health symptoms as adeptly as would a person professionally trained to care for someone with a mental disorder, that is not the standard. As appellant states, '[t]he question in a LPS conservatorship case where the proposed conservatee asserts a third party assistance claim is not whether the third party will be able to manage the person's mental health symptoms completely. Rather, the dispositive question is whether the person is able to provide the proposed conservatee with food, clothing, and shelter on a regular basis." (*Conservatorship of Jesse G., supra,* 248 Cal.App.4th at p. 463 fn. 4.)

- "We ... hold that a person sought to be made an LPS conservatee subject to involuntary confinement

in a mental institution, is entitled to have a unanimous jury determination of all of the questions involved in the imposition of such a conservatorship, and not just on the issue of grave disability in the narrow sense of whether he or she can safely survive in freedom and provide food, clothing or shelter unaided by willing, responsible relatives, friends or appropriate third persons." (*Conservatorship of Davis* (1981) 124 Cal.App.3d 313, 328 [177 Cal.Rptr. 369].)

- "[A]n individual who will not voluntarily accept mental health treatment is not for that reason alone gravely disabled." (*Conservatorship of Symington* (1989) 209 Cal.App.3d 1464, 1468 [257 Cal.Rptr. 860].)

- "[T]he pivotal issue is whether [respondent] was 'presently' gravely disabled and the evidence demonstrates that he was not. Accordingly, the order granting the petition must be overturned." (*Conservatorship of Benvenuto* (1986) 180 Cal.App.3d. 1030, 1034 [226 Cal.Rptr. 33], fn. omitted, citing to *Conservatorship of Murphy* (1982) 134 Cal.App.3d 15, 18 [184 Cal.Rptr. 363].)

- "[A] conservatorship cannot be established because of a perceived likelihood of future relapse. To do so could deprive the liberty of persons who will not suffer such a relapse solely because of the pessimistic statistical odds. Because of the promptness with which a conservatorship proceeding can be invoked the cost in economic and liberty terms is unwarranted." (*Conservatorship of Neal* (1987) 190 Cal.App.3d 685, 689 [235 Cal.Rptr. 577].)

- "A perceived likelihood of future relapse, without more, is not enough to justify establishing a conservatorship. Neither can such a likelihood justify keeping a conservatorship in place if its subject is not presently gravely disabled, in light of the statutory provisions allowing rehearings to evaluate a conservatee's current status." (*Conservatorship of Jones* (1989) 208 Cal.App.3d 292, 302 [256 Cal.Rptr. 415], internal citation omitted.)

- "[T]he definition of ' "[g]ravely disabled minor" ' from section 5585.25 is not part of the LPS Act, but is found in the Children's Civil Commitment and Mental Health Treatment Act of 1988. (§ 5585.) This definition applies 'only to the initial 72 hours of mental health evaluation and treatment provided to a minor. … Evaluation and treatment of a minor beyond the initial 72 hours shall be pursuant to the … [LPS Act].' (§ 5585.20.) Accordingly, we must apply the definition found in the LPS Act, and determine whether there was substantial evidence Minor suffered from a mental disorder as a result of which she 'would be unable to provide for [her] basic personal needs' if she had to so provide." (*Conservatorship of M.B., supra,* 27 Cal.App.5th at p. 107.)

- "Theoretically, someone who is willing and able to accept voluntary treatment may not be gravely disabled if that treatment will allow the person to meet the needs for food, clothing, and shelter. Under the statutory scheme, however, this is an evidentiary conclusion to be drawn by the trier of fact. If credible evidence shows that a proposed conservatee is willing and able to accept treatment that would allow them to meet basic survival needs, the fact finder may conclude a reasonable doubt has been raised on the issue of grave disability, and the effort to impose a conservatorship may fail. It may be necessary in some cases for the fact finder to determine whether the treatment a proposed conservatee is prepared to accept will sufficiently empower them to meet basic survival needs. In some cases of severe dementia or mental illness, there may simply be no treatment that would enable the person to 'survive safely in freedom.' " (*Conservatorship of K.P.* (2021) 11 Cal.5th 695, 711 [280

Cal.Rptr.3d 298, 489 P.3d 296].)

Secondary Sources

3 Witkin, California Procedure (5th ed. 2008) Actions, § 97

2 California Conservatorship Practice (Cont.Ed.Bar) §§ 23.3, 23.5

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, §§ 361A.33, 361A.42 (Matthew Bender)

Instruction(s)	Commenter	Comment	Committee Response
All except as noted below	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	Agree (VF-410, 1810, VF-2304, 3714, 3905A, and 4000)	No response required.
	Orange County Bar Association by Daniel S. Robinson, President	Agree (1009B, 1306, 1621, 1810, 2334, 2522A, 2522B, 2522C, VF-2507A, VF-2507B, VF-2507C, 2754, 2765, 2769, 2770, 3905A, 4000, and 4002)	No response required
VF-410. Statute of Limitations—Delayed Discovery—Reasonable Investigation Would Not Have Disclosed Pertinent Facts (Revise)	Bruce Greenlee Attorney Richmond	New sentence added to the Directions for Use: change "non-discovery" to "nondiscovery. Prefixes should not be hyphenated unless the unhyphenated form makes a different word (e.g., re-cover and recover).	The committee agrees and has unhyphenated *nondiscovery*. The committee has also unhyphenated *delayed discovery* in the sentence because it is not being used as a compound adjective.
	Orange County Bar Association by Daniel S. Robinson, President	Disagree. "There is no authority for the suggested revisions to the instruction. Additionally, for instance, adding the language 'discover, or' to the first paragraph titled '2' would appear to cause greater confusion as the jury might wonder what is the difference between 'discover…facts' and 'know of facts'."	The change is being made to conform the verdict form to the language of CACI No. 455, *Statute of Limitations—Delayed Discovery*, which uses this phrasing. The various cases in the Sources and Authority for that instruction support the revision.
		"The suggested revision to the Directions for Use is helpful."	No response required.

Instruction(s)	Commenter	Comment	Committee Response
1009B. Liability to Employees of Independent Contractors for Unsafe Conditions—Retained Control (Revise)	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	a. We agree with the proposed revisions to the instruction but believe that another element is needed. *Sandoval v. Qualcomm Inc.* (2021) 12 Cal.4th 256, 274, indicates that for the hirer to be liable for negligence to an employee of an independent contractor based on the hirer's retained control, the employee must have been working on a task within the independent contractor's scope of work. This is because ' " 'retained control' refers specifically to a hirer's authority over work entrusted to the contractor." (*Ibid.*) We propose the following as new element 2: "2. That [*specify nature of work*] was part of the work that [*name of defendant*] entrusted to [*name of contractor*];"	The committee disagrees to the extent that another element is suggested. The Court in *Sandoval* discussed this requirement in the context of retained control (element 1). The committee, therefore, has refined element 1, and has added a sentence to the Directions for Use on the issue.
		b. We would add to the Sources and Authority language from *Sandoval* supporting new element 2: " 'A hirer "retains control" where it retains a sufficient degree of authority over the manner of performance of the work entrusted to the contractor. . . . So "retained control" refers specifically to a hirer's authority over work entrusted to the contractor, i.e., work the contractor has agreed to perform.' (*Sandoval*, *supra*, 12 Cal.5th at p. 274.)"	The committee agrees that language on the issue of contracted work should be added to the Sources and Authority, and recommends adding another excerpt from *Sandoval*, as suggested.
	Consumer Attorneys of California (CAOC), by Shounak S. Dharap Jointly with: The Arns Law Firm, The Veen Firm	On behalf of Consumer Attorneys of California (CAOC), California's state wide, nonpartisan and non-profit association of plaintiff's attorneys, we write to respectfully submit the following comment to the proposed revision to CACI 1009B. We are attorneys at the Arns Law Firm and the Veen Firm who have dedicated our practice to representing injured workers. In many cases, our clients' livelihoods depend on the jury instruction and underlying legal framework for hirer liability on multiemployer job sites set forth in CACI 1009B.	No response required.

Instruction(s)	Commenter	Comment	Committee Response
	San Francisco	We therefore write on behalf of CAOC to submit public comment suggesting additional proposed revisions to CACI 1009B that will build upon the work the Committee has done thus far and further align the revised instruction with the Supreme Court's conclusion in *Sandoval v. Qualcomm Inc.* (2021) 12 Cal.5th 256 that only a hirer that fully and effectively delegates work to a contractor may be shielded from liability for injuries suffered by a contractor's employee. Our additional proposed revisions are in blue. A discussion of the reasoning behind the proposed changes follows. A clean version of the proposed instruction is attached to his letter as Attachment 1. [Clean version omitted from this comment chart.]	See committee responses to the specific suggestions, below. The committee thanks CAOC for submitting its suggestions in track changes.
		I. FURTHER PROPOSED REVISIONS **1009B. Liability to Employees of Independent Contractors for Unsafe Conditions—Retained Control** [*Name of plaintiff*] **claims that** [**he/she**/*nonbinary pronoun*] **was harmed by an unsafe condition while employed by** [*name of ~~plaintiff's employer~~contractor*] **and working on** [~~*name of defendant*~~]~~'s~~ **~~property~~** [*specify nature of work that ~~defendant hired the contractor to perform~~ created the unsafe condition*]. **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*] **retained the right to exercise some control over ~~safety conditions at the worksite~~ the** [*name of contractor*]'s **manner of performance of** [*specify nature of work*] **the work**; **~~3~~2. That** [*name of defendant*] **~~negligently~~ actually exercised** [**his/her**/*nonbinary pronoun*/**its**] **retained**	See the committee responses to CAOC's specific comments, below.

Instruction(s)	Commenter	Comment	Committee Response
		control over ~~safety conditions by~~ that work by [*specify alleged ~~negligent acts or omissions~~ negligence of defendant*]; **~~4~~3**. **That** [*name of plaintiff*] **was harmed**; and **~~5~~4**. **That** [*name of defendant*]'s **negligent exercise of** [**his/her**/*nonbinary pronoun*/**its**] **retained control ~~over safety conditions was a substantial factor in causing~~ affirmatively contributed in some way to** [*name of plaintiff*]'s **harm**. **Directions for Use** This instruction is for use if a dangerous condition on property causes injury to an employee of an independent contractor hired to perform work on the property. This instruction should not be used if the dangerous condition was created by work the contractor was not hired to perform. (See *Sandoval v. Qualcomm Inc.* (2021) 12 Cal.5th 256, 273.) The test for whether the work is "contracted" work subject to this instruction, as opposed to "noncontract" work outside its scope, is whether the defendant entrusted or transferred control over the work to the contractor prior to the injury. ¶ The basis of liability is that the defendant retained control over the ~~safety conditions at the worksite~~ manner of performance of some part of the work entrusted to the contractor. (*Sandoval ~~v. Qualcomm Inc.~~* (~~2021~~), 12 Cal.5th ~~256~~,at 274.) Both retaining control and actually exercising control over retst of the work is required because hirers who fully and effectively delegate work to a contractor owe no tort duty to that contractor's workers. (See *id.*) For an instruction for injuries to others due to a concealed condition, see CACI No. 1003, *Unsafe Conditions*. For an instruction for injuries based on unsafe conditions not discoverable by the plaintiff's employer, see CACI No.	

Instruction(s)	Commenter	Comment	Committee Response
		1009A, *Liability to Employees of Independent Contractors for Unsafe Concealed Conditions.* For an instruction for injuries based on the property owner's providing defective equipment, see CACI No. 1009D, *Liability to Employees of Independent Contractors for Unsafe Conditions—Defective Equipment*. […] **Sources and Authority** […] "~~[A]ffirmative contribution is a different sort of inquiry than substantial factor causation. For instance, a fact finder might reasonably conclude that a hirer's negligent hiring of the contractor was a substantial factor in bringing about a contract worker's injury, and yet negligent hiring is not affirmative contribution because the hirer's liability is essentially derivative of the contractor's conduct.~~ ~~Conversely,~~ [A]affirmative contribution does not itself require that the hirer's contribution to the injury be substantial." (*Sandoval, supra,* 12 Cal.5th at p. 278), internal citations omitted.)	
		II. DISCUSSION **A. The Directions for Use Should Note That the Threshold Question to Application of this Instruction Is Whether the Work that Created the Dangerous Condition was Contracted or Noncontract Work** As the Supreme Court observed in *Sandoval*, *supra*, 12 Cal.5th 256, attachment of the rule against hirer liability requires a preliminary "transfer of control" of the condition-creating work from the hirer to the contractor. (*See id.* at p. 273 [transfer of control of the condition-creating work triggers the presumption of delegation of tort duties]; *id.* at p. 271 [the presumption attaches only after the hirer entrusts control of the work to the contactor].) This threshold question recognizes that the bar against a	The committee has refined the Directions for Use to note that the instruction should not be used when an injury results from work not entrusted to the contractor.

Instruction(s)	Commenter	Comment	Committee Response
		hirer's liability has historically been grounded on the principle that "hirers typically hire independent contractors precisely for their greater ability to perform the contracted work safely and successfully." (*Id.* at p. 269.) Thus, the notion that a hirer delegates control over all contracted work presupposes that the work at issue is, in fact, "work the contractor has agreed to perform" either by written contract or informal agreement. (*Id.* at p. 274.) It follows that if a hirer has reserved control over particular work and not entrusted it to the contractor, liability for injury flowing from that work must lie with the hirer. This threshold question can be traced back to the common law rule regarding hirer liability, under which a hirer was generally not responsible for injuries resulting from a contractor's performance of work entrusted to a contractor. (*See Privette*, *supra*, 5 Cal.4th at 693.) Then, too, the rule presupposed that the injury arose from the work the contractor was hired to perform. (*See ibid*. ["Central to this rule of nonliability was the recognition that a person who hired an independent contractor had 'no right of control as to the mode of doing *the work contracted for*.'"] [italics added].) Over time, policy-driven exceptions swallowed the rule to the point where "the rule is now primarily important as a preamble to the catalog of its exceptions." (*Privette*, *supra*, 5 Cal.4th at p. 693.) One such exception qualified the growing recognition among courts that a landowner undertaking dangerous activity should not escape liability simply by hiring a contractor to do the work. (*Id.* at pp. 693-94.) California adopted this "peculiar risk doctrine," which declared that a hirer had a duty to ensure precautions were taken to protect contracted workers from injuries arising out of inherently dangerous work. (*See Woolen v.*	

Instruction(s)	Commenter	Comment	Committee Response
		Aerojet General Corp. (1962) 57 Cal.2d 407, 410 *overruled by Privette*, at p. 689.) Still, the threshold question of whether the injuries arose out of contracted work remained. (*See Woolen*, at p. 410 [recognizing that the peculiar risk doctrine presupposes an agreement between the hirer and contractor entrusting the contractor to do that work].) In *Privette*, *supra*, 5 Cal.4th at p. 693, the Supreme Court reversed course and limited the peculiar risk doctrine as applied to hirers of contractors, holding that, even where the contracted work is likely to create a peculiar risk of harm, a hirer is not liable for a contracted worker's injury. (*Privette*, at pp. 691-92.) In establishing this exception, the Court reasoned that the California workers' compensation system was founded on the same policy rationales underlying the peculiar risk doctrine and had therefore obviated the need for the doctrine as a means for civil recovery. (*See ibid.*) As before, the Court's application of the no-liability rule was premised on the contracted nature of the work that created the unsafe condition. (*See Privette*, at p. 695 [the "critical inquiry" underlying the peculiar risk doctrine and no-liability limitation relates to "the work for which the contractor was hired"].) Half a century later, the Court addressed a resurging acknowledgement among courts that workers' compensation did not alleviate the burden on the contractor where a third party was actually responsible for a workers' injury. (*See Hooker v. Department of Transportation* (2002) 27 Cal.4th 198, 213-14 [hereafter *Hooker*].) Under *Hooker*, if a hirer retains control over the work entrusted to the contractor, and its exercise of that control affirmatively contributes to a worker's injury, the hirer can still be liable. (*Ibid.*)	

Instruction(s)	Commenter	Comment	Committee Response
		As the *Hooker* rule became the focus of exception to *Privette*, the threshold question that had persisted since common law faded from the foreground of the analysis. (*See*, *e.g.*, *Regalado v. Callaghan* (2016) 3 Cal.App.5th 582, 586 [appellant appealed the issue of whether the defendant retained control under *Hooker* but not the threshold issue of transfer of control despite facts supporting both]; *accord Sandoval*, *supra*, 12 Cal.5th at p. 275, fn. 5 [recognizing that the facts in *Regalado* relating to retained control could also have supported an argument as to the threshold question of contracted versus noncontract work].) Courts and litigants can hardly be faulted for overlooking the threshold analysis in favor of the *Hooker* test; after all, the two rules are deceptively similar. As the Supreme Court observed in *Sandoval*: "[a]gainst the backdrop of no hirer duty respecting the manner of performance of work entrusted to a contractor" (*id.* at p. 275), "it will not always be easy to distinguish between (a) contracted work over which the hirer retained control, and (b) noncontract work in which the contractor had some involvement but which the hirer controlled to such a great extent that we would not say it was *entrusted* to the contractor" (*id.* at p. 275, fn. 5). Under the facts of *Sandoval*, the Court found that the defendant, Qualcomm, did not have a tort duty to a contractor's employee who was injured by an arcing circuit breaker. The Court found that because Qualcomm turned over control of the switchgear room in which the injury-causing circuit was located, the presumption of delegation applied, "subject only to the retained control exception[.]" (*Id.* at p. 272.) But the Court noted that if the injury had occurred *before* Qualcomm turned over control of the circuit to the contractor, it might have found that "no	

Instruction(s)	Commenter	Comment	Committee Response
		transfer of control of tort duties from Qualcomm to the contractor had yet occurred." (*Id.* at p. 273.) In reaching this conclusion, the Court analyzed blurred line between initial transfer of control and retained control in the context of another case involving hirer liability for a contract worker's injury—*Regalado*, *supra*, 3 Cal. App. 5th 582. (*See Sandoval*, *supra*, 12 Cal.5th at p. 275, fn. 5.) In *Regalado*, an employee of a contractor hired to install a pool was injured when he ignited a propane heater in an underground vault, causing an explosion. The Court of Appeal for the Fourth District held the homeowner-hirer liable for the injuries because, *inter alia*, the hirer participated in the installation of the underground vault and propane line but failed to obtain the proper permits despite promising to do so. (*Regalado*, at p. 597.) Discussing the case, the *Sandoval* Court emphasized that "it might be difficult to say whether the hirer in *Regalado* […] was performing the noncontract work of obtaining permits, or retaining control over the permitting aspect of the contracted work." (*Sandoval*, at 275 n. 5.) But regardless of the similarity between the two tests, *Sandoval*, *supra*, 12 Cal.5th 256, unequivocally clarified that the threshold question of the noncontract nature of the condition-creating work stands apart from *Hooker* and requires a determination antecedent to the application of rule against hirer liability. (*See Sandoval*, at pp. 272-73; *id.* at p. 275, fn. 5.) Under this refreshed framework, the analysis must begin and may end with the initial question: whether the work that created the unsafe condition was contracted work entrusted to the contractor or noncontract work outside the scope of the contractor's agreement with the hirer. If it *is* contracted work, then the next step is the	

Instruction(s)	Commenter	Comment	Committee Response
		analysis of whether the hirer nevertheless retained control over that work. But if it is noncontracted work, then the analysis ends and the hirer may be liable.	
		B. The Instruction Should Clarify that the "Retained Control" Element of the Test Required Only that the Defendant Retained the *Right to Exercise* Control The gateway element of the *Hooker* test, retained control, is met where a hirer "retains merely the right" to exercise control over the method or manner of performing the work entrusted to the contractor. (*Sandoval*, 12 Cal.5th at p. 277; *id*. at p. 274-75.) Retained control is a broadly inclusive standard that is easily met where the hirer is a general contractor with authority over worksite safety. (*See Sandoval*, at pp. 275-76; *Hooker*, *supra*, 27 Cal.4th at pp. 202-03 [triable issues of fact regarding retained control where the hirer retained the right to take corrective safety measures with respect to the contractor's performance of its work]; *Tverberg v. Fillner Construction* (2012) 202 Cal.App.4th 1439, 1448 (hereafter *Tverberg II*) [triable issues regarding retained control where the hirer assumed responsibility for workers working near a series of uncovered bollard holes and the plaintiff was injured by one of the holes while performing the unrelated task of erecting a canopy in the area].) Thus, the test should be whether a hirer retained the *right to exercise* control over the manner of the condition-creating work.	The committee believes that element 1 adequately states the requirements of a hirer's "retained control" as set forth in *Sandoval*.
		"**C. The Instruction Should Clarify that the 'Retained Control' Element of the Test Requires Only The Right to Exercise *Some* Control Over Manner of the Work** The proposed revision, as currently stated, states the requirement as retained control over the manner of the contractor's work. This is a more stringent requirement	The committee agrees in part. The committee believes that element 1 adequately states the requirements of a hirer's "retained control" as set forth in *Sandoval* but has added "some," as suggested, for additional clarity.

Instruction(s)	Commenter	Comment	Committee Response
		than that established by the Court in *Sandoval*: 'whether the hirer retained a *sufficient degree* of control over the manner of performing the contracted work.' (*Sandoval*, 12 Cal.5th at 274.) In discussing what constitutes a sufficient degree of control in the context of *Hooker*, the Court clarified that 'some' control is sufficient. (*Id.* at 275.) Thus, the instruction should clarify that the defendant need only retain 'some' control over the manner of the performance of the work."	
		D. The Instruction Should Qualify Affirmative Contribution by Recognizing that a Defendant Need only Affirmatively Contribute to the Injury *In Some Way* In clarifying that affirmative contribution "does not require that the hirer's contribution to the injury be substantial[,]" the *Sandoval* Court established that *some* affirmative contribution is sufficient to meet the test. The Court's reframing of this element clarified that it turns less on the *degree* of the hirer's contribution to the injury and more on whether the hirer's exercise of retained control contributed to the injury "in a way that isn't merely derivative of the contractor's contribution to the injury." (Sandoval, supra, 12 Cal.5th at p. 277.) Thus, the Court's distinction between legal causation and the lower degree of contribution required to show affirmative contribution should be specifically highlighted to prevent confusion by a jury that may also be read a separate instruction relating to legal causation.	The committee does not see improved clarity or accuracy in the suggested phrasing for affirmative contribution (element 4).
		E. The Sources and Authorities Should Omit Dicta Relating to Negligent Hiring Because It Conflicts with the Caselaw and Goes Beyond the Court's Directive in *Sandoval*	The standard for inclusion in the Sources and Authority is that the excerpt would be of interest and relevant to *CACI* users. Because the court expressly stated that

Instruction(s)	Commenter	Comment	Committee Response
		The Committee's proposed revisions to the Sources and Authorities section contains a quote from *Sandoval* discussing negligent hiring. This explanatory *dicta*, which follows a statement of law that affirmative contribution is not the same as substantial factor causation, seeks to provide an example of a situation where a fact-finder might find substantial causation but not affirmative contribution. But this statement generalizes the body of law regarding negligent hiring as affirmative contribution and paints the issue as a black and white in a manner not reflected in the complex jurisprudence on the subject. Moreover, the inclusion of this statement within 1009B creates a potential conflict with CACI 426, which acknowledges the holding in *Noble v. Sears, Roebuck & Co.* (1973) 33 Cal.App.3d 654 and states: "It appears that liability may also be imposed on the hirer of an independent contractor for the negligent selection of the contractor." This conflict would require revisions to CACI 426 on the basis of the Court's dicta and would go beyond the Court's directive in *Sandoval* to revise 1009B in a manner consistent with its holding.	substantial factor causation is not the correct standard, the committee believes this excerpt meets the standard for inclusion.
	Bruce Greenlee Attorney Richmond	"I think that the proposed revisions capture the holdings of *Sandoval* well and the revisions to the last paragraph of the DforU [Directions for Use] on 'affirmative contribution' are well done. I'm glad to see that the question of negligent exercise by a failure to act has been retained."	No response required.
		"However, 'pursuant to' is considered legalese to be avoided in legal writing circles. Change to 'under.' "	The committee believes *pursuant to* is sufficiently clear in the context of the Directions for Use.

Instruction(s)	Commenter	Comment	Committee Response
		There's an orphan bullet in the Sources and Authority.	The appearance of an orphan bullet is the result of track changes. No orphan bullets exist in the Sources and Authority.
1306. Sexual Battery—Essential Factual Elements (Revise)	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	a. Proposed new (d) and (e) refer to "a sexual organ" and "[a/an] sexual organ/anus/. . . ." We believe the jury would better understand the instruction if the person to whom the sexual organ belongs were identified. We believe that person is either the defendant or someone else (not the plaintiff).	The committee understands that the Legislature wrote the statute to be gender neutral. The committee has maintained the statute's use of a/an to ensure that persons of any gender could be liable for intentionally making sexual contact after a condom has been removed without consent.
		b. Civil Code section 1708.5, subdivision (d)(1) defines "intimate part" to include "the breast of a female." We believe proposed new (d) and (e) are overbroad because they refer to a "breast" with no limitation. This could be remedied by inserting the words "of a female" after "breast" in (d) and (e), although that seems grammatically awkward. Alternatively, (d) and (e) could be rewritten to include the limitation, or language could be added to the Directions for Use stating that the instruction should be modified if there is a factual question whether the breast of a female is at issue.	To avoid potentially unnecessary or clunky phrasing throughout element 1, the committee recommends adding a new paragraph to the Directions for Use on the meaning of *intimate part* as it pertains to the instruction's use of the term *breast*.
		c. We believe "has been removed" in (d) should be "had been removed" and "removed" in (e) should be "had removed."	The committee agrees and has refined the language as suggested.
		d. Accordingly, we suggest the following revisions to (d) and (e): "(d) That [*name of defendant*] caused contact between ~~a~~ [*name of defendant*/*name of other person*]'s sexual organ, from which a condom ~~has~~ had been removed, and [*name*	The committee thanks CLA for submitting its suggestions in track changes. See the committee responses to specific comments, above.

Instruction(s)	Commenter	Comment	Committee Response
		of plaintiff]'s [sexual organ/anus/groin/buttocks/[or] breast];] "[OR] "(e) That [*name of defendant*] caused contact between ~~[a/an]~~ [*name of defendant*/*name of other person*]'s [sexual organ/anus/groin/buttocks/[or] breast] and [*name of plaintiff*]'s sexual organ from which [*name of defendant*] had removed a condom;]"	
	Bruce Greenlee Attorney Richmond	"In new option (d), remove comma after 'sexual organ.' "	The committee has tracked the language of the statute, which is clear with the comma.
		"Maybe add statute CC 1708.5 to the title as a parenthetical as this seems to be a strictly statutory cause of action."	For consistency, the committee has added the statutory information as a parenthetical in the instruction's title.
1621. Negligence— Recovery of Damages for Emotional Distress— No Physical Injury— Bystander— Essential Factual Elements) (Revise)	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	a. We agree with the proposed revisions to element 2 of the instruction.	No response required.
		b. We would revise element 3 to clarify the requirement of contemporaneous observation, particularly now that element 2 allows virtual presence: "3. That [*name of plaintiff*] was ~~then~~ aware at the time the [*describe event*] occurred that the [*e.g., traffic accident*] was causing [injury to/the death of] [*name of victim*];"	The committee believes that element 3 already states the requirement of contemporaneous observation.
	Civil Justice Association of California (CJAC) by Jaime Huff, Vice President	Bystander recovery for emotional distress through a virtual presence, which entails no physical harm, can be subject to abuse. Therefore, it is important the jury instruction for this recovery mirrors the law by explicitly stating that the virtual presence be contemporaneous and via live-	The committee agrees with the commenter's summary of the case law but does not believe that the revision proposed is vague or overbroad. Because technological developments outpace updates to the *CACI* publication, the

Instruction(s)	Commenter	Comment	Committee Response
		streaming. The proposed wording is vague and overly broad. Case law establishes the perception be contemporaneous, and in the case of virtual perception, take place in real time. In *Thing vs. La Chusa et al*, the California Supreme Court noted that a bystander plaintiff can recover damages when they: "personally and contemporaneously perceive the injury-producing event and its traumatic consequences." [Footnote citation omitted.] And in *Ko v. Maxim Healthcare Services*, the Court of Appeals recognized that "personally and contemporaneously" was satisfied virtually through a real-time, streamed audiovisual connection. [Footnote citation omitted]"	committee prefers the bracketed text *specify technological means* to identifying just one method (live-streaming) for a plaintiff to perceive an event. And as noted in the response to CLA's comment, above, the committee believes that element 3 already states the requirement of contemporaneous observation.
		Accordingly, CJAC requests the following clarifying changes to the CACI 1621 instruction provided in blue: [Instruction text omitted] 2. That when the [*describe event, e.g., traffic accident*] that caused [*injury to/the death of*] [*name of victim*] occurred, [*name of plaintiff*] was [*virtually*] present at the scene personally and contemporaneously [through [*live-streaming in real time*]]; [remaining instruction text omitted]	The committee does not see improved clarity in adding personally and contemporaneously to element 2. And for the reasons stated in the response above, the committee declines to rephrase technological means in the bracket.
		We also recommend amending the Directions for Use to provide the holding in the *Ko v. Maxim Healthcare* decision that clarifies the virtual presence should be via a streaming technology in real time. Include the optional language in element 2 only if the plaintiff claims virtual presence at the scene through technological means, and specify the technology used to assist the jury in understanding the concept of "virtual" presence. As held in *Ko*, the plaintiffs were virtually	The Directions for Use and the Sources and Authority already both include a citation to and a direct quote from the *Ko* case. As the court in *Ko* observed, "technology for virtual presence has developed dramatically, such that it is now common for families to experience events as they unfold through the livestreaming of video and audio. Recognition of an NIED

Instruction(s)	Commenter	Comment	Committee Response
		present via modern technology that "streamed" the subject assault audio and video in "real time." (See *Ko v. Maxim Healthcare Services, Inc.* (2020) 58 Cal.App.5th 1144, 1159 [272 Cal.Rptr.3d 906, 919].)	claim where a person uses *modern technology* to contemporaneously perceive an event causing injury to a close family member is consistent with the Supreme Court's requirements for NIED liability and the court's desire to establish a bright-line test for bystander recovery." (*Ko v. Maxim Healthcare Services, Inc.* (2020) 58 Cal.App.5th 1144, 1146–1147, emphasis added.) The committee understands the commenter's concern but believes the issue of whether a particular technology is sufficiently akin to "livestreaming" will be a question for the jury.
2334. Bad Faith (Third Party)—Refusal to Accept Reasonable Settlement Within Liability Policy Limits—Essential Factual Elements (Revise)	Karen M. Bray Attorney Horvitz & Levy LLP Burbank	"We write to support the Advisory Committee's proposed additions and revisions to CACI No. 2334, *Bad Faith (Third Party)—Refusal to Accept Reasonable Settlement Demand Within Liability Policy Limits—Essential Factual Elements*. We believe that the elements listed in the new version of the instruction accurately reflect the law, as described in the recent decision *Pinto v. Farmers Insurance Exchange* (2021) 61 Cal.App.5th 676."	No response required.
		"However, we believe that the final sentence of the instruction should be omitted (i.e., 'An insurance company's conduct is unreasonable when, for example, it does not give at least as much consideration to the interests of the insured as it gives to its own interests'). Whether an insurer's conduct amounts to bad faith must be evaluated under all of the circumstances pertinent to a particular case. (*Wilson v. 21st Century Ins. Co.* (2007) 42	The comment is beyond the scope of the invitation to comment. The final sentence of the instruction was added after public comment in the last release. As noted in the committee's responses in November 2021, the committee believes that the final sentence is a correct statement of the law. (See *Pinto, supra,* at p. 692.) See Judicial Council of Cal., Advisory Com. Rep., Jury Instructions: Civil Jury Instructions

Instruction(s)	Commenter	Comment	Committee Response
		Cal.4th 713, 723; *Walbrook Ins. Co. v. Liberty Mutual Ins. Co.* (1992) 5 Cal.App.4th 1445, 1455–1456.) The final sentence of the instruction proposed by the Committee conflicts with that principle by making a single factor determinative, i.e., an insurer has acted unreasonably if it 'does not give at least as much consideration to the interests of the insured as it gives to its own interests.' But that may not always be true. For example, an insurer may refuse a settlement offer because (1) there is a dispute whether the claim is covered, and (2) it wants to avoid paying policy limits for one insured when there is another insured under the policy. The first reason is improper and unreasonable because it places the interests of the insurer in avoiding paying out on a policy over the interests of the insured in avoiding personal liability. (*Blue Ridge Ins. Co. v. Jacobsen* (2001) 25 Cal.4th 489, 502; *Samson v. Transamerica Ins. Co.* (1981) 30 Cal.3d 220, 237; *Johansen v. California State Auto. Assn. Inter-Ins. Bureau* (1975) 15 Cal.3d 9, 15–16; *Comunale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654, 658, 660.) The second reason, however, is an independently proper basis to refuse a settlement offer, because an insurer's duty of good faith extends to all of its insureds, and it cannot pay policy limits to settle a claim against one insured when doing so would leave another insured without coverage. (*Shell Oil Co. v. National Union Fire Ins. Co.* (1996) 44 Cal.App.4th 1633, 1645; *Lehto v. Allstate Ins. Co.* (1994) 31 Cal.App.4th 60, 72–75; *Strauss v. Farmers Ins. Exchange* (1994) 26 Cal.App.4th 1017, 1019,1021–1022; *Palmer v. Financial Indem. Co.* (1963) 215 Cal.App.2d	(Release 40) (Nov. 19, 2021), at https://jcc.legistar.com/View.ashx?M=F&ID=9932038&GUID=BAFAE3B4-EB72-4297-B851-A21E9005EA89.

Instruction(s)	Commenter	Comment	Committee Response
		419, 426–427, 431.) Nevertheless, the final sentence of CACI No. 2334 proposed by the Committee would erroneously direct the jury to find that the insurer acted unreasonably notwithstanding the fact that the insurer had a legally valid basis for refusing an offer. Moreover, the requirement that an insurer give equal consideration to the interests of its insureds is a broad, general concept that is already addressed in CACI No. 2330, the introductory instruction that provides an overview of the obligation of good faith and fair dealing: 'To fulfill its implied obligation of good faith and faith dealing, an insurance company must give at least as much consideration to the interests of the insured as it gives to its own interests.' Reiterating that principle in CACI No. 2334 does not provide the jury with any guidance or clarification concerning the specific conduct that a plaintiff must prove to demonstrate the form of bad faith the plaintiff has alleged, i.e., a refusal of a settlement offer without proper cause. We accordingly suggest that the Committee simply eliminate that final sentence."	
	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A.	a. We agree with the proposed revisions to the instruction, except that we would change "[or]" after the first alternative element 6 to "[and/or]" and provide an option to renumber the second alternative element 6 as element 7 because we believe both versions of element 6 should be given when the plaintiff claims both an excess judgment and other damages.	The committee understands the commenter's concern that both could be at issue and recommends addressing the possibility in the Directions for Use, rather than using a bracketed [and/or] between the options, which could be confusing.

Instruction(s)	Commenter	Comment	Committee Response
	Ginsburg, Chair	b. Although it is beyond the scope of the invitation to comment, we would revise element 5 for greater clarity and because we believe the reference to some conduct other than failure to accept the settlement demand is confusing and unnecessary: "5. That [*name of defendant*]'s failure to accept the settlement demand was ~~the result of~~ unreasonable ~~conduct by [*name of defendant*~~]; [and]"	As acknowledged by the commenter, the comment is beyond the scope of the invitation to comment. The committee addressed the phrasing of this element in the last release. See Judicial Council of Cal., Advisory Com. Rep., Jury Instructions: Civil Jury Instructions (Release 40) (Nov. 19, 2021), at https://jcc.legistar.com/View.ashx?M=F&ID=9932038&GUID=BAFAE3B4-EB72-4297-B851-A21E9005EA89.
		c. Although it is beyond the scope of the invitation to comment, we believe the first sentence in the second paragraph after the elements refers to a settlement demand that is reasonable in amount and should explicitly so state. The second sentence then makes it clear that a settlement demand that is reasonable in amount my be unreasonable for another reason: "A settlement demand for an amount within policy limits is reasonable in amount if . . . ."	As acknowledged by the commenter, the comment is beyond the scope of the invitation to comment. The committee will consider this suggestion in a future release.
	Civil Justice Association of California (CJAC) by Jaime Huff, Vice President	We recommend striking the example provided in the instruction on pages 20-21. An insurance company's unreasonable conduct may be shown by its action or by its failure to act. ~~An insurance company's conduct is unreasonable when, for example, it does not give at least as much consideration to the interests of the insured as it gives to its own interests.~~ It is unnecessary to provide an example in this instruction. In addition, the example provided in this instruction could also be viewed as prejudicial depending on the case. Our preference is that no example be provided in this instruction. If Judicial Council opts to use examples, it	See the committee response to the comment of Karen Bray on this instruction, above.

Instruction(s)	Commenter	Comment	Committee Response
		should provide examples of both what does, and what does not, constitute reasonable conduct and do so in the Directions for Use portion of the instruction rather than in the jury instruction itself.	
	David Goodwin Attorney Covington & Burling LLP San Francisco	Disagree. "I write to oppose the proposed revision to Instruction No. 2334, which concerns a claim for 'bad faith failure to settle.' CACI should leave the current version of Instruction No. 2334 as is. The proposed revision requires an insurer's refusal to accept a reasonable settlement offer to be an 'unreasonable' refusal. The revision is based on a recent appellate decision, Pinto v. Farmers Ins. Exch. (2021) 61 Cal. App. 5th 676, 688, which adds that requirement. However, Pinto cites no California Supreme Court authority for its new requirement and none exists: all of the California Supreme Court cases addressing a 'bad faith failure to settle' claim hold only that an insurer has a duty to accept reasonable settlement offers and an insurer breaches that duty when it fails to do so. In fact, the California Supreme Court has held that an insurer that fails to accept a reasonable settlement offer on the ground that it believes the claim is not covered can be subject to bad faith liability, which necessarily means that the insurer's conduct (apart from its refusal to accept the settlement offer) can be 'reasonable' yet still subject to liability. See Johansen v. California State Auto. Ass'n Interins. Bureau (1975) 15 Cal.3d 9, 15-16; see also, e.g., Samson v. Transamerica Ins. Co. (1981) 30 Cal.3d 220, 243; Hamilton v. Maryland Cas. Co. (2002) 27 Cal.4th 718, 724-25.	The comment is beyond the scope of the invitation to comment. Revisions based on *Pinto* were approved by the council in November 2021. See Judicial Council of Cal., Advisory Com. Rep., Jury Instructions: Civil Jury Instructions (Release 40) (Nov. 19, 2021, at https://jcc.legistar.com/View.ashx?M=F&ID=9932038&GUID=BAFAE3B4-EB72-4297-B851-A21E9005EA89.

Instruction(s)	Commenter	Comment	Committee Response
		The current instruction makes sense and is far easier for courts, parties, and juries to address. As things currently stand, a 'bad faith failure to settle' action turns on a simple analysis of whether a settlement offer is reasonable: The jury considers the likelihood of liability, and whether, if liability is imposed, the likelihood of a damages award in excess of policy limits. For example, assume a 70% chance of losing and a likely verdict of $2 million if the defendant loses, then the jury would start with a $1.4 million number in the bad faith failure to settle analysis. If (a) the result of that calculation is greater than the policy limits; (b) the plaintiff has made an offer to settle within policy limits; (c) the insured has communicated the offer to the insurer with sufficient time for the insurer to evaluate and respond to the offer; and (d) the insurer refuses to accept so the case goes to trial; then (e) the insurer is responsible for the portion of the resulting judgment that exceeds the policy limits. E.g., Samson v. Transamerica, supra. The proposed revision to the instruction imposes an additional requirement on this straightforward test that will complicate trials, confuse juries, and lead to evidentiary disputes. The instruction should remain unchanged."	
	Bruce Greenlee Attorney Richmond	"Element 5 (and question 5 of new VF-2304) seems needlessly wordy. Can't you just say: 'That [*name of defendant*]'s failure to accept the settlement demand was unreasonable.'? (I probably should have made this point in the last release.)"	See the committee response to the comment of CLA, above.
		"Alternative elements (and questions) 6: I found the addition to the DforU [Directions for Use] to not be as clear as it could be. How about: 'If there has been an excess	The committee has refined the Directions for Use to address the possibility of both options, as suggested by CLA.

Instruction(s)	Commenter	Comment	Committee Response
		judgment but no other damages, use the first option only. if there is no excess judgment but there were other damages (cite to *Howard*), give the second option only. If there has been both an excess judgment and other damages, include both options.'"	
	Peter Klee Attorney Sheppard, Mullin, Richter & Hampton LLP San Diego on behalf of: Allstate Insurance Company Alliance United Insurance Company Crusader Insurance Company Fred Loya Insurance Company Government Employees Insurance Company (GEICO)	"We write to provide our comments on the most recent version of CACI 2334 that has been proposed in the wake of the California Court of Appeal's decision in *Pinto v. Farmers Insurance* (2021) 61 Cal.App.5th 676. Our principal suggestion is that the following sentence be omitted from the proposed instruction and moved to the 'Sources and Authorities' section of the instruction: An insurance company's conduct is unreasonable when, for example, it does not give at least much consideration to the interests of the insured as it gives to its own interests. We believe the addition of this sentence (i) is inconsistent with California law governing the drafting of jury instructions and (ii) introduces a misleading and unworkable jury standard for evaluating whether a liability carrier's conduct in failing to accept a settlement demand was reasonable. **Our Experience and Perspective** These comments are submitted by the following auto insurance companies: **Allstate Insurance Company** **Alliance United Insurance Company** **Crusader Insurance Company** **Fred Loya Insurance Company** **Government Employees Insurance Company (GEICO)** **Infinity Insurance Company**	See the committee response to the comment of Karen Bray on this instruction, above.

Instruction(s)	Commenter	Comment	Committee Response
	Infinity Insurance Company Interinsurance Exchange of the Automobile Club (Auto Club) Mercury Insurance Travelers Insurance Wawanesa General Insurance Company	**Interinsurance Exchange of the Automobile Club (Auto Club)** **Mercury Insurance** **Travelers Insurance** **Wawanesa General Insurance Company** Collectively, we issue a significant number of policies in the State of California and command a substantial share of the automobile insurance market in the state. We process tens of thousands of third-party auto liability claims in California every year. A small percentage of those claims are not settled and result in 'bad faith failure to settle' lawsuits. In a large number of those cases, there is significant confusion concerning CACI 2334 and whether it is accurate and complete. In sum, we see no justification for the instruction to provide a *specific example* of when an insurance company's conduct would be deemed to be 'unreasonable.' Indeed, our research failed to locate any other pattern jury instruction where the drafters provided an example of when, applying the instruction, the defendant would essentially lose the case. The last sentence of the instruction is virtually indistinguishable from the other legal propositions contained in the 'Sources of Authority' section of the instruction. The sentence should be moved to the Sources of Authority section; it does not belong in the body of a model jury instruction." [Proposed text of CACI No. 2334 with redlines omitted.] "**THE LAST SENTENCE** [of the proposed instruction: "An insurance company's conduct is unreasonable when, for example, it does not give at least as much consideration	

Instruction(s)	Commenter	Comment	Committee Response
		to the interests of the insured as it gives to its own interests."] **SHOULD BE DELETED AND MOVED TO THE "SOURCES AND AUTHORITIES" SECTION OF THE INSTRUCTION** For the following reasons, we request that the last sentence of the proposed instruction be deleted and moved to the "Sources and Authorities" section: First, the instruction places too great an emphasis on a single aspect of the body of case law governing an insurance company's obligations under the implied covenant. It is improper to draft an instruction—let alone a model instruction—that emphasizes a particular issue or theory. *See Santillan v. Roman Cath. Bishop of Fresno*, 202 Cal. App. 4th 708, 725 (2012) ("Instructions that unduly emphasize issues or theories, either by singling them out or making them unduly prominent, are improper"); *Munoz v. City of Union City*, 120 Cal. App. 4th 1077, 1108, 16 Cal. Rptr. 3d 521, 544–45 (2004) ('[I]t is error to give, and proper to refuse, instructions that unduly overemphasize issues, theories or defenses either by repetition or singling them out or making them unduly prominent although the instruction may be a legal proposition); *Fibreboard Paper Prod. Corp. v. E. Bay Union of Machinists, Loc. 1304, United Steelworkers of Am., AFL-CIO*, 227 Cal. App. 2d 675, 718 (1964) (same); *see also Auto Stores v. Reyes*, 223 F.2d 298, 305 (10th Cir. 1955) ('A trial court in its instructions to the jury should, so far as possible, avoid undue emphasis of issues, theories or defenses by repetition or by giving them undue prominence or by minimizing the importance of others'); see generally 89 C.J.S. Trial § 735 (2021) ('Jury instructions that unduly emphasize issues or	

Instruction(s)	Commenter	Comment	Committee Response
		theories, either by singling them out or making them unduly prominent, are improper.') As written, the proposed instruction emphasizes an argument this is frequently made by plaintiffs' attorneys in third-party bad faith cases: the insurer placed its interests above the insureds. While the insured is certainly entitled to make that argument, the correct standard for bad faith in California is reasonableness based on a 'totality of the circumstances' standard *Wilson v. 21st Century Ins. Co*., 42 Cal. 4th 713, 723 (2007) ('An insurer's good or bad faith must be evaluated in light of the totality of the circumstances surrounding its actions'). Indeed, the last two bullet points to the proposed instruction's 'Sources of Authority' provide examples of things that do not constitute unreasonable conduct: • "[F]ailing to accept a reasonable settlement offer does not necessarily constitute bad faith. '[T]he crucial issue is … the basis for the insurer's decision to reject an offer of settlement.' '[M]ere errors by an insurer in discharging its obligations to its insured " 'does not necessarily make the insurer liable in tort for violating the covenant of good faith and fair dealing; to be liable in tort, the insurer's conduct must also have been unreasonable.' " ' " (*Pinto, supra*, 61 Cal.App.5th at p. 688, original italics, internal citations omitted.) • "In short, so long as insurers are not subject to a strict liability standard, there is still room for an honest, innocent mistake." (*Walbrook Ins. Co. Ltd. v. Liberty Mut. Ins. Co.* (1992) 5 Cal.App.4th 1445, 1460 [7 Cal.Rptr.2d 513, 521].)	

Instruction(s)	Commenter	Comment	Committee Response
		If the proposed instruction is to be balanced, it should either include these examples as well or no examples at all." "Second, the last sentence of the proposed instruction borders on an improper 'formula instruction,' which essentially tells the jury when the plaintiff wins and the defendant loses. As the Supreme Court observed, such instructions are improper. *Chutuk v. S. Ctys. Gas Co. of California*, 21 Cal. 2d 372, 381 (1942) ('The refused instructions were in the nature of formula instructions, each purporting to set forth the circumstances under which the jury would have been required to return a verdict in favor of defendant. They were repetitious in substance and were objectionable in that said instructions could have served only to emphasize unduly the defendant's theory of the case. Insofar as the refused instructions contained correct statements of the law, we are satisfied that the substance thereof was adequately covered by the instructions given'). It would be no different from adding a sentence that states: '**An insurance company's conduct is reasonable when, for example, it gives at least as much consideration to the interests of the insured as it gives to its own interests.'** Re-wording the sentence in this fashion says the same thing, except it essentially instructs the jury to find for the insurance company if it makes that finding. One can imagine only imagine the objections such a sentence would draw from the policyholders' bar. And they would be right: providing an example is improper under either circumstance." "Third, the sentence introduces an unworkable and misleading standard. It is always in the insured's interest to	

Instruction(s)	Commenter	Comment	Committee Response
		have a third-party tort claim against them settled, regardless of whether the proposed settlement is reasonable. *Crisci v. Sec. Ins. Co. of New Haven, Conn.*, 66 Cal. 2d 425, 430 (1967) ('Obviously, it will always be in the insured's interest to settle within the policy limits when there is any danger, however slight, of a judgment in excess of those limits'). It may or may not be in the insurance company's best interest to settle a claim for the policy limits. Thus there are countless instances in which the insurer's rejection of a settlement demand is not in the insured's best interests, but nevertheless reasonable. The most obvious example is when a policy limit demand is made to settle a claim that is not worth the policy limit. In such instances, although accepting the demand would end litigation against the insured (and thus be in the insured's best interests), the insurer may reasonably decline to settle because the claim is worth less than the amount demanded. And yet, if the offending sentence is included in the model instruction, a jury could easily rationalize imposing liability even though the insurer acted reasonably. Courts and commentators alike have recognized the obvious problem with an 'equal interests' standard: Yet however much the carrier considers the interests of its insured in pondering the decision as to settlement, the moment it decides not to settle, it in effect, however reasonably, sacrifices the interests of the insured in order to promote its own. It is always to the benefit of the insured to settle and thereby avoid the danger of an excess verdict. Since an insurer serves only its own interests by declining to compromise within the insurance coverage, a decision not to settle is perforce a selfish one. In attempting to save some of its own	

Instruction(s)	Commenter	Comment	Committee Response
		money on the policy, the company necessarily and automatically exposes the insured to the risk of an excess judgment. *Rova Farms Resort, Inc. v. Investors Ins. Co. of America*, 65 N.J. 474, 498, 323 A.2d 495, 508 (1974); *see generally*, Stephen S. Ashley, *Bad Faith Actions Liability & Damages* § 3:18 (2d ed. 2021) ('What makes the equal consideration standard empty and unworkable is the fact that there is no middle alternative between accepting or rejecting the settlement offer. The insurer must either accept or reject the settlement, and a decision either way necessarily favors the interests of one party over the other. . . . [¶] If the courts seriously insisted that insurers give as much consideration to the insureds' interests as they give to their own, insurers would have no choice except to prefer the insureds' interests, for any other course would necessarily fail to give the insureds' interests equal consideration'). Moreover, while such a statement may be helpful to courts reviewing bad faith cases on appeal, it does not provide juries with a workable standard by which to evaluate the insurer's conduct. Among other problems, the statement, standing alone, is incomplete. Indeed, in case law, it is commonly coupled with other balancing statements: An insurer, however, may give its own interests consideration equal to that it gives the interests of its insured (*Egan v. Mutual of Omaha Ins. Co., supra,* 24 Cal.3d at pp. 818–819, 169 Cal.Rptr. 691, 620 P.2d 141); **it is not required to disregard the interests of its shareholders and other policyholders when evaluating claims** (*Austero v. National Cas. Co., supra,* 84 Cal.App.3d at p. 30, 148 Cal.Rptr. 653). [Emphasis added.]	

Instruction(s)	Commenter	Comment	Committee Response
		Love v. Fire Ins. Exch., 221 Cal. App. 3d 1136, 1148–49 (1990); *Griffin Dewatering Corp. v. N. Ins. Co. of New York*, 176 Cal. App. 4th 172, 207 (2009); *Progressive W. Ins. Co. v. Superior Ct.*, 135 Cal. App. 4th 263, 278 (2005). Thus, the sentence should be removed from the instruction or, at a minimum, coupled with one or more other statements to provide the requisite balance." "Finally, the instruction appears to be an isolated quote taken verbatim from several judicial opinions, which is a disfavored practice in California. As courts have recognized, '[t]he mere fact that language in a proposed jury instruction comes from case authority does not qualify it as a proper instruction. "The admonition has been frequently stated that it is dangerous to frame an instruction upon isolated extracts from the opinions of the court." [Citation.] ... [Citation.]' *Morales v. 22nd Dist. Agricultural Assn.*, 1 Cal.App.5th 504, 526 (2016); *Sloan v. Stearns*, 137 Cal. App. 2d 289, 300 (1955) ('In concluding this subject we call attention again that it is a dangerous practice, and one not to be followed, to take excerpts from opinions of the courts of last resort and indiscriminately change them into instructions to juries. The reasons are too obvious to require further comment.' *Rosander v. Market Street Ry. Co.*, 89 Cal. App. 710, 718, 265 P. 536, 540. 'It has often been decided by the supreme court that the language used by the court in writing an opinion should not be used as an instruction. Assuming, without deciding, that the proposed instruction was a correct statement of the law, it is patent that it was but a mere abstract principle of law which is embodied in and forms a part of the basis for the broader instructions which were given by the court.')	

Instruction(s)	Commenter	Comment	Committee Response
		In sum, we do not believe that it is appropriate for CACI 2334 to provide a single example of when an insurance company acts in bad faith in the context of a model jury instruction. The statement belongs in a use note, along with the other examples of what does or does not constitute reasonable conduct. If the Judicial Council believes that examples are necessary in the instruction itself, the undersigned request that the last sentence be modified to read as follows: 'An insurance company's conduct is reasonable when, for example, it gives at least as much consideration to the interests of the insured as it gives to its own interests.' Alternatively, the undersigned request that the instruction be balanced out with examples of what does not constitute unreasonable conduct, such as an 'honest, innocent mistake' or 'mere errors.' "	
VF-2304. Bad Faith (Third Party)—Refusal to Accept Reasonable Settlement Demand Within Liability Policy Limits (New)	Orange County Bar Association by Daniel S. Robinson, President	"The third paragraph under Directions for Use begins 'If specificity is not required, users do not have to itemize all the damages listed in **question 6** . . . .' The proper reference is to **Question 7**."	The committee has updated the reference to question 7.
		"Currently, Question 7 does not include an option for damages specifically related to the amount of an excess judgment, which are the damages available if the jury only answers option one in Question 6 (see revised CACI 2334). So, we would add a new option under Question 7: '[a. Amount of excess judgment $_____.' "	The committee agrees and recommends adding a new option (a.) for question 7.
		"The Directions for Use should also clarify that the court must give the second option in question #6 of the verdict form if the plaintiff seeks the itemized damages currently listed under question #7. That is consistent with Instruction 2334, which provides two separate options for element #6. The Directions for Use for that instruction state: "Use the	For clarity but to avoid redundancy, the committee has added a reference to CACI No. 2334's element 6 in the Directions for Use of this verdict form.

Instruction(s)	Commenter	Comment	Committee Response
		first option for element 6 ***if the plaintiff is seeking only the amount of the excess judgment***. Use the second option for element 6 ***if the plaintiff is seeking damages separate from or in addition to the excess judgment***." (Emphasis added.) The Directions for Use for the verdict form should be similarly clear as to when to use the optional question under #6 of that form."	
2522A. Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Individual Defendant (Revise)	California Employment Lawyers Association by Laura L. Horton, Chair	The bracketed language "[name of employer]" may be confusing in the rare case where the entity defendant is not an employer. For example, the FEHA's prohibition on harassment applies not only to employers, but also to other specified entities, and specifically including any "labor organization, employment agency, apprenticeship training program or any training program leading to employment." (Gov't Code § 12940(j)(1). The subdivision of the FEHA that provides for individual liability for harassment, § 12940(j)(3) states: "An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action."	The committee agrees that the bracketed language may be confusing, especially if the case involves claims against both an individual defendant and the employer or a covered entity. The committee, therefore, recommends revising the bracketed content as suggested by the commenter and the CLA, below.
		CELA recommends that, for clarity that (1) references to "[*name of defendant*]" be replaced by "[*name of individual defendant*]" and (2) "[*name of employer*]" be replaced by either "[*name of entity defendant*] or "[*name of covered entity*]" throughout the instruction. Alternatively, language could be added to the Directions for Use to modify the instruction if the covered entity is a labor organization,	For improved clarity, the committee has changed the bracketed options throughout as suggested (name of *individual* defendant and name of *covered entity*). With this refinement, the committee does not believe that additional changes to the Directions for Use are necessary.

Instruction(s)	Commenter	Comment	Committee Response
		employment agency, apprenticeship training program, or training program.	
	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	a. We believe the bracketed language "[*name of employer*]" may be confusing when the covered entity is a labor organization, employment agency, apprenticeship training program, or training program leading to employment. The prohibition against harassment applies not only to employers but also to these other entities. (Gov. Code, § 12940, subd. (j)(1).) Also, there may be both an individual and an entity defendant. To avoid confusion, we suggest that (1) references to "[*name of defendant*]" be replaced by "[*name of individual defendant*]" and (2) "[*name of employer*]" be replaced by either "[*name of entity defendant*] or (2) "[*name of covered entity*]" throughout the instruction.	See the committee response to the comments of CELA on this instruction, above.
		b. Alternatively, language could be added to the Directions for Use to modify the instruction if the covered entity is a labor organization, employment agency, apprenticeship training program, or training program, as in the Directions for Use for CACI No. 2521A.	See the committee response to the comment of CELA on this proposed instruction, above.
		c. We believe the language added to the Directions for Use regarding use of the verdict form belong in the verdict form's Directions for Use. If this language is included here as well, we would revise the language for greater specificity to "include optional question 2 on the verdict form" rather than "include an additional question on the verdict form."	For greater specificity, the committee has refined the language of CACI No. 2522A's, B's, and C's Directions for Use, as suggested.
	Bruce Greenlee Attorney Richmond	Directions for Use: Using the statutory language: "an employee of an entity subject to this subdivision" is not plain language and is clunky. How about: "…the individual	To improve clarity, the committee has refined the sentence in the Directions for Use.

Instruction(s)	Commenter	Comment	Committee Response
		defendant is also an employee of plaintiff's employer, such as the plaintiff's supervisor or coworker."	
	Joan Herrington Attorney Bay Area Employment Law Office Oakland	CACI 2522A. Work Environment Harassment-Conduct Directed at Plaintiff-Essential Elements-Individual Defendant (Gov. Code, §§ 12923, 12940(j) and subsequent dependent instructions. Proposed revision: inserting "2. That [*name of defendant*] was an employee of [*name of employer*];]" California law has long held that harassment by a third party, such as a customer of the employer, imposes liability on the Defendant. (See, e.g., *Carter v. California Dept. of Veterans Affairs*, 38 Cal.4th 914 (2006); *M.F. v. Pacific Pearl Hotel Mgmt*, 16 Cal.App.5th 693 (2017).) However, the Fair Employment and Housing Act ("FEHA") imposes liability not only on an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, but also on "*any other person*" for harassment based on a protected characteristic. (Gov. Code, § 12940, subd. (j)(1) (emphasis added.) Thus, limiting individual liability to an employee is contrary to the plain language of the statute. In this day of increased recognition of the continuing prevalence of sexual harassment, it is more efficient to allow the harasser to be sued under the FEHA along with the Defendant employer.	The committee does not disagree with the commenter's summary of the law for employers and other covered entities, but the instructions at issue (2522A, 2522B, 2522C and related verdict forms) address the personal liability of the individual alleged harasser, not employer liability for harassment by a third party. The committee disagrees with the commenter's suggestion that employee liability is contrary to the language of the statute. Government Code section 12940(j)(3) expressly provides: "An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action."
2522B. Work Environment Harassment—	California Employment Lawyers	Same comments as CACI No. 2522A.	See committee response to the comments on CACI 2522A, above.

Instruction(s)	Commenter	Comment	Committee Response
Conduct Directed at Others—Essential Factual Elements—Individual Defendant (Revise)	Association by Laura L. Horton, Chair		
	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	Same comments as CACI No. 2522A.	See committee response to the comments on CACI 2522A, above.
	Bruce Greenlee Attorney Richmond	Directions for Use: Using the statutory language: "an employee of an entity subject to this subdivision" is not plain language and is clunky. How about: "…the individual defendant is also an employee of plaintiff's employer, such as the plaintiff's supervisor or coworker."	See committee response to the comments on CACI 2522A, above.
2522C. Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Individual Defendant (Revise)	California Employment Lawyers Association by Laura L. Horton, Chair	Same comments as CACI No. 2522A.	See committee response to the comments on CACI 2522A, above.
	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	Same comments as CACI No. 2522A.	See committee response to the comments on CACI 2522A, above.

Instruction(s)	Commenter	Comment	Committee Response
	Bruce Greenlee Attorney Richmond	Directions for Use: Using the statutory language: "an employee of an entity subject to this subdivision" is not plain language and is clunky. How about: "…the individual defendant is also an employee of plaintiff's employer, such as the plaintiff's supervisor or coworker."	See committee response to the comments on CACI 2522A, above.
2546. Disability Discrimination —Reasonable Accommodation —Failure to Engage in Interactive Process (Revise)	California Employment Lawyers Association by Laura L. Horton, Chair	CELA is opposed to adding the proposed element: "**[7. That [***name of defendant***] could have made a reasonable accommodation when the interactive process should have taken place;]"** As the current CACI instructions state in the use notes, there is a split of authority as to whether Plaintiff must prove that reasonable accommodation was available. It is the function of the California Supreme Court to resolve this issue. Limiting the availability of the reasonable accommodation to the time when the interactive process should have taken place should be expanded to include "or that the employer know will become available in the foreseeable future." Otherwise, an employer may escape liability by arguing that, on the day of the interactive process meeting, no reasonable accommodation was available. For example, an employer could argue that there was no vacant position for the employee seeking reassignment was otherwise qualified when the employer knows that one will become available the following week. Reasonable accommodation and an interactive process are each a benefit of employment whose deprivation, in and of	The committee has recognized the existence of a split in authority and has bracketed the proposed element considering the split in authority. If the Supreme Court resolves the issue, the committee will revise the instruction accordingly. With respect to the timing of the interactive process, the committee believes "could have made" adequately encompasses the possibility of an available accommodation on the horizon.

Instruction(s)	Commenter	Comment	Committee Response
		itself, constitutes disability discrimination. For example, in *Prilliman v. United Airlines, Inc*. (1997) 53 Cal.App.4th 935 the court defined reasonable accommodation as a "term, condition or privilege of employment" whose denial constitutes disability discrimination. In light of the foregoing, and consistent with the interpretation of the concept of reasonable accommodation under the FEHA as set out in section 7293.9 of title 2 of the California Code of Regulations, we conclude that an employer who knows of the disability of an employee has an affirmative duty to make known to the employee other suitable job opportunities with *951 the employer and to determine whether the employee is interested in, and qualified for, those positions, if the employer can do so without undue hardship or if the employer offers similar assistance or benefit to other disabled or nondisabled employees or has a policy of offering such assistance or benefit to any other employees. Such a duty is also consistent with the provisions of Government Code section 12940, subdivision (a), which, with specified exceptions, provides in pertinent part that it is an unlawful employment practice for an employer, because of the physical disability or medical condition of any person, "*to discriminate against the person in compensation or in terms, conditions or privileges of employment*." Section 7294.2(a) of title 2 of the California Code of Regulations provides that "It shall be unlawful to condition any employment decision regarding an applicant or employee with a disability upon the waiver of any fringe benefit." Id. at 950-951 and FN 4, (emphasis added).	

Instruction(s)	Commenter	Comment	Committee Response
		The *Prilliman* court's interpretation is consistent not only with the FEHA, which states in pertinent part, "It is an unlawful employment practice [f]or an employer, because of the… physical disability, mental disability,… of any person, to … discriminate against the person in compensation or in terms, conditions, or privileges of employment", but also with the FEHA's interpretative regulations. (Gov. Code § 12940(a.) The California Code of Regulations, title 2, section 11008, subdivision (f), defines "employment benefit" as follows: "Employment Benefit." Except as otherwise provided in the Act, any benefit of employment covered by the Act, including hiring, employment, promotion, selection for training programs leading to employment or promotions, freedom from disbarment or discharge from employment or a training program, compensation, provision of a discrimination-free workplace, *and any other favorable term, condition or privilege of employment*. (emphasis added.) Disability discrimination is established by a denial of an employment benefit. "(b) Disability discrimination is established if a preponderance of the evidence demonstrates a causal connection between a qualified individual's disability and *denial of an employment benefit* to that individual by the employer or other covered entity. The evidence need not demonstrate that the qualified individual's disability was the sole or even the dominant cause of the employment benefit denial. Discrimination is established if the qualified individual's disability was one of the factors that influenced the employer or other covered entity and the denial of the employment benefit is not justified by a	

Instruction(s)	Commenter	Comment	Committee Response
		permissible defense, as detailed below at section 11067 of this article." Cal. Code Regs., tit. 2, §§ 11009, subd. (c), 11066 (emphasis added). Reasonable accommodation and an interactive process are each statutorily imposed conditions of employment, and thus are "benefits of employment" as defined in section 11008, subdivision (f), whose denial establishes disability discrimination under section 11066 of the FEHA's interpretative regulations. This is consistent with section 11008, subdivision (g), the makes the employer's "omission" of a privilege of employment an "employment practice" prohibited by Government Code section 12940, subdivision (a). This analysis is also consistent with the Americans with the Disabilities Act ("ADA"), which provides "the floor of protection" for the disability provisions of the Fair Employment and Housing Act. Thus, federal cases interpreting Americans with the Disabilities Act ("ADA") law trump California cases interpreting the FEHA if the federal cases provide greater protection. (Gov. Code, § 12926.1.) In fact, little federal case law interpretation is needed since the ADA, itself, flatly states that "the duty to make reasonable accommodations is an essential component of the duty not to discriminate." (29 CFR pt 1630, App §1630.9; see also, 42 U.S.C.A. § 12112(5)(A).) Accordingly, federal courts interpreting the ADA have long held that a failure to provide reasonable accommodation supports a disability discrimination claim. (See, e.g., *Holly v. Clairson Industries, L.L.C.* ("Holly") (11th Cir., 2007) 492 F.3d 1247, 1262 ("Thus, an employer's failure to reasonably accommodate a disabled individual *itself*	

Instruction(s)	Commenter	Comment	Committee Response
		constitutes discrimination under the ADA, so long as that individual is "otherwise qualified," and unless the employer can show undue hardship").) Accordingly, liability for failure to provide a timely, good faith interactive process does not depend on whether reasonable accommodation was available. It is the deprivation of this benefit of employment that gives rise to liability and nominal and emotional distress damages. The extent of economic damages, however, may well depend on whether reasonable accommodation could be made. Therefore, CELA asks the committee to reject the addition of element #7.	
	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	a. We agree with the proposed revision to the instruction.	No response required.
		b. We would revise the paragraph in the Directions for Use discussing the split of authority as follows for greater clarity: "Bracketed element 7 reflects that there is a split of authority as to whether the employee must also prove that a reasonable accommodation was available. (Compare *Shirvanyan v. Los Angeles Community College Dist.* (2020) 59 Cal.App.5th 82, 87 [273 Cal.Rptr.3d 312] ["the availability of a reasonable accommodation is an essential element of an interactive process claim"] and *Nadaf-Rahrov v. The Neiman Marcus Group, Inc*. (2008) 166 Cal.App.4th 952, 980–985 [83 Cal.Rptr.3d 190] [employee who brings a section 12940(n) claim bears the burden of proving a reasonable accommodation was available before the employer can be held liable under the statute] with *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 424–425 [69 Cal.Rptr.3d 1] [jury's finding that no reasonable accommodation was	The committee has refined the paragraph in the Directions for Use as suggested.

Instruction(s)	Commenter	Comment	Committee Response
		possible is not inconsistent with its finding of liability for refusing to engage in interactive process] and *Claudio v. Regents of the University of California* (2005) 134 Cal.App.4th 224, 243 [35 Cal.Rptr.3d 837] [if the employer's failure to participate in good faith causes a breakdown in the interactive process, liability follows]; see also *Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1018–1019 [93 Cal.Rptr.3d 338] [attempting to reconcile conflict]; ~~*Shirvanyan v. Los Angeles Community College Dist.* (2020) 59 Cal.App.5th 82, 87 [273 Cal.Rptr.3d 312] [adopting the Scotch court's reasoning~~].) See also verdict form . . . ."	
	Bruce Greenlee Attorney Richmond	New optional element 7 (and question 7 of VF-2513): How about: "Had [*name of defendant*] participated in a timely good-faith interactive process, a reasonable accommodation could have been made."	The committee does not see improved clarity in the suggested language.
		"In the DforU [Directions for Use] you say that *Shirvanyan* adopted the *Scotch* court's harmonizing reasoning, but the only excerpt in the S&A seems to be in agreement with *Neiman Marcus*. You need a *Shirvanyan* excerpt that cites *Scotch*."	The committee has refined the Directions for Use to clarify the existing split in authority. The Sources and Authority already includes an excerpt from *Shirvanyan*, which is in agreement with *Nadaf-Rahrov v. Neiman Marcus Group*.
	Joan Herrington Attorney Bay Area Employment Law Office Oakland	2546. Disability Discrimination—Reasonable Accommodation—Failure to Engage in Interactive Process (Gov. Code, § 12940(n)) and subsequent dependent instructions. Proposed revision: inserting "[7. That [*name of defendant*] could have made a reasonable accommodation when the interactive process should have taken place;]" First, as the current CACI instructions state in the use notes, there is a split of authority as to whether Plaintiff	See the committee response to the comment of CELA on this instruction, above.

Instruction(s)	Commenter	Comment	Committee Response
		must prove that reasonable accommodation was available. It is the function of the California Supreme Court to resolve this issue. Second, if the Judicial Council adopts this revision, limiting the availability of the reasonable accommodation to the time when the interactive process should have taken place should be expanded to include "or that the employer know will become available in the foreseeable future." Otherwise, an employer may escape liability by arguing that, on the day of the interactive process meeting, no reasonable accommodation was available. For example, an employer could argue that there was no vacant position for the employee seeking reassignment was otherwise qualified when the employer knows that one will become available the following week. Indeed, to take the current proposed revision to the limits of absurdity, say, for example, the ergonomic desk which the employee needs will not become available for a month, the employer can argue that reasonable accommodation was not available at the time of the interactive process meeting. Third, and most significantly, just as the California Family Rights Act, and its federal equivalent, the Family Medical Leave Act, are split into deprivation of benefit cases and intent cases, the FEHA was intended to be so split. Reasonable accommodation and an interactive process are each a *benefit of employment* whose deprivation, in and of itself, constitutes disability discrimination. For example, in *Prilliman v. United Airlines, Inc.* (1997) 53 Cal.App.4th 935 the court defined reasonable accommodation as a "term, condition or privilege of employment" whose denial constitutes disability discrimination.	

Instruction(s)	Commenter	Comment	Committee Response
		In light of the foregoing, and consistent with the interpretation of the concept of reasonable accommodation under the FEHA as set out in section 7293.9 of title 2 of the California Code of Regulations, we conclude that an employer who knows of the disability of an employee has an affirmative duty to make known to the employee other suitable job opportunities with *951 the employer and to determine whether the employee is interested in, and qualified for, those positions, if the employer can do so without undue hardship or if the employer offers similar assistance or benefit to other disabled or nondisabled employees or has a policy of offering such assistance or benefit to any other employees. Such a duty is also consistent with the provisions of Government Code section 12940, subdivision (a), which, with specified exceptions, provides in pertinent part that it is an unlawful employment practice for an employer, because of the physical disability or medical condition of any person, "*to discriminate against the person in compensation or in terms, conditions or privileges of employment*." [Footnote omitted] The *Prilliman* court's interpretation is consistent not only with the FEHA, which states in pertinent part, "It is an unlawful employment practice [f]or an employer, because of the… physical disability, mental disability,… of any person, to … discriminate against the person in compensation *or in terms, conditions, or privileges of employment*", but also with the FEHA's interpretative regulations. (Gov. Code § 12940(a.) The California Code of Regulations, title 2, section 11008, subdivision (f), defines "employment benefit" as follows:	

Instruction(s)	Commenter	Comment	Committee Response
		"Employment Benefit." Except as otherwise provided in the Act, any benefit of employment covered by the Act, including hiring, employment, promotion, selection for training programs leading to employment or promotions, freedom from disbarment or discharge from employment or a training program, compensation, provision of a discrimination-free workplace, *and any other favorable term, condition or privilege of employment.* (emphasis added.) Disability discrimination is established by a denial of an employment benefit. "(b) Disability discrimination is established if a preponderance of the evidence demonstrates a causal connection between a qualified individual's disability and *denial of an employment benefit* to that individual by the employer or other covered entity. The evidence need not demonstrate that the qualified individual's disability was the sole or even the dominant cause of the employment benefit denial. Discrimination is established if the qualified individual's disability was one of the factors that influenced the employer or other covered entity and the denial of the employment benefit is not justified by a permissible defense, as detailed below at section 11067 of this article." Cal. Code Regs., tit. 2, §§ 11009, subd. (c), 11066 (emphasis added). Reasonable accommodation and an interactive process are each statutorily imposed conditions of employment, and thus are "benefits of employment" as defined in section 11008, subdivision (f), whose denial establishes disability discrimination under section 11066 of the FEHA's interpretative regulations. This is consistent with section	

Instruction(s)	Commenter	Comment	Committee Response
		11008, subdivision (g), the makes the employer's "omission" of a privilege of employment an "employment practice" prohibited by Government Code section 12940, subdivision (a). This analysis is also consistent with the Americans with the Disabilities Act ("ADA"), which provides "the floor of protection" for the disability provisions of the Fair Employment and Housing Act. Thus, federal cases interpreting Americans with the Disabilities Act ("ADA") law trump California cases interpreting the FEHA if the federal cases provide greater protection. (Gov. Code, § 12926.1.) In fact, little federal case law interpretation is needed since the ADA, itself, flatly states that "the duty to make reasonable accommodations is an essential component of the duty not to discriminate." (29 CFR pt 1630, App §1630.9; see also, 42 U.S.C.A. § 12112(5)(A).) Accordingly, federal courts interpreting the ADA have long held that a failure to provide reasonable accommodation supports a disability discrimination claim. (See, e.g., *Holly v. Clairson Industries, L.L.C.* ("*Holly*") (11th Cir., 2007) 492 F.3d 1247, 1262 ("Thus, an employer's failure to reasonably accommodate a disabled individual itself constitutes discrimination under the ADA, so long as that individual is "otherwise qualified," and unless the employer can show undue hardship").) Accordingly, liability for failure to provide a timely, good faith interactive process does not depend on whether reasonable accommodation was available. It is the deprivation of this benefit of employment that gives rise to liability and nominal and emotional distress damages. The extent of economic damages, however, may well depend on whether reasonable accommodation could be made.	

Instruction(s)	Commenter	Comment	Committee Response
	Orange County Bar Association by Daniel S. Robinson, President	Change the redlined element number 7 to: "That [*name of defendant*] could have made a reasonable accommodation for [*name of plaintiff*] so that [he/she/*nonbinary pronoun*] would be able to perform the essential job requirements when the interactive process should have taken place."	The committee does not see improved clarity in the suggested language.
VF-2507A. Work Environment Harassment—Conduct Directed at Plaintiff—Individual Defendant (Revise)	California Employment Lawyers Association by Laura L. Horton, Chair	The verdict form Directions for Use provide that "Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2522A." We suggest adding language to the Directions for Use to explain when to include optional question 2. We would insert the following language as a new fourth paragraph: "Include optional question 2 if optional element 2 is included in CACI No. 2522A."	The committee agrees and recommends adding a sentence to the Directions for Use on when to include optional question 2.
	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	a. We agree with the proposed revision to the verdict form.	No response required.
		b. We believe language should be added to the Directions for Use for this verdict form on when to include optional question 2. We would insert the following language as a new fourth paragraph: "Include optional question 2 if optional element 2 is included in CACI No. 2522A."	The committee agrees and recommends adding a sentence to the Directions for Use on when to include optional question 2.
VF-2507B. Work Environment Harassment—Conduct Directed at	California Employment Lawyers Association by Laura L. Horton, Chair	Same comments as VF-2507A, but refer to optional element 2 in CACI No. 2522B.	See committee response to the comments on CACI No. VF- 2507A.

Instruction(s)	Commenter	Comment	Committee Response
Others—Individual Defendant (Revise)	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	Same comments as VF-2507A, but refer to optional element 2 in CACI No. 2522B.	See committee response to the comments on CACI No. VF- 2507A.
VF-2507C. Work Environment Harassment—Sexual Favoritism—Individual Defendant (Revise)	California Employment Lawyers Association by Laura L. Horton, Chair	Same comments as VF-2507A, but refer to optional element 2 in CACI No. 2522C.	See committee response to the comments on CACI No. VF- 2507A.
	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	Same comments as VF-2507A, but refer to optional element 2 in CACI No. 2522C.	See committee response to the comments on CACI No. VF- 2507A.
VF-2513. Disability Discrimination—Reasonable Accommodation—Failure to Engage in	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A.	We would revise the paragraph in the Directions for Use discussing the split of authority as stated above for CACI No. 2546 for greater clarity.	See committee response to CLA's comment to CACI No. 2546, above.

Instruction(s)	Commenter	Comment	Committee Response
Interactive Process (Revise)	Ginsburg, Chair		
	Orange County Bar Association by Daniel S. Robinson, President	Change the redlined element number 7 to: "Could [*name of defendant*] have made a reasonable accommodation for [*name of plaintiff*] so that [he/she/*nonbinary pronoun*] would be able to perform the essential job requirements when the interactive process should have taken place."	See committee response to OCBA's comment to CACI No. 2546, above.
2754. Reporting Time Pay—Essential Factual Elements (Revise)	California Employment Lawyers Association by Laura L. Horton, Chair	CELA has no objection or additional suggestion at this time on the language of the instruction itself. We have comments on the proposed revisions to the Directions for Use and Sources and Authority.	See the committee responses to CELA's specific comments on this instruction, below.
		We suggest the following for the modified direction regarding telephonic reporting to reflect the guidance in *Ward v. Tilly's* that if the defendant required employees to report to work telephonically or through other means, then the instruction should be modified accordingly. Ward's guidance was not limited to telephonic reporting for work.	The committee will continue to monitor the law in this area. Although the court in *Ward* discussed other means, the committee prefers to limit the Directions for Use to the specific issue decided by the court.
		Modify the instruction as appropriate if the plaintiff claims that the defendant required telephonic **or some other manner of** reporting before **the start of** a potential shift. (See *Ward v. Tilly's, Inc.* (2019) 31 Cal.App.5th 1167, 1171, **1185** [243 Cal.Rptr.3d 461].)	For improved clarity, the committee has added "to work" and "the start of" to the sentence in the Directions for Use.
		We suggest adding the following bullet point, or replace the existing bullet point regarding *Ward v. Tilly* with this: • "[W]e conclude, contrary to the trial court, that an employee need not necessarily physically appear at the workplace to "report for work." Instead, "report[ing] for work" within the meaning of the wage order is best understood as presenting oneself	The committee has added the suggested excerpt from *Ward* to the Sources and Authority.

Instruction(s)	Commenter	Comment	Committee Response
		as ordered. "Report for work," in other words, does not have a single meaning, but instead is defined by the party who directs the manner in which the employee is to present himself or herself for work—that is, by the employer. As thus interpreted, the reporting time pay requirement operates as follows. If an employer directs employees to present themselves for work by physically appearing at the workplace at the shift's start, then the reporting time requirement is triggered by the employee's appearance at the jobsite. But if the employer directs employees to present themselves for work by logging on to a computer remotely, or by appearing at a client's jobsite, or by setting out on a trucking route, then the employee "reports for work" by doing those things. And if, as plaintiff alleges in this case, the employer directs employees to present themselves for work by telephoning the store two hours prior to the start of a shift, then the reporting time requirement is triggered by the telephonic contact." *Ward*, *supra*, 31 Cal. App. 5th at p. 1185.	
	Civil Justice Association of California (CJAC) by Jaime Huff, Vice President	In this section, under Directions for Use, we are requesting two clarifying changes on page 60. The first is to make clear that the reporting being addressed under this section is related to work, and not another type of employer reporting requirement. Modify the instruction as appropriate if the plaintiff claims that the defendant required telephonic reporting to work before a potential shift. (See *Ward v. Tilly's, Inc.* (2019) 31 Cal.App.5th 1167, 1171 [243 Cal.Rptr.3d 461].)	For improved clarity, the committee has added "to work" to the sentence in the Directions for Use as suggested.

Instruction(s)	Commenter	Comment	Committee Response
		The second clarification, found in the Sources and Authority section, is to add context to the cited opinion in *Ward v. Tilly's, Inc*. This California Court of Appeals case dealt with the subject of on-call work; the court found that requiring reporting time pay for on-call shifts is consistent with California wage reporting laws. [Footnote citation omitted.] The quotation taken from this opinion as a stand-alone can be taken out of context. We suggest clarifying that this applies when employees are required to call into work, specifically: "We conclude that the on-call scheduling alleged in this case triggers Wage Order 7's reporting time pay requirements. As we explain, on-call shifts, [where employees are required to call into work], burden employees, who cannot take other jobs, go to school, or make social plans during on-call shifts—but who nonetheless receive no compensation from [the defendant] unless they ultimately are called in to work. This is precisely the kind of abuse that reporting time pay was designed to discourage." (*Ward*, supra, 31 Cal.App.5th at p. 1171.)	The committee does not add editorial content to the direct quotes excerpted in the Sources and Authority.
3714. Ostensible Agency—Physician-Hospital Relationship — Essential Factual Elements (Revise)	Association of Southern California Defense Counsel by Steven S. Fleishman Attorney	In response to the Judicial Council's CACI 22-01 Invitation to Comment, we write on behalf of the Association of Southern California Defense Counsel (ASCDC) regarding the proposed amendment to CACI No. 3714. While ASCDC is supportive of the amendments, as proposed, ASCDC offers additional suggestions for the CACI Committee's consideration. ASCDC is the nation's largest and preeminent regional organization of lawyers primarily devoted to defending civil actions in Southern and Central California. ASCDC has approximately 1,100 attorney members, who are among	See the committee responses to specific comments, below. No response required.

Instruction(s)	Commenter	Comment	Committee Response
		some of the leading trial and appellate lawyers of California's civil defense bar. ASCDC is actively involved in assisting courts on issues of interest to its members, the judiciary, the bar as a whole, and the public. It is dedicated to promoting the administration of justice, educating the public about the legal system, and enhancing the standards of civil litigation practice.	
		ASCDC is generally supportive of CACI No. 3714 because it encapsulates the ostensible agency standard from *Wicks v. Antelope Valley Healthcare District* (2020) 49 Cal.App.5th 866, 884 (*Wicks*) for determining whether a physician was the ostensible agent of a hospital. As *Wicks* explained, " '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.' " (*Id.* at p. 882.) Accordingly, a plaintiff cannot establish ostensible agency when *either* (1) the hospital gave the plaintiff actual notice that the treating physician was not a hospital employee and there is no reason to believe the patient could not understand the information provided, *or* (2) *the patient was treated by his or her personal physician* and knew or *should have known* the doctor was not an employee or actual agent of the hospital. (*Id.* at p. 884.) When *either* of these criteria is satisfied, a plaintiff cannot prove ostensible agency. (*Id*. at pp. 884–885.)	The comment is beyond the scope of the invitation to comment. The committee considered the substance of this comment in the last release.
		ASCDC supports the proposed changes to the third paragraph of CACI No. 3714 because those proposed changes confirm that it is the plaintiff's burden, consistent with CACI No. 3709, to prove ostensible agency.	No response required.

Instruction(s)	Commenter	Comment	Committee Response
		ASCDC is concerned, however, that the first sentence of the final paragraph of CACI No. 3714 continues to create an apparent presumption that hospital hold themselves out as providers of *physician* care unless the hospitals give the patient adequate notice that treating physicians are not the hospitals' agents or employees. This presumption squarely conflicts with California law banning the corporate practice of medicine. (Bus. & Prof. Code, §§ 2032, 2400; *Wicks*, *supra*, 49 Cal.App.5th at p. 884 [hospitals "may not control, direct or supervise physicians on its staff"].) A presumption that hospitals hold themselves out as providing physician services also ignores the common situation where the patient is being treated by his or her personal physician. As currently written, the instruction seems to presume that patients *always* seek medical services from physicians on the medical staff at hospitals only in urgent or emergency care situations and without seeking advice from their own personal physician. To the contrary, patients commonly follow the advice of their personal physicians to seek treatment by that physician at a hospital where the physician has clinical privileges. Such patients certainly look to the hospital for supportive medical services, but the hospital has done nothing to create any reasonable impression that the patient's personal physician is acting as its agent. For example, in a case where the patient gave no thought to the potential agency issue until after he or she spoke with an attorney about an unsuccessful surgery by their personal physician (who they personally selected before the surgery), there should not be ostensible agency no matter what notice the hospital gave since there was no reasonable reliance on any apparent agency relationship. (*Wicks*, *supra*, 49 Cal.App.5th at pp. 882, 884–885.)	The comment is beyond the scope of the invitation to comment. Nevertheless, the committee considered the substance of this comment in the last release, and the committee continues to disagree.

Instruction(s)	Commenter	Comment	Committee Response
		CACI No. 3714 should be modified, consistent with *Wicks*, to instruct the jury that ostensible agency does not exist if the plaintiff was treated at a hospital by his or her personal physician and the patient either knew or should have known that the physician was not the hospital's agent—i.e., where the hospital did nothing that would have reasonably caused the plaintiff to believe that his or her treating physician was an agent or employee of the hospital. (*Wicks*, *supra*, 49 Cal.App.5th at pp. 882, 884–885; CACI No. 3709.)	The comment is beyond the scope of the invitation to comment. Nevertheless, the committee considered the substance of this comment in the last release. The committee continues to disagree. The instruction adequately sets forth the requirements of *Wicks*.
		ASCDC therefore suggests that the first sentence of the last paragraph be modified to read: A hospital holds itself out to the public as a provider of physician care whenever the patient did not select the physician providing treatment at the hospital, unless the hospital gives notice to a patient that a physician is not an [employee/agent] of the hospital.	The comment is beyond the scope of the invitation to comment. Nevertheless, the committee considered the substance of this comment in the last release. The committee continues to disagree with the suggest language.
		Finally, ASCDC is concerned that because CACI No. 3714 does not track the language in *Wicks* to establish ostensible agency, some party may claim that the CACI instruction is somehow inconsistent with *Wicks*. That is not the case, since the CACI committee aims to make its instructions conform to California case law. However, in order to avoid confusion on this point, ASCDC suggests that the third paragraph of the instruction be modified as follows: If you find that [name of physician]'s [insert tort theory] harmed [name of plaintiff], then you must decide whether [name of hospital] is responsible for the harm. [Name of hospital] is responsible for [name of physician's] conduct if [name of plaintiff] proves both of the following:	The comment is beyond the scope of the invitation to comment. Nevertheless, the committee considered the substance of this comment in the last release. The committee believes that the instruction adequately sets forth the requirements of *Wicks*.

Instruction(s)	Commenter	Comment	Committee Response
		1. [Name of hospital] did not give [name of plaintiff] actual notice that the treating physician was not a hospital [agent/employee] or the patient could not understand the agency disclaimer information provided; *and* 2. [Name of plaintiff] was not treated by his or her personal physician and knew or should have known the physician was not an employee or actual agent of [name of hospital].	
	Bruce Greenlee Attorney Richmond	In the Directions for Use, you say that the instruction applies to a claim of ostensible agency. Is there any authority for the proposition that this claim applies to a partnership or any relationship other than agent/employee? If so, cite it; if not, delete reference to "other" and "partner" in second paragraph.	The committee is unaware of any authority that would limit a physician's relationship with a hospital to agent or employee for hospital-physician ostensible agency to apply. For this reason, the committee believes the option "*insert other relationship*" is supported. The committee agrees to the extent that the example used may not be helpful. The committee, therefore, recommends deleting the example from the second paragraph to ("e.g., 'partner'").
	Orange County Bar Association by Daniel S. Robinson, President	The proposed changes include removing the following, which should not be removed as it would be helpful to the trier of fact: **In deciding whether [name of plaintiff] has proved element 1, you**	The committee disagrees. The committee does not see improved clarity in the paragraph with the clause retained.
3905A. Physical Pain, Mental Suffering, and Emotional Distress (Noneconomic	Bruce Greenlee Attorney Richmond	[See comment below on proposed CACI No. 3919.]	See response to comment on CACI No. 3919, below.

Instruction(s)	Commenter	Comment	Committee Response
Damage) (Revise)			
3919. Survival Damages (Revise and Renumber)	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	a. We agree with the proposed revisions to the instruction.	No response required.
		b. We believe CACI Nos. 3905 and 3905A should be given whenever item 5 [in this instruction] is given because No. 3905 lists the items of noneconomic damages and No. 3905A explains how to determine noneconomic damages, which this instruction does not explain. Accordingly, we would modify the second sentence of the final paragraph in the Directions for Use: "For actions or proceedings filed on or after January 1, 2022 and before January 1, 2026 (or if granted a preference under Code of Civil Procedure section 36 before January 1, 2022) and depending on the case, ~~it may be preferable either to~~ include item 5 (an item of noneconomic damages) ~~or to~~ and give CACI No. 3905, Items of Noneconomic Damage, and a version of CACI No. 3905A . . . ."	The committee agrees and recommends refining the Directions for Use in the manner similar to the commenter's suggestion.
	Bruce Greenlee Attorney Richmond	"I wonder what the scope of 'suffering' is under 377.34(b). As I read the new paragraph in the DforU [Directions for Use] of 3919, if I give 3905A in a survival action, from the extensive list of horrors in the first paragraph, I can only pick 'physical pain,' 'mental suffering,' or 'disfigurement.' I can't pick e.g., grief, anxiety, or humiliation. Yet I could make an argument that these all involve 'suffering' under 377.34(b). But it may be that 377.34 'suffering' is only that associated with physical pain or disfigurement. Maybe worth a quick peek at the legislative history."	The committee is unaware of any such limitation based on either the statutory language or the legislative history. The committee recommends removing both *physical* and *mental* from element 5 to eliminate any potential for confusion or any implied limitation on the statutory terms "pain" and "suffering."
		In new element 5 to 3919, you say "mental" suffering, while the statute just says "suffering." While there may be no difference, I would stick with the statute for now and delete "mental."	For the reasons stated above, the committee agrees and has removed *mental*, as well as *physical*, from element 5.

Instruction(s)	Commenter	Comment	Committee Response
		In the revision date line for 3919, change to: *Renumbered from CACI No. 3903Q and revised May 2022*	The committee has made the change to the date line for the instruction.
	Civil Justice Association of California (CJAC) by Jaime Huff, Vice President	We recommend adding some clarifying punctuation to make clear that pain, mental suffering and disfigurement are considered their own element under the instruction. If you decide that [*name of plaintiff*] has proved [*his/her/nonbinary pronoun*] claim against [*name of defendant*] for the death of [*name of decedent*], you must also decide the amount of damages that [*name of decedent*] sustained before death and that [he/she/nonbinary pronoun] would have been entitled to recover because of [*name of defendant*]'s conduct[, including any [penalties/ [or] punitive damages] as explained in the other instructions that I will give you]. [*Name of plaintiff*] may recover the following damages: [1. The reasonable cost of reasonably necessary medical care that [*name of decedent*] received;] [2. The amount of [*income/earnings/salary/wages*] that [*he/she/nonbinary pronoun*] lost before death;] [3. The reasonable cost of health care services that [*name of decedent*] would have provided to [*name of family member*] before [*name of decedent*]'s death;] [4. [*Specify other recoverable economic damage.*]] [5. The [physical pain,/mental suffering,/ or disfigurement] [*name of decedent*] suffered before [*his/her/nonbinary pronoun*] death.] You may not award damages for any loss for [*name of decedent*]'s shortened life span attributable to [*his/her/nonbinary pronoun*] death.	The committee agrees, and has added bracketed [,/or] between the three options in element 5.

Instruction(s)	Commenter	Comment	Committee Response
	Orange County Bar Association by Daniel S. Robinson, President	The fourth paragraph under the Directions for Use should be revised for clarity to read: "Though damages for pain, suffering, or disfigurement are generally not recoverable in a survival action (except at times in an elder abuse case), Code of Civil Procedure section 337.34(b) permits the recovery of these noneconomic damages by the decedent's personal representative or successor in interest for those actions or proceedings filed on or after January 1, 2022 and before January 1, 2026 (or if granted a preference under Code of Civil Procedure section 36 before January 1, 2022). (Code Civ. Proc., § 377.34; see *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1265 [45 Cal.Rptr.3d 222]; see also instructions in the 3100 Series, Elder Abuse and Dependent Adult Civil Protection Act.) For actions or proceedings covered by section 337.34(b), and depending on the case, it may be preferable either to include item 5 (an item of noneconomic damages) or to give CACI No. 3905, *Items of Noneconomic Damage*, and a version of CACI No. 3905A, *Physical Pain, Mental Suffering, and Emotional Distress (Noneconomic Damage)*, that includes only pain, suffering, or disfigurement. Note that many Sources and Authority below do not recognize the availability of noneconomic damages as a result of this temporary change in law. (Stats. 2021, ch. 448 (SB 447).)"	For improved clarity, the committee has refined the language of the fourth paragraph as suggested by the commenter.
4002. "Gravely Disabled" Explained (Revise)	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A.	a. We would change "unable voluntarily to accept meaningful treatment" in the final sentence of the instruction to "unable to voluntarily accept meaningful treatment" because we believe jurors would find this language more natural and comprehensible.	The committee agrees that relocating *voluntarily* between *to* and *accept* will improve jurors' ability to comprehend the sentence. To the extent the commenter may be proposing removal of *unwilling* from the sentence, the committee does not agree because unable and unwilling are different.

Instruction(s)	Commenter	Comment	Committee Response
	Ginsburg, Chair		
		b. CACI No. 4000 uses the term "gravely disabled," and this instruction (No. 4002) defines that term. But this instruction repeatedly qualifies "gravely disabled" by stating "presently gravely disabled." We believe this creates confusion as to whether "gravely disabled," the term used in No. 4000, is the same as or different from "presently gravely disabled" and the significance of any difference. We believe this instruction should consistently use the same term, "gravely disabled," and should not state "presently gravely disabled." This instruction explains that the jury should not consider the likelihood of future deterioration or relapse, so there is no need to qualify "gravely disabled" with 'presently" to convey that point.	The committee agrees and recommends deleting the term *presently* when used to modify gravely disabled.
		c. Although it is beyond the scope of the invitation to comment, but closely related to our comment above, we would strike the word "presently" from the language "is presently unable to provide for the person's basic needs" in the instruction. We believe "is" adequately conveys the present tense, the instruction explains that the jury should not consider the likelihood of future deterioration or relapse, and the word "presently" is unnecessary and potentially confusing.	The comment is beyond the scope of the invitation to comment. The committee will consider the suggestion in a future release.

Item number: 06

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 4/6/22

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

Title of proposal: Civil Jury Instructions: Instructions with Minor or Nonsubstantive Revisions (Release 41)

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Judicial Council of California Civil Jury Instructions (CACI) Nos. 406, 454, 455, 601, 724, 1002, 1231, 1401, 1402, 1800, 2500, 2600, 3053, 3055, 3963, 4200, 4304, 4560, and 4900

Committee or other entity submitting the proposal:
Advisory Committee on Civil Jury Instructions
Hon. Martin J. Tangeman, Chair

*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:
Annual agenda approved by Rules Committee on (*date*): 11/02/21
Project description from annual agenda: 5. Maintenance—Sources and Authority;
6. Maintenance—Secondary Sources; and
7. Technical Corrections

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (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. The Judicial Council has given the Rules Committee final authority to approve instructions with 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 19 revised CACI instructions for release 41.

Additional Information for JC Staff (provide with reports to be submitted to JC)**:**

- **Form Translations** (check all that apply)
  This proposal:
  ☐ includes forms that have been translated.
  ☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
  ☐ includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)
  ☐ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
  ☐ This proposal may require changes or additions to self-help web content.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
March 25, 2022

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 41)

Action Requested
Review and Approve Publication of Instructions

Deadline
April 6, 2022

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 19 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 19 civil jury instructions, prepared by the advisory committee, that contain changes that do not require posting for public comment or full Judicial

Council approval: CACI Nos. 406, 454, 455, 601, 724, 1002, 1231, 1401, 1402, 1800, 2500, 2600, 3053, 3055, 3963, 4200, 4304, 4560, and 4900.

These instructions will be published in the May supplement to the 2022 edition of *CACI* and posted online on the California Courts website, and on Lexis and Westlaw.

The revised instructions are attached at pages 5–78.

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]

[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.

(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.

Analysis/Rationale

Overview of revisions

All 19 revised instructions in this release (Release 41) that are presented for final approval by the Rules Committee have revisions under category (a) above (additions of cases and statutes to the Sources and Authority). In addition to adding a case to the Sources and Authority, one instruction also has nonsubstantive revisions to the Directions for Use (category (c) 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 deleted or 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. In one instance, a quote from a treatise has been deleted from the Sources and Authority; the treatise is appropriately cited in the Secondary Sources.

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 5–78

CIVIL JURY INSTRUCTIONS
(Release 41: Nonsubstantive Changes)
TABLE OF CONTENTS

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

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].)

- " 'Generally, a defendant has the burden of establishing that some nonzero percentage of fault is properly attributed to the plaintiff, other defendants, or nonparties to the action.' More specifically, a defendant has 'the burden to establish concurrent or alternate causes by proving: that [the plaintiff] was exposed to defective asbestos-containing products of other companies; that the defective designs of the other companies' products were legal causes of the plaintiffs' injuries; and the percentage of legal cause attributable to the other companies.' " (*Phipps v. Copeland Corp. LLC* (2021) 64 Cal.App.5th 319, 332 [278 Cal.Rptr.3d 688], internal citations omitted.)

- "[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.)

- "[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)

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)

454. Affirmative Defense—Statute of Limitations

[*Name of defendant***] contends that [***name of plaintiff***]'s lawsuit was not filed within the time set by law. To succeed on this defense, [***name of defendant***] must prove that [***name of plaintiff***]'s claimed harm occurred before [***insert date from applicable statute of limitation***].**

New April 2007; Revised December 2007

Directions for Use

This instruction states the common-law rule that an action accrues on the date of injury. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1109 [245 Cal.Rptr. 658, 751 P.2d 923].) The date to be inserted is the applicable limitation period before the filing date. For example, if the limitation period is two years and the filing date is August 31, 2007, the date is August 31, 2005.

For an instruction on the delayed-discovery rule, see CACI No. 455, *Statute of Limitations—Delayed Discovery*. See also verdict form CACI No. VF-410, *Statute of Limitations—Delayed Discovery—Reasonable Investigation Would Not Have Disclosed Pertinent Facts.*

Do not use this instruction for attorney malpractice. (See CACI No. 610, *Affirmative Defense—Statute of Limitations—Attorney Malpractice—One-Year Limit,* and CACI No. 611, *Affirmative Defense—Statute of Limitations—Attorney Malpractice—Four-Year Limit.*)

"Claimed harm" refers to all of the elements of the cause of action, which must have occurred before the cause of action accrues and the limitation period begins. (*Glue-Fold, Inc. v. Slautterback Corp.* (2000) 82 Cal.App.4th 1018, 1029 [98 Cal.Rptr.2d 661].) In some cases, it may be necessary to modify this term to refer to specific facts that give rise to the cause of action.

Sources and Authority

- Two-Year Statute of Limitations. Code of Civil Procedure section 335.1.
- Three-Year Statute of Limitations. Code of Civil Procedure section 338(c).
- One-Year Statute of Limitations. Code of Civil Procedure section 340.2(c).
- "A limitation period does not begin until a cause of action accrues, i.e., all essential elements are present and a claim becomes legally actionable." (*Glue-Fold, Inc., supra,* 82 Cal.App.4th at p. 1029, internal citations omitted.)
- " ' " ' "Ordinarily this is when the wrongful act is done and the obligation or the liability arises, but it does not 'accrue until the party owning it is entitled to begin and prosecute an action thereon.' " … In other words, "[a] cause of action accrues 'upon the occurrence of the

last element essential to the cause of action.' " ' " ' " (*Choi v. Sagemark Consulting* (2017) 18 Cal.App.5th 308, 323 [226 Cal.Rptr.3d 267], original italics.)

- "It is undisputed that plaintiffs discovered shortly after the accident in 2010 that [defendant] had failed to secure the insurance coverage plaintiffs requested. Thus, this case does not involve the delayed discovery doctrine, which makes 'accrual of a cause of action contingent on when a party discovered or should have discovered that his or her injury had a wrongful cause.' In delayed discovery cases, 'plaintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation.' Here, the question is when plaintiffs incurred 'actual injury'—not when they discovered [defendant]'s negligence. The trial court erred to the extent that it relied on the delayed discovery doctrine to determine when plaintiffs incurred actual injury." *(Lederer v. Gursey Schneider LLP* (2018) 22 Cal.App.5th 508, 521 [231 Cal.Rptr.3d 518], internal citations omitted.)

- "Where, as here, 'damages are an element of a cause of action, the cause of action does not accrue until the damages have been sustained. … "Mere threat of future harm, not yet realized, is not enough." … "Basic public policy is best served by recognizing that damage is necessary to mature such a cause of action." … Therefore, when the wrongful act does not result in immediate damage, "the cause of action does not accrue prior to the maturation of perceptible harm." ' " (*Thomson v. Canyon* (2011) 198 Cal.App.4th 594, 604 [129 Cal.Rptr.3d 525].)

- "[W]hen a defendant asserts a statute of limitations defense against a FEHA failure to promote claim, the burden is on the defendant to prove when the plaintiff knew or should have known of the adverse promotion decision. (*Pollock v. Tri-Modal Distribution Services, Inc.* (2021) 11 Cal.5th 918, 947 [281 Cal.Rptr.3d 498, 491 P.3d 290].)

- " '[O]nce plaintiff has suffered actual and appreciable harm, neither the speculative nor uncertain character of damages nor the difficulty of proof will toll the period of limitation.' Cases contrast actual and appreciable harm with nominal damages, speculative harm or the threat of future harm. The mere breach of duty—causing only nominal damages, speculative harm or the threat of future harm not yet realized—normally does not suffice to create a cause of action." (*San Francisco Unified School Dist. v. W. R. Grace & Co.* (1995) 37 Cal.App.4th 1318, 1326 [44 Cal.Rptr.2d 305], internal citations omitted.)

- "Violations of a continuing or recurring obligation may give rise to 'continuous accrual' of causes of action, meaning that ' "a cause of action accrues each time a wrongful act occurs, triggering a new limitations period." [Citation.]' " (*Esparza v. Safeway, Inc*. (2019) 36 Cal.App.5th 42, 59 [247 Cal.Rptr.3d 875].)

- "Generally, the bar of the statute of limitations is raised as an affirmative defense, subject to proof by the defendant." (*Czajkowski v. Haskell & White* (2012) 208 Cal.App.4th 166, 174 [144 Cal.Rptr.3d 522].)

- " '[R]esolution of the statute of limitations issue is normally a question of fact … .' " (*Romano v. Rockwell Int'l, Inc.* (1996) 14 Cal.4th 479, 487 [59 Cal.Rptr.2d 20, 926 P.2d 1114].)

- "Commencement of the statute of limitations is usually a factual question, but can be resolved as a matter of law when, as here, the material facts are not disputed." *Moss v. Duncan* (2019) 36 Cal.App.5th 569, 574 [248 Cal.Rptr.3d 689].)

- "Because the relevant facts are not in dispute, the application of the statute of limitations may be decided as a question of law." (*Lederer, supra,* 22 Cal.App.5th at p. 521.)

- "Based upon our review of legal precedent and our understanding of the principles and policies of the continuous accrual theory, we conclude that the theory is not limited in its application to cases in which a payor has acted 'wrongfully' in the sense of failing or refusing to make a periodic payment to a payee." (*Blaser v. State Teachers' Retirement System* (2019) 37 Cal.App.5th 349, 372 [249 Cal.Rptr.3d 701].)

- "So long as the time allowed for filing an action is not inherently unreasonable, California courts afford 'contracting parties considerable freedom to modify the length of a statute of limitations.' " (*Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 74 [215 Cal.Rptr.3d 835].)

Secondary Sources

4 Witkin, California Procedure (5th ed. 2008) Actions, §§ 493–507, 553–592, 673

5 Levy et al., California Torts, Ch. 71, *Commencement, Prosecution, and Dismissal of Tort Actions*, §§ 71.01–71.06 (Matthew Bender)

30 California Forms of Pleading and Practice, Ch. 345, *Limitation of Actions*, §§ 345.19, 345.20 (Matthew Bender)

33 California Forms of Pleading and Practice, Ch. 380, *Negligence*, § 380.150 (Matthew Bender)

14 California Points and Authorities, Ch. 143, *Limitation of Actions*, § 143.20 et seq. (Matthew Bender)

1 California Pretrial Civil Procedure Practice Guide: The Wagstaffe Group, Ch. 17, *Preparing the Answer*, § 17-IV[I]

455. Statute of Limitations—Delayed Discovery

If [*name of defendant***] proves that [***name of plaintiff***]'s claimed harm occurred before [***insert date from applicable statute of limitations***], [***name of plaintiff***]'s lawsuit was still filed on time if [***name of plaintiff***] proves that before that date,**

[[*name of plaintiff***] did not discover, and did not know of facts that would have caused a reasonable person to suspect, that [he/she/***nonbinary pronoun***/it] had suffered harm that was caused by someone's wrongful conduct.]**

[*or***]**

[[*name of plaintiff***] did not discover, and a reasonable and diligent investigation would not have disclosed, that [***specify factual basis for cause of action~~, e.g., "a medical device" or "inadequate medical treatment"~~***] contributed to [***name of plaintiff***]'s harm.]**

New April 2007; Revised December 2007, April 2009, December 2009, May 2020

Directions for Use

Read this instruction with the first option after CACI No. 454, *Affirmative Defense—Statute of Limitations*, if the plaintiff seeks to overcome the statute-of-limitations defense by asserting the "delayed-discovery rule" or "discovery rule." The discovery rule provides that the accrual date of a cause of action is delayed until the plaintiff is aware of the plaintiff's injury and its negligent cause. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1109 [245 Cal.Rptr. 658, 751 P.2d 923].) The date to be inserted is the applicable limitation period before the filing date. For example, if the limitation period is two years and the filing date is August 31, 2009, the date is August 31, 2007.

Read this instruction with the second option ~~If~~ if the facts suggest that even if the plaintiff had conducted a timely and reasonable investigation, it would not have disclosed the limitation-triggering information~~, read the second option~~. (See *Fox v. Ethicon Endo-Surgery* (2005) 35 Cal.4th 797 [27 Cal.Rptr.3d 661, 110 P.3d 914] [fact that plaintiff suspected her injury was caused by surgeon's negligence and timely filed action for medical negligence against health care provider did not preclude "discovery rule" from delaying accrual of limitations period on products liability cause of action against medical staple manufacturer whose role in causing injury was not known and could not have been reasonably discovered within the applicable limitations period commencing from date of injury].)

See also verdict form CACI No. VF-410, *Statute of Limitations—Delayed Discovery—Reasonable Investigation Would Not Have Disclosed Pertinent Facts.*

Do not use this instruction for medical malpractice (see CACI No. 555, *Affirmative Defense—Statute of Limitations—Medical Malpractice—One-Year Limit*, and CACI No. 556, *Affirmative Defense—Statute of Limitations—Medical Malpractice—Three-Year Limit*) or attorney

malpractice (see CACI No. 610, *Affirmative Defense—Statute of Limitations—Attorney Malpractice—One-Year Limit*, and CACI No. 611, *Affirmative Defense—Statute of Limitations—Attorney Malpractice—Four-Year Limit*). Also, do not use this instruction if the case was timely but a fictitiously named defendant was identified and substituted in after the limitation period expired. (See *McOwen v. Grossman* (2007) 153 Cal.App.4th 937, 942 [63 Cal.Rptr.3d 615] [if lawsuit is initiated within the applicable period of limitations against one party and the plaintiff has complied with Code of Civil Procedure section 474 by alleging the existence of unknown additional defendants, the relevant inquiry when the plaintiff seeks to substitute a real defendant for one sued fictitiously is what facts the plaintiff actually knew at the time the original complaint was filed].)

"Claimed harm" refers to all of the elements of the cause of action, which must have occurred before the cause of action accrues and the limitation period begins. (*Glue-Fold, Inc. v. Slautterback Corp.* (2000) 82 Cal.App.4th 1018, 1029 [98 Cal.Rptr.2d 661].) In some cases, it may be necessary to modify this term to refer to specific facts that give rise to the cause of action.

Sources and Authority

- "An exception to the general rule for defining the accrual of a cause of action—indeed, the 'most important' one—is the discovery rule. … It postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action. [¶] … [T]he plaintiff discovers the cause of action when he at least suspects a factual basis, as opposed to a legal theory, for its elements, even if he lacks knowledge thereof—when, simply put, he at least 'suspects … that someone has done something wrong' to him, 'wrong' being used, not in any technical sense, but rather in accordance with its 'lay understanding.' He has reason to discover the cause of action when he has reason at least to suspect a factual basis for its elements. He has reason to suspect when he has 'notice or information of circumstances to put a reasonable person on *inquiry*'; he need not know the 'specific "facts" necessary to establish' the cause of action; rather, he may seek to learn such facts through the 'process contemplated by pretrial discovery'; but, within the applicable limitations period, he must indeed seek to learn the facts necessary to bring the cause of action in the first place—he 'cannot wait for' them to 'find him' and 'sit on' his 'rights'; he 'must go find' them himself if he can and 'file suit' if he does." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397–398 [87 Cal.Rptr.2d 453, 981 P.2d 79], original italics, internal citations and footnote omitted.)

- "[I]t is the discovery of facts, not their legal significance, that starts the statute." (*Jolly, supra,* 44 Cal.3d at p. 1113.)

- "*Jolly* 'sets forth two alternate tests for triggering the limitations period: (1) a subjective test requiring actual suspicion by the plaintiff that the injury was caused by wrongdoing; and (2) an objective test requiring a showing that a reasonable person would have suspected the injury was caused by wrongdoing. [Citation.] The first to occur under these two tests begins the limitations period.' " (*Nguyen v. Western Digital Corp.* (2014) 229 Cal.App.4th 1522, 1552 [178 Cal.Rptr.3d 897].)

- "While ignorance of the existence of an injury or cause of action may delay the running of the statute of limitations until the date of discovery, the general rule in California has been that ignorance of the identity of the defendant is not essential to a claim and therefore will not toll the statute." (*Bernson v. Browning-Ferris Industries* (1994) 7 Cal.4th 926, 932 [30 Cal.Rptr.2d 440, 873 P.2d 613].)

- "[U]nder the delayed discovery rule, a cause of action accrues and the statute of limitations begins to run when the plaintiff has reason to suspect an injury and some wrongful cause, unless the plaintiff pleads and proves that a reasonable investigation at that time would not have revealed a factual basis for that particular cause of action. In that case, the statute of limitations for that cause of action will be tolled until such time as a reasonable investigation would have revealed its factual basis." (*Fox, supra,* 35 Cal.4th at p. 803.)

- "The California rule on delayed discovery of a cause of action is the statute of limitation begins to run 'when the plaintiff has reason to suspect an injury and some wrongful cause … .' 'A plaintiff need not be aware of the specific "facts" necessary to establish the claim; that is a process contemplated by pretrial discovery. … So long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her.' " (*MGA Entertainment, Inc. v. Mattel, Inc.* (2019) 41 Cal.App.5th 554, 561 [254 Cal.Rptr.3d 314].)

- "[A]s *Fox* teaches, claims based on two independent legal theories against two separate defendants can accrue at different times." (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1323 [64 Cal.Rptr.3d 9].)

- "A limitation period does not begin until a cause of action accrues, i.e., all essential elements are present and a claim becomes legally actionable. Developed to mitigate the harsh results produced by strict definitions of accrual, the common law discovery rule postpones accrual until a plaintiff discovers or has reason to discover the cause of action." (*Glue-Fold, Inc., supra,* 82 Cal.App.4th at p. 1029, internal citations omitted.)

- "A plaintiff's inability to discover a cause of action may occur 'when it is particularly difficult for the plaintiff to observe or understand the breach of duty, or when the injury itself (or its cause) is hidden or beyond what the ordinary person could be expected to understand.' " (*NBCUniversal Media, LLC v. Superior Court* (2014) 225 Cal.App.4th 1222, 1232 [171 Cal.Rptr.3d 1].)

- "[T]he plaintiff may discover, or have reason to discover, the cause of action even if he does not suspect, or have reason to suspect, the identity of the defendant. That is because the identity of the defendant is not an element of any cause of action. It follows that failure to discover, or have reason to discover, the identity of the defendant does not postpone the accrual of a cause of action, whereas a like failure concerning the cause of action itself does. 'Although never fully articulated, the rationale for distinguishing between ignorance' of the defendant and 'ignorance' of the cause of action itself 'appears to be premised on the commonsense assumption that once the plaintiff is aware of' the latter, he 'normally' has 'sufficient opportunity,' within the 'applicable limitations period,' 'to discover the identity' of the former. He may 'often effectively extend[]' the limitations period in question 'by the

filing' and amendment 'of a Doe complaint' and invocation of the relation-back doctrine. 'Where' he knows the 'identity of at least one defendant … , [he] must' proceed thus." (*Norgart, supra,* 21 Cal.4th at p. 399, internal citations and footnote omitted.)

- "The discovery rule only delays accrual until the plaintiff has, or should have, inquiry notice of the cause of action. The discovery rule does not encourage dilatory tactics because plaintiffs are charged with presumptive knowledge of an injury if they have ' " 'information of circumstances to put [them] on inquiry' " ' or if they have ' " 'the opportunity to obtain knowledge from sources open to [their] investigation.' " ' In other words, plaintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation." (*Fox, supra,* 35 Cal.4th at pp. 807–808, internal citations omitted.)

- "Thus, a two-part analysis is used to assess when a claim has accrued under the discovery rule. The initial step focuses on whether the plaintiff possessed information that would cause a reasonable person to inquire into the cause of his injuries. Under California law, this inquiry duty arises when the plaintiff becomes aware of facts that would cause a reasonably prudent person to suspect his injuries were the result of wrongdoing. If the plaintiff was in possession of such facts, thereby triggering his duty to investigate, it must next be determined whether 'such an investigation would have disclosed a factual basis for a cause of action[.] [T]he statute of limitations begins to run on that cause of action when the investigation would have brought such information to light.' " (*Alexander v. Exxon Mobil* (2013) 219 Cal.App.4th 1236, 1251 [162 Cal.Rptr.3d 617], internal citation omitted.)

- " [I]f continuing injury from a completed act generally extended the limitations periods, those periods would lack meaning. Parties could file suit at any time, as long as their injuries persisted. This is not the law. The time bar starts running when the plaintiff first learns of actionable injury, even if the injury will linger or compound. ' " '[W]here an injury, although slight, is sustained in consequence of the wrongful act of another, and the law affords a remedy therefor, the statute of limitations attaches at once. *It is not material that all the damages resulting from the act shall have been sustained at that time, and the running of the statute is not postponed by the fact that the actual or substantial damages do not occur until a later date … .*' " ' " (*Vaca v. Wachovia Mortgage Corp.* (2011) 198 Cal.App.4th 737, 745 [129 Cal.Rptr.3d 354], original italics, internal citation omitted.)

- "[T]he discovery rule 'may be applied to breaches [of contract] which can be, and are, committed in secret and, moreover, where the harm flowing from those breaches will not be reasonably discoverable by plaintiffs until a future time.' " (*Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 73 [215 Cal.Rptr.3d 835].)

- "[T]he trial court erred in concluding that the discovery rule did not pertain to the limitations period of section 335.1 for medical battery claims." (*Daley v. Regents of University of California* (2019) 39 Cal.App.5th 595, 606 [252 Cal.Rptr.3d 273].)

- There is no doctrine of constructive or imputed suspicion arising from media coverage. "[Defendant]'s argument amounts to a contention that, having taken a prescription drug,

[plaintiff] had an obligation to read newspapers and watch television news and otherwise seek out news of dangerous side effects not disclosed by the prescribing doctor, or indeed by the drug manufacturer, and that if she failed in this obligation, she could lose her right to sue. We see no such obligation." (*Nelson v. Indevus Pharmaceuticals, Inc.* (2006) 142 Cal.App.4th 1202, 1206 [48 Cal.Rptr.3d 668].)

- "The statute of limitations does not begin to run when some members of the public have a suspicion of wrongdoing, but only '[o]nce the plaintiff *has* a suspicion of wrongdoing.' " (*Unruh-Haxton v. Regents of University of California* (2008) 162 Cal.App.4th 343, 364 [76 Cal.Rptr.3d 146], original italics.)

- "Generally, the bar of the statute of limitations is raised as an affirmative defense, subject to proof by the defendant. [¶] However, when a plaintiff relies on the discovery rule or allegations of fraudulent concealment as excuses for an apparently belated filing of a complaint, 'the burden of pleading and proving belated discovery of a cause of action falls on the plaintiff.' " (*Czajkowski v. Haskell & White, LLP* (2012) 208 Cal.App.4th 166, 174 [144 Cal.Rptr.3d 522].)

- " '[R]esolution of the statute of limitations issue is normally a question of fact … .' " (*Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 487 [59 Cal.Rptr.2d 20, 926 P.2d 1114].)

- "More specifically, as to accrual, 'once properly pleaded, belated discovery is a question of fact.' " (*Nguyen, supra,* 229 Cal.App.4th at p. 1552.)

Secondary Sources

3 Witkin, California Procedure (5th ed. 2008) Actions, §§ 493–507, 553–592, 673

Haning et al., California Practice Guide: Personal Injury, Ch. 5-B, *When To Sue—Statute Of Limitations*, ¶¶ 5:108–5:111.6 (The Rutter Group)

5 Levy et al., California Torts, Ch. 71, *Commencement, Prosecution, and Dismissal of Tort Actions*, § 71.03[3] (Matthew Bender)

30 California Forms of Pleading and Practice, Ch. 345, *Limitation of Actions*, § 345.19[3] (Matthew Bender)

14 California Points and Authorities, Ch. 143, *Limitation of Actions*, §§ 143.47, 143.52 et seq. (Matthew Bender)

1 Matthew Bender Practice Guide: California Pretrial Civil Procedure, Ch. 4, *Limitation of Actions*, 4.15

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

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.)

- " '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

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.)~~ "For purposes of determining whether a more favorable outcome would have been obtained, the object of the exercise is not to ' "recreate what a particular judge or fact finder would have done. Rather, the [finder of fact's] task is to determine what a reasonable judge or fact finder would have done … ." ' " (*O'Shea v. Lindenberg* (2021) 64 Cal.App.5th 228, 236 [278 Cal.Rptr.3d 654].)

- "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 v. Seyfarth Shaw LLP* (2009)~~, *supra,*~~ 171 Cal.App.4th 336, ~~at pp.~~ 357–358 [89 Cal.Rptr.3d 710].)

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)

724. Negligent Entrustment of Motor Vehicle

[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] was harmed because [***name of defendant***] negligently permitted [***name of driver***] to use [***name of defendant***]'s vehicle. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of driver***] was negligent in operating the vehicle;**

2. **That [***name of defendant***] [owned the vehicle operated by [***name of driver***]/had possession of the vehicle operated by [***name of driver***] with the owner's permission];**

3. **That [***name of defendant***] knew, or should have known, that [***name of driver***] was incompetent or unfit to drive the vehicle;**

4. **That [***name of defendant***] permitted [***name of driver***] to drive the vehicle; and**

5. **That [***name of driver***]'s incompetence or unfitness to drive was a substantial factor in causing harm to [***name of plaintiff***].**

New September 2003; Revised December 2009

Directions for Use

For a definition of "negligence," see CACI No. 401, *Basic Standard of Care*.

Sources and Authority

- Permissive Use by Unlicensed Driver. Vehicle Code section 14606(a).
- Permissive Use by Unlicensed Minor. Vehicle Code section 14607.
- Rental to Unlicensed Driver. Vehicle Code section 14608(a).
- " ' "[I]t is generally recognized that one who places or entrusts his [or her] motor vehicle in the hands of one whom he [or she] knows, or from the circumstances is charged with knowing, is incompetent or unfit to drive, may be held liable for an injury inflicted by the use made thereof by that driver, provided the plaintiff can establish that the injury complained of was proximately caused by the driver's disqualification, incompetency, inexperience or recklessness … ." ' " (*Flores v. Enterprise Rent-A-Car Co.* (2010) 188 Cal.App.4th 1055, 1063 [116 Cal.Rptr.3d 71].)
- "A rental car company may be held liable for negligently entrusting one of its cars to a customer. ... In determining whether defendant was negligent in entrusting its car to [the driver], defendant's conduct is to be measured by what an ordinarily prudent person would do in similar circumstances." (*Osborn v. Hertz Corp.* (1988) 205 Cal.App.3d 703, 709 [252 Cal.Rptr. 613], internal citations omitted.)

- "Liability for negligent entrustment is determined by applying general principles of negligence, and ordinarily it is for the jury to determine whether the owner has exercised the required degree of care." (*Allen v. Toledo* (1980) 109 Cal.App.3d 415, 421 [167 Cal.Rptr. 270], internal citations omitted.)

- ~~"A claim that an employer was negligent in hiring or retaining an employee-driver rarely differs in substance from a claim that an employer was negligent in entrusting a vehicle to the employee. Awareness, constructive or actual, that a person is unfit or incompetent to drive underlies a claim that an employer was negligent in hiring or retaining that person as a driver. (See Judicial Council of Cal. Civ. Jury Instns. (2011) CACI No. 426.) That same awareness underlies a claim for negligent entrustment. (See CACI No. 724.) In a typical case, like this, the two claims are functionally identical." (*Diaz v. Carcamo* (2011) 51 Cal.4th 1148, 1157 [126 Cal.Rptr.3d 443, 253 P.3d 535].)~~ " 'A claim that an employer was negligent in hiring or retaining an employee-driver rarely differs in substance from a claim that an employer was negligent in entrusting a vehicle to the employee. Awareness, constructive or actual, that a person is unfit or incompetent to drive underlies a claim that an employer was negligent in hiring or retaining that person as a driver. (See Judicial Council of Cal. Civ. Jury Instns. (2010) CACI No. 426.) That same awareness underlies a claim for negligent entrustment. (See CACI No. 724.) In a typical case … the two claims are functionally identical.' " (*McKenna v. Beesley* (2021) 67 Cal.App.5th 552, 566–567 [281 Cal.Rptr.3d 431], internal citation and footnote omitted.)

- "[I]f an employer admits vicarious liability for its employee's negligent driving in the scope of employment, 'the damages attributable to both employer and employee will be coextensive.' Thus, when a plaintiff alleges a negligent entrustment or hiring cause of action against the employer and the employer admits vicarious liability for its employee's negligent driving, the universe of defendants who can be held responsible for plaintiff's damages is reduced by one—the employer—for purposes of apportioning fault under Proposition 51. Consequently, the employer would not be mentioned on the special verdict form. The jury must divide fault for the accident among the listed tortfeasors, and the employer is liable only for whatever share of fault the jury assigns to the employee." (*Diaz v. Carcamo* (2011)~~, *supra,*~~ 41 Cal.4th ~~at p.~~ 1148, 1159 [126 Cal.Rptr.3d 443, 253 P.3d 535], internal citation omitted.)

- "[O]rdinarily, in the absence of a special relationship between the parties, there is no duty to control the conduct of a third person so as to prevent him from causing harm to another and ... this rule applies even where the third person's conduct is made possible only because the defendant has relinquished control of his property to the third person, unless the defendant has reason to believe that the third person is incompetent to manage it." (*Grafton v. Mollica* (1965) 231 Cal.App.2d 860, 863 [42 Cal.Rptr. 306].)

- "[T]he tort requires demonstration of actual knowledge of facts showing or suggesting the driver's incompetence-not merely his lack of a license. ... For liability to exist, knowledge must be shown of the user's incompetence or inability safely to use the [vehicle]." (*Dodge Center v. Superior Court* (1988) 199 Cal.App.3d 332, 341 [244 Cal.Rptr. 789], internal citations omitted.)

- "Knowledge of possession of a temporary permit allowing a person to drive only if accompanied by a licensed driver is sufficient to put the entrustor 'upon inquiry as to the competency of' the unlicensed

driver. ... It is then for the jury to determine under the circumstances whether the entrustor is negligent in permitting the unlicensed driver to operate the vehicle." (*Nault v. Smith* (1961) 194 Cal.App.2d 257, 267–268 [14 Cal.Rptr. 889], internal citations omitted.)

- "In cases involving negligent entrustment of a vehicle, liability ' "is imposed on [a] vehicle owner or permitter because of his own independent negligence and not the negligence of the driver." ' " (*Ghezavat v. Harris* (2019) 40 Cal.App.5th 555, 559 [252 Cal.Rptr.3d 887].)

- "[E]ntrustment of a vehicle to an intoxicated person is not negligence per se. A plaintiff must prove defendant had knowledge of plaintiff's incompetence when entrusting the vehicle." (*Blake v. Moore* (1984) 162 Cal.App.3d 700, 706 [208 Cal.Rptr. 703].)

- "[T]he mere sale of an automobile to an unlicensed and inexperienced person does not constitute negligence per se." (*Perez v. G & W Chevrolet, Inc.* (1969) 274 Cal.App.2d 766, 768 [79 Cal.Rptr. 287].)

- "It is well-settled that where a company knows that an employee has no operator's license that such knowledge is sufficient to put the employer on inquiry as to his competency; it is for the jury to determine under such circumstances whether the employer was negligent in permitting the employee to drive a vehicle." (*Syah v. Johnson* (1966) 247 Cal.App.2d 534, 545 [55 Cal.Rptr. 741].)

- "[I]t has generally been held that the owner of an automobile is under no duty to persons who may be injured by its use to keep it out of the hands of a third person in the absence of facts putting the owner on notice that the third person is incompetent to handle it." (*Richards v. Stanley* (1954) 43 Cal.2d 60, 63 [271 P.2d 23], internal citations omitted.)

- "[T]he mere fact of co-ownership does not prevent one co-owner from controlling use of the vehicle by the other co-owner. Thus, where ... plaintiff alleges that one co-owner had power over the use of the vehicle by the other and that the negligent co-owner drove with the express or implied consent of such controlling co-owner, who knew of the driver's incompetence, the basis for a cause of action for negligent entrustment has been stated." (*Mettelka v. Superior Court* (1985) 173 Cal.App.3d 1245, 1250 [219 Cal.Rptr. 697].)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1372–1377

Haning et al., California Practice Guide: Personal Injury, Ch. 2(II)-B, *Liability Arising From Operation Of Motor Vehicle*, ¶ 2:985 (The Rutter Group)

Croskey et al., California Practice Guide: Insurance Litigation, Ch. 7D-D, *Liability Based On Negligent Entrustment*, ¶ 7:1332 (The Rutter Group)

California Tort Guide (Cont.Ed.Bar 3d ed.) Automobiles, § 4.38

2 Levy et al., California Torts, Ch. 20, *Motor Vehicles*, § 20.21 (Matthew Bender)

8 California Forms of Pleading and Practice, Ch. 82, *Automobiles: Causes of Action*, § 82.11 (Matthew Bender)

California Civil Practice: Torts § 25:47 (Thomson Reuters)

1002. Extent of Control Over Premises Area

[*Name of plaintiff*] claims that [*name of defendant*] controlled the property involved in [*name of plaintiff*]'s harm, even though [*name of defendant*] did not own or lease it. A person controls property that the person does not own or lease when the person uses the property as if it were the person's own. A person is responsible for maintaining, in reasonably safe condition, all areas that person controls.

New September 2003; Revised May 2020

Directions for Use

Use this instruction only for property that is not actually owned or leased by the defendant.

Sources and Authority

- "[A] defendant's duty to maintain land in a reasonably safe condition extends to land over which the defendant exercises control, regardless of who owns the land. 'As long as the defendant exercised control over the land, the location of the property line would not affect the defendant's potential liability.' " (*University of Southern California v. Superior Court* (2018) 30 Cal.App.5th 429, 445 [241 Cal.Rptr.3d 616], internal citation omitted.)

- ~~"[I]t is clear from [*Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1167 [60 Cal.Rptr.2d 448, 929 P.2d 1239]] that simple maintenance of an adjoining strip of land owned by another does not constitute an exercise of control over that property. Although evidence of maintenance is considered 'relevant on the issue of control,' the court limited its holding by stating that 'the simple act of mowing a lawn on adjacent property (or otherwise performing minimal, neighborly maintenance of property owned by another) generally will [not], standing alone, constitute an exercise of control over [the] property ... .' " (*Contreras v. Anderson* (1997) 59 Cal.App.4th 188, 198–199 [69 Cal.Rptr.2d 69].)~~ "Even if a hazard located on publicly owned property is created by a third party, an abutting owner or occupier of private property will be held liable for injuries caused by that hazard if the owner or occupier has ' "dramati[cally] assert[ed]" ' any of the ' "right[s] normally associated with ownership or … possession" ' by undertaking affirmative acts that are consistent with being the owner or occupier of the property and that go beyond the 'minimal, neighborly maintenance of property owned by another.' " (*Lopez v. City of Los Angeles* (2020) 55 Cal.App.5th 244, 258 [269 Cal.Rptr.3d 377].)

- "In *Alcaraz ... ,* our Supreme Court held that a landowner who exercises control over an adjoining strip of land has a duty to protect or warn others entering the adjacent land of a known hazard there. This duty arises even if the person does not own or exercise control over the hazard and even if the person does not own the abutting property on which the hazard is located. … [¶] The *Alcaraz* court concluded that such evidence was 'sufficient to raise a triable issue of fact as to whether defendants exercised control over the strip of land containing the meter box and thus owed a duty of care to protect or warn plaintiff of the allegedly dangerous condition of the property.' " (*Contreras~~, supra,~~ v. Anderson* (1997) 59 Cal.App.4th ~~at pp.~~188, 197–198 [69 Cal.Rptr.2d 69], footnote and internal

citations omitted.)

- " ' "*The crucial element is control.*" [Citation.]' '[W]e have placed major importance on the existence of possession and control as a basis for tortious liability for conditions on the land.' " (*Salinas v. Martin* (2008) 166 Cal.App.4th 404, 414 [82 Cal.Rptr.3d 735], original italics, internal citations omitted.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1225, 1226

1 Levy et al., California Torts, Ch. 15, *General Premises Liability*, §§ 15.02–15.03 (Matthew Bender)

11 California Real Estate Law and Practice, Ch. 381, *Tort Liability of Property Owners*, §§ 381.03–381.04 (Matthew Bender)

29 California Forms of Pleading and Practice, Ch. 334, *Landlord and Tenant: Claims for Damages*, § 334.52 (Matthew Bender)

36 California Forms of Pleading and Practice, Ch. 421, *Premises Liability*, § 421.15 (Matthew Bender)

17 California Points and Authorities, Ch. 178, *Premises Liability*, § 178.60 et seq. (Matthew Bender)

1 California Civil Practice: Torts § 16:2 (Thomson Reuters)

1231. Implied Warranty of Merchantability—Essential Factual Elements

[*Name of plaintiff***] [also] claims that [he/she/***nonbinary pronoun***/it] was harmed by the [***product***] that [he/she/***nonbinary pronoun***/it] bought from [***name of defendant***] because the [***product***] did not have the quality that a buyer would expect. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] bought the [***product***] from [***name of defendant***];**

2. **That, at the time of purchase, [***name of defendant***] was in the business of selling these goods [or by [his/her/***nonbinary pronoun***/its] occupation held [himself/herself/***nonbinary pronoun***/itself] out as having special knowledge or skill regarding these goods];**

3. **That the [***product***] [***insert one or more of the following:***]**

   [was not of the same quality as those generally acceptable in the trade;]

   [was not fit for the ordinary purposes for which such goods are used;]

   [did not conform to the quality established by the parties' prior dealings or by usage of trade;]

   [*other ground as set forth in California Uniform Commercial Code section 2314(2);***]**

4. **[That [***name of plaintiff***] took reasonable steps to notify [***name of defendant***] within a reasonable time that the [***product***] did not have the expected quality;]**

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

6. **That the failure of the [***product***] to have the expected quality was a substantial factor in causing [***name of plaintiff***]'s harm.**

New September 2003

Directions for Use

This cause of action could also apply to products that are leased. If so, modify the instruction accordingly.

The giving of notice to the seller is not required in personal injury or property damage lawsuits against a manufacturer or another supplier with whom the plaintiff has not directly dealt.

(*Greenman v. Yuba Power Products, Inc.* (1963) 59 Cal.2d 57, 61 [27 Cal.Rptr. 697, 377 P.2d 897]; *Gherna v. Ford Motor Co.* (1966) 246 Cal.App.2d 639, 652-653 [55 Cal.Rptr. 94].)

If an instruction on the giving of notice to the seller is needed, see CACI No. 1243, *Notification/Reasonable Time*.

Sources and Authority

- Implied Warranty of Merchantability. California Uniform Commercial Code section 2314.
- Customary Dealings of Parties. California Uniform Commercial Code section 1303.
- "Merchant" Defined. California Uniform Commercial Code section 2104(1).
- "Goods" Defined. California Uniform Commercial Code section 2105(1).
- ~~"A warranty is a contractual term concerning some aspect of the sale, such as title to the goods, or their quality or quantity." (4 Witkin, Summary of California Law (10th ed. 2005) Sales, § 51.)~~
- "Unlike express warranties, which are basically contractual in nature, the implied warranty of merchantability arises by operation of law. It does not 'impose a general requirement that goods precisely fulfill the expectation of the buyer. Instead, it provides for a minimum level of quality.' " (*American Suzuki Motor Corp. v. Superior Court* (1995) 37 Cal.App.4th 1291, 1295–1296 [44 Cal.Rptr.2d 526], internal citations omitted.)
- "[I]n cases involving personal injuries resulting from defective products, the theory of strict liability in tort has virtually superseded the concept of implied warranties." (*Grinnell v. Charles Pfizer & Co.* (1969) 274 Cal.App.2d 424, 432 [79 Cal.Rptr. 369].)
- "Vertical privity is a prerequisite in California for recovery on a theory of breach of the implied warranties of fitness and merchantability." (*United States Roofing, Inc. v. Credit Alliance Corp.* (1991) 228 Cal.App.3d 1431, 1441 [279 Cal.Rptr. 533], internal citations omitted.)
- ~~Although privity appears to be required for actions based upon the implied warranty of merchantability, there are exceptions to this rule, such as one for members of the purchaser's family.~~ "[Plaintiff] comes within a well-recognized exception to the [privity] rule: he is a member of the purchaser's family." (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 115, fn. 8 [120 Cal.Rptr. 681, 534 P.2d 377].)
- ~~Vertical privity is also waived for employees.~~ "Therefore, says plaintiff, … in view of modern industrial usage employe[e]s should be considered a member of the industrial 'family' of the employer -- whether corporate or private -- and to thus stand in such privity to the manufacturer as to permit the employe[e]s to be covered by warranties made to the purchaser-employer. [¶] We are persuaded that this position is meritorious." (*Peterson v.*

Lamb Rubber Co. (1960) 54 Cal.2d 339, 347 [5 Cal.Rptr. 863, 353 P.2d 575].) ~~A plaintiff satisfies the privity requirement when he or she leases or negotiates the sale or lease of the product. (*United States Roofing, Inc., supra.*)~~

- "A buyer who is damaged by a breach of implied warranty has two possible measures of those damages: one where the buyer has rightfully rejected or 'justifiably revoked acceptance' of the goods, and one where the buyer has accepted the goods." (*Simgel Co., Inc. v. Jaguar Land Rover North America, LLC* (2020) 55 Cal.App.5th 305, 315-316 [269 Cal.Rptr.3d 364].)

Secondary Sources

4 Witkin, Summary of California Law (11th ed. 2017) Sales, § 51

California Products Liability Actions, Ch. 2, *Liability for Defective Products*, §§ 2.31-2.33, Ch. 7, *Proof*, § 7.03 (Matthew Bender)

44 California Forms of Pleading and Practice, Ch. 502, *Sales: Warranties*, §§ 502.24, 502.51, 502.200-502.214 (Matthew Bender)

20 California Points and Authorities, Ch. 206, *Sales,* § 206.63 et seq. (Matthew Bender)

1401. False Arrest Without Warrant by Peace Officer—Essential Factual Elements

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[*Name of plaintiff*] claims that [he/she/*nonbinary pronoun*] was wrongfully arrested by [*name of defendant*]. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of defendant*] arrested [*name of plaintiff*] without a warrant;**

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

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

New September 2003

Directions for Use

Give CACI No. 1402, *False Arrest Without Warrant—Affirmative Defense—Peace Officer—Probable Cause to Arrest*, if applicable, immediately after this instruction.

If plaintiff is seeking nominal damages as an alternative to actual damages, insert the following paragraph above element 2:

> If you find the above, then the law assumes that [*name of plaintiff*] has been harmed and [he/she/*nonbinary pronoun*] is entitled to a nominal sum such as one dollar. [*Name of plaintiff*] is also entitled to additional damages if [he/she/*nonbinary pronoun*] proves the following:

The second sentence of the above paragraph, along with the final two elements of this instruction, should be omitted if plaintiff is seeking nominal damages only. Read "actually" in the second element only if nominal damages are also being sought.

Sources and Authority

- "Arrest" Defined. Penal Code section 834.
- Public Employee Liability for False Arrest. Government Code section 820.4.
- "Peace Officer" Defined. Penal Code section 830 et seq.
- "False arrest and false imprisonment are the same tort. False arrest is a way of committing false imprisonment." (*Cox v. Griffin* (2019) 34 Cal.App.5th 440, 446, fn. 6 [246 Cal.Rptr.3d 185].)
- ~~Government Code section 820.4 provides: "A public employee is not liable for his act or omission, exercising due care, in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment."~~

- A person is liable for false imprisonment if he or she " 'authorizes, encourages, directs, or assists an officer to do an unlawful act, or procures an unlawful arrest, without process, or participates in the unlawful arrest ... .' " (*Du Lac v. Perma Trans Products, Inc.* (1980) 103 Cal.App.3d 937, 941 [163 Cal.Rptr. 335], internal citation omitted.) Where a defendant "knowingly [gives] the police false or materially incomplete information, of a character that could be expected to stimulate an arrest" ... "such conduct can be a basis for imposing liability for false imprisonment." (*Id.* at p. 942.)

- "It has long been the law that a cause of action for false imprisonment is stated where it is alleged that there was an arrest without process, followed by imprisonment and damages. Upon proof of those facts the burden is on the defendant to prove justification for the arrest." (*Cervantez v. J.C. Penney Co.* (1979) 24 Cal.3d 579, 592 [156 Cal.Rptr. 198, 595 P.2d 975].)

- "[T]he elements of the tort of false arrest are: defendant arrested plaintiffs without a warrant, plaintiffs were harmed, and defendant's conduct was a substantial factor in causing the harm." (*Carcamo v. Los Angeles County Sheriff's Dept.* (2021) 68 Cal.App.5th 608, 616 [283 Cal.Rptr.3d 647].)

- ~~Penal Code section 830 and following provisions define who are peace officers in California.~~

- "False imprisonment and malicious prosecution are mutually inconsistent torts and only one, if either, will lie in this case. In a malicious criminal prosecution, the detention was malicious but it was accomplished properly, i.e., by means of a procedurally valid arrest. In contrast, if the plaintiff is arrested pursuant to a procedurally improper warrant or warrantless arrest, the remedy is a cause of action for false imprisonment." (*Cummings v. Fire Ins. Exch.* (1988) 202 Cal.App.3d 1407, 1422 [249 Cal.Rptr. 568].)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 507–513

3 Levy et al., California Torts, Ch. 42, *False Imprisonment and False Arrest*, § 42.23 (Matthew Bender)

22 California Forms of Pleading and Practice, Ch. 257, *False Imprisonment* (Matthew Bender)

California Civil Practice: Torts § 13:20 (Thomson Reuters)

1402. False Arrest Without Warrant—Affirmative Defense—Peace Officer—Probable Cause to Arrest

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[*Name of defendant***] claims the arrest was not wrongful because [he/she/***nonbinary pronoun***] had the authority to arrest [***name of plaintiff***] without a warrant.**

[If [*name of defendant***] proves that [***insert facts that, if proved, would constitute reasonable cause to believe that plaintiff had committed a crime in defendant's presence***], then [***name of defendant***] had the authority to arrest [***name of plaintiff***] without a warrant.]**

[*or***]**

[If [*name of defendant***] proves that [***insert facts that, if proved, would establish that defendant had reasonable cause to believe that plaintiff had committed a felony, whether or not a felony had actually been committed***], then [***name of defendant***] had the authority to arrest [***name of plaintiff***] without a warrant.]**

New September 2003

Directions for Use

In the brackets, the judge must insert the fact or facts that are actually controverted and that may be necessary to arrive at the probable cause determination. There may be one or more facts or combinations of facts that are necessary to make this determination, in which case they can be phrased in the alternative.

If a criminal act is alleged as justification, it may be necessary to instruct whether the crime is a felony, misdemeanor, or public offense.

Penal Code section 836 provides, in part, that a warrantless arrest may be made if a person has committed a felony, although not in the officer's presence. While the requirement of probable cause is not explicitly stated, it would seem that the officer must always have probable cause at the time of the arrest and that subsequent conviction of a felony does not sanitize an improper arrest.

If the first bracketed paragraph is used, the judge should include "in the officer's presence" as part of the facts that the jury needs to find if there is a factual dispute on this point.

Sources and Authority

- Arrest Without a Warrant. Penal Code section 836(a).
- Felonies and Misdemeanors. Penal Code section 17(a).
- "Peace Officers" Defined. Penal Code section 830 et seq.

- "An officer is not liable for false imprisonment for the arrest without a warrant of a person whom he has reasonable grounds to believe is guilty of a crime." (*Allen v. McCoy* (1933) 135 Cal.App. 500, 507–508 [27 P.2d 423].)

- "[P]robable cause for arrest in a criminal proceeding is the same as probable cause in a civil case for damages alleging false arrest." (*Carcamo v. Los Angeles County Sheriff's Dept.* (2021) 68 Cal.App.5th 608, 620–621 [283 Cal.Rptr.3d 647].)

- "It has long been the law that a cause of action for false imprisonment is stated where it is alleged that there was an arrest without process, followed by imprisonment and damages. Upon proof of those facts the burden is on the defendant to prove justification for the arrest. Considerations of both a practical and policy nature underlie this rule. The existence of justification is a matter which ordinarily lies peculiarly within the knowledge of the defendant. The plaintiff would encounter almost insurmountable practical problems in attempting to prove the negative proposition of the nonexistence of any justification. This rule also serves to assure that official intermeddling is justified, for it is a serious matter to accuse someone of committing a crime and to arrest him without the protection of the warrant process." (*Cervantez v. J. C. Penney Co.* (1979) 24 Cal.3d 579, 592 [156 Cal.Rptr. 198, 595 P.2d 975], footnote and internal citations omitted.)

- "We look to whether facts known to the arresting officer 'at the moment the arrest was made' ' "would persuade someone of 'reasonable caution' that the person to be arrested has committed a crime." ' " (*Cornell v. City & County of San Francisco* (2017) 17 Cal.App.5th 766, 779 [225 Cal.Rptr.3d 356], internal citations omitted.)

- "If the facts that gave rise to the arrest are undisputed, the issue of probable cause is a question of law for the trial court. When, however, the facts that gave rise to the arrest are controverted, the trial court must instruct the jury as to what facts, if established, would constitute probable cause. 'The trier of fact's function in false arrest cases is to resolve conflicts in the evidence. Accordingly, where the evidence is conflicting with respect to probable cause, " 'it [is] the duty of the court to instruct the jury as to what facts, if established, would constitute probable cause.' " … The jury then decides whether the evidence supports the necessary factual findings.' " (*Levin v. United Air Lines, Inc.* (2008) 158 Cal.App.4th 1002, 1018–1019 [70 Cal.Rptr.3d 535], internal citations omitted.)

- "The legal standard we apply to assess probable cause is an objective one in which the subjective motivations of the arresting officers have no role. But it is an overstatement to say that what is in the mind of an arresting officer is wholly irrelevant, for the objective test of reasonableness is simply a measure by which we assess whether the circumstances as subjectively perceived by the officer provide a reasonable basis for the seizure." (*Cornell, supra,* 17 Cal.App.5th at p. 779, internal citations omitted.)

- "The arrests of plaintiffs were justified only if defendants can meet their burden to show the arresting officer had probable cause, which is objectively reasonable cause to believe plaintiffs committed a crime. 'California courts speak of "reasonable cause" and "probable cause" interchangeably.' Can a law enforcement agency have objectively reasonable cause to believe plaintiffs committed a crime if deputies arrest them for violating a statute our Supreme Court declared void more than half a century ago? The answer is no." (*Carcamo, supra,* 68 Cal.App.5th at 618.)

- " 'Presence' is not mere physical proximity but is determined by whether the offense is apparent to the officer's senses." (*People v. Sjosten* (1968) 262 Cal.App.2d 539, 543–544 [68 Cal.Rptr. 832], internal citations omitted.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 509, 511

3 Levy et al., California Torts, Ch. 42, *False Imprisonment and False Arrest*, § 42.23 (Matthew Bender)

22 California Forms of Pleading and Practice, Ch. 257, *False Imprisonment*, § 257.20 (Matthew Bender)

10 California Points and Authorities, Ch. 103, *False Imprisonment*, § 103.65 et seq. (Matthew Bender)

California Civil Practice: Torts §§ 13:22–13:24 (Thomson Reuters)

1800. Intrusion Into Private Affairs

[*Name of plaintiff***] claims that [***name of defendant***] violated [his/her/***nonbinary pronoun***] right to privacy. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] had a reasonable expectation of privacy in [***specify place or other circumstance***];**

2. **That [***name of defendant***] intentionally intruded in [***specify place or other circumstance***];**

3. **That [***name of defendant***]'s intrusion would be highly offensive to a reasonable person;**

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

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

In deciding whether [*name of plaintiff***] had a reasonable expectation of privacy in [***specify place or other circumstance***], you should consider, among other factors, the following:**

(a) The identity of [*name of defendant***];**

(b) The extent to which other persons had access to [*specify place or other circumstance***] and could see or hear** [***name of plaintiff***]**; and**

(c) The means by which the intrusion occurred.

In deciding whether an intrusion is highly offensive to a reasonable person, you should consider, among other factors, the following:

(a) The extent of the intrusion;

(b) [***Name of defendant***]**'s motives and goals; and**

(c) The setting in which the intrusion occurred.

New September 2003; Revised June 2010

Directions for Use

If the plaintiff is asserting more than one privacy right, give an introductory instruction stating that a

person's right to privacy can be violated in more than one way and listing the legal theories under which the plaintiff is suing.

Sources and Authority

- "Seventy years after Warren and Brandeis proposed a right to privacy, Dean William L. Prosser analyzed the case law development of the invasion of privacy tort, distilling four distinct kinds of activities violating the privacy protection and giving rise to tort liability: (1) intrusion into private matters; (2) public disclosure of private facts; (3) publicity placing a person in a false light; and (4) misappropriation of a person's name or likeness. … Prosser's classification was adopted by the Restatement Second of Torts in sections 652A-652E. California common law has generally followed Prosser's classification of privacy interests as embodied in the Restatement." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 24 [26 Cal.Rptr.2d 834, 865 P.2d 633].)

- "[The tort of intrusion] ~~"~~encompasses unconsented-to physical intrusion into the home, hospital room or other place the privacy of which is legally recognized, as well as unwarranted sensory intrusions such as eavesdropping, wiretapping, and visual or photographic spying." (*Shulman v. Group W Productions, Inc.* (1998) 18 Cal.4th 200, 230–231 [74 Cal.Rptr.2d 843, 955 P.2d 469], internal citation omitted.)

- ~~The right of privacy was first recognized in California in the case of *Melvin v. Reid* (1931) 112 Cal.App. 285, 291 [297 P. 91]. The court found a legal foundation for the tort in the right to pursue and obtain happiness found in article I, section 1 of the California Constitution.~~

- "The foregoing arguments have been framed throughout this action in terms of both the common law and the state Constitution. These two sources of privacy protection 'are not unrelated' under California law. (*Shulman, supra,* 18 Cal.4th 200, 227; accord, *Hill, supra,* 7 Cal.4th 1, 27; but see *Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300, 313, fn. 13 [127 Cal.Rptr.2d 482, 58 P.3d 339] [suggesting it is an open question whether the state constitutional privacy provision, which is otherwise self-executing and serves as the basis for injunctive relief, can also provide direct and sole support for a damages claim].)" (*Hernandez v. Hillsides, Inc.* (2009) 47 Cal.4th 272, 286 [97 Cal.Rptr.3d 274, 211 P.3d 1063].)

- "[W]e will assess the parties' claims and the undisputed evidence under the rubric of both the common law and constitutional tests for establishing a privacy violation. Borrowing certain shorthand language from *Hill, supra,* 7 Cal.4th 1, which distilled the largely parallel elements of these two causes of action, we consider (1) the nature of any intrusion upon reasonable expectations of privacy, and (2) the offensiveness or seriousness of the intrusion, including any justification and other relevant interests." (*Hernandez, supra,* 47 Cal.4th at p. 288.)

- ~~The element of intrusion~~ "The cause of action … has two elements: (1) intrusion into a private place, conversation or matter, (2) in a manner highly offensive to a reasonable person. The first element … is not met when the plaintiff has merely been observed, or even photographed or recorded, in a public place. Rather, 'the plaintiff must show the defendant penetrated some zone of physical or sensory privacy surrounding, or obtained unwanted access to data about, the plaintiff.' " (*Sanders v. American Broadcasting Co.* (1999) 20 Cal.4th 907, 914–915 [85 Cal.Rptr.2d 909, 978 P.2d 67], internal citations omitted.)

- "As to the first element of the common law tort, the defendant must have 'penetrated some zone of physical or sensory privacy … or obtained unwanted access to data' by electronic or other covert means, in violation of the law or social norms. In either instance, the expectation of privacy must be 'objectively reasonable.' In *Sanders* [*supra,* at p. 907] … , this court linked the reasonableness of privacy expectations to such factors as (1) the identity of the intruder, (2) the extent to which other persons had access to the subject place, and could see or hear the plaintiff, and (3) the means by which the intrusion occurred." (*Hernandez, supra,* 47 Cal.4th at pp. 286–287.)

- ~~The plaintiff does not have to prove that he or she had a "complete expectation of privacy":~~ "Privacy for purposes of the intrusion tort must be evaluated with respect to the identity of the alleged intruder and the nature of the intrusion." (*Sanders, supra,* 20 Cal.4th at pp. 917–918.)

- "The second common law element essentially involves a 'policy' determination as to whether the alleged intrusion is 'highly offensive' under the particular circumstances. Relevant factors include the degree and setting of the intrusion, and the intruder's motives and objectives. Even in cases involving the use of photographic and electronic recording devices, which can raise difficult questions about covert surveillance, 'California tort law provides no bright line on ["offensiveness"]; each case must be taken on its facts.' " (*Hernandez, supra,* 47 Cal.~~4~~4th at p. 287, internal citations omitted.)

- "While what is 'highly offensive to a reasonable person' suggests a standard upon which a jury would properly be instructed, there is a preliminary determination of 'offensiveness' which must be made by the court in discerning the existence of a cause of action for intrusion. ... A court determining the existence of 'offensiveness' would consider the degree of intrusion, the context, conduct and circumstances surrounding the intrusion as well as the intruder's motives and objectives, the setting into which he intrudes, and the expectations of those whose privacy is invaded." (*Miller v. National Broadcasting Co.* (1986) 187 Cal.App.3d 1463, 1483–1484 [232 Cal.Rptr. 668].)

- "Plaintiffs must show more than an intrusion upon reasonable privacy expectations. Actionable invasions of privacy also must be 'highly offensive' to a reasonable person, and 'sufficiently serious' and unwarranted as to constitute an 'egregious breach of the social norms.' " (*Hernandez, supra,* 47 Cal.4th at p. 295, internal citation omitted.)

- " 'T]he extent and gravity of the invasion is an indispensable consideration in assessing an alleged invasion of privacy.' The impact on the plaintiff's privacy rights must be more than 'slight or trivial.' " (*Mezger v. Bick* (2021) 66 Cal.App.5th 76, 87 [280 Cal.Rptr.3d 720], internal citations omitted.)

- "[L]iability under the intrusion tort requires that the invasion be highly offensive to a reasonable person, considering, among other factors, the motive of the alleged intruder." (*Sanders, supra,* 20 Cal.4th at p. 911, internal citations omitted.)

- "[T]he ~~D~~damages flowing from an invasion of privacy "logically would include an award for mental suffering and anguish." (*Miller, supra,* 187 Cal.App.3d at p. 1484, citing *Fairfield v. American Photocopy Equipment Co.* (1955) 138 Cal.App.2d 82 [291 P.2d 194].)

- ~~Related statutory actions can be brought for stalking (Civ. Code, § 1708.7), invasion of privacy to~~

~~capture physical impression (Civ. Code, § 1708.8), and eavesdropping and wiretapping (Pen. Code, § 637.2). Civil Code section 1708.8 was enacted in 1998 as an anti-paparazzi measure. To date there are no reported cases based on this statute.~~

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 756, 757, 762–765

6 Witkin, Summary of California Law (11th ed. 2017) Torts, § 1887

4 Levy et al., California Torts, Ch. 46, *Invasion of Privacy*, § 46.02 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 429, *Privacy,* § 429.16 (Matthew Bender)

18 California Points and Authorities, Ch. 183, *Privacy: State Constitutional Rights*, § 183.30 (Matthew Bender)

California Civil Practice: Torts § 20:8 (Thomson Reuters)

2500. Disparate Treatment—Essential Factual Elements (Gov. Code, § 12940(a))

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

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

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

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

   [or]

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

   [or]

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

4. **That [***name of plaintiff***]'s [***protected status--for example, race, gender, or age***] was a substantial motivating reason for [***name of defendant***]'s [decision to [discharge/refuse to hire/[***other adverse employment action***]] [***name of plaintiff***]/conduct];**

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 April 2009, June 2011, June 2012, June 2013, May 2020

Directions for Use

This instruction is intended for use when a plaintiff alleges disparate treatment discrimination under the FEHA against an employer or other covered entity. Disparate treatment occurs when an employer treats an individual less favorably than others because of the individual's protected status. In contrast, disparate impact (the other general theory of discrimination) occurs when an employer has an employment practice that appears neutral but has an adverse impact on members of a protected group. For disparate impact claims, see CACI No. 2502, *Disparate Impact—Essential Factual Elements*.

If element 1 is given, the court may need to instruct the jury on the statutory definition of "employer"

under the FEHA. Other covered entities under the FEHA include labor organizations, employment agencies, and apprenticeship training programs. (See Gov. Code, § 12940(a)–(d).)

Read the first option for element 3 if there is no dispute as to whether the employer's acts constituted an adverse employment action. Read the second option and also give CACI No. 2509, *"Adverse Employment Action" Explained,* if whether there was an adverse employment action is a question of fact for the jury. If constructive discharge is alleged, give the third option for element 3 and also give CACI No. 2510, *"Constructive Discharge" Explained*. Select "conduct" in element 4 if either the second or third option is included for element 3.

Note that there are two causation elements. There must be a causal link between the discriminatory animus and the adverse action (see element 4), and there must be a causal link between the adverse action and the damage (see element 6). (See *Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 713 [81 Cal.Rptr.3d 406].)

Element 4 requires that discrimination based on a protected classification be a substantial motivating reason for the adverse action. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; see also CACI No. 2507, *"Substantial Motivating Reason" Explained*.) Modify element 4 if plaintiff was not actually a member of the protected class, but alleges discrimination 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).)

For damages instructions, see applicable instructions on tort damages.

Sources and Authority

- Discrimination Prohibited Under Fair Employment and Housing Act. Government Code section 12940(a).

- Perception and Association. Government Code section 12926(o).

- "Race" and "Protective Hairstyles." Government Code section 12926(w), (x).

- "[C]onceptually the theory of '[disparate] treatment' ... is the most easily understood type of discrimination. The employer simply treats some people less favorably than others because of their race, color, religion, sex or national origin." (*Mixon v. Fair Employment and Housing Com.* (1987) 192 Cal.App.3d 1306, 1317 [237 Cal.Rptr. 884], quoting *Teamsters v. United States* (1977) 431 U.S. 324, 335–336, fn. 15 [97 S.Ct. 1843, 52 L.Ed.2d 396].)

- "California has adopted the three-stage burden-shifting test for discrimination claims set forth in *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792 [93 S.Ct. 1817, 36 L.Ed. 2d 668]. 'This so-called *McDonnell Douglas* test reflects the principle that direct evidence of intentional discrimination is rare, and that such claims must usually be proved circumstantially. Thus, by successive steps of increasingly narrow focus, the test allows discrimination to be inferred from facts that create a reasonable likelihood of bias and are not satisfactorily explained.' " (*Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 307 [115 Cal.Rptr.3d 453], internal citations omitted.)

- "The *McDonnell Douglas* framework was designed as 'an analytical tool for use by the trial judge in applying the law, not a concept to be understood and applied by the jury in the factfinding process.' " (*Abed v. Western Dental Services, Inc.* (2018) 23 Cal.App.5th 726, 737 [233 Cal.Rptr.3d 242].)

- "At trial, the *McDonnell Douglas* test places on the plaintiff the initial burden to establish a prima facie case of discrimination. This step is designed to eliminate at the outset the most patently meritless claims, as where the plaintiff is not a member of the protected class or was clearly unqualified, or where the job he sought was withdrawn and never filled. While the plaintiff's prima facie burden is 'not onerous', he must at least show ' "actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were 'based on a [prohibited] discriminatory criterion . . . .' …." …' " (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 354–355 [100 Cal.Rptr.2d 352, 8 P.3d 1089], internal citations omitted.)

- "If, at trial, the plaintiff establishes a prima facie case, a presumption of discrimination arises. This presumption, though 'rebuttable,' is 'legally mandatory.' Thus, in a trial, '[i]f the trier of fact believes the plaintiff's evidence, and if the employer is silent in the face of the presumption, the court must enter judgment for the plaintiff because no issue of fact remains in the case.' [¶] Accordingly, at this trial stage, the burden shifts to the employer to rebut the presumption by producing admissible evidence, sufficient to 'raise[] a genuine issue of fact' and to 'justify a judgment for the [employer],' that its action was taken for a legitimate, nondiscriminatory reason. [¶] If the employer sustains this burden, the presumption of discrimination disappears. The plaintiff must then have the opportunity to attack the employer's proffered reasons as pretexts for discrimination, or to offer any other evidence of discriminatory motive. In an appropriate case, evidence of dishonest reasons, considered together with the elements of the prima facie case, may permit a finding of prohibited bias. The ultimate burden of persuasion on the issue of actual discrimination remains with the plaintiff." *(Guz, supra,* 24 Cal.4th at pp. 355–356, internal citations omitted.)

- "The trial court decides the first two stages of the *McDonnell Douglas* test as questions of law. If the plaintiff and defendant satisfy their respective burdens, the presumption of discrimination disappears and the question whether the defendant unlawfully discriminated against the plaintiff is submitted to the jury to decide whether it believes the defendant's or the plaintiff's explanation." (*Swanson v. Morongo Unified School Dist*. (2014) 232 Cal.App.4th 954, 965 [181 Cal.Rptr.3d 553].)

- "To succeed on a disparate treatment claim at trial, the plaintiff has the initial burden of establishing a prima facie case of discrimination, to wit, a set of circumstances that, if unexplained, permit an inference that it is more likely than not the employer intentionally treated the employee less favorably than others on prohibited grounds. Based on the inherent difficulties of showing intentional discrimination, courts have generally adopted a multifactor test to determine if a plaintiff was subject to disparate treatment. The plaintiff must generally show that: he or she was a member of a protected class; was qualified for the position he sought; suffered an adverse employment action, and there were circumstances suggesting that the employer acted with a discriminatory motive. [¶] On a defense motion for summary judgment against a disparate treatment claim, the defendant must show either that one of these elements cannot be established or that there were one or more legitimate, nondiscriminatory reasons underlying the adverse employment action." (*Jones v. Department of Corrections* (2007) 152 Cal.App.4th 1367, 1379 [62 Cal.Rptr.3d 200], internal citations omitted.)

- "Although '[t]he specific elements of a prima facie case may vary depending on the particular facts,' the plaintiff in a failure-to-hire case '[g]enerally … must provide evidence that (1) he [or she] was a member of a protected class, (2) he [or she] was qualified for the position he [or she] sought … , (3) he [or she] suffered an adverse employment action, such as … denial of an available job, and (4) some other circumstance suggests discriminatory motive,' such as that the position remained open and the employer continued to solicit applications for it." (*Abed, supra,* 23 Cal.App.5th at p. 736.)

- "Although we recognize that in most cases, a plaintiff who did not apply for a position will be unable to prove a claim of discriminatory failure to hire, a job application is not an *element* of the claim." (*Abed, supra,* 23 Cal.App.5th at p. 740, original italics.)

- "Employers who lie about the existence of open positions are not immune from liability under the FEHA simply because they are effective in keeping protected persons from applying." (*Abed, supra,* 23 Cal.App.5th at p. 741.)

- "[Defendant] still could shift the burden to [plaintiff] by presenting admissible evidence showing a legitimate, nondiscriminatory reason for terminating her. 'It is the employer's honest belief in the stated reasons for firing an employee and not the objective truth or falsity of the underlying facts that is at issue in a discrimination case.' … '[I]f nondiscriminatory, [the employer's] true reasons need not necessarily have been wise or correct. … While the objective soundness of an employer's proffered reasons supports their credibility … , the ultimate issue is simply whether the employer acted with *a motive to discriminate illegally*. Thus, "legitimate" reasons … in this context are reasons that are *facially unrelated to prohibited bias,* and which, if true, would thus preclude a finding *of discrimination*. …' " (*Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 170–171 [125 Cal.Rptr.3d 1], original italics, internal citations omitted.)

- "The burden therefore shifted to [plaintiff] to present evidence showing the [defendant] engaged in intentional discrimination. To meet her burden, [plaintiff] had to present evidence showing (1) the [defendant]'s stated reason for not renewing her contract was untrue or pretextual; (2) the [defendant] acted with a discriminatory animus in not renewing her contract; or (3) a combination of the two." (*Swanson, supra,* 232 Cal.App.4th at p. 966.)

- "Evidence that an employer's proffered reasons were pretextual does not necessarily establish that the employer intentionally discriminated: ' " '[I]t is not enough … to disbelieve the employer; the factfinder must believe the plaintiff's explanation of intentional discrimination.' " ' However, evidence of pretext is important: ' "[A] plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." ' " (*Diego v. City of Los Angeles* (2017) 15 Cal.App.5th 338, 350–351 [223 Cal.Rptr.3d 173], internal citations omitted.)

- "While a complainant need not prove that [discriminatory] animus was the sole motivation behind a challenged action, he must prove by a preponderance of the evidence that there was a 'causal connection' between the employee's protected status and the adverse employment decision." (*Mixon, supra,* 192 Cal.App.3d at p. 1319.)

- "Requiring the plaintiff to show that discrimination was a *substantial* motivating factor, rather than simply *a* motivating factor, more effectively ensures that liability will not be imposed based on evidence of mere thoughts or passing statements unrelated to the disputed employment decision. At the same time, … proof that discrimination was a *substantial* factor in an employment decision triggers the deterrent purpose of the FEHA and thus exposes the employer to liability, even if other factors would have led the employer to make the same decision at the time." (*Harris, supra,* 56 Cal.4th at p. 232, original italics.)

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

- "In cases involving a comparison of the plaintiff's qualifications and those of the successful candidate, we must assume that a reasonable juror who might disagree with the employer's decision, but would find the question close, would not usually infer discrimination on the basis of a comparison of qualifications alone. In a close case, a reasonable juror would usually assume that the employer is more capable of assessing the significance of small differences in the qualifications of the candidates, or that the employer simply made a judgment call. [Citation.] But this does not mean that a reasonable juror would in every case defer to the employer's assessment. If that were so, no job discrimination case could ever go to trial. If a factfinder can conclude that a reasonable employer would have found the plaintiff to be *significantly better* qualified for the job, but this employer did not, the factfinder can legitimately infer that the employer consciously selected a less-qualified candidate—something that employers do not usually do, unless some other strong consideration, such as discrimination, enters into the picture." (*Reeves v. MV Transportation, Inc.* (2010) 186 Cal.App.4th 666, 674–675 [111 Cal.Rptr.3d 896], original italics.)

- "While not all cases hold that 'the disparity in candidates' qualifications "must be so apparent as to jump off the page and slap us in the face to support a finding of pretext" ' the precedents do consistently require that the disparity be substantial to support an inference of discrimination." (*Reeves, supra,* 186 Cal.App.4th at p. 675, internal citation omitted.)

- "In no way did the Court of Appeal in *Reeves* overturn the long-standing rule that comparator evidence is relevant and admissible where the plaintiff and the comparator are similarly situated in all relevant respects and the comparator is treated more favorably. Rather, it held that in a job hiring case, and in the context of a summary judgment motion, a plaintiff's weak comparator evidence 'alone' is insufficient to show pretext." (*Gupta v. Trustees of California State University* (2019) 40 Cal.App.5th 510, 521 [253 Cal.Rptr.3d 277].)

- "[Defendant] contends that a trial court must assess the relative strength and nature of the evidence presented on summary judgment in determining if the plaintiff has 'created only a weak issue of fact.' However, [defendant] overlooks that a review of all of the evidence is essential to that assessment. The stray remarks doctrine, as advocated by [defendant], goes further. It allows a court to weigh and assess the remarks in isolation, and to disregard the potentially damaging nature of discriminatory remarks simply because they are made by 'nondecisionmakers, or [made] by decisionmakers unrelated to the decisional process.' [Defendant] also argues that ambiguous remarks are stray,

irrelevant, prejudicial, and inadmissible. However, 'the task of disambiguating ambiguous utterances is for trial, not for summary judgment.' Determining the weight of discriminatory or ambiguous remarks is a role reserved for the jury. The stray remarks doctrine allows the trial court to remove this role from the jury." (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 540–541 [113 Cal.Rptr.3d 327, 235 P.3d 988], internal citations omitted; see ~~also~~ Gov. Code, § 12923(c) [Legislature affirms the decision in *Reid v. Google, Inc.* in its rejection of the "stray remarks doctrine"].)

- "[D]iscriminatory remarks can be relevant in determining whether intentional discrimination occurred: 'Although stray remarks may not have strong probative value when viewed in isolation, they may corroborate direct evidence of discrimination or gain significance in conjunction with other circumstantial evidence. Certainly, who made the comments, when they were made in relation to the adverse employment decision, and in what context they were made are all factors that should be considered." (*Husman v. Toyota Motor Credit Corp.* (2017) 12 Cal.App.5th 1168, 1190–1191 [220 Cal.Rptr.3d 42].)

- "Discrimination on the basis of an employee's foreign accent is a sufficient basis for finding national origin discrimination." (*Galvan v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 549, 562 [250 Cal.Rptr.3d 16].)

- "Because of the similarity between state and federal employment discrimination laws, California courts look to pertinent federal precedent when applying our own statutes." (*Guz, supra,* 24 Cal.4th at p. 354.)

- "We have held 'that, in a civil action under the FEHA, all relief generally available in noncontractual actions ... may be obtained.' This includes injunctive relief." (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132 [87 Cal.Rptr.2d 132, 980 P.2d 846], internal citations omitted.)

- "The FEHA does not itself authorize punitive damages. It is, however, settled that California's punitive damages statute, Civil Code section 3294, applies to actions brought under the FEHA ... ." (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1147–1148 [74 Cal.Rptr.2d 510], internal citations omitted.)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1143–1147

Chin et al., California Practice Guide: Employment Litigation, Ch. 7-A, *Title VII And The California Fair Employment And Housing Act*, ¶¶ 7:194, 7:200–7:201, 7:356, 7:391–7:392 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, §§ 2.44–2.82

3 Wilcox, California Employment Law, Ch. 43, *Civil Actions Under Equal Employment Opportunity Laws*, § 43.01 (Matthew Bender)

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

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

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.**

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(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 Unemp~~loyment~~ 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).)

Sources and Authority

- California Family Rights Act. Government Code section 12945.2.
- "Employer" Defined. Government Code section 12945.2(b)(3).
- "Parent" Defined. Government Code section 12945.2(b)(10) (Assem. Bill 1033; Stats. 2021, ch. 327) [adding parent-in-law to the definition of parent].
- "Serious Health Condition" Defined. Government Code section 12945.2(b)(12).
- "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)

3053. Retaliation for Exercise of Free Speech Rights—Public Employee—Essential Factual Elements (42 U.S.C. § 1983)

[*Name of plaintiff***] claims that [***name of defendant***] retaliated against [him/her/***nonbinary pronoun***] because [he/she/***nonbinary pronoun***] exercised [his/her/***nonbinary pronoun***] right to speak as a private citizen about a matter of public concern. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **[That [***name of plaintiff***] was speaking as a private citizen and not as a public employee when [he/she/***nonbinary pronoun***] [***describe speech alleged to be protected by the First Amendment, e.g., criticized the mayor at a city council meeting***];]**

2. **That [***name of defendant***] [***specify retaliatory acts, e.g., terminated plaintiff's employment***];**

3. **That [***name of plaintiff***]'s [***e.g., speech to the city council***] was a substantial motivating reason for [***name of defendant***]'s decision to [***e.g., terminate plaintiff's employment***];**

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

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

If [*name of plaintiff***] proves all of the above, [***name of defendant***] is not liable if [he/she/***nonbinary pronoun***/it] proves either of the following:**

6. **That [***name of defendant***] had an adequate employment-based justification for treating [***name of plaintiff***] differently from any other member of the general public; or**

7. **That [***name of defendant***] would have [***specify adverse action, e.g., terminated plaintiff's employment***] anyway for other legitimate reasons, even if [he/she/***nonbinary pronoun***/it] also retaliated based on [***name of plaintiff***]'s protected conduct.**

In deciding whether [*name of plaintiff***] was speaking as a public citizen or a public employee (element 1), you should consider whether [his/her/***nonbinary pronoun***] [***e.g., speech***] was within [his/her/***nonbinary pronoun***] job responsibilities. [However, the listing of a given task in an employee's written job description is neither necessary nor sufficient alone to demonstrate that conducting the task is part of the employee's professional duties.]**

New November 2017; Revised May 2020

Directions for Use

This instruction is for use in a claim by public employees who allege that they suffered an adverse employment action in retaliation for their private speech on an issue of public concern. Speech made by

public employees in their official capacity is not insulated from employer discipline by the First Amendment but speech made in one's private capacity as a citizen is. (*Garcetti v. Ceballos* (2006) 547 U.S. 410, 421 [126 S.Ct. 1951, 164 L.Ed.2d 689].) For a claim by a private citizen who alleges retaliation, see CACI No. 3050, *Retaliation—Essential Factual Elements*.

Element 1, whether the employee was speaking as a private citizen or as a public employee, and element 6, whether the public employer had an adequate justification for the adverse action, are ultimately determined as a matter of law, but may involve disputed facts. (*Eng v. Cooley* (9th Cir. 2009) 552 F.3d 1062, 1071.) If there are no disputed facts, these elements should not be given. They may be modified to express the particular factual issues that the jury must resolve.

Give the bracketed optional sentence in the last paragraph if the defendant has placed the plaintiff's formal written job description in evidence. (See *Garcetti, supra,* 547 U.S. at p. 424.)

Note that there are two causation elements. The protected speech must have caused the employer's adverse action (element 3), and the adverse action must have caused the employee harm (element 5). This second causation element will rarely be disputed in a termination case. For optional language if the employer claims that there was no adverse action, see CACI No. 2505, *Retaliation—Essential Factual Elements* (under California's Fair Employment and Housing Act). See also CACI No. 2509, *"Adverse Employment Action" Explained* (under FEHA).

Sources and Authority

- " '[C]itizens do not surrender their First Amendment rights by accepting public employment.' Moreover, '[t]here is considerable value . . . in encouraging, rather than inhibiting, speech by public employees,' because 'government employees are often in the best position to know what ails the agencies for which they work.' At the same time, '[g]overnment employers, like private employers, need a significant degree of control over their employees' words and actions.' Accordingly, government employees may be subject to some restraints on their speech 'that would be unconstitutional if applied to the general public.' " (*Moonin v. Tice* (9th Cir. 2017) 868 F.3d 853, 860-861, internal citations omitted.)

- "First Amendment retaliation claims are governed by the framework in *Eng.* See 552 F.3d at 1070-72. [Plaintiff] must show that (1) he spoke on a matter of public concern, (2) he spoke as a private citizen rather than a public employee, and (3) the relevant speech was a substantial or motivating factor in the adverse employment action. Upon that showing, the State must demonstrate that (4) it had an adequate justification for treating [plaintiff] differently from other members of the general public, or (5) it would have taken the adverse employment action even absent the protected speech. '[A]ll the factors are necessary, in the sense that failure to meet any one of them is fatal to the plaintiff's case.' " (*Kennedy v. Bremerton Sch. Dist.* (9th Cir. 2017) 869 F.3d 813, 822, internal citations omitted.)

- "In a First Amendment retaliation case, an adverse employment action is an act that is reasonably likely to deter employees from engaging in constitutionally protected speech." (*Greisen v. Hanken* (9th Cir. 2019) 925 F.3d 1097, 1113.)

- "*Pickering* [*v. Bd. of Educ.* (1968) 391 U.S. 563 [88 S.Ct. 1731, 20 L.Ed.2d 811]] and the cases decided in its wake identify two inquiries to guide interpretation of the constitutional protections accorded to public employee speech. The first requires determining whether the employee spoke as a citizen on a matter of public concern. If the answer is no, the employee has no First Amendment cause of action based on his or her employer's reaction to the speech. If the answer is yes, then the possibility of a First Amendment claim arises. The question becomes whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public. This consideration reflects the importance of the relationship between the speaker's expressions and employment. A government entity has broader discretion to restrict speech when it acts in its role as employer, but the restrictions it imposes must be directed at speech that has some potential to affect the entity's operations." (*Garcetti, supra,* 547 U.S. at p. 418, internal citations omitted.)

- "In the forty years since *Pickering,* First Amendment retaliation law has evolved dramatically, if sometimes inconsistently. Unraveling *Pickering*'s tangled history reveals a sequential five-step series of questions: (1) whether the plaintiff spoke on a matter of public concern; (2) whether the plaintiff spoke as a private citizen or public employee; (3) whether the plaintiff's protected speech was a substantial or motivating factor in the adverse employment action; (4) whether the state had an adequate justification for treating the employee differently from other members of the general public; and (5) whether the state would have taken the adverse employment action even absent the protected speech. Analysis of these questions, further complicated by restraints on our interlocutory appellate jurisdiction, involves a complex array of factual and legal inquiries requiring detailed explanation." (*Eng, supra,* 552 F.3d at p. 1070.)

- "Whether speech is on a matter of public concern is a question of law, determined by the court…. The speech need not be entirely about matters of public concern, but it must 'substantially involve' such matters. '[S]peech warrants protection when it "seek[s] to bring to light actual or potential wrongdoing or breach of public trust." ' " (*Greisen, supra,* 925 F.3d at p. 1109.)

- "Public employees' expression is on a matter of public concern if it 'relat[es] to any matter of political, social, or other concern to the community,' and not 'upon matters *only* of personal interest.' Some subjects *both* affect a public employee's personal interests *and* implicate matters of public concern. *Rendish* [*v. City of Tacoma* (9th Cir. 1997) 123 F.3d 1216, 1223] held that unlawful discrimination is such a matter, recognizing that 'the public has an interest in unlawful discrimination' in City government, and that employee speech about such discrimination therefore involves matters of public concern even if it arises out of a personal dispute. [¶ . . . ¶] This rule applies to both administrative and judicial proceedings seeking to 'bring to light potential or actual discrimination' by government officials, and controls even when the plaintiff seeks only private relief for the vindication of her own rights. This precedent clearly establishes that speech by public employees about unlawful discrimination in the workplace is inherently speech on a matter of public concern." (*Ballou v. McElvain* (9th Cir. 2022), -- F.4th --, --, original italics, internal citations and footnotes 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, internal citation omitted.)

- "Whether an individual speaks as a public employee is a mixed question of fact and law. 'First, a factual determination must be made as to the "scope and content of a plaintiff's job responsibilities." ' 'Second, the "ultimate constitutional significance" of those facts must be determined as a matter of law.' " (*Barone v. City of Springfield* (9th Cir. 2018) 902 F.3d 1091, 1099, internal citations omitted.)

- "An employee does not speak as a citizen merely because the employee directs speech towards the public, or speaks in the presence of the public, particularly when an employee's job duties include interacting with the public." (*Barone, supra,* 902 F.3d at p. 1100.)

- "[T]he parties in this case do not dispute that [plaintiff] wrote his disposition memo pursuant to his employment duties. We thus have no occasion to articulate a comprehensive framework for defining the scope of an employee's duties in cases where there is room for serious debate. We reject, however, the suggestion that employers can restrict employees' rights by creating excessively broad job descriptions. The proper inquiry is a practical one. Formal job descriptions often bear little resemblance to the duties an employee actually is expected to perform, and the listing of a given task in an employee's written job description is neither necessary nor sufficient to demonstrate that conducting the task is within the scope of the employee's professional duties for First Amendment purposes." (*Garcetti, supra,* 547 U.S. at p. 424.)

- "To show that retaliation was a substantial or motivating factor behind an adverse employment action, a plaintiff can (1) introduce evidence that the speech and adverse action were proximate in time, such that a jury could infer that the action took place in retaliation for the speech; (2) introduce evidence that the employer expressed opposition to the speech; or (3) introduce evidence that the proffered explanations for the adverse action were false and pretextual." (*Anthoine v. N. Cent. Counties Consortium* (9th Cir. 2010) 605 F.3d 740, 750.)

- "[I]n synthesizing relevant Ninth Circuit precedent since *Garcetti*, an en banc panel of this Court in *Dahlia v. Rodriguez,* 735 F.3d 1060, 1074–76 (9th Cir. 2013), announced three guiding principles for undertaking the practical factual inquiry of whether an employee's speech is insulated from employer discipline under the First Amendment. … The guiding principles are: [¶] 1. 'First, particularly in a highly hierarchical employment setting such as law enforcement, whether or not the employee confined his communications to his chain of command is a relevant, if not necessarily dispositive, factor in determining whether he spoke pursuant to his official duties. When a public employee communicates with individuals or entities outside of his chain of command, it is unlikely that he is speaking pursuant to his duties.' [¶] 2. 'Second, the subject matter of the communication is also of course highly relevant to the ultimate determination whether the speech is protected by the First Amendment … When an employee prepares a routine report, pursuant to normal departmental procedure, about a particular incident or occurrence, the employee's preparation of that report is typically within his job duties. . . By contrast, if a public employee raises within the department broad concerns about corruption or systemic abuse, it is

unlikely that such complaints can reasonably be classified as being within the job duties of an average public employee, except when the employee's regular job duties involve investigating such conduct.' [¶] 3. 'Third, we conclude that when a public employee speaks in direct contravention to his supervisor's orders, that speech may often fall outside of the speaker's professional duties. Indeed, the fact that an employee is threatened or harassed by his superiors for engaging in a particular type of speech provides strong evidence that the act of speech was not, as a 'practical' matter, within the employee's job duties notwithstanding any suggestions to the contrary in the employee's formal job description.' " (*Brandon v. Maricopa County* (9th Cir. 2017) 849 F.3d 837, 843–844, internal citations omitted.)

- "Initially, in this case, the burden was properly placed upon respondent to show that his conduct was constitutionally protected, and that this conduct was a 'substantial factor' - or, to put it in other words, that it was a 'motivating factor' in the [defendant]'s decision not to rehire him. Respondent having carried that burden, however, the District Court should have gone on to determine whether the [defendant] had shown by a preponderance of the evidence that it would have reached the same decision as to respondent's re-employment even in the absence of the protected conduct." (*Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle* (1977) 429 U.S. 274, 287 [97 S.Ct. 568, 50 L.Ed.2d 471].)

- "Although the *Pickering* balancing inquiry is ultimately a legal question, like the private citizen inquiry, its resolution often entails underlying factual disputes. Thus we must once again assume any underlying disputes will be resolved in favor of the plaintiff to determine, as a matter of law, whether the state has 'adequate justification' to restrict the employee's speech. If the allegations, viewed in light most favorable to the plaintiff, indicate adequate justification, qualified immunity should be granted." (*Eng, supra,* 552 F.3d at pp. 1071–1072, internal citations omitted.)

- "Although the *Pickering* framework is most often applied in the retaliation context, a similar analysis is used when assessing prospective restrictions on government employee speech. Where a 'wholesale deterrent to a broad category of expression' rather than 'a post hoc analysis of one employee's speech and its impact on that employee's public responsibilities' is at issue, the Court weighs the impact of the ban as a whole—both on the employees whose speech may be curtailed and on the public interested in what they might say—against the restricted speech's ' "necessary impact on the actual operation" of the Government,' '[U]nlike an adverse action taken in response to actual speech,' a prospective restriction 'chills potential speech before it happens.' The government therefore must shoulder a heavier burden when it seeks to justify an ex ante speech restriction as opposed to 'an isolated disciplinary action.' " (*Moonin, supra,* 868 F.3d at p. 861, internal citations omitted.)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, § 563

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law §§ 894, 895

1 Civil Rights Actions, Ch. 2, *Governmental Liability and Immunity*, ¶ 2.03 (Matthew Bender)

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.)

- "Under *Mt. Healthy*, once a petitioner has made a showing of a First Amendment retaliation claim, 'the burden shifts to the government to show that it "would have taken the same action even in the absence of the protected conduct." ' The Government 'must show more than that they "*could* have" punished the plaintiffs in the absence of the protected speech; instead, "the burden is on the defendants to show" through evidence that they "*would* have" punished the plaintiffs under those circumstances.' " (*Bello-Reyes v. Gaynor* (9th Cir. 2021) 985 F.3d 696, 702, original italics,

internal citations omitted.)

Secondary Sources

4 Witkin & Epstein, California Criminal Law (4th ed. 2020) Pretrial, § 367

5 Witkin, Summary of California Law (11th ed. 2017) Torts, § 511

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)

3963. Affirmative Defense—Employee's Duty to Mitigate Damages

[*Name of defendant***] claims that if [***name of plaintiff***] is entitled to any damages, they should be reduced by the amount that [***name of plaintiff***] could have earned from other employment. To succeed, [***name of defendant***] must prove all of the following:**

1. **That employment substantially similar to [***name of plaintiff***]'s former job was available to [him/her/***nonbinary pronoun***];**

2. **That [***name of plaintiff***] failed to make reasonable efforts to seek [and retain] this employment; and**

3. **The amount that [***name of plaintiff***] could have earned from this employment.**

In deciding whether the employment was substantially similar, you should consider, among other factors, whether:

(a) The nature of the work was different from [*name of plaintiff***]'s employment with [***name of defendant***];**

(b) The new position was substantially inferior to [*name of plaintiff***]'s former position;**

(c) The salary, benefits, and hours of the job were similar to [*name of plaintiff***]'s former job;**

(d) The new position required similar skills, background, and experience;

(e) The job responsibilities were similar; [and]

(f) The job was in the same locality; [and]

(g) [*insert other relevant factor(s)***].**

[In deciding whether [*name of plaintiff***] failed to make reasonable efforts to retain comparable employment, you should consider whether [***name of plaintiff***] quit or was discharged from that employment for a reason within [his/her/***nonbinary pronoun***] control.]**

New September 2003; Revised February 2007, December 2014; Revised and Renumbered from CACI No. 2407 November 2018

Directions for Use

This instruction may be given for any claim in which the plaintiff seeks to recover damages for past and future lost earnings from an employer for a wrongful termination of employment, for example in violation of public policy (see CACI No. 2400 et seq.) or under the Fair Employment and Housing Act (see CACI No. 2500 et seq.), when there is evidence that the employee's damages could have been mitigated. The bracketed language at the end of the instruction regarding plaintiff's failure to retain a new job is based on the holding in *Stanchfield v. Hamer Toyota, Inc.* (1995) 37 Cal.App.4th 1495, 1502-1503 [44 Cal.Rptr.2d 565].

In deciding whether the plaintiff could have obtained a substantially similar job, the trier of fact may consider several factors, including salary, benefits, hours of work per day, hours of work per year, locality, and availability of a merit-based system. (See *California School Employees Assn. v. Personnel Commission* (1973) 30 Cal.App.3d 241, 250-255 [106 Cal.Rptr. 283].) Read only those factors that have been shown by the evidence.

Sources and Authority

- "The general rule is that the measure of recovery by a wrongfully discharged employee is the amount of salary agreed upon for the period of service, less the amount which the employer affirmatively proves the employee has earned or with reasonable effort might have earned from other employment. However, before projected earnings from other employment opportunities not sought or accepted by the discharged employee can be applied in mitigation, the employer must show that the other employment was comparable, or substantially similar, to that of which the employee has been deprived; the employee's rejection of or failure to seek other available employment of a different or inferior kind may not be resorted to in order to mitigate damages." (*Parker v. Twentieth Century-Fox Film Corp.* (1970) 3 Cal.3d 176, 181-182 [89 Cal.Rptr. 737, 474 P.2d 689], internal citations omitted; see ~~also~~ *Rabago-Alvarez v. Dart Industries, Inc.* (1976) 55 Cal.App.3d 91, 98 [127 Cal.Rptr. 222] ["Plaintiff concedes that the trial court was entitled to deduct her actual earnings"]; but see *Villacorta v. Cemex Cement, Inc.* (2013) 221 Cal.App.4th 1425, 1432 [165 Cal.Rptr.3d 441] [wages actually earned from an inferior job may not be used to mitigate damages].)

- "We respectfully disagree with *Villacorta*[, *supra,* 221 Cal.App.4th 1425]. Neither *Parker* nor *Rabago-Alvarez* supports *Villacorta*'s holding that earned wages from an inferior job do not mitigate economic damages for wrongful termination." (*Martinez v. Rite Aid Corp.* (2021) 63 Cal.App.5th 958, 974–975 [278 Cal.Rptr.3d 310].)

- "[B]efore projected earnings from other employment opportunities not sought or accepted by the discharged employee can be applied in mitigation, the employer must show that the other employment was comparable, or substantially similar, to that of which the employee has been deprived … ." (*Kao v. University of San Francisco* (2014) 229 Cal.App.4th 437, 454 [177 Cal.Rptr.3d 145].)

- "[W]e conclude that the trial court should not have deducted from plaintiff's recovery against defendant the amount that the court found she might have earned in employment

which was substantially inferior to her position with defendant." (*Rabago-Alvarez, supra,* 55 Cal.App.3d at p. 99.)

- "[I]n those instances where the jury determines the employee was fired from a substantially similar position for cause, any amount the employee with reasonable effort could have earned by retaining that employment should be deducted from the amount of damages which otherwise would have been awarded to the employee under the terms of the original employment agreement." (*Stanchfield, supra,* 37 Cal.App.4th at pp. 1502-1503.)

- "The location of the new job is one of the factors to consider in determining whether the new job is inferior." (*Villacorta, supra,* 221 Cal.App.4th at p. 1432.)

- "There is some authority for the proposition that whether or not the other employment is comparable or substantially similar or equivalent to the prior position is a question of fact. On the other hand the issue of substantial similarity or inferiority of employment is one that has often been decided as a matter of law in California." (*California School Employees Assn., supra,* 30 Cal.App.3d at pp. 253−254, internal citations omitted.)

- "The court could reasonably admit the evidence of other available jobs and leave the question of their substantial similarity to the jury." (*Kao, supra,* 229 Cal.App.4th at p. 454.)

- "[S]elf-employment is not unreasonable mitigation as long as the discharged employee applies sufficient effort trying to make the business successful, even if those efforts fail." (*Cordero-Sacks v. Housing Authority of City of Los Angeles* (2011) 200 Cal.App.4th 1267, 1284–1285 [134 Cal.Rptr.3d 883].)

Secondary Sources

Chin et al., California Practice Guide: Employment Litigation, Ch. 17-F, *Mitigation Of Damages (Avoidable Consequences Doctrine)*, ¶¶ 17:490, 17:492, 17:495, 17:497, 17:499–17:501 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Contract Actions, §§ 8.40–8.41

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.08[4] (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 249, *Employment Law: Termination and Discipline*, §§ 249.18, 249.65 (Matthew Bender)

4200. Actual Intent to Hinder, Delay, or Defraud a Creditor—Essential Factual Elements (Civ. Code, § 3439.04(a)(1))

[*Name of plaintiff***] claims [he/she/***nonbinary pronoun***/it] was harmed because [***name of debtor***] [transferred property/incurred an obligation] to [***name of defendant***] in order to avoid paying a debt to [***name of plaintiff***]. [This is called "actual fraud."] To establish this claim against [***name of defendant***], [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] has a right to payment from [***name of debtor***] for [***insert amount of claim***];**

2. **That [***name of debtor***] [transferred property/incurred an obligation] to [***name of defendant***];**

3. **That [***name of debtor***] [transferred the property/incurred the obligation] with the intent to hinder, delay, or defraud one or more of [his/her/***nonbinary pronoun***/its] creditors;**

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

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

To prove intent to hinder, delay, or defraud creditors, it is not necessary to show that [*name of debtor***] had a desire to harm [his/her/***nonbinary pronoun***/its] creditors. [***Name of plaintiff***] need only show that [***name of debtor***] intended to remove or conceal assets to make it more difficult for [his/her/***nonbinary pronoun***/its] creditors to collect payment.**

[It does not matter whether [*name of plaintiff***]'s right to payment arose before or after [***name of debtor***] [transferred property/incurred an obligation].]**

New June 2006; Revised June 2013, June 2016

Directions for Use

Under the Uniform Voidable Transactions Act (formerly the Uniform Fraudulent Transfer Act), a transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud a creditor. (Civ. Code, § 3439.04(a)(1).)

This instruction assumes the defendant is a transferee of the original debtor. Read the bracketed second sentence if the plaintiff is asserting claims for both actual and constructive fraud. Read the last bracketed sentence if the plaintiff's alleged claim arose after the defendant's property was transferred or the obligation was incurred.

Note that in element 3, only the debtor-transferor's intent is required. (See Civ. Code, § 3439.04(a)(1).)

The intent of the transferee is irrelevant. However, a transferee who receives the property both in good faith and for a reasonably equivalent value has an affirmative defense. (See Civ. Code, § 3439.08(a); CACI No. 4207, *Affirmative Defense—Good Faith*.)

If the case concerns an incurred obligation, users may wish to insert a brief description of the obligation in this instruction, e.g., "a lien on the property."

Courts have held that there is a right to a jury trial whenever the remedy sought is monetary relief, including even the return of a "determinate sum of money." (*Wisden v. Superior Court* (2004) 124 Cal.App.4th 750, 757 [21 Cal.Rptr.3d 523].) If the only remedy sought is the return of a particular nonmonetary asset, the action is an equitable action. However, even if a specific nonmonetary asset is involved, a conspiracy claim or an action against any party other than the transferee who possesses the asset (e.g., "the person for whose benefit the transfer was made") (Civ. Code, § 3439.08(b)(1)(A)) necessarily would seek monetary relief and give rise to a right to a jury trial.

Note that there may be a split of authority regarding the appropriate standard of proof of intent. The Sixth District Court of Appeal has stated: "Actual intent to defraud must be shown by clear and convincing evidence. (*Hansford v. Lassar* (1975) 53 Cal.App.3d 364, 377 [125 Cal.Rptr. 804].)" (*Reddy v. Gonzalez* (1992) 8 Cal.App.4th 118, 123 [10 Cal.Rptr.2d 58].) Note that the case relied on by the *Hansford* court (*Aggregates Assoc., Inc. v. Packwood* (1962) 58 Cal.2d 580 [25 Cal.Rptr. 545, 375 P.2d 425]) was disapproved by the Supreme Court in *Liodas v. Sahadi* (1977) 19 Cal.3d 278, 291–292 [137 Cal.Rptr. 635, 562 P.2d 316]. The Fourth District Court of Appeal, Division Two, disagreed with *Reddy*: "In determining whether transfers occurred with fraudulent intent, we apply the preponderance of the evidence test, even though we recognize that some courts believe that the test requires clear and convincing evidence." (*Gagan v. Gouyd* (1999) 73 Cal.App.4th 835, 839 [86 Cal.Rptr.2d 733], internal citations omitted, disapproved on other grounds in *Mejia v. Reed* (2003) 31 Cal.4th 657, 669, fn. 2 [3 Cal.Rptr.3d 390, 74 P.3d 166].)

Sources and Authority

- Uniform Voidable Transactions Act. Civil Code section 3439 et seq.
- "Claim" Defined for UVTA. Civil Code section 3439.01(b).
- Creditor Remedies Under UVTA. Civil Code section 3439.07.
- "The UFTA permits defrauded creditors to reach property in the hands of a transferee." (*Mejia, supra,* 31 Cal.4th at p. 663.)
- "The UVTA, formerly known as the Uniform Fraudulent Transfer Act, 'permits defrauded creditors to reach property in the hands of a transferee.' 'A fraudulent conveyance is a transfer by the debtor of property to a third person undertaken with the intent to prevent a creditor from reaching that interest to satisfy its claim.' … The purpose of the voidable transactions statute is ' "to prevent debtors from placing property which legitimately should be available for the satisfaction of demands of creditors beyond their reach … ." ' " (*Lo v. Lee* (2018) 24 Cal.App.5th 1065, 1071 [234 Cal.Rptr.3d 824], internal citations omitted.)

- "Under the UFTA, 'a transfer of assets made by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer, if the debtor made the transfer (1) with an actual intent to hinder, delay or defraud any creditor, or (2) without receiving reasonably equivalent value in return, and either (a) was engaged in or about to engage in a business or transaction for which the debtor's assets were unreasonably small, or (b) intended to, or reasonably believed, or reasonably should have believed, that he or she would incur debts beyond his or her ability to pay as they became due.' " (*Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 121−122 [173 Cal.Rptr.3d 356], internal citations omitted.)

- "[A] conveyance will not be considered fraudulent if the debtor merely transfers property which is otherwise exempt from liability for debts. That is, because the theory of the law is that it is fraudulent for a judgment debtor to divest himself of assets against which the creditor could execute, if execution by the creditor would be barred while the property is in the possession of the debtor, then the debtor's conveyance of that exempt property to a third person is not fraudulent." (*Yaesu Electronics Corp. v. Tamura* (1994) 28 Cal.App.4th 8, 13 [33 Cal.Rptr.2d 283].)

- "A transfer is not voidable against a person 'who took in good faith and for a reasonably equivalent value or against any subsequent transferee.' " (*Filip, supra,* 129 Cal.App.4th at p. 830, internal citations omitted.)

- "We hold that under the UVTA, physically relocating personal property and transmitting or transporting sale proceeds out of state, then transmuting them into a different legal form, may constitute a direct or indirect mode of parting with assets or one's interest in those assets. As such, [plaintiff] adequately alleged a 'transfer' under the UVTA. In this posture the trier of fact must now determine if grantor's title is but, 'a mere cloak under which is hidden the hideous skeleton of deceit … .' " (*Nagel v. Westen* (2021) 59 Cal.App.5th 740, 749 [274 Cal.Rptr.3d 21].)

- " '[T]he UFTA is not the exclusive remedy by which fraudulent conveyances and transfers may be attacked'; they 'may also be attacked by, as it were, a common law action.' " (*Wisden, supra,* 124 Cal.App.4th at p. 758, internal citation omitted.)

- "Case law has established the remedies specified in the UVTA are cumulative and not the exclusive remedy for fraudulent conveyances. 'They may also be attached by, as it were, a common law action.' By its terms the UVTA was intended to supplement, not replace, common law principles relating to fraud." (*Berger v. Varum* (2019) 35 Cal.App.5th 1013, 1019 [248 Cal.Rptr.3d 51].)

- "[E]ven if the Legislature intended that all fraudulent conveyance claims be brought under the UFTA, the Legislature could not thereby dispense with a right to jury trial that existed at common law when the California Constitution was adopted." (*Wisden, supra,* 124 Cal.App.4th at p. 758, internal citation omitted.)

- "Whether a conveyance was made with fraudulent intent is a question of fact, and proof often consists of inferences from the circumstances surrounding the transfer." (*Filip, supra,* 129 Cal.App.4th at p. 834, internal citations omitted.)

- "In order to constitute intent to defraud, it is not necessary that the transferor act maliciously with the desire of causing harm to one or more creditors." (*Economy Refining & Service Co. v. Royal Nat'l Bank* (1971) 20 Cal.App.3d 434, 441 [97 Cal.Rptr. 706].)

- "There is no minimum number of factors that must be present before the scales tip in favor of finding of actual intent to defraud. This list of factors is meant to provide guidance to the trial court, not compel a finding one way or the other." (*Filip, supra,* 129 Cal.App.4th at p. 834.)

- " 'A well-established principle of the law of fraudulent transfers is, "A transfer in fraud of creditors may be attacked only by one who is injured thereby. Mere intent to delay or defraud is not sufficient; injury to the creditor must be shown affirmatively. In other words, prejudice to the plaintiff is essential." ' " (*Berger, supra,* 35 Cal.App.5th at p. 1020.)

- "It cannot be said that a creditor has been injured unless the transfer puts beyond [her] reach property [she] otherwise would be able to subject to the payment of [her] debt." (*Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75, 80 [112 Cal.Rptr.2d 802], internal citations omitted.)

- "[G]ranting [plaintiff judgment creditor] an additional judgment against [defendant judgment debtor] under the UFTA for … 'the amount transferred here to avoid paying part of his underlying judgment, *would in effect allow [him] to recover more than the underlying judgment,* which the [UFTA] does not allow.' (Italics added.) We thus conclude that because [plaintiff] obtained a judgment in the prior action for the damages [defendant] caused him, the principle against double recovery for the same harm bars him from obtaining a second judgment against her under the UFTA for a portion of those same damages." (*Renda v. Nevarez* (2014) 223 Cal.App.4th 1231, 1238 [167 Cal.Rptr.3d 874], original italics.)

- "Certain cases, while not awarding consequential damages, have recognized the availability of such damages." (*Berger, supra,* 35 Cal.App.5th at p. 1021.)

Secondary Sources

8 Witkin, California Procedure (5th ed. 2008) Enforcement of Judgment, § 495 et seq.

Ahart, California Practice Guide: Enforcing Judgments & Debts, Ch. 3-C, *Prelawsuit Considerations*, ¶ 3:291 et seq. (The Rutter Group)

Gaab & Reese, California Practice Guide: Civil Procedure Before Trial—Claims & Defenses, Ch. 5(III)-B, *Elements of Claim*, ¶ 5:528 (The Rutter Group)

23 California Forms of Pleading and Practice, Ch. 270, *Fraudulent Conveyances*, § 270.40 (Matthew Bender)

1 Goldsmith et al., Matthew Bender Practice Guide: California Debt Collection and Enforcement of Judgments, Ch. 4, *Fraudulent Transfers*, 4.05

4304. Termination for Violation of Terms of Lease/Agreement—Essential Factual Elements

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[*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 perform [a] requirement(s) under [his/her/***nonbinary pronoun***/its] [lease/rental agreement/sublease]. 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***] agreed [***insert required condition(s) that were not performed***];**

4. **That [***name of defendant***] failed to perform [that/those] requirement(s) by [***insert description of alleged failure to perform***];**

5. **That [***name of plaintiff***] properly gave [***name of defendant***] [and [***name of subtenant***]] three days' written notice to [either [***describe action to correct failure to perform***] or] vacate the property; [and]**

[6. That [*name of defendant***] did not [***describe action to correct failure to perform***]; [and]]**

[7. That [*name of plaintiff***] properly gave [***name of defendant***] [and [***name of subtenant***]] three days' written notice to vacate the property; and]**

8. **That [***name of defendant***] [or subtenant [***name of subtenant***]] is still occupying the property.**

[[*Name of defendant***]'s failure to perform the requirement(s) of the [lease/rental agreement/sublease] must not be trivial, but must be a substantial violation of [an] important obligation(s).]**

New August 2007; Revised June 2010, December 2010, June 2011, December 2011, May 2020, November 2021

Directions for Use

Include the bracketed references to a subtenancy in the opening paragraph, in element 5, and in element 8 if persons other than the tenant-defendant are in occupancy of the premises.

If the plaintiff is the landlord or owner, select either "lease" or "rental agreement" in the opening paragraph and in element 3, "owns" in element 1, and "rented" in element 2. 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 subtenant, select "sublease" in the opening paragraph and in element 3, "leases" in element 1, and "subleased" in element 2. (Code Civ. Proc., § 1161(3).)

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 5.

If the violation of the condition or covenant involves assignment, sublet, or waste, or if the breach cannot be cured, 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); *Salton Community Services Dist. v. Southard* (1967) 256 Cal.App.2d 526, 529 [64 Cal.Rptr. 246].) In such a case, omit the bracketed language in element 5 and also omit element 6. If the violation involves nuisance or illegal activity, give CACI No. 4308, *Termination for Nuisance or Unlawful Use—Essential Factual Elements*.

The Tenant Protection Act of 2019 and/or local or federal law may impose additional requirements for the termination of a rental agreement based on breach of a condition. (See, e.g., 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. For example, the Tenant Protection Act of 2019 requires a separate three-day notice to quit after the initial three-day notice to cure that is expressed in element 5. (See Civ. Code, § 1946.2(c).)

Element 7 applies only to a just cause eviction under the Tenant Protection Act of 2019, which governs certain residential real property tenancies of specified durations. (See *id.*, subd. (a) [stating occupancy requirement of 12 months of continuous tenancy, or, if any tenants have been added to the lease, after all tenants have lived at the property for a year or if the original tenant has lived there for 24 months or more], subd. (c) ["Before an owner of residential real property issues a notice to terminate a tenancy for just cause that is a curable lease violation, the owner shall first give notice of the violation to the tenant with an opportunity to cure the violation pursuant to paragraph (3) of Section 1161 of the Code of Civil Procedure. If the violation is not

cured within the time period set forth in the notice, a three-day notice to quit without an opportunity to cure may thereafter be served to terminate the tenancy"].)

Include the last paragraph if the tenant alleges that the violation was trivial. (See *Boston LLC v. Juarez* (2016) 245 Cal.App.4th 75, 81 [199 Cal.Rptr.3d 452].) It is not settled whether the landlord must prove the violation was substantial or the tenant must prove triviality as an affirmative defense. (See *Superior Motels, Inc. v. Rinn Motor Hotels, Inc.* (1987) 195 Cal.App.3d 1032, 1051 [241 Cal.Rptr. 487]; *Keating v. Preston* (1940) 42 Cal.App.2d 110, 118 [108 P.2d 479].)

See CACI No. 4305, *Sufficiency and Service of Notice of Termination for Violation of Terms of Agreement*, for an instruction on proper written notice.

See also CACI No. 312, *Substantial Performance*.

Sources and Authority

- Unlawful Detainer Based on Failure to Perform Conditions. Code of Civil Procedure section 1161(3), (4).
- Tenant Protection Act of 2019. Civil Code section 1946.2.
- Dual Notice Requirement for Certain Residential Tenancies. Civil Code section 1946.2(c).
- Conversion of Unlawful Detainer to Ordinary Civil Action If Possession No Longer at Issue. Civil Code section 1952.3(a).
- "[Code of Civil Procedure section 1161(3)] provides, that where the conditions or covenants of a lease can be performed, a lessee may within three days after the service of the notice perform them, and so save a forfeiture of his lease. By performing, the tenant may defeat the landlord's claim for possession. Where, however, the covenants cannot be performed, the law recognizes that it would be an idle and useless ceremony to demand their performance, and so dispenses with the demand to do so. And this is all that it does dispense with. It does not dispense with the demand for the possession of the premises. It requires that in any event. If the covenants can be performed, the notice is in the alternative, either to perform them or deliver possession. When the covenants are beyond performance an alternative notice would be useless, and demand for possession alone is necessary. Bearing in mind that the object of this statute is to speedily permit a landlord to obtain possession of his premises where the tenant has violated the covenants of the lease, the only reasonable interpretation of the statute is, that before bringing suit he shall take that means which should be most effectual for the purpose of obtaining possession, which is to demand it. If upon demand the tenant surrenders possession, the necessity for any summary proceeding is at an end, and by the demand is accomplished what the law otherwise would accord him under the proceeding." (*Schnittger v. Rose* (1903) 139 Cal. 656, 662 [73 P. 449].)

- "It is well settled that the notice required under [Code Civ. Proc., § 1161] subdivisions 2 and 3 (where the condition or covenant assertedly violated is capable of being performed) must be framed in the alternative, viz., pay the rent *or* quit, perform the covenant *or* quit, and a notice which merely directs the tenant to quit is insufficient to render such tenant guilty of unlawful detainer upon his continued possession." (*Hinman v. Wagnon* (1959) 172 Cal.App.2d 24, 27 [341 P.2d 749], original italics.)

- "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, supra,* 172 Cal.App.2d at p. 29.)

- "The law sensibly recognizes that although every instance of noncompliance with a contract's terms constitutes a breach, not every breach justifies treating the contract as terminated. Following the lead of the Restatements of Contracts, California courts allow termination only if the breach can be classified as 'material,' 'substantial,' or 'total.' " (*Superior Motels, Inc., supra,* 195 Cal.App.3d at p. 1051, internal citations omitted.)

- " '[A] lease may be terminated only for a substantial breach thereof, and not for a mere technical or trivial violation.' This materiality limitation even extends to leases which contain clauses purporting to dispense with the materiality limitation." (*Boston LLC, supra,* 245 Cal.App.4th at p. 81, internal citation omitted.)

- " 'Normally the question of whether a breach of an obligation is a material breach … is a question of fact,' however ' "if reasonable minds cannot differ on the issue of materiality, the issue may be resolved as a matter of law." ' " (*Boston LLC, supra,* 245 Cal.App.4th at p. 87.)

- "As to the substantiality of the violation, the evidence shows that the violation was wilful. Therefore, the court will not measure the extent of the violation." (*Hignell v. Gebala* (1949) 90 Cal.App.2d 61, 66 [202 P.2d 378].)

- "Where a covenant in a lease has been breached and the breach cannot be cured, a demand for performance is not a condition precedent to an unlawful detainer action." (*Salton Community Services Dist., supra,* 256 Cal.App.2d at p. 529.)

- "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].)

- "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.)

- "Given the detailed requirements for payment instructions in section 1161, subdivision 2, the lack of specific notice requirements concerning return of the property to the owner in subdivisions 2, 3, and 4 is noteworthy. Rather, these subdivisions only require the notice to demand 'possession of the property' (§ 1161, subds. 2 & 3) or 'possession of the demised premises' (§ 1161, subd. 4). Had the Legislature sought to require more detailed instructions in the notice on how to restore possession of the property to the owner, the particularized requirements in subdivision 2 shows it knew how to do so. As such, the absence of any such requirements in the notice appears to be intentional." (*Lee v. Kotyluk* (2021) 59 Cal.App.5th 719, 730 [274 Cal.Rptr.3d 29].)

- "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.)

Secondary Sources

12 Witkin, Summary of California Law (11th ed. 2017) Real Property, §§ 753, 759

1 California Landlord-Tenant Practice (Cont.Ed.Bar 2d ed.) §§ 8.50–8.54

1 California Eviction Defense Manual (Cont.Ed.Bar 2d ed.) §§ 5.2, 6.38–6.49

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 12-G, *Termination of Section 8 Tenancies*, ¶ 12:200 et seq. (The Rutter Group)

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 7-C, *Bases For Terminating Tenancy*, ¶ 7:93 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. 210, *Unlawful Detainer*, §§ 210.21, 210.23, 210.24 (Matthew Bender)

Matthew Bender Practice Guide: California Landlord-Tenant Litigation, Ch. 5, *Unlawful Detainer*, 5.07

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)

23 California Points and Authorities, Ch. 236, *Unlawful Detainer*, §§ 236.11, 236.20 (Matthew Bender)

Miller & Starr California Real Estate 4th, § 34.182 (Thomson Reuters)

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

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].) For a case brought by a licensed contractor or an allegedly unlicensed contractor 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).) 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 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 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 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.)

- "A third party's agreement to assume a contractor's duties under a construction contract without a license is akin to the execution of a construction contract without a license, something the California Supreme Court has explained does not trigger section 7031 forfeiture. Such an assumption is neither an act for which the assignee may seek compensation under the contract, nor an act that can be fairly characterized as 'carrying out the contract.' It thus cannot constitute ' "performance of that … contract." ' " (*Manela v. Stone* (2021) 66 Cal.App.5th 90, 105–106 [281 Cal.Rptr.3d 28].)

- "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)

4900. Adverse Possession

[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] is the owner of [***briefly describe property***] because [he/she/***nonbinary pronoun***] has obtained title to the property by adverse possession. In order to establish adverse possession, [***name of plaintiff***] must prove that for a period of five years, all of the following were true:**

1. That [*name of plaintiff***] exclusively possessed the property;**

2. That [*name of plaintiff***]'s possession was continuous and uninterrupted;**

3. That [*name of plaintiff***]'s possession of the property was open and easily observable, or was under circumstances that would give reasonable notice to [***name of defendant***];**

4. That [*name of plaintiff***] did not recognize, expressly or by implication, that [***name of defendant***] had any ownership rights in the land;**

5. That [*name of plaintiff***] claimed the property as [his/her/***nonbinary pronoun***] own under [either] [color of title/ [or] a claim of right]; and**

6. That [*name of plaintiff***] timely paid all of the taxes assessed on the property during the five-year period.**

New November 2019

Directions for Use

Use this instruction for a claim that the plaintiff has obtained title of property by adverse possession. 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]; see CACI No. 4901, *Prescriptive Easement*.) Presumably the same right would apply to a claim for adverse possession. (See *Kendrick v. Klein* (1944) 65 Cal.App.2d 491, 496 [150 P.2d 955] [whether occupancy amounted to adverse possession is question of fact].)

By statute, the taxes must have been paid by "the party or persons, their predecessors and grantors." (Code Civ. Proc., § 325(b).) Revise element 6 if the taxes were paid by someone other than the plaintiff.

Sources and Authority

- Adverse Possession. Code of Civil Procedure section 325.
- Color of Title: Occupancy Under Written Instrument or Judgment. Code of Civil Procedure section 322.

- Occupancy Under Claim of Right. Code of Civil Procedure section 324.

- "There is a difference between a prescriptive use of land culminating in an easement (i.e., an incorporeal interest) and adverse possession which creates a change in title or ownership (i.e., a corporeal interest); the former deals with the *use* of land, the other with *possession*; although the elements of each are similar, the requirements of proof are materially different." (*Hansen v. Sandridge Partners, L.P.* (2018) 22 Cal.App.5th 1020, 1032 [232 Cal.Rptr.3d 247], original italics.)

- "In an action to quiet title based on adverse possession the burden is upon the claimant to prove every necessary element: (1) Possession must be by actual occupation under such circumstances as to constitute reasonable notice to the owner. (2) It must be hostile to the owner's title. (3) The holder must claim the property as his own, under either color of title or claim of right. (4) Possession must be continuous and uninterrupted for five years. (5) The holder must pay all the taxes levied and assessed upon the property during the period." (*Dimmick v. Dimmick* (1962) 58 Cal.2d 417, 421 [24 Cal.Rptr. 856, 374 P.2d 824].)

- ~~"To establish adverse possession, the claimant must prove: (1) possession under claim of right or color of title; (2) actual, open, and notorious occupation of the premises constituting reasonable notice to the true owner; (3) possession which is adverse and hostile to the true owner; (4) continuous possession for at least five years; and (5) payment of all taxes assessed against the property during the five-year period." (*Hansen, supra,* 22 Cal.App.5th at pp. 1032–1033.)~~"The elements of an adverse possession claim consist of the following: (1) actual possession by the plaintiff of the property under claim of right or color of title; (2) the possession consists of open and notorious occupation of the property in such a manner as to constitute reasonable notice to the true owner; (3) the possession is adverse and hostile to the true owner; (4) the possession is uninterrupted and continuous for at least five years; and (5) the plaintiff has paid all taxes assessed against the property during the five-year period." (*Bailey v. Citibank, N.A.* (2021) 66 Cal.App.5th 335, 351 [280 Cal.Rptr.3d 546].)

- " 'The elements necessary to establish title by adverse possession are tax payment and open and notorious use or possession that is continuous and uninterrupted, hostile to the true owner and under a claim of title,' for five years. [Citation.]" (*McLear-Gary v. Scott* (2018) 25 Cal.App.5th 145, 152 [235 Cal.Rptr.3d 443].)

- "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.)

- "Because of the taxes element, it is more difficult to establish adverse possession than a prescriptive easement. The reason for the difference in relative difficulty is that a successful adverse possession claimant obtains ownership of the land (i.e., an estate), while a successful prescriptive easement claimant merely obtains the right to *use* the land in a particular way (i.e., an easement)." (*Hansen, supra,* 22 Cal.App.5th at p. 1033, original italics.)

- " 'The requirement of "hostility" . . . means, not that the parties must have a dispute as to the title during the period of possession, but that the claimant's possession must be adverse to the record owner, "unaccompanied by any recognition, express or inferable from the circumstances of the right in the latter." . . . "Title by adverse possession may be acquired through [sic] the possession or use commenced under mistake." ' " (*Kunza v. Gaskell* (1979) 91 Cal.App.3d 201, 210–211 [154 Cal.Rptr. 101].)

- "Adverse possession under [Code of Civil Procedure] section 322 is based on what is commonly referred to as color of title. In order to establish a title under this section it is necessary to show that the claimant or 'those under whom he claims, entered into possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the property included in such instrument, decree, or judgment, or of some part of the property . . . for five years … .' " (*Sorensen v. Costa* (1948) 32 Cal.2d 453, 458 [196 P.2d 900].)

- "The requirements of possession are more stringent where the possessor acts under mere claim of right than when he occupies under color of title. In the former case, the land is deemed to have been possessed and occupied only where it has (a) been protected by a substantial inclosure, or (b) usually cultivated or improved." (*Brown v. Berman* (1962) 203 Cal.App.2d 327, 329 [21 Cal.Rptr. 401], internal citations omitted; see Code Civ. Proc., § 325.)

- "It is settled too that the burden of proving all of the essential elements of adverse possession rests upon the person relying thereon and it cannot be made out by inference but only by clear and positive proof." (*Mosk v. Summerland Spiritualist Asso.* (1964) 225 Cal.App.2d 376, 382 [37 Cal.Rptr. 366].)

Secondary Sources

12 Witkin, Summary of California Law (11th ed. 2017) Real Property, § 223 et seq.

10 California Real Estate Law and Practice, Ch. 360, *Adverse Possession*, § 360.20 (Matthew Bender)

2 California Forms of Pleading and Practice, Ch. 13, *Adverse Possession*, § 13.12 (Matthew Bender)

1 California Points and Authorities, Ch. 13, *Adverse Possession*, §§ 13.10, 13.20 (Matthew Bender)

6 Miller & Starr California Real Estate 4th (2015) § 18:1 et seq. (Ch. 18, *Real Property*) (Thomson Reuters)

Smith-Chavez, et al., California Civil Practice, Real Property Litigation § 13:1 et seq. (Thomson Reuters)

Item number: 07

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: April 6, 2022

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

Title of proposal: Rules and Forms: Form Revision Implementing Assembly Bill 1580

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Revise form AT-138/EJ-125

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:
Annual agenda approved by Rules Committee on (*date*): November 2, 2021; amended November 16, 2021 and March 21, 2022
Project description from annual agenda: Develop form recommendations as appropriate. AB 1580 expands the information that must be provided to corporate entities in orders to appear for examination (form AT-138/EJ-125). Specifically, a notice must explain that if a corporate entity fails to designate a person to appear then the order will be deemed to have been made for a specific person to appear and the notice must also include statutory specifications about who will be required to appear absent a designation by the corporate entity. The current form for orders to appear for examination must be revised to conform to the new law.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

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

Additional Information for JC Staff (provide with reports to be submitted to JC)**:**

- **Form Translations** (check all that apply)
  This proposal:
  ☐ includes forms that have been translated.
  ☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
  ☐ includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)
  ☐ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
  ☐ This proposal may require changes or additions to self-help web content.

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-100
For business meeting on: May 12–13, 2022

Title
Rules and Forms: Form Revision Implementing Assembly Bill 1580

Rules, Forms, Standards, or Statutes Affected
Revise form AT-138/EJ-125

Recommended by
Civil and Small Claims Advisory Committee
Hon. Tamara Wood, Chair

Agenda Item Type
Action Required

Effective Date
September 1, 2022

Date of Report
March 25, 2022

Contact
James Barolo, Legal Services, 415-865-8928
james.barolo@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends revising *Application and Order for Appearance and Examination* (form AT-138/EJ-125) to implement statutory changes in Assembly Bill 1580 (Stats. 2021, ch. 30). The statutory amendment requires additional information for organizations on orders to appear for examination. The proposal incorporates the new required statements and suggestions from commenters on the council's existing form.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise *Application and Order for Appearance and Examination* (form AT-138/EJ-125), effective September 1, 2022.

The proposed revised form is attached at pages 5–7.

Relevant Previous Council Action

The Judicial Council adopted form AT-138/EJ-125 in 1984 and most recently revised it effective January 1, 2017. The most recent revisions to the form included minor modifications regarding service and requests for accommodation.

Analysis/Rationale

Prior to the enactment of Assembly Bill 1580 (Stats. 2021, ch. 30),[1] Code of Civil Procedure section 708.150[2] set forth certain duties and rights of a corporation, partnership, association, trust, or other organization (hereafter "organization") served with an order to appear for an examination. Section 708.150 also required that if the order to appear for examination does not require the appearance of a specified individual, that the order notify the organization of its duty to designate one or more officers to be examined.

Assembly Bill 1580 amended section 708.150 to expand the information that must be provided in an order for an organization to appear for an examination if the order does not require the appearance of a specified individual. Specifically, if the organization fails to designate a person to appear, the order will be deemed to have been made to a specific individual in the organization and sets out who that specific person will be based on the type of organization.

To address the amendments to section 708.150, the committee recommends expanding the notice on the form that is directed at organizations to include new statutory language. [3] Expanding the notice requires the form to have an additional page, and conforming modifications concerning page numbers are also made throughout the form.[4]

Policy implications

The revised form in this proposal would implement amended statutes that provide additional information to organizations subject to an order to appear for examination. Accordingly, the key policy implications are ensuring that council forms reflect the law correctly and are not misleading to parties.

Comments

The proposal was circulated for public comment between December 10, 2021, and January 21, 2022, as part of the winter comment cycle. Comments were received from the California Association of Judgment Professionals, the Superior Court of San Bernardino County, and the

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[1] Assem. Bill 1580, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1580*.

[2] All further statutory references are to the Code of Civil Procedure unless otherwise noted.

[3] Although the statutory amendments enacted by AB 1580 are already in effect, the committee recommends the standard effective date for form proposals in the winter cycle, September 1, to provide courts time to prepare for the revised form.

[4] The proposal also makes two other minor modifications to correct errors: "Limited Liability Company" is now included in the heading for the notice to organizations and on page 3 the title of form MC-410 is updated in the information about accommodations.

Superior Court of San Diego County. All three commenters offered that the proposal addresses its stated purpose, and the Superior Court of San Diego County indicated their agreement with the proposal. A chart setting forth all the comments and committee's responses to the comments is attached at pages 8–14.

The California Association of Judgment Professionals offered several technical comments to improve the form's clarity and to more accurately reflect the amendments to section 708.150 enacted by AB 1580. The committee agreed with most of those suggestions and included them in the proposed form. For example, the caption of the form now includes "petitioner" and "respondent" as well as "plaintiff" and "defendant." Additionally, the notices to organizations on page 3 of proposed form AT-138/EJ-125 explains at the top that the notices only apply if the order to appear for examination on page 1 of the form does not require the appearance of a specified individual. (See § 708.150(c).)

The committee declined the association's suggestion to include additional language on the first page of the form stating that all of the notices on pages 2 and 3 of the form apply to organizations. The committee determined such language is unnecessary as the notices on page 2 of the form are not limited to natural persons. Additionally, the committee declined another suggestion to include a notice that additional persons from an organization may accompany an individual specified to appear as such notice is not required by statute.

Alternatives considered

Because AB 1580 expressly requires additional information on orders to appear for examination that is not on the council's current order form, the committee determined it must act and that taking no action would be inappropriate.

In addition to this recommendation, the committee considered separating the required notice for organizations into its own form that could be attached to form AT-138/EJ-125 if the order to appear for examination was directed to an organization. However, the committee concluded that requiring a separate attachment in certain instances would needlessly complicate the process for seeking an order to appear for examination.

The committee also considered consolidating other notices on the form, but declined to do so because using a single notice applicable to differently situated individuals in different types of actions might be confusing.

Fiscal and Operational Impacts

The committee anticipates that this proposal will result in costs incurred by courts to incorporate new forms into their paper or electronic processes and to train court staff. However, given that the proposal only makes minor informational modifications to an existing form, any such costs or impacts are likely to be minor.

Attachments and Links

1. Form AT-138/EJ-125, at pages 5–7
2. Chart of comments, at pages 8–14
3. Link A: AB 1580, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1580*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	DRAFT 3/8/2022 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	
APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION ☐ **ENFORCEMENT OF JUDGMENT** ☐ **ATTACHMENT (Third Person)** ☐ **Judgment Debtor** *or* ☐ **Third Person**	CASE NUMBER:

ORDER TO APPEAR FOR EXAMINATION

1. TO *(name):*
   YOU ARE ORDERED TO APPEAR personally before this court, or before a referee appointed by the court, to
   a. ☐ furnish information to aid in enforcement of a money judgment against you.
   b. ☐ answer concerning property of the judgment debtor in your possession or control or concerning a debt you owe the judgment debtor.
   c. ☐ answer concerning property of the defendant in your possession or control or concerning a debt you owe the defendant that is subject to attachment.

Date:	Time:	Dept. or Div.:	Rm.:
Address of court ☐ is shown above ☐ is:			

3. This order may be served by a sheriff, marshal, registered process server, **or** the following specially appointed person *(name)*:

Date:

JUDGE

This order must be served not less than 10 days before the date set for the examination.

IMPORTANT NOTICES ON PAGES 2 AND 3

APPLICATION FOR ORDER TO APPEAR FOR EXAMINATION

4. ☐ Original judgment creditor ☐ Assignee of record ☐ Plaintiff who has a right to attach order applies for an order requiring *(name):*
   to appear and furnish information to aid in enforcement of the money judgment or to answer concerning property or debt.
5. The person to be examined is
   a. ☐ the judgment debtor.
   b. ☐ a third person (1) who has possession or control of property belonging to the judgment debtor or the defendant or (2) who owes the judgment debtor or the defendant more than $250. An affidavit supporting this application under Code of Civil Procedure section 491.110 or 708.120 is attached.
6. The person to be examined resides or has a place of business in this county or within 150 miles of the place of examination.
7. ☐ This court is **not** the court in which the money judgment is entered or *(attachment only)* the court that issued the writ of attachment. An affidavit supporting an application under Code of Civil Procedure section 491.150 or 708.160 is attached.
8. ☐ The judgment debtor has been examined within the past 120 days. An affidavit showing good cause for another examination is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

(Continued on pages 2 and 3)

Form Adopted for Mandatory Use
Judicial Council of California
AT-138/EJ-125 [Rev. September 1, 2022]

APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION
(Attachment—Enforcement of Judgment)

Code of Civil Procedure, §§ 491.110, 708.110, 708.120, 708.150, 708.170
www.courts.ca.gov

Information for Judgment Creditor Regarding Service

If you want to be able to ask the court to enforce the order on the judgment debtor or any third party, you must have a copy of the order personally served on the judgment debtor by a sheriff, marshal, registered process server, or the person appointed in item 3 of the order at least 10 calendar days before the date of the hearing, and have a proof of service filed with the court.

IMPORTANT NOTICES ABOUT THE ORDER

APPEARANCE OF JUDGMENT DEBTOR (ENFORCEMENT OF JUDGMENT)

NOTICE TO JUDGMENT DEBTOR If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

APPEARANCE OF A THIRD PERSON (ENFORCEMENT OF JUDGMENT)

NOTICE TO PERSON SERVED If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

NOTICE TO JUDGMENT DEBTOR The person in whose favor the judgment was entered in this action claims that the person to be examined under this order has possession or control of property that is yours or owes you a debt. This property or debt is as follows *(describe the property or debt)*:

If you claim that all or any portion of this property or debt is exempt from enforcement of the money judgment, you must file your exemption claim in writing with the court and have a copy personally served on the judgment creditor not later than three days before the date set for the examination. You must appear at the time and place set for the examination to establish your claim of exemption or your exemption may be waived.

APPEARANCE OF A THIRD PERSON (ATTACHMENT)

NOTICE TO PERSON SERVED If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the plaintiff in this proceeding.

APPEARANCE OF A CORPORATION, PARTNERSHIP, ASSOCIATION, TRUST, LIMITED LIABILITY COMPANY, OR OTHER ORGANIZATION

If the order to appear for the examination on page 1 does not require the appearance of a specified individual:

- **The organization has a duty to designate one or more of the following to appear and be examined: officers, directors, managing agents, or other persons who are familiar with the organization's property and debts.**
- **Failure to designate such a person familiar with the organization's property and debts to appear for examination will result in the order to appear for the examination to be deemed to have been made to, and require the appearance of, the following:**
  - **If the organization is a corporation registered with the Secretary of State, a natural person named as the chief financial officer in the corporation's most recent filing with the Secretary of State. If no one is so named, a natural person named as the chief executive officer in the corporation's most recent filing with the Secretary of State. If no one is so named, a natural person named as the secretary in the corporation's most recent filing with the Secretary of State.**
  - **If the organization is a limited liability company registered with the Secretary of State, the first natural person named as a manager or member in the limited liability company's most recent filing with the Secretary of State.**
  - **If the organization is a limited partnership registered with the Secretary of State, the first natural person named as a general partner in the limited partnership's most recent filing with the Secretary of State.**
  - **If the organization is not registered with the Secretary of State or the organization's filings with the Secretary of State do not identify a natural person as described above, a natural person identified by the judgment creditor as being familiar with the property and debts of the organization, together with an affidavit or declaration signed by the judgment creditor that sets forth the factual basis for the identification of the individual. The affidavit or declaration shall be served on the organization together with the order.**
- **Service of an order to appear for an examination upon an organization by any method permitted under the Code of Civil Procedure or the Corporations Code, including service on the agent of the organization for service of process, shall be deemed effective service of the order to appear upon the individuals identified above.**

Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Disability Accommodation Request* (form MC-410). (Civil Code, § 54.8.)

W22-02

Rules and Forms: Enforcement of Judgment Form Implementing Assembly Bill 1580 (Revise form AT-138/EJ-125.)

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

	Commenter	Position	Comment	DRAFT Committee Response
1.	California Association of Judgment Professionals by Gretchen D. Lichtenberger Legislative Chairperson	NI	On behalf of the California Association of Judgment Professionals, we would like to submit our comments regarding your proposed revision of form AT-138/EJ-125. **Suggestions for the revised *Application and Order for Appearance and Examination* (form AT-138/EJ-125):** 1) On page 1, in the caption above the form title, we suggest you include "Petitioner" with the word "Plaintiff" and include the word "Respondent" with the word "Defendant" so those two lines will read "PLAINTIFF/PETITIONER" and "DEFENDANT/RESPONDENT" respectively, as was done with the last revised *Writ of Execution* form EJ-130 and *Notice of Levy* form EJ-150. {underlined words added to existing text} The AT-138/EJ-125 form is also used in Family Law and Probate matters as well. 2) On page 1, in the caption regarding the check boxes in the form title, we suggest you reposition the check boxes because persons using this form are often confused and don't check the correct boxes. Currently, the "Third Person" box is below the "ATTACHMENT (Third Person)" box which causes confusion. The "Third Person" box is only checked when the "ENFORCEMENT OF JUDGMENT" box is checked. Examinations to enforce a judgment are either "Judgment Debtor" exams under Code of Civil Procedure §708.110 or "Third	In light of this comment, proposed form AT-138/EJ-125 now includes "Petitioner" and "Respondent" in the caption. In light of this comment, the checkboxes at the top of proposed form AT-138/EJ-125 have been reconfigured so that "Judgment Debtor" *or* "Third Person" are aligned under "Enforcement of Judgement."

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

	Commenter	Position	Comment	DRAFT Committee Response
			Person" exams under Code of Civil Procedure §708.120. We frequently hear Creditors and the Courts refer to examinations of Third Persons as "*Third Person Judgment Debtor Exams*", which is incorrect verbiage, and causes creditor to, at times, check both boxes. In Enforcement of Judgments, the exam is <u>either</u> of the Judgment Debtor <u>or</u> the Third Person. In Attachments, there are no Judgment Debtors, it is always a Third Person. We would like to suggest you please configure the title box in the caption so both the "Judgment Debtor" box and the "Third Person" box are under the "ENFORCEMENT OF JUDGMENT" box, and possibly put the word "or" between them, something like this: []ENFORCEMENT OF JUDGMENT []Judgment Debtor *or* []Third Person []ATTACHMENT (Third Person)	
			3) On page 1 in item 4, we would like to request that the fillable box after *"(name):*" please extend all the way to the right margin, like in item 1. The space is available on the form however the area selected to accommodate typing does not extend to the farthest right margin. Sometimes, the "name" of the examinee is something like "*ABC Plumbing, by and through Jonathan Switzer, Chief Financial Officer*".	The committee notes that the fillable box after "name" in item 4 of proposed form AT-138/EJ-125 already extends to the right margin.
			4) On page 3, we suggest the addition of the relevant text from the new Code of Civil Procedure §708.150 distinguishing when a	The committee declines this suggestion because subdivision (c) of Code of Civil Procedure section 708.150 only requires the included notices when a

	Commenter	Position	Comment	DRAFT Committee Response
			named individual is listed in items 1 and 4 as a person to be examined on behalf of an organization. So, at the top of page 3, before the paragraph beginning "*The organization has a duty to designate*….", we suggest you add as the first paragraph: "*If the order to appear for an examination on page 1 requires the appearance of a specified individual, the specified individual shall appear for the examination and may be accompanied by one or more officers, directors, managing agents, or other persons familiar with the property and debts of the organization*" {see CCP §708.150(b)}. Then, followed by the second paragraph "*If the order to appear for the examination on page 1 does not require the appearance of a specified individual, the organization has a duty to designate*….." {and the rest of your current first paragraph – see CCP §708.150(c); underlined words added to existing sentence}. If the creditor applies on page 1 to have a specific individual appear on behalf of the organization, it could be confusing if the organization reads the text of page 3 as it reads now. We believe there needs to be a distinction made that everything in this box on page 3 only applies when a specific individual is not named on page 1. 5) On page 3, in the second paragraph of newly added text, we suggest a slight variation to the	specified individual has not been designated. In light of this comment, similar language was added at the top of the notices on page 3 of proposed form AT-138/EJ-125 to make clear that the following notices only apply if the order does not require the appearance of a specified individual. In light of this comment, proposed form AT-138/EJ-125 now includes the suggested language.

	Commenter	Position	Comment	DRAFT Committee Response
			wording. Currently, it currently states "*Failure to designate a person to appear for examination….*". Stating just "*a person*", doesn't further demonstrate the intent of the statute where the new CCP §708.150(a)(2) says "*fails to designate a person to appear pursuant to paragraph (1)*". Said statutory wording references back to the fact the person designated must be familiar with the entity's property and debts. We suggest you please clarify said sentence by putting "*Failure to designate <u>such</u> a person <u>familiar with the organization's property and debts</u> to appear for examination …*" { and the rest of your current second paragraph; underlined words added to existing sentence}	
			6) On page 3, in the last paragraph, we suggest you add the qualifier for when a named individual is not stated on page 1 {see CCP §708.150(c)}, so the last paragraph should read "*<u>If the order to appear for the examination on page 1 does not require the appearance of a specified individual,</u> service of an order to appear for an examination upon an organization…..*" { and the rest of your current last paragraph; underlined words added to existing sentence}	In light of this comment, similar language was added at the top of the notices on page 3 of proposed form AT-138/EJ-125 to make clear that the following notices only apply if the order does not require the appearance of a specified individual.
			7) We would also like to make the suggestion that a warning or notice be added on page 3 letting any organization know that the Important Notices on page 2 apply, as appropriate, to the organization in whichever capacity it is being order to appear. We suggest something like:	The committee declines this suggestion as unnecessary because the notices on page 2 of the form are as provided in the statute and are not limited to natural persons.

	Commenter	Position	Comment	DRAFT Committee Response
			"WARNING: THE IMPORTANT NOTICES STATED ON PAGE 2 APPLY TO ORGANIZATIONS, AS WELL AS TO INDIVIDUALS, WHEN ORDERED TO APPEAR FOR EXAMINATION". 8) Interesting to note, Code of Civil Procedure §491.140 was not amended to parallel the new amended language of §708.150. Guess we will have to work on that issue. At least the form will already be correct when §491.140 is amended. **Request for Specific Comments** Yes, we believe your Proposal appropriately addresses the stated purpose. And thank you for addressing our previously submitted comments/suggestions into your drafting of this Proposal.	The committee appreciates the information provided.
2.	Superior Court of San Bernardino County Civil and Small Claims Committees by Melissa Williams District Manager I	NI	**Requested comments from courts on the Rules and Forms: Enforcement of Judgment Form Implementing Assembly Bill 1580:** 1. Does the proposal appropriately address the stated purpose? Yes. 2. Would the proposal provide cost savings? If so, please quantify. The committee does not believe this would	The committee appreciates the information provided.

	Commenter	Position	Comment	DRAFT Committee Response
			provide cost savings for the court. 3. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? The courts would need to provide notice to the judicial officers of the amendments. Staff training would be minimal and would need to include training staff to look for a designee when debtor is a corporation. Additionally, form packets would need to be updated and revised QRGs generated and distributed to staff. 4. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. 5. How well would this proposal work in courts of different sizes? The proposal should work for courts of all sizes.	

W22-02

Rules and Forms: Enforcement of Judgment Form Implementing Assembly Bill 1580 (Revise form AT-138/EJ-125.)

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

	Commenter	Position	Comment	DRAFT Committee Response
3.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	**Request for Specific Comments** Q: Does the proposal appropriately address the stated purpose? Yes. Q: Would the proposal provide cost savings? If so, please quantify. No. Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Notifying staff and updating procedures. Q: Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. Q: How well would this proposal work in courts of different sizes? The proposal appears to work for courts of different sizes.	The committee appreciates the information provided.

Item number: 08

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: April 6, 2022

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

Title of proposal: Protective Orders: Civil Harassment Form Adoptions and Revisions, and Rule Amendment

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend Cal. Rules of Court, rule 3.1160; adopt forms CH-117 and CH-210; approve form CH-205-INFO; revise forms CH-109, CH-110, CH-116, CH-120, CH-120-INFO, CH-200, CH-200-INFO, and CH-250; revoke form CH-260

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:
Annual agenda approved by Rules Committee on (*date*): November 2, 2021; amended November 16, 2021 and March 21, 2022
Project description from annual agenda: Develop form recommendations as appropriate. AB 1143 authorizes a court to approve alternative means of service of process for a petition for a civil harassment protective order if the court determines that the respondent is evading service. The committee will consider whether CH forms need to be revised or new forms created to conform to this new law.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

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

Additional Information for JC Staff (provide with reports to be submitted to JC)**:**

- **Form Translations** (check all that apply)
  This proposal:
  ☐ includes forms that have been translated.
  ☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
  ☐ includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)
  ☒ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
  ☒ This proposal may require changes or additions to self-help web content.

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-099
For business meeting on: May 12–13, 2022

Title
Protective Orders: Civil Harassment Form Adoptions and Revisions, and Rule Amendment

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 3.1160; adopt forms CH-117 and CH-210; approve form CH-205-INFO; revise forms CH-109, CH-110, CH-116, CH-120, CH-120-INFO, CH-200, CH-200-INFO, and CH-250; revoke form CH-260

Recommended by
Civil and Small Claims Advisory Committee
Hon. Tamara L. Wood, Chair

Agenda Item Type
Action Required

Effective Date
September 1, 2022

Date of Report
March 28, 2022

Contact
James Barolo, 415-865-8928
james.barolo@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends amending rule 3.1160 of the California Rules of Court, the adoption, approval, and revision of 11 forms, and the revocation of one form to implement statutory changes in Assembly Bill 1143 (Stats. 2021, ch. 27). The statutory amendment permits courts to allow an alternative method of service for civil harassment restraining order petitions, temporary restraining orders, and notices of hearing upon a showing that the petitioner has been unable to accomplish personal service after a diligent effort, and that there is reason to believe the respondent is evading service or cannot be located. The proposal incorporates this potential alternative service and the required showing into the council's forms and rules of court, and makes other minor changes to civil harassment forms.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council take the following actions, effective September 1, 2022:

1. Amend California Rules of Court, rule 3.1160;

2. Adopt the following forms:
   - *Order Granting Alternative Service* (form CH-117); and
   - *Summons (Civil Harassment Restraining Order)* (form CH-210);

3. Approve the following form:
   - *What If the Person I Want Protection from Is Avoiding (Evading) Service or Cannot Be Located?* (form CH-205-INFO);

4. Revise the following forms:
   - *Notice of Court Hearing* (form CH-109);
   - *Temporary Restraining Order* (CLETS-TCH) (form CH-110);
   - *Order on Request to Continue Hearing* (form CH-116);
   - *Response to Request for Civil Harassment Restraining Orders* (form CH-120);
   - *How Can I Respond to a Request for Civil Harassment Restraining Orders?* (CH-120-INFO);
   - *Proof of Personal Service* (form CH-200);
   - *What Is "Proof of Personal Service"?* (form CH-200-INFO); and
   - *Proof of Service by Mail* (form CH-250);

5. Revoke the following form:
   - *Proof of Service of Order After Hearing by Mail* (CH-260).

The proposed amended rule, and new, revised, and revoked forms are attached at pages 9–37.

Relevant Previous Council Action

Under the Code of Civil Procedure the Judicial Council must provide forms and instructions for use in civil harassment protective order matters. The forms have been revised when changes to the law required revisions and in response to suggestions from the public, judicial officers, and court professionals. The last substantive change to civil harassment protective order forms came in 2018 when the council adopted four new forms allowing parties to seek modification and termination of civil harassment restraining orders.

In 2019, the Judicial Council adopted two new forms, approved a new information sheet, and revised three existing forms to implement Assembly Bill 2694 (Stats. 2018, ch. 219), a precursor to AB 1143, which permitted courts to allow alternative service for domestic violence restraining order forms when the petitioner has been unable to accomplish personal service and there is

reason to believe the respondent is evading service.[1] Where possible, the new and revised forms in this proposal closely parallel the domestic violence forms that were adopted, approved, or revised to implement AB 2694.

Analysis/Rationale

In August 2021, the Legislature enacted Assembly Bill 1143 (Stats. 2021, ch. 27).[2] Prior to this legislation, a person seeking a restraining order for civil harassment was required to personally serve the respondent with a copy of the petition, the temporary restraining order (if one had been issued), and the notice of hearing on the petition. In some cases, however, personal service proved challenging to effectuate as the respondent had moved frequently or purposely avoided service. The new law seeks to address such circumstances and permits a court to specify a method of service other than personal service for those items if "the court determines at the hearing that, after a diligent effort, the petitioner has been unable to accomplish personal service, and that there is reason to believe that the respondent is evading service or cannot be located." (Code Civ. Proc., § 527.6(m).)[3] If the court makes such a determination, then it may "specify another method of service that is reasonably calculated to give actual notice to the respondent and may prescribe the manner in which proof of service shall be made." (*Ibid.*) AB 1143 does not change the service requirements for restraining orders issued after a hearing. (See § 527.6(q).)[4]

Amended rule 3.1160

Rule 3.1160 of the California Rules of Court enumerates several procedural requirements for the following types of civil restraining orders: civil harassment, elder abuse, private postsecondary school violence, and workplace violence. Subdivision (c) regulates the service of requests, notices, and orders for such restraining orders and requires that the "request for a protective order, notice of hearing, and any temporary restraining order [] be personally served on the respondent at least five days before the hearing." In light of the passage of AB 1143, the committee recommends splitting subdivision (c) into two paragraphs as follows:

- Paragraph (1) retains the language in current subdivision (c) regarding the requirement of personal service, but is preceded by "Except as provided in (2)."

[1] See Judicial Council of Cal., Advisory Com. Rep., *Protective Orders: Alternative Service in Domestic Violence Prevention Act Cases* (Sept. 3, 2019); Judicial Council of Cal., Advisory Com. Rep., *Protective Orders: Revisions to Continuance Forms* (Sept. 6, 2019).

[2] AB 1143, Civil procedure: restraining orders, available online at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1143.

[3] All statutory citations are to the Code of Civil Procedure, unless otherwise stated.

[4] AB 1143 only applies to civil harassment restraining orders and does not alter the service requirements for any other type of restraining order, including those to prevent elder abuse, private postsecondary school violence, and workplace violence.

- Paragraph (2) is new and summarizes the amended provisions of section 527.6(m) by stating that the "court may specify another method of service for a request for a civil harassment protective order" if the court makes the required determinations.

Adding a new paragraph regarding alternative service implements the legislative change and provides guidance for litigants and attorneys when an alternative to personal service may be needed.

Civil harassment forms

Revised* Order on Request to Continue Hearing *(form CH-116)

The provisions of AB 1143 require a small change to form CH-116, which is used by the courts to continue hearings for civil harassment restraining orders. Specifically, an order to continue the hearing may now include an order authorizing the petitioner to serve the respondent through alternative means. Accordingly, item 6 on revised form CH-116 now includes an option for the court to provide that "the court gives you permission to serve the restrained party as listed on the attached form CH-117."[5]

New* Order Granting Alternative Service *(form CH-117)

The committee recommends adoption of a new form for courts to allow service of preliminary civil harassment restraining order papers by an alternative method, as authorized by AB 1143. Since amended section 527.6(m) specifies that the required findings to support alternative service must be made "at the hearing," new form CH-117 is an attachment to an order for a new hearing date and the top of the form requires the court to identify the order to which form CH-117 is attached.

Items 1(a) and 1(b) provide the deadline to serve the respondent and specify the papers that must be served. In item 1(c), the court specifies the alternative method of service that the petitioner must use to serve the respondent. The court may check "substituted service" for either the respondent's home or workplace (both of which are methods of service provided in section 415.20), or "publish in a newspaper" (which is a method of service provided in section 415.50). Alternatively, the court can order another method of alternative service by checking "other" and writing in the method. Item 1(d) allows the court to specify how the petitioner shall provide proof of service, which the court is expressly authorized to do in amended section 527.6(m). Finally, item 2 lists the requisite findings that the court must have made to support the order authorizing alternative service under section 527.6(m).

Revised* What is "Proof of Personal Service"? *(form CH-200-INFO)

To comply with AB 1143, the information sheet, *What is "Proof of Personal Service"?*, needs to be revised to include alternative service as a possibility. The committee recommends that form CH-200-INFO include new information about alternative service at the end of the form under an item titled, "What if the other party is avoiding (evading) service or cannot be located?" The new

[5] Form CH-116 also contains a technical revision to provide the correct name of form MC-410 under "Request for Accommodations" on page 3.

item explains the circumstances in which the petitioner may be allowed to use an alternative method of service and how to request it. The form also contains numerous modifications to improve usability modeled after recent changes to form DV-200-INFO, including presenting the information in the form in columns, removing graphics, using plain language, reorganizing content into the steps a petitioner must take to accomplish service, and incorporating information about possible safety issues.

New* What If the Person I Want Protection from Is Avoiding (Evading) Service or Cannot Be Located? *(form CH-205-INFO)
In addition to the added information on the *What is "Proof of Personal Service"?* information sheet (form CH-200-INFO), the committee also recommends approval of a new information sheet, *What If the Person I Want Protection from Is Avoiding (Evading) Service or Cannot Be Located?* (form CH-205-INFO), which provides a petitioner who is having trouble personally serving the respondent with the following information:

- Why serving the respondent is important;
- The type of service required for a restraining order issued after a hearing;
- What to do if the respondent cannot be served, including the requisite showing that must be made for a court to order alternative service;
- Specific explanations of how to perform substituted service and service by publication;
- Why electronic service is likely not appropriate; and
- Where to find legal help.

New* Summons (Civil Harassment Restraining Order) *(form CH-210)
One possible alternative method of service that the court may order is publication of the petitioner's court papers. Such court papers typically include a six-page petition, a three-page notice of hearing, and a six-page temporary restraining order. In light of the burden that would be placed on the petitioner (who will be charged to publish based on the length of the text), the committee also recommends adoption of a brief "summons," which the court could order the petitioner to publish in lieu of other court papers. The summons also contains the following information, in both English and Spanish:

- The name of the person requesting the restraining order (the petitioner);
- Information on what may happen if the respondent does not go to the hearing;
- Where to obtain the restraining order petition;
- Where to get help; and
- Where and when to appear for the court hearing.

Revised* Proof of Service by Mail *(form CH-250) and related forms
Current form CH-250 is a proof of service by mail and is limited to use by respondents to demonstrate that they appropriately served their response to a request for a civil harassment restraining order. Existing law provides that if the terms of a restraining order issued after hearing are identical to the terms of a temporary restraining order (except the duration) and the respondent was personally served with notice of hearing on the restraining order, then the order

after hearing can be served on the respondent via first class mail. (§ 527.6(q)(2).) Current form CH-260 is used to prove service by mail of such an order after hearing. With the passage of AB 1143, the petition, temporary restraining order, and notice of hearing are additional items that may be appropriately served by mail if the court so orders. Accordingly, the subcommittee recommends revisions to form CH-250 to expand its use as a proof of service by mail for any civil harassment form that may be served that way. Specifically, the modifications are:

- Changing the title of form CH-250 to eliminate "of Response";
- Adding a check box in front of item 4(a) (service of form CH-120);
- Adding form CH-130 as a check box in item 4(b); and
- Eliminating certain superfluous information from item 3.[6]

Modifying the name of form CH-250 requires minor technical changes to forms that mention CH-250. Accordingly, the committee recommends making such a revision on the following forms, which is the only revision to those forms unless otherwise stated:

- *Notice of Court Hearing* (form CH-109)[7];
- *Temporary Restraining Order (CLETS-TCH)* (form CH-110);
- *Response to Request for Civil Harassment Restraining Orders* (form CH-120);
- *How Can I Respond to a Request for Civil Harassment Restraining Orders?* (CH-120-INFO); and
- *Proof of Personal Service* (form CH-200).

Given the revisions to form CH-250, form CH-260 becomes unnecessary. Thus, the committee recommends revocation of that form.

Finally, the committee also recommends revising form CH-200, *Proof of Personal Service* to add "CH-250, *Proof of Service by Mail* (blank form)" to the list of forms that may be identified as having been served in item 4 of the form. Item 6 in the current *Notice of Court Hearing* (form CH-109) instructs the petitioner to serve a blank form CH-250 on the respondent, among other documents, and suggests using form CH-200 to prove personal service was performed. However, the current form CH-200 does not allow the petitioner to check form CH-250 as a form that was served; this revision addresses that omission.

Policy implications

The new and revised forms in this proposal implement amended statutes that provide for alternative service of civil harassment restraining order papers in certain circumstances.

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[6] The revisions eliminate a statement that the server must live or be employed in the county where the mailing took place, which is not required by law (see § 414.10) and an instruction that the server is to complete and sign the form and give it to the respondent, which is unnecessary.

[7] Forms CH-109 and CH-120-INFO also contains technical revisions to provide the correct name of form MC-410 under "Request for Accommodations" on form CH-109 and under "What if I am deaf or hard of hearing?" on form CH-120-INFO.

Accordingly, the key policy implications are ensuring that council forms reflect the law correctly and are not misleading to parties. The proposed forms should assist courts and parties in navigating the new statutory provisions related to service of civil harassment restraining order forms.

Comments

The proposal was circulated for public comment between December 10, 2021, and January 21, 2022, as part of the regular winter comment cycle. Comments were received from the Superior Court of Los Angeles County, the Superior Court of San Bernardino County, the Superior Court of San Diego County, and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. Only the Superior Court of San Diego raised an issue with the substance of the proposal. All the comments are briefly summarized below with a discussion of the substantive comment of the Superior Court of San Diego County. A chart setting forth all the comments and the committee's responses to the comments is attached at pages 38–42.

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee commented only to state that the proposal will not result in cost savings. The Superior Court of Los Angeles County and the Superior Court of San Bernardino County indicated that the proposal appropriately addresses the stated purpose and only offered specific comments as to court implementation of the proposal.

Since AB 1143 went into effect January 1, 2022, the Superior Court of San Diego County suggested that the forms in this proposal become effective earlier than September 1, 2022, to prevent the need for individual courts to draft local forms. In response to this comment the committee weighed the need to have accurate and complete forms for use by the courts and litigants and the need to provide sufficient notice to the courts of any new and revised forms in order to prepare systems and staff. The committee ultimately concluded that making the forms effective September 1, 2022 struck the best balance because while the forms currently in effect may not provide specific instructions for doing so, the forms do not preclude petitioners from requesting alternative service or courts from authorizing it.

Alternatives considered

Because AB 1143 enacted changes to law that are not currently reflected in rule 3.1160 and several forms, the committee determined that taking no action would be inappropriate, because such a course would result in forms and rules not in compliance with law.

Instead of including alternative service of civil harassment restraining orders in rule 3.1160, the committee considered deleting rule 3.1160(c) altogether, as the service requirements for the types of civil restraining orders covered by the rule are also provided in statute. The committee concluded, however, that continuing to include and updating the service requirements in the California Rules of Court would promote awareness of and compliance with those requirements by litigants and attorneys.

With regard to the types of alternative service listed on form CH-117 and explained on form CH-205-INFO, the committee considered two other possibilities:

- First, the committee considered including posting papers at the courthouse as an alternative method of service on the forms. However, because posting papers is not explicitly authorized by the Code of Civil Procedure, the committee concluded that it would not be appropriate to include.

- Second, the committee considered *not* including publication as an alternative method of service on either form. While publication is explicitly authorized by section 415.50, it may not comply with the amended requirements of section 527.6(m) that the alternative service allowed must be "reasonably calculated to give actual notice to the respondent." However, given that the Code of Civil Procedure expressly provides for service in such a manner, the committee decided to include it as a suggested alternative. Moreover, inclusion of service by publication on the forms does not prevent the court from ordering a method of alternative service that is more likely to give actual notice in a particular case.

Finally, as suggested by the Superior Court of San Diego County, the committee considered having the forms take effect at an earlier date, such as May 16, 2022, or July 1, 2022, but concluded that an effective date of September 1, 2022 is appropriate as the current forms do not preclude litigants from availing themselves of the additional potential service options authorized in AB 1143 and such an effective date provides time for courts to prepare for the new and revised forms.

Fiscal and Operational Impacts

The committee anticipates that this proposal will result in costs incurred by courts to incorporate new forms into their paper or electronic processes and to train court staff. However, most of the impacts arising from this new law—including education of judicial officers, staff, and justice partners as to the new provisions—are a result of the statute, not the forms.

Attachments and Links

1. Cal. Rules of Court, rule 3.1160, at page 9
2. Forms CH-109, CH-110, CH-116, CH-117, CH-120, CH-120-INFO, CH-200, CH-200-INFO, CH-205-INFO, CH-210, CH-250, and CH-260, at pages 10–37
3. Chart of comments, at pages 38–42
4. Link A: AB 1143, *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1143*

Rule 3.1160 of the California Rules of Court is amended, effective September 1, 2022, to read:

Rule 3.1160. Requests for protective orders to prevent civil harassment, workplace violence, private postsecondary school violence, and elder or dependent adult abuse

(a)–(b) * * *

(c) Service of requests, notices, and orders

(1) Except as provided in (2), t~~T~~he request for a protective order, notice of hearing, and any temporary restraining order, must be personally served on the respondent at least five days before the hearing, unless the court for good cause orders a shorter time. Service must be made in the manner provided by law for personal service of summons in civil actions.

(2) The court may specify another method of service for a request for a civil harassment protective order brought under Code of Civil Procedure section 527.6 if the court determines that the petitioner has been unable to accomplish personal service, and that there is reason to believe that the respondent is evading service or cannot be located.

(d)–(e) * * *

CH-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

DRAFT

3/27/2022

NOT APPROVED BY JUDICIAL COUNCIL

1 Person Seeking Protection

a. Your Full Name:

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*

Address: _____

City: _____ State: ____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

2 Person From Whom Protection Is Sought

Full Name: _____

The court will complete the rest of this form.

3 Notice of Hearing

A court hearing is scheduled on the request for restraining orders against the person in 2:

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

_____

_____

4 Temporary Restraining Orders *(Any orders granted are on form CH-110, served with this notice.)*

a. Temporary Restraining Orders for personal conduct and stay-away orders as requested in form CH-100, *Request for Civil Harassment Restraining Orders,* are *(check only one box below):*

(1) ☐ All **GRANTED** until the court hearing.

(2) ☐ All **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

(3) ☐ Partly **GRANTED** and partly **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

b. Reasons for denial of some or all of those personal conduct and stay-away orders as requested in form CH-100, *Request for Civil Harassment Restraining Orders,* are:

(1) ☐ The facts as stated in form CH-100 do not sufficiently show acts of violence, threats of violence, or a course of conduct that seriously alarmed, annoyed, or harassed the person in (1) and caused substantial emotional distress.

(2) ☐ Other *(specify):* ☐ As set forth on Attachment 4b.

(5) Confidential Information Regarding Minor

a. ☐ A *Request to Keep Minor's Information Confidential* (form CH-160) was made and **GRANTED**. (*See form CH-165,* Order on Request to Keep Minor's Information Confidential, *served with this form.)*

b. **If the request was granted, the information described in item (7) on the order (form CH-165) must be kept CONFIDENTIAL. The disclosure or misuse of the information is punishable as a sanction, with a fine of up to $1,000 or other court penalities.**

(6) Service of Documents for the Person in (1)

At least ☐ five ☐ _____ days before the hearing, someone age 18 or older—**not you or anyone to be protected—**must personally give (serve) a court's file-stamped copy of this form CH-109 to the person in (2) along with a copy of all the forms indicated below:

a. CH-100, *Request for Civil Harassment Restraining Orders* (file-stamped)

b. ☐ CH-110, *Temporary Restraining Order* (file-stamped) **IF GRANTED**

c. CH-120, *Response to Request for Civil Harassment Restraining Orders* (blank form)

d. CH-120-INFO, *How Can I Respond to a Request for Civil Harassment Restraining Orders?*

e. CH-250, *Proof of Service by Mail* (blank form)

f. ☐ CH-170, *Notice of Order Protecting Information of Minor* and CH-165*, Order on Request to Keep Minor's Information Confidential* (file-stamped) **IF GRANTED**

g. ☐ Other *(specify):* _____

Date: _____ _____

Judicial Officer

Case Number:

To the Person in 1 :

- The court cannot make the restraining orders after the court hearing unless the person in 2 has been personally given (served) a copy of your request and any temporary orders. To show that the person in 2 has been served, the person who served the forms must fill out a proof of service form. Form CH-200, *Proof of Personal Service,* may be used.
- For information about service, read form CH-200-INFO, *What Is "Proof of Personal Service"?*
- If you are unable to serve the person in 2 in time, you may ask for more time to serve the documents. Use form CH-115, *Request to Continue Court Hearing and to Reissue Temporary Restraining Order*.

To the Person in 2 :

- If you want to respond to the request for orders in writing, file form CH-120, *Response to Request for Civil Harassment Restraining Orders,* and have someone age 18 or older—**not you or anyone to be protected—**mail it to the person in 1 .
- The person who mailed the form must fill out a proof of service form. Form CH-250, *Proof of Service by Mail,* may be used. File the completed form with the court before the hearing and bring a copy with you to the court hearing.
- Whether or not you respond in writing, go to the hearing if you want the judge to hear from you before making an order. You may tell the judge why you agree or disagree with the orders requested.
- You may bring witnesses and other evidence.
- At the hearing, the judge may make restraining orders against you that could last up to five years and may order you to turn in to law enforcement, or sell to or store with a licensed gun dealer, any firearms that you own or possess.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Disability Accommodation Request* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Court Hearing* is a true and correct copy of the original on file in the court.

Clerk's Certificate
[seal]

Date: _____

Clerk, by _____, Deputy

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

CH-110 Temporary Restraining Order

Clerk stamps date here when form is filed.

DRAFT

3/27/2022

NOT APPROVED BY JUDICIAL COUNCIL

Person in (1) must complete items (1), (2), and (3) only.

(1) Protected Person

a. Your Full Name: _____

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.):*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(2) Restrained Person

Full Name: _____

Description:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address *(if known)*: _____

City: _____ State: _____ Zip: _____

Relationship to Protected Person: _____

(3) ☐ Additional Protected Persons

In addition to the person named in (1), the following family or household members of that person are protected by the temporary orders indicated below:

Full Name	Sex	Age	Household Member?	Relation to Protected Person
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	

☐ *Check here if there are additional persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use form MC-025, Attachment.*

The court will complete the rest of this form.

(4) Expiration Date

This Order expires at the end of the hearing scheduled for the date and time below:

Date: _____ Time: _____ ☐ a.m. ☐ p.m.

This is a Court Order.

To the Person in (2):

The court has granted the temporary orders checked as granted below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.

(5) Personal Conduct Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows:**

a. You must **not** do the following things to the person named in (1)
☐ and to the other protected persons listed in (3):

(1) ☐ Harass, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, abuse, destroy personal property of, or disturb the peace of the person.

(2) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by email, by text message, by fax, or by other electronic means.

(3) ☐ Take any action to obtain the person's address or location. If this item (3) is not checked, the court has found good cause not to make this order.

(4) ☐ Other *(specify):*

☐ Other personal conduct orders are attached at the end of this Order on Attachment 5a(4).

_____

_____

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order. However, you may have your papers served by mail on the person in (1).

(6) Stay-Away Order

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows:**

a. You must stay at least _____ yards away from *(check all that apply):*

(1) ☐ The person in (1)
(2) ☐ Each person in (3)
(3) ☐ The home of the person in (1)
(4) ☐ The job or workplace of the person in (1)
(5) ☐ The school of the person in (1)
(6) ☐ The school of the children of the person in (1)
(7) ☐ The place of child care of the children of the person in (1)
(8) ☐ The vehicle of the person in (1)
(9) ☐ Other *(specify):*

_____

_____

_____

_____

b. This stay-away order does not prevent you from going to or from your home or place of employment.

(7) No Guns or Other Firearms and 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. You must:

(1) Sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.

This is a Court Order.

(2) File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in, sold, or stored. *(You may use form CH-800,* Proof of Firearms Turned In, Sold, or Stored, *for the receipt.)*

c. ☐ The court has received information that you own or possess a firearm.

8 Possession and Protection of Animals

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows** *(specify):*

a. ☐ The person in (1) is given the sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by him or her, or reside in his or her household. *(Identify animals by, e.g., type, breed, name, color, sex.)*

b. ☐ The person in (2) must stay at least _____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

9 Other Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows** *(specify):*

☐ Additional orders are attached at the end of this Order on Attachment 9.

To the Person in (1):

10 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, the person in (1) or his or her lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address *(City, State, Zip)*

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 10.

This is a Court Order.

(11) No Fee to Serve (Notify) Restrained Person ☐ **Ordered** ☐ **Not Ordered**

The sheriff or marshal will serve this Order without charge because:

a. ☐ The Order is based on unlawful violence, a credible threat of violence, or stalking.

b. ☐ The person in (1) is entitled to a fee waiver.

(12) Number of pages attached to this Order, if any: _____

Date: _____ _____

Judicial Officer

Warnings and Notices to the Restrained Person in (2)

You Cannot Have Guns or Firearms

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control as stated in item (7) above. The court will require you to prove that you did so.

Notice Regarding Nonappearance at Hearing and Service of Order

If you have been personally served with this Temporary Restraining Order and form CH-109, *Notice of Court Hearing,* but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this Temporary Restraining Order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the address in item (2).

If this address is not correct or you wish to verify that the Temporary Restraining Order was converted into a restraining order at the hearing without substantive change, or to find out the duration of the order, contact the clerk of the court.

After You Have Been Served With a Restraining Order

- Obey all the orders.
- Read form CH-120-INFO, *How Can I Respond to a Request for Civil Harassment Restraining Orders?,* to learn how to respond to this Order.
- If you want to respond, fill out form CH-120, *Response to Request for Civil Harassment Restraining Orders,* and file it with the court clerk. You do not have to pay any fee to file your response if the Request claims that you inflicted or threatened violence against or stalked the person in (1).
- You must have form CH-120 served by mail on the person in (1) or that person's attorney. You cannot do this yourself. The person who does the mailing should complete and sign form CH-250, *Proof of Service by Mail*. File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served, signed by you and other persons who have personal knowledge of the facts. You may use form MC-030, *Declaration,* for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at *www.courts.ca.gov/forms*. If you do not know how to prepare a declaration, you should see a lawyer.

This is a Court Order.

- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, the judge can make restraining orders against you that last for up to five years. Tell the judge why you disagree with the orders requested.

Instructions for Law Enforcement

Enforcing the Restraining Order

This order 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 Restraining and Protective Orders System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

Start Date and End Date of Orders

This order *starts* on the date next to the judge's signature on page 4. The order *ends* on the expiration date in item (4) on page 1.

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. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- 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 informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The order 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, the orders must be enforced according to the following priorities (see Pen. Code, § 136.2; Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and 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 over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

(Clerk will fill out this part.)

Clerk's Certificate
[seal]

—Clerk's Certificate—

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.

CH-116 Order on Request to Continue Hearing

Clerk stamps date here when form is filed.

DRAFT

3/10/2022

NOT APPROVED BY JUDICIAL COUNCIL

Complete items (1) and (2) only.

(1) **Protected Party:** _____

(2) **Restrained Party:** _____

The court will complete the rest of this form

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(3) Next Court Date

a. ☐ The request to reschedule the court date is **denied**.

Your court date is: _____

(1) Any *Temporary Restraining Order* (form CH-110) already granted stays in full force and effect until the next court date.

(2) Your court date is not rescheduled because: _____

b. ☐ The request to reschedule the court date is **granted**. Your court date is rescheduled for the day and time listed below. See (4)–(8) for more information.

New Court Date → Date: _____ Time: _____ Dept.: _____ Room: _____

Name and address of court, if different from above:

(4) Temporary Restraining Order

a. ☐ **There is no *Temporary Restraining Order* (TRO) in this case until the next court date** because:.

(1) ☐ A TRO was not previously granted by the court.

(2) ☐ The court terminates (cancels) the previously granted TRO because: _____

b. ☐ **A *Temporary Restraining Order* (TRO) is still in full force and effect** because:

(1) ☐ The court extends the TRO previously granted on *(date)*: _____
It now expires on *(date)*: _____
(*If no date is listed, the TRO expires at the end of the court date listed in 3b.)*

(2) ☐ The court changes the TRO previously granted and signs a new TRO (form CH-110).

Warning and Notice to the Restrained Party:
If (4) b is checked, a civil harassment restraining order has been issued against you. You must follow the orders until they expire.

c. ☐ Other *(specify)*: _____

This is a Court Order.

5 Reason Court Date Is Rescheduled

a. ☐ There is good cause to reschedule the court date *(check one)*:
   (1) ☐ The protected party has not served the restrained party.
   (2) ☐ Other: _____

b. ☐ This is the first time that the restrained party has asked for more time to prepare.

c. ☐ The court reschedules the court date on its own motion.

6 Serving (Giving) Order to Other Party

The request to reschedule was made by the:

a. ☐ **Protected party**	b. ☐ **Restrained party**	c. ☐ **Court**
(1) ☐ You do not have to serve the restrained party because they or their lawyer were at the court date or agreed to reschedule the court date.	(1) ☐ You do not have to serve the protected party because they or their lawyer were at the court date or agreed to reschedule the court date.	(1) ☐ Further notice is not required.
(2) ☐ You must have the restrained party personally served with a copy of this order and a copy of all documents listed on form CH-109, item 6, by *(date)*: _____	(2) ☐ You must have the protected party personally served with a copy of this order by *(date)*: _____	(2) ☐ The court will mail a copy of this order to all parties by *(date)*: _____ .
(3) ☐ You must have the restrained party served with a copy of this order. This can be done by mail. You must serve by *(date)*: _____	(3) ☐ You must have the protected party served with a copy of this order. This can be done by mail. You must serve by *(date)*: _____	(3) ☐ Other: _____
(4) ☐ The court gives you permission to serve the restrained party as listed on the attached form CH-117.	(4) ☐ Other: _____	
(5) ☐ Other: _____		

This is a Court Order.

Case Number:

7 No Fee to Serve (Notify) Restrained Person ☐ Ordered ☐ Not Ordered

The sheriff or marshal will serve this order for free because:

a. ☐ The order is based on unlawful violence, a credible threat of violence, or stalking.

b. ☐ The person in 1 is entitled to a fee waiver.

8 ☐ Other Orders

_____

_____

_____

_____

Date: _____

_____
Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms.htm* for *Disability Accommodation Request* (*form MC-410*). (Civ. Code, § 54.8.)

Instructions to Clerk

If the hearing is rescheduled and the court extended, modified, or terminated a temporary restraining order, then the court must enter this order into CLETS or send this order to law enforcement to enter into CLETS. This must be done within one business day from the day the order is made.

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order on Request to Continue Hearing (Temporary Restraining Order) (CLETS-TCH)* 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

DRAFT 3/10/2022 NOT APPROVED BY JUDICIAL COUNCIL

CH-117 Order Granting Alternative Service

Case Number:

This form is attached to (check one): ☐ CH-116 ☐ Other order setting new hearing date

1 Serving the Restrained Party

Protected party: You must have the restrained party served by following the orders below.

(a) **Deadline:** You must serve the restrained party by *(date)*: _____

(b) **Papers to Serve** *(check all that apply)*:

(1) ☐ A copy of this order, including form CH-116 or other order setting new hearing date
(2) ☐ Form CH-210
(3) ☐ All the documents indicated on form CH-109, item 6
(4) ☐ Other:

(c) **How to Serve Papers**

(1) ☐ **Substituted Service**

(A) ☐ **Home**: You must have your server (1) leave a copy of all the papers listed in 1b at the restrained party's home or usual mailing address with an adult that lives there, and (2) mail a copy to the restrained party to the same address.

(B) ☐ **Workplace**: You must have your server (1) leave a copy of all the papers listed in 1b at the restrained party's workplace or usual mailing address with someone who seems to be in charge, and (2) mail a copy to the restrained party at the same workplace.

(2) ☐ **Publish in a newspaper**

(A) You must have form CH-210 published at least once a week for 4 weeks in a row with the newspaper listed here: _____

(B) If you find an address for the restrained party while form CH-210 is published in the newspaper, you must have someone mail all the papers listed in 1b to that address.

(3) ☐ **Other**: _____

For more information on alternative service, read form CH-205-INFO, What if the Person I Want Protection from is Avoiding (Evading) Service?

(d) **How to Provide Proof of Service**

(1) ☐ Fill out form POS-010
(2) ☐ Fill out form CH-250
(3) ☐ **Other**: _____

2 Findings That Support This Order

(a) The protected person has made diligent efforts to have the restrained party personally served but has been unsuccessful.

(b) There is reason to believe that the restrained party is avoiding (evading) service or cannot be located.

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

CH-120 Response to Request for Civil Harassment Restraining Orders

Clerk stamps date here when form is filed.

DRAFT

3/27/2022

NOT APPROVED BY JUDICIAL COUNCIL

Use this form to respond to the *Request* (form CH-100)

- Read *How Can I Respond to a Request for Civil Harassment Restraining Orders?* (form CH-120-INFO) to protect your rights.
- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—**not you**—serve the person in (1) or his or her lawyer by mail with a copy of this form and any attached pages. *(Use form CH-250,* Proof of Service by Mail.*)*

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(1) Person Seeking Protection

Full name of person seeking protection *(see form CH-100, item (1))*:

(2) Person From Whom Protection Is Sought

a. Your Name: _____

Your Lawyer *(if you have one for this case)*
Name: _____ State Bar No.: _____
Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*

Address: _____
City: _____ State: ____ Zip: _____
Telephone: _____ Fax: _____
Email Address: _____

Present your response and any opposition at the hearing. Write your hearing date, time, and place from form CH-109 item (3) here:

Hearing Date → Date: _____ Time: _____
Dept.: _____ Room: _____

If you were served with a Temporary Restraining Order, you must obey it until the hearing. At the hearing, the court may make orders against you that last for up to five years.

(3) ☐ Personal Conduct Orders

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item (11) on page 3.)*
c. ☐ I agree to the following orders *(Specify below or in item (11) on page 3.)*

_____
_____

(4) ☐ Stay-Away Orders

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item (11) on page 3.)*
c. ☐ I agree to the following orders *(specify below or in item (11) on page 3):*

_____
_____

(5) ☐ Additional Protected Persons

a. ☐ I agree that the persons listed in item (3) of form CH-100 may be protected by the order requested.
b. ☐ I do not agree that the persons listed in item (3) of form CH-100 may be protected by the order requested.

6 Guns or Other Firearms and Ammunition

If you were served with form CH-110, *Temporary Restraining Order,* you cannot own or possess any guns, other firearms, or ammunition. (See item 7 of form CH-110.) You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control within 24 hours of being served with form CH-110. You must file a receipt with the court. You may use form CH-800, *Proof of Firearms Turned In, Sold or Stored,* for the receipt.

a. ☐ I do not own or control any guns or firearms.

b. ☐ I ask for an exemption from the firearms prohibition under Code of Civil Procedure section 527.9(f) because carrying a firearm is a condition of my employment, and my employer is unable to reassign me to another position where a firearm is unnecessary. *(Explain):*

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 6b—Firearms Surrender Exemption" as a title. You may use form MC-025,* Attachment.

c. ☐ I have turned in my guns and firearms to the police or sold them to or stored them with a licensed gun dealer.
A copy of the receipt ☐ is attached. ☐ has already been filed with the court.

7 ☐ Possession and Protection of Animals

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 11 on page 3.)*
c. ☐ I agree to the following orders *(specify below or in item 11 on page 3):*

8 ☐ Other Orders

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 11 on page 3.)*
c. ☐ I agree to the following orders *(specify below or in item 11 on page 3):*

9 ☐ Denial

I did not do anything described in item 7 of form CH-100. *(Skip to 11 .)*

10 ☐ Justification or Excuse

If I did some or all of the things that the person in (1) has accused me of, my actions were justified or excused for the following reasons *(explain):*

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 10—Justification or Excuse" as a title. You may use form MC-025,* Attachment.

11 ☐ Reasons I Do Not Agree to the Orders Requested

Explain your answers to each order requested that you do not agree with.

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 11—Reasons I Disagree" as a title. You may use form MC-025,* Attachment.

Case Number:

12 ☐ No Fee for Filing

a. ☐ I request that I not be required to pay the filing fee because the person in 1 claims in form CH-100 item 13 to be entitled to free filing.

b. ☐ I request that I not be required to pay the filing fee because I am eligible for a fee waiver. *(Form FW-001,* Request to Waive Court Fees, *must be filed separately.)*

13 ☐ Lawyer's Fees and Costs

a. ☐ I ask the court to order payment of my ☐ Lawyer's fees ☐ Court costs.

The amounts requested are:

Item	Amount	Item	Amount
	$		$
	$		$
	$		$

☐ *Check here if there are more items. Put the items and amounts on the attached sheet of paper and write "Attachment 13—Lawyer's Fees and Costs" for a title. You may use form MC-025,* Attachment.

b. ☐ I ask the court to deny the request of the person asking for protection that I pay his or her lawyer's fees and costs.

14 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____

Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

CH-120-INFO How Can I Respond to a Request for Civil Harassment Restraining Orders?

What is a civil harassment restraining order?

It is a court order that prohibits you from doing certain things and going to certain places.

What does the order do?

The court can order you to:

- Not contact the person who asked for the order
- Stay away from that person and the person's home and workplace
- Not have any guns as long as the order is in effect

Who can ask for a civil harassment restraining order?

A person who is worried about safety because he or she has been or is being:

- Stalked
- Harassed
- Assaulted, including sexually, *or*
- Threatened with violence

I've been served with a request for civil harassment restraining orders. What do I do now?

Read the papers served on you very carefully. The *Notice of Court Hearing* tells you when to appear in court. There may also be a *Temporary Restraining Order* forbidding you from doing certain things. You must obey the order until the hearing.

What if I don't obey the order?

The police can arrest you. You can go to jail and pay a fine.

What if I don't agree with what the order says?

You still must obey the order until the hearing. If you disagree with the orders the person is asking for, fill out form CH-120, *Response to Request for Civil Harassment Restraining Orders,* before your hearing date and file it with the court. If you need to include attachments, you can use form MC-025. You can get the forms from legal publishers or on the Internet at *www.courts.ca.gov.* You also may be able to find them at your local courthouse or county law library.

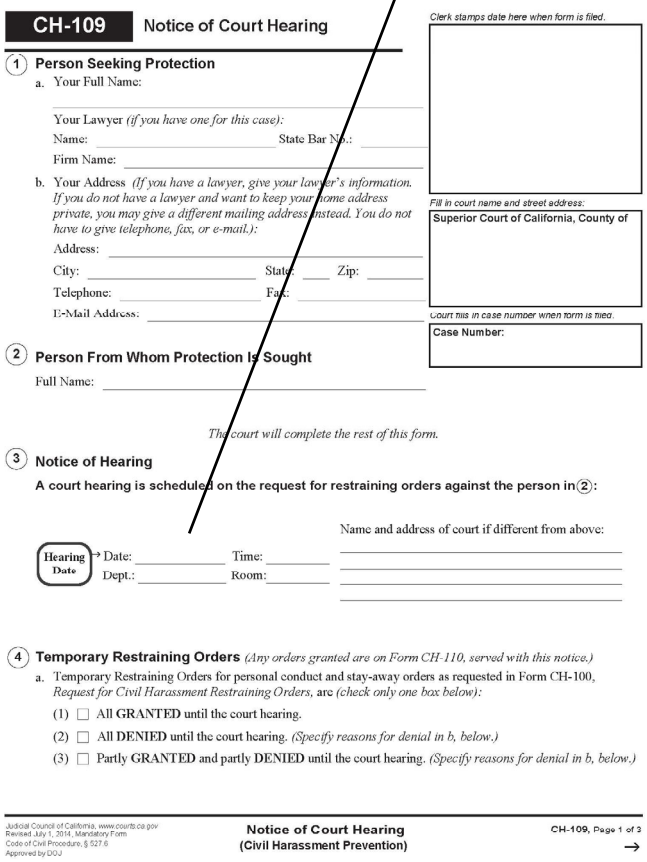
Do I have to serve the other person with a copy of my response?

Yes. Have someone age 18 or older—**not you**—mail a copy of completed form CH-120 to the person who asked for the order (or that person's lawyer). (This is called "service by mail.")

The person who serves the form by mail must fill out form CH-250, *Proof of Service by Mail.* Have the person who did the mailing sign the original. Take the completed form back to the court clerk or bring it with you to the hearing.

Should I go to the court hearing?

Yes. You should go to court on the date listed on form CH-109, *Notice of Court Hearing*. If you do not go to the hearing, the judge can make orders against you without hearing from you.



CH-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

1 Person Seeking Protection

a. Your Full Name:

Your Lawyer *(if you have one for this case):*
Name: State Bar No.:
Firm Name:

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):*
Address:
City: State: Zip:
Telephone: Fax:
E-Mail Address:

Fill in court name and street address:
Superior Court of California, County of

Court fills in case number when form is filed.
Case Number:

2 Person From Whom Protection Is Sought
Full Name:

The court will complete the rest of this form.

3 Notice of Hearing
A court hearing is scheduled on the request for restraining orders against the person in 2:

Hearing Date → Date: Time:
Dept.: Room:

Name and address of court if different from above:

4 Temporary Restraining Orders *(Any orders granted are on Form CH-110, served with this notice.)*
a. Temporary Restraining Orders for personal conduct and stay-away orders as requested in Form CH-100, *Request for Civil Harassment Restraining Orders,* are *(check only one box below):*
(1) ☐ All GRANTED until the court hearing.
(2) ☐ All DENIED until the court hearing. *(Specify reasons for denial in b, below.)*
(3) ☐ Partly GRANTED and partly DENIED until the court hearing. *(Specify reasons for denial in b, below.)*

Judicial Council of California, www.courts.ca.gov
Revised July 1, 2014, Mandatory Form
Code of Civil Procedure, § 527.6
Approved by DOJ

Notice of Court Hearing
(Civil Harassment Prevention)

CH-109, Page 1 of 3 →

CH-120-INFO How Can I Respond to a Request for Civil Harassment Restraining Orders?

How long does the order last?

If the court issued a temporary restraining order before the hearing, it will last until your hearing date. At that time, the court will decide to continue or cancel the order. Any order issued at the hearing can last for up to five years.

Do I need a lawyer?

Having a lawyer is always a good idea, but it is not required, and you are not entitled to a free court-appointed attorney. Ask the court clerk about free and low-cost legal services and self-help centers in your county.

Will I see the person who asked for the order at the court hearing?

Yes. Assume that the person who is asking for the order will attend the hearing. Do not talk to him or her unless the judge or that person's attorney says that you can.

Can I bring a witness to the court hearing?

Yes. You can bring witnesses or documents that support your case to the hearing. But if possible, you should also bring the witnesses' written statements of what they saw or heard. Their statements must be made under penalty of perjury. You can use form MC-030 for this.

For help in your area, contact:

[Local information may be inserted.]

What if I don't speak English?

When you file your papers, ask the clerk if a court interpreter is available. You may have to pay a fee for the interpreter. If an interpreter is not available for your court date, bring someone to interpret for you. You should ask someone age 18 or older to interpret for you.

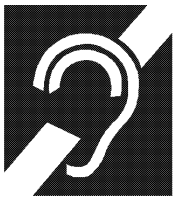
What if I have a gun?

If a restraining order is issued, you cannot own, possess, or have a gun, other firearm, or ammunition while the order is in effect. If you have a gun or other firearm in your immediate possession or control, you must sell it to or store it with a licensed gun dealer, or turn it in to a law enforcement agency.

Can I agree with the protected person to cancel the order?

No. Once the order is issued, only the judge can change or cancel it. You or the protected person would have to file a request with the court to cancel the order.

What if I am deaf or hard of hearing?



Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five court days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Disability Accommodation Request* (form MC-410). (Civ. Code, § 54.8.)

CH-200 Proof of Personal Service

Clerk stamps date here when form is filed.

DRAFT

3/10/2022

NOT APPROVED BY JUDICIAL COUNCIL

1 Person Seeking Protection

Name: _____

2 Person From Whom Protection Is Sought

Name: _____

3 Notice to Server

The server must:

- Be 18 years of age or older.
- Not be listed in items 1 or 3 of form CH-100.
- Give a copy of all documents checked in 4 to the person in 2. (You cannot send them by mail.) Then complete and sign this form and give or mail it to the person in 1.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

PROOF OF PERSONAL SERVICE

4 I gave the person in 2 a copy of the forms checked below:

a. ☐ CH-109, *Notice of Court Hearing*
b. ☐ CH-110, *Temporary Restraining Order*
c. ☐ CH-100, *Request for Civil Harassment Restraining Orders*
d. ☐ CH-120, *Response to Request for Civil Harassment Restraining Orders* (blank form)
e. ☐ CH-120-INFO, *How Can I Respond to a Request for Civil Harassment Restraining Orders?*
f. ☐ CH-130, *Civil Harassment Restraining Order After Hearing*
g. ☐ CH-250, *Proof of Service by Mail* (blank form)
h. ☐ CH-800, *Proof of Firearms Turned In, Sold, or Stored* (blank form)
i. ☐ Other *(specify):* _____

5 I personally gave copies of the documents checked above to the person in 2:

a. On *(date):* _____ b. At *(time):* _____ ☐ a.m. ☐ p.m.

c. At this address: _____

City: _____ State: _____ Zip: _____

6 Server's Information

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

(If you are a registered process server):

County of registration: _____ Registration number: _____

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print server's name *Server to sign here*

For your protection and privacy, please press the Clear This Form button after you have printed the form.

29

Print this form | Save this form | Clear this form

CH-200-INFO What Is "Proof of Personal Service"?

What is "service"?

Service is the act of giving your court papers to the other party in your case. There are different ways to serve the other party: in person, by mail, and others.

Why do my court papers need to be served?

Before a judge can grant a civil harassment restraining order (that can last up to five years), the person you want a restraining order against must know about your request and have a chance to go to court to explain their side. Also, if a restraining order is in place, the police cannot arrest the restrained person for violating the restraining order until the restrained person is served with the order.

What is "personal service"?

Personal service is when someone, known as a server, personally delivers your court papers to the other party.

In most cases, these forms must be served to the other party by personal service:

- Form CH-109;
- Form CH-100;
- Form CH-110;
- Form CH-120 (leave this form blank);
- Form CH-120-INFO; and
- Form CH-250 (leave this form blank).

Who can serve my court papers?

Any adult who is not protected by the restraining order can serve your court papers. **You cannot serve your own court papers.**

Some situations may be dangerous. Think about people's safety when deciding who you want to serve your papers.

A sheriff or marshal will serve your court papers for free if:

- The court granted you a fee waiver; or
- The restraining order is based on stalking, violence, or a credible threat of violence.

A registered process server is a business you pay to deliver papers. To hire a process server, look for "process server" on the internet or in the yellow pages.

How do I have my court papers served?

◯ **Step 1: Choose a server**

The person who gives your court papers to the other party is called a server. Your server must be at least 18-years-old. They must not be protected by the restraining order or involved in your case. This means that you cannot serve your own court papers.

◯ **Step 2: Have your server give your court papers to the other party**

Give your server these instructions:

1. Before you serve the forms, note which forms you have, including the name of the form and the form number. See form CH-200 for a list of forms.
2. Find the person you need to serve. Make sure you are serving the right person by asking the person's name.
3. Give the person the papers. If the person refuses to take the papers, put them on the ground or somewhere next to the person. The person doesn't have to touch or sign for the papers. It is okay if they tear them up.
4. Fill out form CH-200 completely and sign.
5. File form CH-200 with the court or give form CH-200 to the person who is asking for the restraining order so they can file it.

◯ **Step 3: File proof with the court**

The court needs proof that service happened and that it was done correctly. If your server was successful, have your server fully complete and sign form CH-200. **The person you want restrained does not sign anything.**

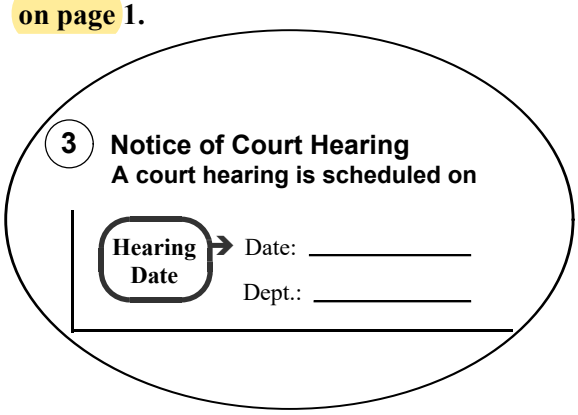
File form CH-200 with the court in your case as soon as possible. This information will automatically go into a restraining order database that police have access to.

If the sheriff or marshal served your court papers, they may use another form for proof besides form CH-200. Make sure a copy is filed with the court and that you get a copy.

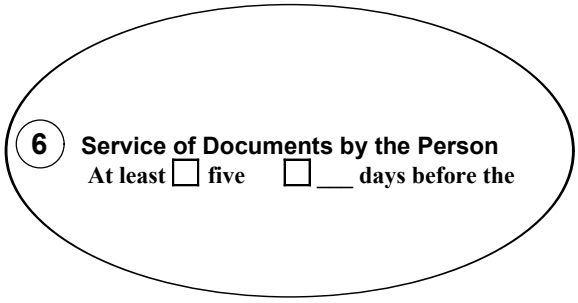
When is the deadline to serve my court papers?

It depends. To know the exact date, you need to look at two items on form CH-109. Follow these steps:

◯ **Step 1: Look at the court date listed under (3) on page 1.**



◯ **Step 2: Look at the number of days written in (6) on page 2.**



◯ **Step 3: Look at a calendar.** Subtract the number of days in (6) from the court date. That's the deadline to have your court papers served. It's okay to serve your court papers before the deadline.

If nothing is written in (6), you must have your court papers served at least five days before your court date.

What happens if I can't get my court papers served before the court date?

You will need to ask the court to reschedule (continue) your court date. Fill out and file form CH-115 and form CH-116. These forms ask the judge for a new court date and to make any temporary orders last until the end of the new court date.

If the judge gives you a new court date, the person you want restrained will have to be served with form CH-115, form CH-116, **and** the original papers you filed. You should keep a copy of form CH-115, form CH-116, and a copy of your original paperwork. That way, the police will know your orders are still in effect.

For more information on asking for a new court date, read form CH-115-INFO.

What if the other party is avoiding (evading) service or cannot be located?

If you've tried many times to serve the the restrained person, and you can show the judge that the restrained person is avoiding (evading) service or cannot be located, you may ask the court to allow you to serve another way. If you want to make this request, at your first court date tell the judge details about your attempts to have the restrained person served. The judge may require a written statement for this.

Read form CH-205-INFO, *What If the Person I Want Protection from Is Avoiding (Evading) Service or Cannot Be Located?*, for more information.

CH-205-INFO What If the Person I Want Protection from Is Avoiding (Evading) Service or Cannot Be Located?

Why do I have to serve the restrained person?

Before a judge can grant a civil harassment restraining order (that can last up to five years), the person you want a restraining order against must know about your request and have a chance to go to court to explain their side. In most cases, the judge will require that you have someone personally deliver the papers to the person you want restrained. This is called personal service. See form CH-200-INFO for more information.

What if I already have a civil harassment restraining order?

If a judge granted you a civil harassment restraining order on form CH-130, alternative service is not an option for you. Follow the orders for service on form CH-130. It is important to follow the orders for service because this is how the restrained person will find out about the restraining orders. Once you file proof that the restrained person was served, law enforcement and the court will have proof that the restrained person knows about the orders. If you have questions about what the judge ordered in your case, see page 2 for where to get legal help.

What if I can't personally serve the restrained person?

When you cannot personally serve the restrained person with a copy of form CH-100 and related papers, a judge may allow you to give, or serve, the restraining order papers another way. This is called alternative service. The judge could order you to have your server give the restrained person your court papers in more than one way.

If you want to request alternative service, at your court date tell the judge details about your attempts to have the restrained person served. To qualify for alternative service, you must show the judge at least two things.

❶ You have tried many times (usually 3 or more times) to have someone personally serve the restrained person.

Some examples of ways you can try to have the restrained person personally served:

- Serve the restrained person at home, their workplace, or somewhere they go a lot.
- Search online for where they may be located.
- Check with their family and friends.

Make sure any attempts to find the restrained person are done safely.

If you have an address for the restrained person, you can ask the sheriff or marshal to serve your papers, which they will do for free if:

- The court granted you a fee waiver; or
- The restraining order is based on stalking, violence, or a credible threat of violence.

❷ You believe the restrained person is avoiding (evading) personal service or cannot be located.

Be ready to explain why you think the restrained person is avoiding service or cannot be located. If you have people who will help you prove this to a judge, bring them to your court hearing or have them write a statement that describes what they witnessed. Form MC-030 may be used for this purpose.

Alternative service may involve other people having access to your court papers.

This will mean they can see your name, the fact that you want a restraining order against the other party, and possibly your statements regarding the abuse. You may want to talk to an advocate about your safety and privacy concerns before you consider this request.

What is substituted service?

The judge may order you to perform substituted service at the restrained person's home or workplace, or, if no physical address is known, the restrained person's usual mailing address (other than a post office box; a private mailbox with a commercial business may be okay). Substituted service requires your server to follow these steps:

1. Give the papers to someone 18 years or older who lives at the restrained person's home or usual mailing address (that is not a P.O. box), or who appears to be in charge at the restrained person's workplace. If the only address reasonably known for the restrained person is a private mailbox with a commercial mail receiving agency, give the papers to someone 18 years or older who appears to be in charge.
2. Get the name of the adult who got the papers, and tell the adult that the papers are for a request for a restraining order against the restrained person.
3. Mail the papers to the restrained person's home, workplace, or usual mailing address. (This step is not required if the papers were given to a person in charge of the commercial mail receiving agency where the restrained person has a private mailbox.)
4. Follow the instructions for completing and filing a proof of service as ordered in item 1(d) on form CH-117.

What is service by publication?

The judge may also order you to serve the restrained person by publication. This means that you would have to pay a newspaper to publish a copy of whatever papers the judge orders you to have published at least once a week, for at least four weeks in a row. The judge would approve a newspaper that would have the best chances of the restrained person seeing it. Follow the orders made by the judge, which will usually be found on form CH-117.

After the newspaper publishes your court papers, make sure you get a signed statement from the newspaper that includes a copy of what was published in the newspaper and when it was published. This statement is usually called “Proof of Publication.” After you receive this statement, file it with the court in your case.

May I serve by email or electronically?

To serve someone electronically, like by email or text message, the person you are serving has to agree to being served electronically or the judge has to order electronic service. If the person is avoiding service, it is unlikely that they will agree to being served electronically. If the judge orders you to serve the restrained person electronically, follow all the instructions of the judge, which will usually be found on form CH-117, including any orders to also provide additional forms of service, such as substituted service or publication.

Where can I find legal help?

Free legal information is available in every county at a court self-help center. Staff can provide you with your legal options but will not tell you what you should do in your case and will not provide you with legal representation. To find your local self-help center, go to *www.courts.ca.gov/selfhelp*.

CH-210 Summons (Civil Harassment Restraining Order) Citación (Orden de restricción por acoso civil)

If ordered by a judge to use this form, complete items (1) and (2) only.
Si un juez le ha ordenado llenar este formulario, llene solo los puntos (1) y (2).

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

DRAFT

3/10/2022

NOT APPROVED BY JUDICIAL COUNCIL

Superior Court of California, County of
Corte Superior de California, Condado de

Case Number:
Número de caso:

(1) Person asking for protection:
La persona que solicita protección:

(2) Notice to *(name of person to be restrained)*:
Aviso a *(nombre de la persona a ser restringida)*:

The person in (1) is asking for a Civil Harassment Restraining Order against you.

La persona en (1) está pidiendo una orden de restricción por acoso civil contra usted. Lea la página 2 para más información.

— The court will complete the rest of this form —
— El tribunal llenará el resto de este formulario —

(3) You have a court date
Tiene una audiencia en la corte

Name and address of court, if different from above:
Nombre y dirección de la corte, si no es la misma de arriba:

Date Fecha: _____
Time Hora: _____
Dept. Depto.: _____
Room Sala: _____

What if I don't go to my court date?

If you do not go to your court date, the judge can grant a restraining order that limits your contact with the person in (1). Having a restraining order against you may impact your life in other ways, including preventing you from having guns and ammunition. If you do not go to your court date, the judge could grant everything that the person in (1) asked the judge to order.

¿Qué pasa si no voy a la audiencia?

Si no va a la audiencia, el juez puede dictar una orden de restricción que limita su contacto con la persona en (1). Una orden de restricción en su contra puede tener otras consecuencias, como prohibirle tener armas de fuego y municiones. Si no va a la audiencia, el juez puede ordenar todo lo que pide la persona en (1).

How do I find out what the person in (1) is asking for?

To find out what the person in (1) is asking the judge to order, go to the courthouse listed at the top of page 1. Ask the court clerk to let you see your case file. You will need to give the court clerk your case number, which is listed above and on page 1. The request for restraining order will be on form CH-100, *Request for Civil Harassment Restraining Order*.

¿Cómo puedo entender lo que pide la persona en (1)?

Para entender lo que pide la persona en (1), vaya al tribunal en la dirección indicada en la parte superior de la página 1. Pida al secretario de la corte permiso para ver el expediente de su caso. Tendrá que darle al secretario el número de su caso, que aparece arriba y en la página 1. La solicitud de una orden de restricción se hace en el formulario CH-100, *Solicitud de órdenes de restricción por acoso civil*.

Where can I get help?

Free legal information is available at your local court's self-help center. Go to *www.courts.ca.gov/selfhelp* to find your local center.

¿Dónde puedo obtener ayuda?

Puede obtener información legal gratis en el centro de ayuda de su corte. Vea *www.courts.ca.gov/selfhelp-selfhelpcenters.htm?rdeLocaleAttr=es* para encontrar el centro de ayuda en su condado.

Do I need a lawyer?

You are not required to have a lawyer, but you may want legal advice before your court hearing. For help finding a lawyer, you can visit *www.lawhelpca.org* or contact your local bar association.

¿Necesito un abogado?

No es obligatorio tener un abogado, pero es posible que quiera consejos legales antes de la audiencia en la corte. Para ayuda a encontrar un abogado, visite *www.lawhelpca.org/es/homepage* o contacte al Colegio de Abogados local.

[seal]
[sello]

Date (Fecha): _____ Clerk, by (Secretario, por): _____, Deputy (Asistente)

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

CH-250 Proof of Service by Mail

Clerk stamps date here when form is filed.

DRAFT

3/10/2022

NOT APPROVED BY JUDICIAL COUNCIL

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Name of Person Asking for Protection:

_____

2 Name of Person to Be Restrained:

_____

3 Notice to Server

The server must:

- Be 18 years of age or over.
- Not be listed in items 1, 2, or 3 of form CH-100, *Request for Civil Harassment Restraining Orders.*
- Mail a copy of all documents checked in 4 to the person in 5.

4 I (the server) am 18 years of age or over and live in or am employed in the county where the mailing took place. I mailed a copy of all documents checked below to the person in 5:

a. ☐ CH-120, *Response to Request for Civil Harassment Restraining Orders*
b. ☐ CH-130, *Civil Harassment Restraining Order After Hearing*
c. ☐ Other *(specify):* _____

_____

_____

_____

5 I placed copies of the documents checked above in a sealed envelope and mailed them as described below:

a. Name of person served: _____
b. To this address: _____
City: _____ State: _____ Zip: _____
c. Mailed on *(date):* _____
d. Mailed from *(city):* _____ (*state*): _____

6 Server's Information

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____
If you are a registered process server:
County of registration: _____ Registration number: _____

7 I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print server's name *Server to sign here*

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

CH-260 Proof of Service of Order After Hearing by Mail

Clerk stamps date here when form is filed.

You may serve form CH-130, Civil Harassment Restraining Order After Hearing, *on the restrained person by mail if the restrained person was not at the hearing and:*

- *Before the hearing, the restrained person was personally served with form CH-110,* Temporary Restraining Order, *and proof of service of form CH-110 was presented to the court at the hearing; and*
- *The judge's orders in form CH-130 are the same as in form CH-110 except for the expiration date.*

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(1) Protected Person

Name:

(2) Restrained Person

Name: _____

PROOF OF SERVICE BY MAIL

(3) I am 18 years of age or older and not a party to this proceeding or a person listed in item (3) of form CH-130. I live or am employed in the county where the mailing took place. I mailed the restrained person a copy of:

a. Form CH-130, *Civil Harassment Restraining Order After Hearing*

b. ☐ Other *(specify):* _____

(4) I placed copies of the documents above in a sealed envelope and mailed them as described below:

a. Mailed to *(name)*: _____

b. To this address: _____

City: _____ State: _____ Zip: _____

c. On *(date)* _____ Mailed from: City: _____ State: _____

(5) Server's Information

Name: _____ Telephone: _____

Address: _____

City: _____ State: _____ Zip: _____

(If you are a registered process server):

County of registration: _____ Registration number: _____

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print server's name *Server to sign here*

W22-01

Protective Orders: Civil Harassment Form Revisions and Rule Amendment (Amend Cal. Rules of Court, rule 3.1160; adopt forms CH-117 and CH-210; approve form CH-205-INFO; revise forms CH-116, CH-200, CH-200-INFO, and CH-250; revoke form CH-260.)

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

	Commenter	Position	Comment	DRAFT Committee Response
1.	Superior Court of Los Angeles County by Bryan Borys Director of Research and Data Management	A	**General comments:** Recommend for approval as proposed. **Specific questions:** In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following: • Does the proposal appropriately address the stated purpose? Yes. It incorporates changes to forms to allow for alternative service as approved by 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. 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?	The committee appreciates the information provided.

	Commenter	Position	Comment	DRAFT Committee Response
			The court will be required to update its CMS, update information in the civil harassment form packets, work with vendors to modify guided interview programs, update efiling system, train court staff and judicial officers. • Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. • How well would this proposal work in courts of different sizes? No comment.	
2.	Superior Court of San Bernardino County Civil and Small Claims Committees by Melissa Williams District Manager I	NI	**Requested comments from courts on the Protective Orders: Civil Harassment Form:** 1. Does the proposal appropriately address the stated purpose? Yes. 2. Would the proposal provide cost savings? If so, please quantify. The committee does not believe this would provide cost savings for the court.	The committee appreciates the information provided.

	Commenter	Position	Comment	DRAFT Committee Response
			3. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? The court would be required to create procedures for when this is ordered by the judicial officer. New system codes for the case management systems (both Odyssey and Clerk's Edition) would need to be created and training provided to legal processing assistants and judicial assistants. Training for staff would be minimal. Form packets would need to be updated and new QRGs would need to be generated and distributed. 4. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. 5. How well would this proposal work in courts of different sizes? This proposal should work for courts of all sizes.	

W22-01

Protective Orders: Civil Harassment Form Revisions and Rule Amendment (Amend Cal. Rules of Court, rule 3.1160; adopt forms CH-117 and CH-210; approve form CH-205-INFO; revise forms CH-116, CH-200, CH-200-INFO, and CH-250; revoke form CH-260.)

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

	Commenter	Position	Comment	DRAFT Committee Response
3.	Superior Court of San Diego County by Mike Roddy Executive Officer	AM	**Request for Specific Comments** Q: Does the proposal appropriately address the stated? Yes, in part. The amended/new forms, with the exception of CH-117 include a proposed revision date of September 2022. This will require courts to draft a local form/order for use until that time. In addition, the CH-117, which includes a proposed approved date of January 1, 2022, references a form that is not effective until September (i.e. CH-210 Summons). In order to eliminate the need for each court to draft local forms, it would be helpful if the committee would consider adopting the forms for earlier use. Q: Would the proposal provide cost savings? If so, please quantify. No. Q: What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? As proposed, it would require the court to update its case management system, local procedures, create local forms pending the	Like the other forms in the proposal, the committee intended for form CH-117 to have an effective date of September 1, 2022 in the proposal. The January 1, 2022 effective date on form CH-117 was an error, which has been corrected. The committee notes that the forms currently in effect do not preclude petitioners from requesting alternative service or courts from authorizing it. The committee also notes that as part of the normal rulemaking process for the Judicial Council, form proposals circulated for comment in winter typically have September 1 effective dates in order to afford sufficient time for courts to prepare for the new and revised forms to go into effect. Accordingly, the committee declines this suggestion. The committee appreciates the information provided.

	Commenter	Position	Comment	DRAFT Committee Response
			adoption of the JCC forms and then repeat the process once the JCC forms are approved. Q: Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. However, since the legislation was effective January 1, 2022 it would benefit courts to have JCC approved forms prior to September 1, 2022. Q: How well would this proposal work in courts of different sizes? The proposal appears to work for courts of different sizes.	See response to first question, above. The committee appreciates the information provided.
4.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) by TCPJAC/CEAC Joint Rules Subcommittee	A	The JRS notes that the proposal is required to conform to a change of law. The JRS also notes the following: Although the proposal suggests that there may be cost savings from the use of this form, we do not agree. Even recognizing that cost burdens are created by the statute, and that the implementation costs will be one-time and relatively minor, there will not be cost savings from the use of the form as stated in the proposal's Fiscal and Operational Impacts section.	The committee appreciates the information provided. In light of this comment, the report to the Judicial Council on this proposal does not include potential cost savings as a fiscal impact.

Item number: 09

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: April 6, 2022

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

Title of proposal: Family Law: Changes to Child Custody Evaluation Rule and Forms

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329

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:
Annual agenda approved by Rules Committee on (*date*): 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.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Additional Information for Rules Committee: (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.

This item previously circulated for public comment in Spring 2021 with one form (FL-328); however, the Family and Juvenile Law Advisory Committee withdrew it for further development and reconsideration in this current cycle.

Additional Information for JC Staff (provide with reports to be submitted to JC)**:**

- **Form Translations** (check all that apply)
  This proposal:
  ☒ includes forms that have been translated.
  ☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
  ☐ includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)
  ☐ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
  ☒ This proposal may require changes or additions to self-help web content.

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-002
For the business meeting on May 13, 2022

Title
Family Law: Changes to Child Custody Evaluation Rule and Forms

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.220; revise forms FL-327, FL-327(A), FL-328, and FL-329

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair

Agenda Item Type
Action Required

Effective Date
September 1, 2022

Date of Report
January 21, 2022

Contact
Gabrielle D. Selden, 415-865-8085
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Gregory Tanaka, 415-865-7671
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending one rule and revising four forms relating to child custody evaluations and reports. The revisions are needed to clarify the differences in the statutory requirements for child custody evaluations that are conducted under Family Code section 3111 and Family Code section 3118. The committee recommends other technical changes to make the language in the rule and forms consistent with each other.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective September 1, 2022:

1. Amend rule 5.220 to reflect the revised titles of forms FL-328 and FL-329 and the revised procedures for filing child custody evaluation reports under Family Code sections 3111 and 3118.

2. Revise *Order Appointing Child Custody Evaluator* (form FL-327) and *Additional Orders Regarding Child Custody Evaluations Under Family Code Section 3118* (form FL-327(A)) to reflect the revised titles of forms FL-328 and FL-329 and the revised procedures for filing child custody evaluation reports under Family Code sections 3111 and 3118.

3. Revise *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) to change the title and include a file-stamp box, as well as other changes.

4. Revise *Confidential Child Custody Evaluation Report* (form FL-329) to change the title and include a new first page that advises that the report is confidential and specifies the service requirements and limitations on access to the report under Family Code section 3118.

The proposed amended rule and the revised forms are attached at pages 12–25.

Relevant Previous Council Action

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 Family Code section 3118.[1] 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 Family Code section 3111 and those under section 3118.[2]

Analysis/Rationale

Spring 2021 invitation to comment proposal deferred
Following the Judicial Council's adoption of form FL-329, and after further review of section 3111 and rule 5.220, the committee circulated proposed changes to *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) in the spring 2021 invitation to comment cycle.[3] The proposed changes reflect the amendments to rule 5.220 by requiring the cover sheet to be attached to child custody evaluation reports conducted under section 3111[4] as well as those conducted under section 3118.[5]

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[1] Judicial Council of Cal., Advisory Com. Rep., *Family Law: Changes to Child Custody Evaluations Rule and Forms* (Aug. 23, 2020), *https://jcc.legistar.com/View.ashx?M=F&ID=8771124&GUID=146EBAE9-AD1F-4DD3-ACC0-CA59E7F6E939.*

[2] All further statutory references are to the Family Code.

[3] The invitation to comment is available at *https://www.courts.ca.gov/documents/spr21-09.pdf.*

[4] Section 3111 is available at *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3111&lawCode=FAM.*

[5] Section 3118 is available at *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3118&lawCode=FAM.*

Specifically, the prior invitation to comment sought to revise form FL-328 to:

- List the persons or agencies that are permitted to access child custody evaluation reports involving serious allegations of child sexual abuse or child abuse under section 3118.
- State that an unwarranted disclosure of the section 3118 report—like reports conducted under section 3111—could subject the person who made an unwarranted disclosure to fines and penalties.
- Include a file-stamp box on the form to help courts process the child custody evaluation report and focus attention on the confidentiality of the report attached to the cover sheet. (The committee also sought specific comment about whether a file-stamp box will help improve existing court procedures for filing the reports compared to the current version of form FL-328, which does not include one.)

The chart of comments received from the spring 2021 proposal is included as Attachment A.

Following the comment period for the spring 2021 proposal, the committee concluded against recommending the changes listed in the first two bullet points (above) regarding access and disclosure under section 3118. Ultimately, the committee determined that the proposed changes could be inconsistent with section 3118, and that other options should be considered instead of relying on one form to serve as a notice for two completely different child custody evaluation reports.

While section 3111 provides that *all* child custody evaluation reports are confidential and includes language prohibiting an unwarranted disclosure of the report, section 3118 does not specifically include any language about unwarranted disclosures. Further, the two statutes were written very differently with respect to those persons or agencies that are authorized to access the child custody evaluator's report and recommendations.

For example, section 3111(b) provides:

> The report shall not be made available other than as provided in subdivision (a)[6] 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.

[6] 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."

In contrast, section 3118(b)(6) specifies that "this report may not be made available other than as provided by this subdivision." However, it does not include as clear and extensive a list of those persons and agencies who may access the report as section 3111. The only guidance in this regard is provided in the following language:

> (b) The evaluator or investigator shall ... [¶] (6) 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.

It is clear from the above language that the clerk of the court, the parties, and the parties' attorneys can access the report. Section 3118, however, does not incorporate the provisions of section 3150,[7] which authorize the child's attorney access to child custody evaluation reports by requiring compliance with rule 5.242(i)(13) of the California Rules of Court.[8]

As circulated for comment in the spring 2021 cycle, the proposed changes to form FL-328 would have expanded the list of persons eligible to access the report under section 3118 to include attorneys appointed to represent the child under section 3150, family court judicial officers, and family court employees. Those who commented on the proposal also requested changes to the list. However, the committee determined that the proposed changes could conflict with the statute. Given the specificity of the legislative language, the committee concluded that the proposed changes would best be addressed by statute.

Therefore, following public comment and further discussion with the committee and staff, the committee deferred the spring 2021 proposal to the winter 2022 cycle with directions to propose changes to rule 5.220 and the other forms in this proposal to reflect the language in sections 3111 and 3118 more closely. This included:

- Changing the titles to forms FL-328 and FL-329 to highlight that form FL-328 is required for section 3111 child custody evaluations and form FL-329 is to be used only in section 3118 child custody evaluations;

- Amending rule 5.220 and revising forms FL-327, FL-327(A), FL-328, and FL-329 to reflect the revised form titles and delete provisions that require form FL-328 to be used as the confidential cover sheet for child custody evaluation reports involving serious allegations of child sexual abuse or child abuse under section 3118; and

[7] Section 3150 is available at *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3150&lawCode=FAM.*

[8] Rule 5.242 is available at *www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_242.*

- Other changes to the rule and forms as specified below.

Rule 5.220, Court-ordered child custody evaluations
The committee recommends amendments to rule 5.220(g) to reflect changes in the titles of forms FL-328 and FL-329 and to strike the requirement to attach form FL-328 to reports under section 3118. Specifically:

- Subdivision (g)(1)(B) will be revised to provide that the evaluator who was appointed to conduct a child custody evaluation under section 3111 must attach *Notice Regarding Confidentiality of Child Custody Evaluation Report Under Family Code Section 3111* (form FL-328) as the cover page of the report;

- Subdivision (g)(2)(C), which requires form FL-328 to be attached as the cover page of the report completed under section 3118, will be stricken from the rule; and

- Subdivision (g)(2)(B) will be revised to reflect the proposed revised title of form FL-329, *Confidential Child Custody Evaluation Report Under Family Code section 3118*.

These proposed changes will make the rule consistent with the proposed changes to the titles of the forms, as well as the proposed new procedures for filing reports under sections 3111 and 3118.

Order Appointing Child Custody Evaluator **(form FL-327)**
Item 6 will be revised to reflect the proposed revised title of form FL-329. The title of item 7 will be revised to "Required Notice for Family Code section 3111 Evaluations" and the contents simplified to specify that form FL-328 must be attached as the cover page for child custody evaluations under section 3111. These changes will help to distinguish the requirements for evaluations completed under sections 3111 and 3118.

Additional Orders Regarding Child Custody Evaluations Under Family Code Section 3118 **(form FL-327(A))**
This form will be revised at item 3a to reflect the proposed revised title of form FL-329.

Notice Regarding Confidentiality of Child Custody Evaluation Report **(form FL-328)**
The committee considered not making changes to the form because it currently does not reference child custody evaluations involving serious allegations of child sexual abuse. However, in light of the public comments received in the spring 2021 cycle about other proposed changes to the form, and a change that is mandated by statute (as noted below), the committee decided to recommend that the form:

- Be retitled *Notice Regarding Confidentiality of Child Custody Evaluation Report <u>Under Family Code Section 3111;</u>*
- Include a file-stamp box on the form to help courts process the child custody evaluation with the required cover sheet attached as the first page;

- Be made gender neutral by replacing the reference to "his or her evaluation" in the first sentence of the form with "the evaluation"; and
- Be redesigned and include content changes as noted below.

Mandated changes. The committee recommends that the form reflect statutory changes regarding access to child custody evaluation reports. Effective January 1, 2015, Assembly Bill 1843 (Stats. 2014, ch. 283) amended section 3025.5.[9] In pertinent part, it added subdivision (b) to section 3025.5 to authorize the disclosure of confidential information in the child custody evaluator's report (completed under section 3111) to the licensing entity of a child custody evaluator. The amendments also detail the manner in which the licensing entity is authorized to use the confidential information disclosed to it.[10] The form will reflect this change by adding "the agency responsible for licensing and disciplining the child custody evaluator" to the list of those who may access the report by law.

Changes to design and organization. The committee recommends other changes regarding the form's design and organization to improve readability and comprehension. The proposed changes include using a plain-language form layout for the notice, shortening and revising the language in some sections to allow room for a file-stamp box, and expanding language in other sections to better explain legal terms.

For example, the committee recommends deleting, in the first entry on the form, the phrase "If directed by the court" from "If directed by the court, the child custody evaluator must file a written, confidential report of the evaluation." The phrase is not needed in cases in which form FL-328 is used because the court has already directed that the evaluator file a written report of the evaluation.

In addition, the entries for "Monetary Sanctions" and "Attorney's Fees and Costs" will be moved under the heading "Possible sanctions for an unwarranted disclosure of the report" to avoid redundancy.

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[9] Assem. Bill 1843, *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AB1843*.

[10] Section 3025.5(b) provides:

> Confidential information contained in a report prepared pursuant to Section 3111 that is disclosed to the licensing entity of a child custody evaluator pursuant to subdivision (a) shall remain confidential and shall only be used for purposes of investigating allegations of unprofessional conduct by the child custody evaluator, or in a criminal, civil, or administrative proceeding involving the child custody evaluator. All confidential information, including, but not limited to, the identity of any minors, shall retain their confidential nature in a criminal, civil, or administrative proceeding resulting from the investigation of unprofessional conduct and shall be sealed at the conclusion of the proceeding and shall not subsequently be released. Names that are confidential shall be listed in attachments separate from the general pleadings. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the licensing entity decides that no further action will be taken in the matter of suspected licensing violations.

Further, prompted by the recommendations of the Elkins Family Law Task Force to "assess the usability or readability of family law forms,"[11] the committee recommends revising the language in the section titled "Unwarranted Disclosure of the Report" to better explain the definition of "unwarranted disclosure" and other terms such as "recklessly or maliciously," and further directs the form user to read the section below to understand who can receive the report. The committee recommends that the section be revised as follows:

> You must not make an "unwarranted disclosure" of the child custody evaluation report. [¶] A disclosure of the child custody evaluation report is unwarranted if it is done either recklessly or maliciously and is not in the best interest of the child. This means that you must not misuse or intentionally give the confidential report to someone who is not allowed to have it. The only people who are allowed access to the report are listed below.

The committee also considered changing the description of the Attorney Fees and Costs section by revising the current language in the first paragraph to align with the language of section 3111(d).[12] The code section allows the court to penalize or refrain from penalizing the person found to have made an unwarranted disclosure of the child custody evaluation report.

As to this area of form FL-328, the committee sought specific comment about how best to communicate the law regarding potential penalties for disclosure. Specifically, the committee sought comment about whether the warning should include the statutory language that penalties may be waived "if the court finds that the person who disclosed the report was justified in doing so or that ordering the person to pay fees and costs will cause an unreasonable financial burden."

The proposed revisions to form FL-328 are intended to make the form more user-friendly and easier for self-represented litigants to understand. They reflect the plain-language principles used in Judicial Council domestic violence forms, such as 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.

***Confidential Child Custody Evaluation Report* (form FL-329)**

The committee recommends changing the title of the form to *Confidential Child Custody Evaluation Report Under Family Code Section 3118*. In addition, the committee recommends adding a new first page to this form to serve as a built-in cover sheet for the mandated report template.

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[11] Recommendation V.A.1.f. on page 91 of the *Elkins Family Law Task Force: Final Report and Recommendations* (Apr. 2010), *http://www.courts.ca.gov/documents/elkins-finalreport.pdf*.

[12] Section 3111(d) provides, in pertinent part, that "[t]he court shall not impose a sanction pursuant to this subdivision that imposes an unreasonable financial burden on the party against whom the sanction is imposed."

The new first page will include a notice about the confidentiality of the report, as well as specific language from section 3118 about service requirements and access to the report. Making these changes to the first page, instead of listing them as part of the form FL-328 cover sheet (and requiring form FL-328 to be attached to form FL-329), will streamline the process for filing the report and better ensure that the access provisions for section 3118 reports are not confused with those for reports under section 3111. Finally, in light of the above proposed changes, the current notice box will be deleted in its entirety to avoid redundancy.

Policy implications

There were no policy implications that contributed to controversy or intense debate within the committee about the proposal. The changes to the rule and forms will help the courts, the evaluators, and the parties and their attorneys understand and distinguish between the limitations on access to the child custody evaluation report under sections 3111 and 3118, and further protect the confidentiality of the report consistent with these two statutes.

Comments

The invitation to comment was circulated for public comment from December 10, 2021, to January 21, 2022, as part of the regular winter comment cycle. The committee received a total of 13 comments. Commenters included the Superior Courts of Orange and San Diego Counties, the Executive Committee of the Family Law Section of the California Lawyers Association, the California Association of Certified Family Law Specialists, the Legal Aid Association of California and four legal aid organizations, and three individuals. Nine organizations agreed with the proposal, suggested other revisions, and responded to specific questions from the committee. One organization and two individuals did not specifically indicate a position but suggested changes or responded to specific questions from the committee. One individual generally disagreed with the proposal but provided no specific comment about the rule or any of the forms.

No commenter suggested additional changes to rule 5.220 or to forms FL-327, FL-327(A), or FL-329.

Form FL-328

All organizations that responded to the specific question about how to present information in the form regarding sanctions stated their preference for the wording in option (a) ("The sanction may also include attorney's fees, costs incurred, or both") instead of option (b) ("The sanction may also include reasonable attorney's fees, costs incurred, or both, unless the court finds that the person who disclosed the report was justified in doing so or that ordering the person to pay fees and costs will cause an unreasonable financial burden"). One person who commented responded that the form should include a modified version of option (b), as it would be a better deterrent.

Some of the reasons that the commenters gave for supporting option (a) are as follows:

- Option (a) is best suited due to its brief statement allowing further discretion by each court.

- Option (b) might make a litigant feel they are justified in disclosing the report or might feel no sanction might be imposed.
- Option (b) would diminish the importance of the private nature of the reports.
- Option (b) may allow a person to believe that the court would not penalize them if the person felt justified in disclosing or if they would not have the ability to pay fees and costs under the statute.
- Option (a) does not take away the court's discretion to determine whether unwarranted disclosures of confidential information are justified or whether a fine would be an unreasonable burden.

After further discussion, the committee recommends that the form be revised to include the language in option (a), as it is a more concise statement that would help avoid confusing the parties and attorneys about the issue of unwarranted disclosure of the child custody evaluation report under section 3111.

General comments about form FL-329

Six organizations suggested changes to the form to ensure that all documents attached to the report are also private and confidential. Five organizations suggested that the Judicial Council adopt a new standard attachment to be used only for form FL-329 and change the numbering system on the form so that the evaluator can write in the number on each page (for example, "page __ of __") instead of numbering each page 1 through 8. The sixth organization recommended that FL-329 reference that all attachments are considered confidential and subject to the same limited access as the report.

In support of their recommendation to create a new attachment form, the five organizations that commented in a joint statement indicated that, "[w]ithout being clearly and accurately marked, attachments could easily be lost and mistaken for non-confidential documents. By allowing for accurate page counts, this will aid in more efficient, organized, and accurate workflows for both litigants and the court."

The committee does not agree that a new standard attachment form for form FL-329 would resolve the issue raised by the commenter. Form FL-329 requires that any attachments be made a part of the report and filed as one complete document. For example, item 13 requires that the evaluator specify the number of pages attached to the report. In addition, not all attachments will be written by the evaluator, as they may include written evaluations or reports from other professionals. Further, because Judicial Council forms must be numbered, the committee does not recommend revising the form to the page numbering system that the commenters suggest.

To respond to the issue raised by the commenters, the committee recommends revising the first page to include an entry for the evaluator to specify the total number of pages of the report. The new language would also include that the total count will include the cover page and all attachments, as well as a notice that "Attachments are confidential and must NOT be filed or served separately from the report." These changes would underscore that all attachments to the

report are not separate and apart from the whole report. It would also allow the court to understand that the attachments in the report must be maintained as part of the confidential file.

Finally, one commenter expressed the belief that the form should be changed to remove the requirement for the evaluator to obtain information, materials, or the opinions of other professionals such as "various CPS and law enforcement investigators" and "suggest[ed] those opinions not be the initial focus and emphasized in the CCE Report, although they should be commented on." However, the content of the form is mandated by Family Code section 3118 and cannot be changed to reduce the importance of the input obtained from any professional person or organization with whom the evaluator must consult in the course of the investigation into serious allegations of child sexual abuse or child abuse.

Responses to specific questions about form FL-329

All five organizations that commented agreed that, instead of requiring the evaluator to attach a separate cover sheet to the completed evaluation report, form FL-329 should be revised so the first page includes a notice about confidentiality, the service requirements, and the limitations on access to the report under section 3118. They generally agreed that, rather than requiring a separate cover page, the change will make the form more comprehensive, eliminate confusion for the parties, and help streamline the process of filing and serving the report.

One person commented that the burden should be on the court to specifically identity the form that must be included as the cover page to the report. The committee disagrees with this suggestion and does not recommend revising the rule and forms to place the burden on the judicial officer. The changes recommended to rule 5.220 and forms FL-328 and FL-329 eliminate any confusion about the cover pages that must be attached to child custody evaluations under section 3111 and 3118 and thus avoids the need for judicial intervention for the evaluator to understand the requirements for compiling the final reports.

Comments on other specific questions

The committee sought comment on seven specific questions about the form. The first four questions received short and unanimous responses.

- *Does the proposal appropriately address the stated purpose?*
  Three commenters responded yes to this question without further comment.

- *Will the proposal provide cost savings? If so, please quantify.*
  Two commenters responded no to this question without further comment.

- *Will 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*
  Two commenters replied yes to this question without further comment.

- *How well will this proposal work in courts of different sizes?*
  Two courts responded. One large court responded that the proposal would work for a

court of its size. The other responded "[t]he proposal appears to work for courts of different sizes."

- *What would be the implementation requirements for courts?*
  Two courts responded and identified the following: notification to staff and the public, training for staff, training the business office, and updating names in the case management system.

Alternatives considered

The committee considered proposing changes only to rule 5.220 and form FL-328; however, on further review, the committee determined that changes to the other forms are needed to fully implement the statute.

The committee also considered proposing revisions to *Child Custody Evaluation Information Sheet* (form FL-329-INFO)[13] to distinguish between child custody evaluations completed under section 3111 and those completed under 3118. However, the committee determined that no changes are needed to the form based on the changes proposed to the rule and other forms in the present cycle. This is because form FL-329-INFO is written in a very general manner, includes no references to forms, and already includes a description on the second page that the evaluator may be appointed to investigate and make recommendations about safety issues, including the protection needs of the child in cases involving allegations of domestic violence and child sexual abuse.

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 the rule and forms in the proposal. Courts may also need to update their case management systems and create new docket codes due to the new file-stamp area on form FL-328, which must remain attached to the child custody evaluator's report under section 3111.

Attachments and Links

1. Cal. Rules of Court, rule 5.220, at page 12
2. Forms FL-327, FL-327(A), FL-328, and FL-329, at pages 13–25
3. Chart of comments, at pages 26–45
4. Attachment A: Spring 2021 chart of comments

[13] Form FL-329-INFO, *https://www.courts.ca.gov/documents/fl329info.pdf.*

Rule 5.220 of the California Rules of Court is amended, effective September 1, 2022, to read:

Rule 5.220. Court-ordered child custody evaluations

(a)–(f) * * *

(g) Confidential written report; requirements

(1) *Family Code section 3111 evaluations*. An evaluator appointed under Family Code section 3111 must do all of the following:

(A) File and serve a report on the parties or their attorneys and any attorney appointed for the child under Family Code section 3150; and

(B) Attach a *Notice Regarding Confidentiality of Child Custody Evaluation Report* Under Family Code Section 3111 (form FL-328) as the first page of the child custody evaluation report when a court-ordered child custody evaluation report is filed with the clerk of the court and served on the parties or their attorneys, and any counsel appointed for the child, to inform them of the confidential nature of the report and the potential consequences for the unwarranted disclosure of the report.

(2) *Family Code section 3118 evaluations*. An evaluator appointed to conduct a child custody evaluation, investigation, or assessment based on (1) a serious allegation of child sexual abuse~~;~~ or (2) an allegation of child abuse under Family Code section 3118 must do all of the following:

(A) Provide a full and complete analysis of the allegations raised in the proceeding and address the health, safety, welfare, and best interests of the child, as ordered by the court; and

(B) Complete, file, and serve *Confidential Child Custody Evaluation Report* Under Family Code Section 3118 (form FL-329) on the parties or their attorneys and any attorney appointed for the child under Family Code section 3150.

~~(C) Attach *Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328) as the first page of the child custody evaluation report in (B) to inform the parties or their attorneys of the confidential nature of the report and the potential consequences for the unwarranted disclosure of the report.~~

(h)–(k) * * *

PARTY WITHOUT ATTORNEY *or* ATTORNEY NAME: STATE BAR NO.:	*FOR COURT USE ONLY*
FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by the Judicial Council** **v. 03.09.2022**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
ORDER APPOINTING CHILD CUSTODY EVALUATOR	CASE NUMBER:

THE COURT ORDERS AS FOLLOWS:

1. The court appoints:
   a. ☐ a local court-connected child custody evaluation service *(specify):*
   b. ☐ a private child custody evaluator *(specify):*
   c. ☐ family court services
   d. ☐ other *(specify):*

   in this matter to perform *(check one):*
   e. ☐ a full child custody evaluation
   f. ☐ a partial child custody evaluation

   under the statutory authority of:
   g. ☐ Family Code section 3111.
   h. ☐ Family Code section 3118.
   (You must attach Additional Orders for Child Custody Evaluations Under Family Code Section 3118 *(form FL-327(A)).*
   i. ☐ Evidence Code section 730.
   j. ☐ Chapter 15 (commencing with section 2032.010) of title 4, part 4 of the Code of Civil Procedure.
2. The names and dates of birth of the children are (*specify):*

   ☐ See attachment.

Name	Date of birth

3. The purpose and scope of the evaluation is (*specify):*

   ☐ See attachment.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

4. **DETERMINATION OF FEES AND PAYMENT**

☐ See attached order on fees and costs.

a. The evaluator will be compensated as follows:
(Specify amount or rate and terms):

☐ The court reserves jurisdiction to determine the amount of the fees and costs for the evaluation.

b. The court finds that the parties are able to pay the cost of the child custody evaluation. The parties are ordered to pay as follows:
(1) ☐ Petitioner/plaintiff must pay % of the cost. ☐ Respondent/defendant must pay % of the cost.
(2) ☐ The court reserves jurisdiction to reallocate the cost of the evaluation between the parties.
(3) ☐ Other: *(specify):*

c. Payment will be made as follows:
(1) ☐ Petitioner/plaintiff must make installment payments of $ per month until the cost of the evaluation is paid or modified by court order.
(2) ☐ Respondent/defendant must make installment payments of $ per month until the cost of the evaluation is paid or modified by court order.
(3) ☐ Other: *(specify):*

5. **NOTICE TO EVALUATOR**

Within 10 court days of receipt of this order and before the evaluation, the child custody evaluator must file a *Declaration of Private Child Custody Evaluator Regarding Qualifications* (form FL-326) with the court unless the person is a court-connected employee who must annually file the *Declaration of Court-Connected Child Custody Evaluator Regarding Qualifications* (FL-325).

6. **EVALUATIONS UNDER FAMILY CODE SECTION 3118**

Additional orders apply to evaluations conducted under Family Code section 3118. See attached *Additional Orders Regarding Child Custody Evaluations Under Family Code Section 3118* (form FL-327(A)). The evaluator must use *Confidential Child Custody Evaluation Report Under Family Code Section 3118* (form FL-329) to complete the report.

7. **REQUIRED NOTICE FOR FAMILY CODE SECTION 3111 EVALUATIONS**

Notice Regarding Confidentiality of Child Custody Evaluation Report Under Family Code Section 3111 (form FL-328) must be attached as the first page of the child custody evaluation report.

For more information, read Family Code section 3111 and *Child Custody Evaluation Information Sheet* (form FL-329-INFO). The form is available from the office of the court clerk or online at *www.courts.ca.gov/forms.htm.*

8. **INSTRUCTIONS FOR INITIAL CONTACT**

a. ☐ The evaluator will contact each party.
b. ☐ Each party must contact the evaluator.
c. ☐ Additional instructions *(specify):*

9. **OTHER**

10. ☐ Additional orders attached.

Number of pages attached: _____

Date:

_____
JUDICIAL OFFICER

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

ADDITIONAL ORDERS REGARDING CHILD CUSTODY EVALUATIONS UNDER FAMILY CODE SECTION 3118

(Attachment to *Order Appointing Child Custody Evaluator* (form FL-327))

1. **MANDATORY CONSIDERATIONS** (Family Code section 3118(f))
   The court has considered the best interests of the child and finds that:
   a. ☐ No temporary orders are needed to limit, suspend, or deny visitation (parenting time) with the parent against whom the allegations have been made.
   b. ☐ Temporary orders are needed and will issue or have issued in accordance with Family Code section 3011 that:
      (1) ☐ limit visitation (parenting time) with the parent against whom allegations have been made to situations in which a third party specified by the court is present.
      (2) ☐ suspend visitation (parenting time) with the parent against whom the allegations have been made.
      (3) ☐ deny visitation (parenting time) with the parent against whom the allegations have been made.
2. **MINIMUM REQUIREMENTS OF THE EVALUATION** (Family Code section 3118(b))
   The child custody evaluator, at a minimum, must do all of the following:
   a. **Consult with the agency providing child welfare services.**
      Consult about the allegations of child sexual abuse, and obtain recommendations from these professionals regarding the child's safety and the child's need for protection.
   b. **Review and summarize the child welfare services agency file.**
      (1) The evaluator must not photocopy any document contained in the child welfare services agency file.
      (2) A summary of the information in the file, including statements made by the children and the parents, and the recommendations made or anticipated to be made by the child welfare services agency to the juvenile court, may be recorded.
      (3) The evaluator must not record the identity of the party who reported the information in (2).
      (4) Keep in a separate file any notes summarizing the child welfare services agency information and release them to either party only by court order.
   c. **Consult with law enforcement.**
      Consult with law enforcement about the allegations of child sexual abuse and obtain recommendations from those professionals regarding the child's safety and the child's need for protection.
   d. **Obtain information from a law enforcement investigator.**
      Obtain from this professional all available information obtained from criminal background checks of the parents and any suspected perpetrator that is not a parent, including information regarding child abuse, domestic violence, or substance abuse.
   e. **Review the results of any multidisciplinary child interview team (MDIT) interview.**
   f. **Interview the child or request an MDIT interview of the child if:**
      (1) The MDIT is not available or was not completed;
      (2) The evaluator believes the MDIT is inadequate for purposes of the evaluation; or
      (3) A repeated interview of the child cannot be avoided. The evaluator must, wherever possible, avoid repeated interviews of the child.
   g. **Request a forensic medical examination of the child.**
      Request the examination from the appropriate agency or include in the required report a written statement about why the examination is not needed.
   h. **Do not disclose the identity of any person making a report of suspected child abuse.**
      Do not disclose any information about the identity of any person making a report of suspected child abuse in accordance with Penal Code section 11167(d).
3. **CONFIDENTIAL WRITTEN REPORT** (Family Code section 3118(b)(6) and (d))
   The child custody evaluator must:
   a. Complete *Confidential Child Custody Evaluation Report Under Family Code Section 3118* (form FL-329);
   b. File the completed report with the clerk of the court in which the child custody hearing will be conducted; and
   c. Serve the completed report on the parties or their attorneys and any attorney for the child at least 10 days before the hearing.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

4. **JUVENILE COURT RECORDS** (Family Code section 3118(a) and (g))
   The child custody evaluator must:
   a. Have access to all juvenile court records pertaining to the child who is the subject of the evaluation.
   b. Keep confidential any juvenile court records or information gained from those records.
   c. Only release the records described above in b as specified in Family Code section 3111(b).
   d. Suspend the evaluation if a petition is filed to declare the child a dependent child of the juvenile court under Welfare and Institutions Code section 300.
   e. Make available to the juvenile court all information the evaluator gathered if a petition is filed as described above in d.

5. ☐ **ORDER FOR FURTHER EVALUATION (**Family Code section 3118(e))
   The court orders further evaluation beyond the minimum requirements to determine the safety needs of the child as follows:

FL-328 Notice Regarding Confidentiality of Child Custody Evaluation Report Under Family Code Section 3111

Clerk stamps date here when form is filed.

Draft - Not approved by the Judicial Council v. 3/09/2022

Case name:

Case Number:

- At least 10 days before any hearing regarding custody of the child, the evaluator must (1) file the report with the clerk of the court, and (2) serve it on the parties or their attorneys and counsel appointed for the child.
- **This form must be attached as the first page of the child custody evaluation report.**
- **The child custody evaluation report is private and confidential. It MUST NOT become part of the public court file.**

THE ATTACHED CHILD CUSTODY EVALUATION REPORT IS CONFIDENTIAL

Unwarranted disclosure of the report	You must not make an "unwarranted disclosure" of the child custody evaluation report. A disclosure of the child custody evaluation report is unwarranted if it is done either recklessly or maliciously and is not in the best interest of the child. This means that you must not misuse or intentionally give the confidential report to someone who is not allowed to have it. The only people who are allowed access to the report are listed below.
Possible sanctions for an unwarranted disclosure of the report	***Monetary Sanctions:*** The court may order that the person who made an unwarranted disclosure of the report pay a sanction (a fine) in an amount that is large enough to discourage future disclosures. ***Attorney's Fees and Costs:*** The possible sanctions may also include reasonable attorney's fees, costs, or both.
Access to report	Reports conducted under section 3111 may be made available to only the following: (1) The parties, their attorneys, and attorneys from whom the parties seek legal representation. (2) Any attorney appointed to represent the child under Family Code section 3150. (3) Court professionals who would receive it directly from the evaluator or 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 • Probate court judicial officers • Guardianship investigators • Law enforcement officers (4) The agency responsible for licensing and disciplining the child custody evaluator. (5) Others, but only by court order.
Information	For information about child custody evaluations, • Read *Child Custody Evaluation Information Sheet* (form FL-329-INFO) • Go to: *https://selfhelp.courts.ca.gov/child-custody/evaluations*.
Total Pages	**TOTAL NUMBER OF PAGES OF THE REPORT *(specify):*** _____ *(Include in the total, the cover page and all attachments.)* **Attachments are confidential and must NOT be filed or served separately from the report.**

EVALUATOR: NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: LICENSE NO. *(if applicable)*:	*FOR COURT USE ONLY* **CONFIDENTIAL** **DRAFT** **NOT APPROVED BY THE JUDICIAL COUNCIL** **V. 3.09.22**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
CONFIDENTIAL CHILD CUSTODY EVALUATION REPORT UNDER FAMILY CODE SECTION 3118	CASE NUMBER:

NOTICE

This child custody evaluation report is private and confidential. It must NOT become part of the public court file.

- **At least 10 days before any hearing regarding custody of the child, the evaluator must file the report with the clerk of the court and serve it on the parties or their attorneys and the attorney appointed for the child.**
- **The report may not be made available to anyone other than the parties or their attorneys, the attorney appointed for the child, and the court.**

TOTAL NUMBER OF PAGES OF THE REPORT *(specify):* _____

(Include in the total the cover page and all attachments.)

Attachments are confidential and must NOT be filed or served separately from the report.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

1. The *Order Appointing Child Custody Evaluator* (form FL-327) filed on (*date*) _____ is attached (see Attachment 1).
2. The names and dates of birth of each child are *(specify):* ☐ Additional children are listed on Attachment 2.

Child's name	Date of birth

3. **Dependency court orders**
   a. ☐ There are no dependency court orders that might affect child custody.
   b. ☐ There are dependency court orders that might affect child custody, as follows: ☐ See Attachment 3b(1).

(1) Court (county, state)	Case number	Date order filed

   (2) Any dependency court orders or findings that might have a bearing on the child custody dispute in family court are summarized *(specify):* ☐ Below: ☐ See Attachment 3b(2).

4. **Summary of child welfare agency investigations and recommendations**
   a. The children listed in 2 and the children's parents are or have been the subject of a child abuse investigation *(specify):*
      ☐ Yes ☐ No *(Skip b through f; go to item 5.)*
   b. I consulted with the agencies providing child welfare services about the serious allegation of child sexual abuse or the allegation of child abuse, reviewed the child welfare agencies' files, and obtained recommendations from social workers about each child's safety and need for protection. *(You must not photocopy any document contained in the child welfare services agency file.)*
   c. The status or disposition of the investigation about the safety of each child is *(specify):* ☐ Below: ☐ See Attachment 4c.

Form Adopted for Mandatory Use
Judicial Council of California
FL-329 [Rev. September 1, 2022]

CONFIDENTIAL CHILD CUSTODY EVALUATION REPORT UNDER FAMILY CODE SECTION 3118

Family Code, §§ 3025.5, 3118, 3150;
Cal.Rules of Court, rules 5.220, 5.242
www.courts.ca.gov

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

d. The contact information for each social worker is *(specify):* ☐ See Attachment 4d.

Name:	Name:
Telephone No.:	Telephone No.:
Mailing Address:	Mailing Address:
City and Zip Code:	City and Zip Code:
Email address:	Email address:

e. A summary of all child welfare agency investigations about the safety of each child (including statements made by each child and the parents, information about child abuse, domestic violence, or substance abuse, and recommendations made or anticipated to be made regarding safety of each child) are *(specify):* ☐ Below: ☐ See Attachment 4e.

f. Recommendations made or anticipated to be made by each social worker to the juvenile court about the safety and need for protection of each child are *(specify):* ☐ Not applicable to this case. ☐ Below: ☐ See Attachment 4f.

5. **Summary of law enforcement investigation and recommendations**

a. I consulted with law enforcement about the serious allegation of child sexual abuse or the allegation of child abuse and obtained recommendations from these professionals about each child's safety and need for protection.

b. Recommendations from each law enforcement professional about each child's safety and need for protection are summarized *(specify):* ☐ Below: ☐ See Attachment 5b.

c. I obtained from a law enforcement investigator all available information obtained from criminal background checks of *(specify):* ☐ the parents ☐ any suspected perpetrator that is not a parent including information about child abuse, domestic violence, or substance abuse.

d. A summary of the information obtained from each law enforcement investigator is *(specify):* ☐ Below: ☐ See Attachment 5d.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

6. **Multidisciplinary and forensic examinations; interview of the child**

a. **Multidisciplinary interview team (MDIT) interviews**

(1) ☐ I reviewed the results of the MDIT interview.

(2) ☐ I requested an MDIT interview because *(select one):*

(a) ☐ There was no MDIT interview of the child.

(b) ☐ I believe that the MDIT interview was inadequate for purposes of this investigation.

(3) ☐ I interviewed each child because *(select one):*

(a) ☐ There was no MDIT interview of the child.

(b) ☐ I believe that the MDIT interview was inadequate for purposes of this investigation.

(4) Whenever possible, I avoided repeated interviews of the child.

(5) A summary of ☐ the MDIT ☐ my interview of each child is: ☐ Below: ☐ See Attachment 6a(5).

(6) Written documentation of ☐ the MDIT ☐ my interview of each child is attached (see Attachment 6a(6)).

(7) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from *(specify):*
☐ the MDIT interview ☐ my interview with each child. A summary of the information is *(specify):*
☐ Below: ☐ See Attachment 6a(7).

b. **Forensic examination of the child**

(1) ☐ I reviewed the forensic medical examinations of each child.

(2) ☐ No forensic medical examination of the child or children was conducted, and *(select (a) or (b)):*

(a) ☐ I requested a forensic medical examination of each child.

(b) ☐ I did not request a forensic medication examination. The examination is not needed because *(explain):*
☐ Below: ☐ See Attachment 6b(2)(B).

(3) A summary of the forensic medical examination of each child is *(specify):* ☐ Below: ☐ See Attachment 6b(3).

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

(4) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from this source.
A summary of the information is *(specify):* ☐ Below: ☐ See Attachment 6b(4).

(5) A copy of all written forensic medical reports is included with this report. ☐ See Attachment 6b(5).

7. **Documentation of other material interviews; relevant background material**

a. ☐ I interviewed the parents.

(1) A summary of each interview is *(specify):* ☐ Below: ☐ See Attachment 7a(1).

(2) Written documentation of each interview is attached (see Attachment 7a(2)).

(3) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from this source.
A summary of the information is *(specify):* ☐ Below: ☐ see Attachment 7a(3).

b. **Prior or currently treating therapists**

(1) ☐ I interviewed each child's ☐ current therapist ☐ prior therapist treating for suspected child abuse.
A summary of each interview (excluding any privileged communication) is ☐ Below: ☐ See Attachment 7b(1).

(2) ☐ I reviewed ☐ I obtained written reports from therapists treating each child for suspected child abuse.
A summary of each report (excluding any privileged communication) is: ☐ Below: ☐ See Attachment 7b(2).

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

(3) ☐ All written reports from the therapists (excluding privileged communication) are attached (see Attachment 7b(3).)

(4) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from this source. A summary (excluding privileged communication) is *(specify):* ☐ Below: ☐ See Attachment 7b(4).

c. **Medical personnel; other medical examinations**

(1) ☐ I interviewed other medical personnel who provided relevant information *(specify in summary).*

(2) ☐ I reviewed ☐ I obtained all written results from other medical examinations or treatments that could help establish or disprove whether each child has been the victim of sexual abuse or other child abuse under Family Code section 3118.

(3) A summary of each ☐ interview ☐ examination result is: ☐ Below: ☐ See Attachment 7c(3).

(4) ☐ All written reports from the above medical examinations are attached (see Attachment 7c(4)).

(5) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from this source. A summary of the information is *(specify):* ☐ Below: ☐ See Attachment 7c(5).

d. **Other professionals**

(1) ☐ I interviewed other professionals who provided relevant information *(specify in summary).*

(2) ☐ I reviewed ☐ I obtained all written results from other professionals that could help establish or disprove whether the child has been the victim of sexual abuse or other child abuse under Family Code section 3118.

(3) A summary of each ☐ interview ☐ examination result is: ☐ Below: ☐ See Attachment 7d(3).

(4) ☐ All written reports from other professionals are attached (see Attachment 7d(4)).

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

(5) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from these sources. A summary of the information is *(specify):* ☐ Below: ☐ See Attachment 7d(5).

e. **Other witnesses**

(1) ☐ I interviewed other witnesses who provided relevant information *(specify in summary).*

(2) A summary of each interview is *(specify):* ☐ Below: ☐ See Attachment 7e(2).

(3) Written documentation of each witness interviewed is attached (see Attachment 7e(3)).

(4) ☐ I obtained information about the presence of domestic violence or substance abuse in the family from these sources. A summary of the information is *(specify):* ☐ Below: ☐ See Attachment 7e(4).

8. **Victims of Crime Program**

List which, if any, family members are known to have been deemed eligible for assistance from the Victims of Crime Program due to child abuse or domestic violence *(specify):* ☐ Below: ☐ See Attachment 8.

9. **Limitations in the evaluation**

Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews. ☐ Below: ☐ See Attachment 9.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

10. **Other**
Additional information that I believe would be helpful to the court in determining the best interests of the child under Family Code section 3011 *(specify):* ☐ Below: ☐ See Attachment 10.

11. **My recommendations** regarding the therapeutic needs of each child and how to ensure the safety of each child are *(specify)*:
☐ Below: ☐ See Attachment 11.

12. **Summary of procedures**
I have summarized the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached. ☐ Below: ☐ See Attachment 12.

13. Number of pages attached: _____

Date:

(NAME OF EVALUATOR)

SIGNATURE OF EVALUATOR

W22-04

Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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.	Leslie A. Abbott, MA. MFCC CCRC, Investigator & Manager Family Court Services Superior Court of Kings County	NI	See specific comments below.	See specific responses below.
2.	California Association of Certified Family Law Specialists By: Justin O'Connell, Legislative Director Woodland	A	See specific comments below.	See specific responses below.
3.	Legal Aid Association of California by: Alison Corn, Legal Design Attorney *Jointly with:* Los Angeles Center for Law and Justice by: Jimena Vasquez, Directing Attorney Community Legal Aid SoCal by:Sarah Reisman, Directing Attorney Neighborhood Legal Services of Los Angeles County by: Ana Maria Garcia, Vice President of Access to Justice Initiatives Family Violence Appellate Project by: Jennafer Dorfman Wagner, Director of Programs	A	See specific comments below.	See specific responses below.

W22-04

Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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**
4.	Neighborhood Legal Services of Los Angeles County By: Minyong Lee, Senior Attorney	A	Neighborhood Legal Services of Los Angeles County agrees with the intent behind the proposed changes and considerations for confidentiality for child custody evaluations ordered under Family Code section 31 18. We believe that there is a heightened need to protect minor children when allegations of child sexual abuse are involved. Child custody evaluation reports can contain information that is extremely sensitive and should not be distributed to any unauthorized persons or agencies and that the judicial forms should be revised to ensure confidentiality and limited access. We are generally in agreement with proposed changes as a whole. However, we provide feedback and comment regarding the following points: See specific comments below.	See specific responses below.
5.	Cathy Marie Rodriguez Chaparral, New Mexico	N	I do not agree with any of the plans that are done indirectly with other sources and or people. Should be directed to the person it pertains to and not done in language that is not understood.	The committee is unable to respond to the comment, as it is not specific as to any rule or form included in the proposal.
6.	Superior Court of Orange County Family Law Division	NI	The proposed changes seem minimal but can make a greater impact to self-represented parties in their understanding of the evaluation process and the need to keep these reports confidential.	See specific responses below.

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			The proposed changes appear to be acceptable and reasonable.	
7.	Superior Court of San Diego County by Michael Roddy, Executive Officer	A	See specific comments below.	See specific responses below.
8.	The Executive Committee of the Family Law Section of the California Lawyer's Association (FLEXCOM) by Justin M. O'Connell, FLEXCOM Legislative Chair and by Saul Berkovitch, Director of Governmental Affairs Sacramento	A	See specific comments below.	See specific responses below.
9.	The Law Office of Martin Lax By: Martin Lax, Attorney Palm Desert	NI	See specific comments below.	See specific responses below.

W22-04

Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

1. Comments about rule 5.220		
Commenter	**Comment**	**Committee Response**
None.		

2. Comments about form FL-327		
Commenter	**Comment**	**Committee Response**
None.		

3. Comments about form FL-327(A)		
Commenter	**Comment**	**Committee Response**
None.		

W22-04

Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

3. General Comments About Form FL-328		
Commenter	**Comment**	**Committee Response**
Leslie A. Abbott, MA. MFCC CCRC, Investigator & Manager Family Court Services Superior Court of Kings County	I respectfully recommend the Judicial Council of California consider a modification of form FL-328 (please see attached) in conjunction of the modification in proposed revisions to the code section and the forms. It is respectfully suggested that a For Court Use Only box be provided on the form to allow a Civil Clerk to appropriately file stamp the form. Also, add the word 'evaluation' to the sentence following 'Important Notice:' That is, the form to read: This form must be attached as the first page of the child custody evaluation report. In some counties, CEOs, Clerks, FCS Directors, and FCS Managers interpret this to mean, this form is attached to each, and every mediation or child custody recommended counseling report, even though the information in the form specifies the form is for Evaluation Report. This results in the waste of paper and time for the submitter and the clerks.	The committee thanks the commenter for submitting comments, and notes that the form the commenter attached to her response is the one currently published on the California Courts Web Site, not the proposed revised form that circulated for comment. The proposed revised form FL-328 that circulated for comment (page 14 of the proposal) included each of the changes that the commenter suggested. Therefore, no changes are recommended based on this comment.

5. Responses to Specific Questions about form FL-328

Should the paragraph about "Attorney's Fees & Costs" on form FL-328 be changed as provided below to (a) *exclude* or (b) *include* language from Family Code section 3111(d) that authorizes the court to *not* penalize a party who made an unwarranted disclosure of a child custody evaluation report in certain situations. *(Please explain your choice):*

(a) The sanction may also include reasonable attorney's fees, costs incurred, or both.

(b) The sanction may also include reasonable attorney's fees, costs incurred, or both, unless the court finds that the person who disclosed the report was justified in doing so or that ordering the person to pay fees and costs would cause an unreasonable financial burden.

Commenter	Comment	Committee Response
California Association of Certified Family Law Specialists By: Justin O'Connell, Legislative Director Woodland	ACFLS agrees with the Judicial Council's observation that such language should be excluded, so that a litigant will not feel they might be justified in disclosing the report or might feel no sanction would be imposed.	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.
Legal Aid Association of California by: Alison Corn, Legal Design Attorney *Jointly with:* Los Angeles Center for Law and Justice by: Jimena Vasquez, Directing Attorney Community Legal Aid SoCal by:Sarah Reisman, Directing Attorney Neighborhood Legal Services of	**Exclude Attorney's Fees & Costs Language** To best effectuate the purpose of form FL-328, which is to keep child custody evaluations confidential, it is our position that the language suggested in (a) "the sanction may also include reasonable attorney's fees, costs incurred, or both," excluding language from Family Code section 3111(d), should be used for two reasons. First, including language from Family Code section 3111(d) dilutes the legitimacy of the form's purpose, and second, excluding the language from Family Code section 3111(d) does not remove the court's discretion. **Legitimacy of the Form's Purpose** The purpose of form FL-328 is to keep sensitive information contained in child custody evaluations confidential. Telling litigants that there is a justifiable expectation to the requirement of confidentiality, including that a person who	The committee thanks the commenters for their responses and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report. The committee thanks the commenters for their responses and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.

5. Responses to Specific Questions about form FL-328

Should the paragraph about "Attorney's Fees & Costs" on form FL-328 be changed as provided below to (a) *exclude* or (b) *include* language from Family Code section 3111(d) that authorizes the court to *not* penalize a party who made an unwarranted disclosure of a child custody evaluation report in certain situations. *(Please explain your choice):*

(a) The sanction may also include reasonable attorney's fees, costs incurred, or both.

(b) The sanction may also include reasonable attorney's fees, costs incurred, or both, unless the court finds that the person who disclosed the report was justified in doing so or that ordering the person to pay fees and costs would cause an unreasonable financial burden.

Commenter	Comment	Committee Response
Los Angeles County by: Ana Maria Garcia, Vice President of Access to Justice Initiatives Family Violence Appellate Project by: Jennafer Dorfman Wagner, Director of Programs	exposed confidential information may not be fined for such exposure if the court determines the fine would pose an unreasonable burden, dilutes the legitimacy of the form's purpose. Though a child custody evaluation may have been made confidential, disclosing this exception to confidentiality puts litigants on notice that that confidentiality is not guaranteed nor always punishable if not preserved: it gives litigants a way around keeping sensitive child custody evaluations confidential. Further, the language may confuse self-represented litigants more so than those who have the benefit of representation. As such, it is our position that including language from Family Code section 3111(d) will evidence an increase in litigants seeking justified exceptions to unwarranted disclosures of confidential information. **Court's Discretion Intact** Critically, excluding the language from Family Code section 3111(d) on form FL-328 does not take away the court's discretion to determine whether unwarranted disclosures of confidential information are justified or whether a fine would be an unreasonable burden. These are fact-based determinations which courts are well equipped to make and should not require a formal request from litigants.	The committee thanks the commenters for their responses and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.

5. Responses to Specific Questions about form FL-328

Should the paragraph about "Attorney's Fees & Costs" on form FL-328 be changed as provided below to (a) *exclude* or (b) *include* language from Family Code section 3111(d) that authorizes the court to *not* penalize a party who made an unwarranted disclosure of a child custody evaluation report in certain situations. *(Please explain your choice):*

(a) The sanction may also include reasonable attorney's fees, costs incurred, or both.

(b) The sanction may also include reasonable attorney's fees, costs incurred, or both, unless the court finds that the person who disclosed the report was justified in doing so or that ordering the person to pay fees and costs would cause an unreasonable financial burden.

Commenter	Comment	Committee Response
	By excluding language from Family Code section 3111(d) on form FL-328, the purpose and usability of the form will be bolstered. Additionally, the court's discretion to determine whether there is a justified exception to unwarranted disclosures of confidential information or whether a fine for such disclosures would pose an unreasonable burden will remain intact.	
Neighborhood Legal Services of Los Angeles County By: Minyong Lee, Senior Attorney	The form FL-328 should exclude the language that authorizes the court to not penalize a party who makes an unwarranted disclosure of a child custody evaluation report. The purpose of the revisions is to make it clear that there are clear penalties and consequences imposed for unauthorized distribution of the reports. If the language from 31 I I (d) was included, it would diminish the importance of the private nature of the reports. To be clear, the form FL-328 should read to state that "The sanction may also include reasonable attorney's fees, costs incurred, or both." It should not include any language that explicitly states that the court has discretion to find that such distribution was justified or would cause unreasonable	The committee thanks the commenter for their responses and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report. The committee thanks the commenters for their responses and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.

5. Responses to Specific Questions about form FL-328

Should the paragraph about "Attorney's Fees & Costs" on form FL-328 be changed as provided below to (a) *exclude* or (b) *include* language from Family Code section 3111(d) that authorizes the court to *not* penalize a party who made an unwarranted disclosure of a child custody evaluation report in certain situations. *(Please explain your choice):*

(a) The sanction may also include reasonable attorney's fees, costs incurred, or both.

(b) The sanction may also include reasonable attorney's fees, costs incurred, or both, unless the court finds that the person who disclosed the report was justified in doing so or that ordering the person to pay fees and costs would cause an unreasonable financial burden.

Commenter	Comment	Committee Response
	financial burden on the person. The discretion would still remain with the court to order attorney's fees or costs as the language does not mandate such fees but allows for it if found by the court to warrant such.	
Superior Court of Orange County Family Law Division	It is suggested to utilize (a) as it is best suited due to its brief statement allowing further discretion by each court.	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Option a, for the reason set forth in the report (i.e. A person may believe that the court would not penalize them if the person felt justified in disclosing or if they would not have the ability to pay fees and costs under the statute).	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.
The Executive Committee of the Family Law Section of the California Lawyer's Association (FLEXCOM) by Justin M. O'Connell, FLEXCOM Legislative Chair and by Saul Berkovitch, Director of Governmental Affairs Sacramento	FLEXCOM agrees with the observation in the Invitation to Comment that if option (b) were used, a litigant might feel they are justified in disclosing the report or might feel no sanction might be imposed, so such language should be excluded.	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.

W22-04

Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

5. Responses to Specific Questions about form FL-328

Should the paragraph about "Attorney's Fees & Costs" on form FL-328 be changed as provided below to (a) *exclude* or (b) *include* language from Family Code section 3111(d) that authorizes the court to *not* penalize a party who made an unwarranted disclosure of a child custody evaluation report in certain situations. *(Please explain your choice):*

(a) The sanction may also include reasonable attorney's fees, costs incurred, or both.

(b) The sanction may also include reasonable attorney's fees, costs incurred, or both, unless the court finds that the person who disclosed the report was justified in doing so or that ordering the person to pay fees and costs would cause an unreasonable financial burden.

Commenter	Comment	Committee Response
The Law Office of Martin Lax By: Martin Lax, Attorney Palm Desert	Instead of providing that Family Code § 3111(d) authorizes the court to not to penalize a party who made an unwarranted disclosure of a CCE report, I suggest Forms emphasize that the party will be sanctioned, including attorneys fees and costs, "unless" the Court finds the party made an unwarranted disclosure. I believe such language is a better deterrent.	The committee thanks the commenter for the response. However, the committee recommends that the Judicial Council revise form FL-328 using the language in option (a) for the reasons explained in the report.

6. General Comments About Form FL-329		
Commenter	**Comment**	**Committee Response**
Legal Aid Association of California by: Alison Corn, Legal Design Attorney *Jointly with:* Los Angeles Center for Law and Justice by: Jimena Vasquez, Directing Attorney Community Legal Aid SoCal by:Sarah Reisman, Directing Attorney Neighborhood Legal Services of Los Angeles County by: Ana Maria Garcia, Vice President of Access to Justice Initiatives Family Violence Appellate Project by: Jennafer Dorfman Wagner, Director of Programs	**Form FL-329 Attachments** Typically, child custody evaluations are long, thorough documents. With that in mind, we are concerned about attachments being noted as and kept confidential unless a standard attachment form specific to form FL-329 is created. Ideally, this standard attachment form would indicate its confidential nature. Further, both form FL-329 and the standard attachment form should include the following format for page numbers: page ___ of ___, to allow litigants to reflect the accurate number of pages. It is our position that this formatting change will aid in ease of use for litigants, as currently the form states there are a set number of pages, such as page 8 of 8, for example. Yet, this form will have attachments included with it. Without being clearly and accurately marked, attachments could easily be lost and mistaken for non-confidential documents. By allowing for accurate page counts, this will aid in more efficient, organized, and accurate workflows for both litigants and the court.	The committee does not agree that a new standard attachment form for form FL-329 would resolve the issue raised by the commenter. Form FL-329 requires that any attachments be made a part of the report and filed as one complete document. For example, item 13 requires that the evaluator specify the number of pages attached to the report. Further, not all attachments will be written by the evaluator, as they may include written evaluations or reports from other professionals. Because Judicial Council forms must be numbered, the committee does not recommend revising the form to the page numbering system that the commenter suggests. To respond to the issue raised by the commenter, the committee recommends revising the first page to include an entry for the evaluator to specify the total number of pages of the report. The new language would also include that the total count will include the cover page and all attachments, as well as a notice that "Attachments are confidential and must NOT be filed or served separately from the report." These changes would underscore that all attachments to the report are not separate and apart from the whole report. It would also allow the court to understand that the attachments in the report are part of the confidential file.
Neighborhood Legal Servcies of Los Angeles County by: Minyong Lee, Senior Attorney	Form FL-329 should also be revised to ensure that all attached documents also be included as private and confidential. The form FL-329 allows for the evaluator to attach many different reports and information that are also confidential and private on its own merits. Thus, form FL-329 should be referred to	Same as above response to Legal Aid Association of California.

6. General Comments About Form FL-329		
Commenter	**Comment**	**Committee Response**
	with all attachments to be considered confidential and with limited access.	
The Law Office of Martin Lax By: Martin Lax, Attorney Palm Desert	Proposal as a Whole: First, having reviewed various material, Form FL-329 Confidential Child Custody Evaluation Report ("CCE Report") appears to place great emphasis on the opinions of others, such as various CPS and law enforcement investigators. I suggest those opinions not be the initial focus and emphasized in the CCE Report, although they should be commented on. The risk of "confirmation bias" cannot be over-stated. Confirmation bias is the tendency of people to favor information that confirms their existing beliefs or hypotheses. It happens when a person gives more weight to evidence that confirms their beliefs and undervalues evidence that could disprove it. People display this bias when they gather or recall information selectively, or when they interpret it in a biased way. The effect is stronger for emotionally charged issues and for deeply entrenched beliefs. My concern is bolstered since CPS and law enforcement investigators are often not specially trained to evaluate complex emotional abuse. The Forms should not pressure or cause an Evaluator to conform to others thinking. It is especially dangerous in cases of parental alienation; that is, emotional abuse. Emotional abuse is as serious as other forms abuse, including physical abuse.	In response, the committee disagrees with the suggested changes. The content of the form is mandated by Family Code section 3118, and cannot be changed to reduce the importance of the input obtained from any professional person or organization whom the evaluator must consult in the course of the investigation into serious allegations of child sexual abuse or child abuse. See above response.

6. General Comments About Form FL-329		
Commenter	**Comment**	**Committee Response**
	The Diagnostic and Statistical Manual of Mental Disorders Fifth Edition defines "child psychological abuse" as any "non-accidental verbal or symbolic acts by a child's parent or caregiver that result, or have reasonable potential to result, in significant psychological harm to the child." American Psychiatric Association, DSM-5, 719 (2013). The DSM-5 created two specific codes for diagnosing and treating parental alienation: On page 715 of the DSM-5 manual, the code V61.20 (Z62.820) is to be used in clinical or forensic settings whenever a child presents with "unwarranted feelings of estrangement" within the target parent-child relationship due to the use of "excessive parental pressure" and/or "parental overprotection" and/or "hostility toward or scapegoating [the target parent]" within the alienating parent-child relationship. It is important to note that unwarranted feelings of estrangement due to excessive parental pressure are specific diagnostic indicators of parental alienation. On page 716 of the DSM-5 manual, the code V61.29 (Z62.898) is to be used to help mental health professionals identify, treat, and prevent parental alienation symptoms and sequalae in cases where "the negative effects of parental relationship discord (e.g., high levels of conflict, distress, or disparagement)" involved a concerted effort by one parent to harm or destroy the children's relationship with the other parent. It is important to note that when children are negatively affected by parental relationship distress the reactions of	The information included with this response is not relevant to the proposal that circulated for comment. Therefore, no committee response is required.

6. General Comments About Form FL-329		
Commenter	**Comment**	**Committee Response**
	the child may include the onset or exacerbation of psychological symptoms, somatic complaints, an internal loyalty conflict, and, in the extreme, parental alienation, leading to loss of a parent-child relationship. Behavioral problems include compositionality and the child's reluctance or refusal to have a relationship with a parent without a good reason (parental alienation).	

7. Responses to specific questions about form FL-329,
Should form FL-329 be revised so that the first page includes a notice about confidentiality, the service requirements of the report, and the limitations on access to the report, instead of requiring the evaluator to attach a separate coversheet to the report similar to form FL-328?

Commenter	Comment	Committee Response
California Association of Certified Family Law Specialists By: Justin O'Connell, Legislative Director Woodland	ACFLS agrees that such language and streamlining would be helpful, in that FL-329 would be comprehensive in its advisements and there would not be an additional form that must be used.	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-329 as proposed in the invitation to comment.
Neighborhood Legal Services of of Los Angeles County By: Minyong Lee, Senior Attorney	Form FL-329 should be revised slightly so as to include some additional language that is contained in form FL-328. However, it should not mirror all of the advisements that is contained in the form FL- 328 so as to not lose the simplicity of the first page of the form FL-329. The large and bold print on the first page should be maintained as much as possible. It serves as a natural visual warning and caution to those accessing the report. As an alternative, the form FL-329 may want to refer to the form FL-328 and the advisements contained within. Advisements on the form FL-329 should not replace the form FL-328 and both are needed to ensure protection and confidentiality for the minor child/children.	On further review of the content of form FL-328 compared with form FL-329, the committee recommends that one additional advisement that is contained on form FL-328 be included in form FL-329. Specifically, the committee recommends that form FL-329 include that the child custody evaluation report must NOT become part of the public court file. Other language, apart from the "Information" section on on form FL-328 reflects the Family Code section 3111, and does not apply to child custody evaluations involving serious allegations of child sexual abuse or child abuse under Family Code section 3118.
Superior Court of Orange County Family Law Division	It is Orange County's preference to add the notice to the FL-329. Parties will not confuse the cover sheets for FL-328 and FL-329 and would help be more efficient.	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-329 as proposed in the invitation to comment.

7. Responses to specific questions about form FL-329,
Should form FL-329 be revised so that the first page includes a notice about confidentiality, the service requirements of the report, and the limitations on access to the report, instead of requiring the evaluator to attach a separate coversheet to the report similar to form FL-328?

Commenter	Comment	Committee Response
Superior Court of San Diego County by Michael Roddy, Executive Officer	Yes.	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-329 as proposed in the invitation to comment.
The Executive Committee of the Family Law Section of the California Lawyer's Association (FLEXCOM) by Justin M. O'Connell, FLEXCOM Legislative Chair and by Saul Berkovitch, Director of Governmental Affairs Sacramento	FLEXCOM agrees that such language and streamlining would be helpful, in that FL-329 would be comprehensive in its advisements and there is not one more form that must be completed and attached.	The committee thanks the commenter for the response and recommends that the Judicial Council revise form FL-329 as proposed.
The Law Office of Martin Lax By: Martin Lax, Attorney Palm Desert	The burden placed on the Evaluator to determine which Form to place on the CCE Report is problematic. There can be confusion or ambiguity in orders, or mistakes made as to which Form FL-328 (Section 3111) or Form FL-329 (Section 3118) is required to be attached as the cover page/sheet of the report. The burden should be on the Court to specifically identify in the Order Appointing Child Custody Evaluator which Form must be included as the cover page to the report.	The committee disagrees with this suggestion and does not recommend revising the rules and forms to place the burden on the judicial officer. The changes recommended to rule 5.220, form FL-328, and form FL-329 eliminate any confusion about the cover pages that must be attached to child custody evaluations under section 3111 and 3118, and thus, avoids the need for judicial intervention for the evaluator to understand the requirements for compiling the final reports.

W22-04

Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

8. Does the proposal appropriately address the stated purpose?		
Commenter	**Comment**	**Committee Response**
Neighborhood Legal Services of Los Angeles County By: Minyong Lee, Senior Attorney	The proposal does appropriately address the stated purpose. We agree that a specific list of persons or agencies that are permitted to access child custody evaluation reports involving serious allegations of child sexual abuse or child abuse under section 3118 makes it clear as to which persons and agencies are allowed access. This is an improvement from the previous language which was vague and unclear as to who was allowed to obtain such reports.	The committee appreciates this information. No response is required.
Superior Court of Orange County Family Law Division	Yes.	The committee appreciates this information. No response is required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Yes.	The committee appreciates this information. No response is required.

W22-04

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9.Would the proposal provide cost savings? If so, please quantify.		
Commenter	**Comment**	**Committee Response**
Superior Court of Orange County Family Law Division	The outcome of the proposal would not be a cost savings for Orange County.	The committee appreciates this information. No response is required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	No.	The committee appreciates this information. No response is required.

W22-04

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10. What would the implementation requirements be for courts?		
Commenter	**Comment**	**Committee Response**
Superior Court of Orange County Family Law Division	If a coversheet for FL-329 is created, implementation requirements would just be notification to staff and the public and training for staff. Notification of file stamp area for staff. Minimal impact.	The committee appreciates this information. No response is required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Notifying/training business office staff and updating form names in the case management system.	The committee appreciates this information. No response is required.

W22-04

Family Law: Changes to Child Custody Evaluation Rules and Forms (Amend rule 5.220, revise forms FL-327, FL-327(A), FL-328, and FL-329)

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

11. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?		
Commenter	**Comment**	**Committee Response**
Superior Court of Orange County Family Law Division	Yes, this time should be sufficient.	The committee appreciates this information. No response is required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Yes.	The committee appreciates this information. No response is required.

12. How well would this proposal work in courts of different sizes?		
Commenter	**Comment**	**Committee Response**
Superior Court of Orange County Family Law Division	Our court is a large court, and this process can work for a court of our size.	The committee appreciates this information. No response is required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	The proposal appears to work for courts of different sizes.	

SPR21-09

Family Law: Child Custody Evaluation Report Cover Sheet (revise form FL-328)

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.	Clerk's Association of the California Courts of Appeal by Charles D. Johnson, Clerk/Executive Officer Court of Appeal, First Appellate District San Francisco	NI	The Courts of Appeal will have to develop a process for screening Family Law appeals that include "Report conducted under Family Code section 3118" as this would be included in the record as well as the briefing so we'd want to make sure the cases were flagged confidential and the briefs didn't get sent to the Law Library. We will amend our category codes in our case management system accordingly.	No response required.
2.	Orange County Bar Association by Larisa M. Dinsmoor, President Newport Beach	A	No specific comments.	No response required.
3.	Superior Court of Los Angeles County by Brian Borys, Senior Advisor	A	See specific comments below.	See specific responses below.
4.	Superior Court of Orange County Family Law Division	NI	See specific comments below.	See specific responses below.
5.	Superior Court of Riverside County by: Susan D. Ryan, Chief Deputy of Legal Services	A	See specific comments below.	See specific responses below.
6.	Superior Court of San Diego County by Michael Roddy, Executive Officer	AM	See specific comments below.	See specific responses below.
7.	The Executive Committee of the Family Law Section of the California	A	No specific comments.	No response required.

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

SPR21-09

Family Law: Child Custody Evaluation Report Cover Sheet (revise form FL-328)

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**
	Lawyer's Association (FLEXCOM) by Justin M. O'Connell, FLEXCOM Legislative Chair and by Saul Berkovitch, Director of Governmental Affairs Sacramento			

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

SPR21-09

Family Law: Child Custody Evaluation Report Cover Sheet (revise form FL-328)

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

1. Comments requesting changes to form FL-328		
Commenter	**Comment**	**Committee Response**
Superior Court of Riverside County by: Susan D. Ryan, Chief Deputy of Legal Services	We suggest that the FL-328 form be further modified to add a section to identify what type of evaluation is attached. For instance, after 1. Case name 2. Case number add 3: Child Custody Evaluation Report ☐Family Code 3111 ☐Family Code 3118	The committee agrees with the commenter and recommends adding check boxes to the top of the form for the evaluator to indicate whether the report was completed under Family Code section 3111 or 3118.
Superior Court of San Diego County by Michael Roddy, Executive Officer	A check box option under "Access to Report" to designate whether the report was conducted under Family Code section 3111 or 3118 may be a good addition. Having a checkbox with this designation would help anyone receiving or processing the report to identify who can access it without having to review other orders from the file to make that determination. The references to Fam. Code sections 3025.5, 3111 under the first bullet point does not include a reference to California Rules of Court, rule 5.220(g)(1), whereas a reference to California Rule of Court, rule 5.220(g)(1) is included in the second bullet point. Since the California Rule of Court applies to both reports conducted under Family Code section 3111 and 3118, it is recommended that both bullets points reference the rule.	The committee agrees with the commenter that the form should include check boxes to designate whether the report was conducted under section 3111 or 3118; however, the committee recommends adding the check boxes at the top of the form for greater prominence. The committee appreciates the comment that the references apply to each of reports. However, to save space and avoid redundancies in the citations to the applicable law in the form, the committee recommends that they only appear in the footer of the page and that the final section of the form be changed to include a reference to other materials relating to child custody evaluations, including a reference and link to *Child Custody Evaluation Information Sheet* (form FL-329-INFO) and information about evaluations that at *https://selfhelp.courts.ca.gov/child-custody/evaluations*

SPR21-09

Family Law: Child Custody Evaluation Report Cover Sheet (revise form FL-328)

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

2. **Does the proposal appropriately address the stated purpose?**		
Commenter	**Comment**	**Committee Response**
Superior Court of Los Angeles County by Brian Borys, Senior Advisor	Yes.	No response required.
Superior Court of Orange County Family Law Division	Yes.	No response required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Yes.	No response required.

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

3. **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)?**		
Commenter	**Comment**	**Committee Response**
Superior Court of Los Angeles County by Brian Borys, Senior Advisor	No concerns.	No response required.
Superior Court of Orange County Family Law Division	No, the language is consistent with FC 3118 which states the report must be filed as confidential with the clerk of the court and shall be served on the parties or their attorneys.	No response required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Although Family Code section 3118 does use the term "family court employees[,]" it may be construed too broadly without further specification. Consider using similar language to the section on the form related to Family Code section 3111 such as: "Family court employees who receive the report directly from the evaluator, investigator, or the court to do their job."	Instead of proposing revisions to form FL-328 that would include notices for child custody evaluations under Family Code section 3118, the committee circulated a new proposal to revise form FL-329 to include a new first page with the notice requirements of section 3118.

4. **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?)**		
Commenter	**Comment**	**Committee Response**
Superior Court of Los Angeles County by Brian Borys, Senior Advisor Los Angeles	Recommend that there should be a place to stamp the document cover page as "Filed." The current version works for electronically-filed reports in Los Angeles because the electronic filing platform places filing information at the top margin of the document, but if staff needs to file stamp the form when it is submitted at the clerk's office counter rather than via the electronic filing system, the cover page does not leave sufficient space to file stamp the document cover page as the first page of the report.	The committee agrees with the comment and recommends revising the form to include a file-stamped box because form FL-328 is required to be attached as the cover page of the child custody evaluation report.
Superior Court of Orange County Family Law Division Orange	No, since the existing form does not have a file stamp box, the updated version of the form doesn't need one either. The form acts as a coversheet. The existing business practice is to file the report itself and image the report with the coversheet on top. The cover sheet does not get filed or docketed in the case, so it does not need a file stamp. Adding a space for a file stamp might actually be more confusing and cause the form to be filed on its own in error, rather than being included on top of the confidential report.	Rule 5.220(g) of the California Rules of Court requires that form FL-328 be the first page of the child custody evaluator's report. It must, therefore, be filed and docketed along with the attached report of the evaluation. To help courts comply with rule 5.220(g), the committee has decided to recommend that form FL-328 be revised to include a file stamp box.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Yes. It will ensure that the Notice becomes part of the confidential portion of the case file.	Please see response to comments of Superior Court of Los Angeles County, above.

SPR21-09
Family Law: Child Custody Evaluation Report Cover Sheet (revise form FL-328)
All comments are verbatim unless indicated by an asterisk (*).

5. Would the proposal provide cost savings? If so, please quantify.		
Commenter	**Comment**	**Committee Response**
Superior Court of Los Angeles County by Brian Borys, Senior Advisor	No.	No response required.
Superior Court of Orange County Family Law Division	No.	No response required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	No.	No response required.

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

6. **What would the implementation requirements be for courts?**		
Commenter	**Comment**	**Committee Response**
Superior Court of Los Angeles County by Brian Borys, Senior Advisor	Minor programming and training costs.	No response required.
Superior Court of Orange County Family Law Division	Minimal training would be required to implement the updated form. There is an existing procedure and process for confidential reports conducted under FC 3118, so an email communication to staff from the training team would be sufficient to make them aware of the updates. No new docket codes would be required because the FL-328 does not get filed or docketed. There is already an existing docket code for confidential reports filed on form FL-329.	No response required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Implementation would be limited to notifying staff of change and potentially file stamping the Notice, if the Committee elects to add a file stamp box.	No response required.

SPR21-09

Family Law: Child Custody Evaluation Report Cover Sheet (revise form FL-328)

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

7. **Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?**		
Commenter	**Comment**	**Committee Response**
Superior Court of Los Angeles County by Brian Borys, Senior Advisor	Yes.	No response required.
Superior Court of Orange County Family Law Division	Yes.	No response required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	Yes.	No response required.

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

SPR21-09
Family Law: Child Custody Evaluation Report Cover Sheet (revise form FL-328)
All comments are verbatim unless indicated by an asterisk (*).

8. **How well would this proposal work in courts of different sizes?**		
Commenter	**Comment**	**Committee Response**
Superior Court of Orange County Family Law Division	The proposal should work well for a court of any size. The only actions that are required are to replace previously printed versions of the form, if any, and communicate the update to staff.	No response required.
Superior Court of San Diego County by Michael Roddy, Executive Officer	There should be no disparate impact between courts of different sizes.	No response required.

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

Item number:10

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: April 6, 2022

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

Title of proposal: Juvenile Law: Nonminor Dependents

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend Cal. Rules of Court, rules 5.555, 5.570, and 5.906; adopt forms JV-469 and JV-471

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair

*Staff contact (*name, phone and e-mail*): Tracy Kenny, 916-263-2838*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): November 2, 2021
Project description from annual agenda:
1. Legislative Changes from the 2021 Legislative Session
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
l. AB 640 (Cooley) Extended foster care: eligibility redetermination (Ch. 622, Stats. of 2021) Creates, with respect to foster youth who were ineligible for federal foster care funds before they turned 18, a process that triggers a new eligibility determination if they receive extended foster care after turning 18.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*
The legislation specifically requires the council to implement the new provision by September 1, 2022.

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

Additional Information for JC Staff (provide with reports to be submitted to JC)**:**

- **Form Translations** (check all that apply)
  This proposal:
  ☐ includes forms that have been translated.
  ☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
  ☐ includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)
  ☒ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
  ☐ This proposal may require changes or additions to self-help web content.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-105
For business meeting on: May 12–13, 2022

Title
Juvenile Law: Nonminor Dependents

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.555, 5.570, and 5.906; adopt forms JV-469 and JV-471

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair

Agenda Item Type
Action Required

Effective Date
September 1, 2022

Date of Report
March 28, 2022

Contact
Tracy Kenny, 916-263-2838
tracy.kenny@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending three rules and adopting two forms to implement recent statutory changes that authorize placing agencies to petition the court on behalf of nonminor dependents who were ineligible for federal funding as children to terminate the nonminors from juvenile dependency or transitional jurisdiction, and immediately reenter them to allow a new federal eligibility determination to be undertaken so that federal matching funds can be accessed to cover the costs of their cases.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective September 1, 2022:

1. Adopt new forms *Petition and Order to Exit and Reenter Jurisdiction—Nonminor Dependent* (form JV-469) and *Findings and Orders Regarding Exit and Reentry of Jurisdiction—Nonminor Dependent* (form JV-471) to allow an agency to petition for and a court to grant an

order exiting a nonminor from jurisdiction and allowing them to reenter with a new voluntary placement agreement; and

2. Amend California Rules of Court, rules 5.555, 5.570, and 5.906 to clarify that their specific procedural requirements do not apply when reentry is done via this process and make them gender neutral.

The proposed amended rules and new forms are attached at pages 7–19.

Relevant Previous Council Action

Rules 5.555 and 5.906 were originally created to implement extended foster care legislation co-sponsored by the Judicial Council,[1] and they have been revised numerous times in response to subsequent clarifying legislation. Rule 5.570 was first adopted as rule 1432, effective January 1, 1991, and was amended and renumbered as rule 5.570 effective January 1, 2007. It has been amended numerous times, most recently effective January 1, 2020, to implement legislative clarifications concerning the requirements of the Indian Child Welfare Act.

Analysis/Rationale

Background

In 2021, the Legislature enacted Assembly Bill 640 (Cooley; Stats. 2021, ch. 622) to provide a mechanism for county child welfare and probation agencies to obtain a redetermination of eligibility for federal financial participation in a foster care case for a nonminor dependent. Such a redetermination is beneficial to the state and the agency because of the restrictions on which cases can receive federal matching funds for reimbursement. As the Assembly Floor Analysis for AB 640 explains:

> Foster care payments for eligible youth are provided through either state or federal AFDC-FC [Aid for Dependent Children–Foster Care]. In order to be eligible for federal AFDC-FC, the home from which the child was removed must meet Aid for Dependent Children (AFDC) eligibility criteria from 1996 for the month in which a dependency petition is filed with the juvenile court, or in any of the six months prior to the month in which the petition is filed. In 1996, the income limit for a family of three to qualify for AFDC was $723. Eligibility for federal AFDC-FC is determined at the time a child is removed from their parent's custody and eligibility is not re-determined once the youth is in foster care. Because many youth are ineligible for federal AFDC-FC, California created state AFDC-FC, which provides funding to foster children who are placed with non-relative foster parents.
>
> Because eligibility for federal AFDC-FC is determined at the time a child is removed from their parents' custody, youth who immediately transition from

[1] Assem. Bill 12 (Beall; Stats. 2010, ch. 559).

> foster care to EFC do not undergo federal AFDC-FC eligibility re-determination, as there is no disruption in their foster care status that would warrant re-determination. However, current law permits nonminors who are eligible for EFC to undergo re-determination for federal AFDC-FC if they re-enter the dependency system through a voluntary re-entry agreement.
>
> (Assem. Floor Analysis, Sen. Conc. Amends. to Assem. Bill 640 (2021–2022 Reg. Sess.) Sept. 2, 2021, pp. 3–4.)

The legislation adds a new subdivision (f) to Welfare and Institutions Code section 388[2] to authorize the placing agency to file the request for the court to terminate its specific jurisdiction over the nonminor and resume that jurisdiction on behalf of and with the consent of the nonminor. It provides that there be no break in services and prohibits filing a petition if the nonminor is categorically ineligible for federal funds, or if the nonminor is a member of a tribe and filing the request would disrupt services or make the nonminor ineligible for services. The request may be granted by the court without a hearing, and the proceeding is not subject to the requirements for other hearings to terminate juvenile court jurisdiction.

AB 640 requires the Judicial Council to adopt any needed rules or forms for implementation by September 1, 2022. Many nonminor dependents whose families were ineligible for federal financial participation when the nonminor entered care are expected to be eligible when they are evaluated as nonminors based on their current income, which will allow the state to draw down additional federal funds for foster care.

Petition and Order to Exit and Reenter Jurisdiction—Nonminor Dependent **(form JV-469)**

The committee recommends that the council adopt a mandatory form to be used by the placing agency to petition the court to dismiss and then resume jurisdiction over the nonminor. The form would also allow the court to order the matter to be set for a hearing. In most cases, it is expected that a hearing will not be required, in which case the court would use the other proposed form to make all of its findings and orders. In response to feedback received from public comment, the committee has included space on the form for the agency to document the time and manner in which it received the consent of the nonminor, as well as certifications that the petition is in the nonminor's best interest and that reasonable efforts have been made to address the nonminor's needs. The form also clarifies the mechanisms by which service on the nonminor and counsel can be accomplished to include the standard means for serving a modification petition, mail service, personal service, or electronic service pursuant to section 212.5.

Findings and Orders Regarding Exit and Reentry of Jurisdiction—Nonminor Dependent **(form JV-471)**

The committee recommends an additional mandatory form be adopted for the court to make the findings and orders required to dismiss and resume jurisdiction over the nonminor so that the

[2] All statutory references hereafter are to the Welfare and Institutions Code.

placing agency may enter into a new nonminor dependent agreement with the youth and redetermine federal financial eligibility. The form would also allow the court to deny the request if it found that granting the petition was not in the nonminor's best interest.

Amendments to rules 5.555, 5.570, and 5.906 to exclude exit and reentry from procedural requirements

The committee recommends amending rules 5.555 and 5.906, which address procedures to be used when terminating jurisdiction over a nonminor or resuming jurisdiction when they reenter care after exiting in other circumstances, to make clear that neither rule applies to the exit and reentry provisions of section 388(f). Similarly, rule 5.570, which governs the procedures for other petitions filed pursuant to section 388, would be amended to clarify that it does not apply to subdivision (f). Each of these rules would then provide that cases filed under section 388(f) should be handled using the two mandatory forms described above. In addition, rules 5.555 and 5.906 would be amended to delete gender specific pronouns to conform to the council's policy that rules and forms be gender neutral whenever that does not conflict with the substantive law. The changes to make the rules gender neutral were not circulated for public comment, but are entirely technical in nature and thus are recommended to be made without further circulation.

Policy implications

The legislation that enacted section 388(f) requires the council to develop and implement rules and forms as necessary to implement its provisions so that the state and counties can access additional federal funds. The committee opted to rely upon the adoption of two mandatory forms as the primary means of implementation of the section with rule changes only to clarify that this process was not subject to other procedural requirements. This choice was made to streamline the process and ensure consistent statewide implementation with as little administrative burden on the courts or child welfare agencies as possible to effectuate the statutory goals.

Comments

This proposal circulated for public comment from December 10, 2021, to January 21, 2022, as part of the winter rules cycle. The committee received comments from 10 entities, including four superior courts. One commenter agreed with the proposal, eight agreed with the proposal if modified, and one did not indicate a position. The committee made some stylistic changes and fixed typographical errors in response to the comments in addition to the specific issues raised in the comments discussed in more detail below. The chart of comments is attached at pages 20-43.

One form as petition and order is workable in this limited situation

The committee sought specific comment on whether it was preferable to have one form to serve as both the request by the agency and the order to set a hearing or not for the court. Most commenters indicated that they preferred one form for simplicity, and even those who indicated they generally prefer separation of these functions indicated that one form was workable in this situation. The committee did revise this form, however, to make it an order only when the court determined that a hearing on the petition was required. Because such hearings will be rare, the result is that the form will generally only need to be used as a petition and the court will not need to sign two orders to finalize most of these petitions.

Forms are an effective way of implementing a procedure for this section and should be mandatory

The committee sought specific comment on whether in addition to the proposed forms, a rule should be adopted to set forth the procedures for these petitions and orders. All commenters agreed that the rules were sufficient, although one noted that rule 5.570, which governs modification petitions filed under section 388, also needed amendment to clarify that it does not apply to these petitions; the committee took that suggestion and added amendments to that rule to the proposal. Because the forms will be the mechanism to ensure that the statutory requirements of section 388(f) are carried out, the committee concluded that it was best for them to be mandatory forms. A child welfare agency noted that it does not typically use council forms for its pleading, but the committee was persuaded by the larger number of commenters who wanted mandatory forms. The committee notes that this process is not required but is available to agencies who believe that it will result in additional federal funding, and they can recreate the mandatory forms in their case management systems as allowed by rule 5.504(b).

Consent should be documented, but a separate form is not required

The statute requires that the consent of the nonminor be obtained before the petition is filed with the court—and the petition as circulated for comment required the petitioner to certify that consent was obtained and to serve a copy on the nonminor and counsel—but the committee sought comment on whether an additional consent form should be approved. While some commenters thought that was the preferred option, a number suggested incorporating proof of consent into the petition to ease the burden on the agency and simplify the process. The committee adopted this suggestion and added a section to the request and order form for the petitioner to document the time and manner by which consent was obtained from the nonminor.

Clarified findings to ensure compliance with federal requirements

Three legal advocacy organizations submitted joint comments expressing concern that the proposal would not satisfy its statutory objectives because it would not allow for an eligibility redetermination under federal law. Their view was that the statute and the proposal were predicating eligibility for a redetermination based on the voluntary reentry of the nonminor, a procedure that can occur under existing law when a nonminor chooses to exit foster care and then subsequently elects to reenter care.

After consulting with the California Department of Social Services, and a close reading of the statute, the committee concluded that section 388(f) is not a voluntary reentry petition, but rather a court-ordered termination and resumption of jurisdiction made with the consent of the nonminor. To ensure that this process is consistent with federal title IV-E requirements, the committee has added a "reasonable efforts" finding to the findings and order form, and has modified the petition to require the agency to certify the basis for this finding as well as the best interest finding. With these modifications, the committee believes that the forms are consistent with section 388(f) and will allow agencies who seek to use this process to redetermine eligibility for any youth who may be newly eligible for federal financial participation.

Alternatives considered

As described above, the committee considered adopting a new rule of court to implement section 388(f) but concluded that the statutory guidance and the forms were sufficient to allow the courts to administer this new process. The committee also considered whether a form was required to document the consent of the nonminor and ultimately concluded that it would be preferable to require the petitioner to document the time and method of obtaining consent on form JV-469, rather than require that a signature be obtained on a separate form. The committee considered separating the order form from the petition but, based on the comments, opted instead to narrow the circumstances in which the petition would be used as an order form for those rare cases in which a hearing is required. The committee considered taking no action on rules or forms, but that would have been in direct contravention of the statutory requirement that rules or forms be developed by September 1, 2022.

Fiscal and Operational Impacts

The proposal is designed to minimize the burden on the courts to implement the new legislative option by providing simple and streamlined mandatory forms to be filed by the placing agency. Because the legislation allows the court to take this action without holding a hearing, the workload burden is expected to be mostly administrative. The committee heard from four courts that the burdens would involve training and case management changes that would be workable in their courts. Only one court of the four that submitted comments indicated that three months was not sufficient time to implement these changes, but because the statute requires that the forms be in place by September 1, the committee determined that implementation could not be delayed beyond that date.

Attachments and Links

1. Cal. Rules of Court, rules 5.555, 5.570, and 5.906, at pages 7–17
2. Forms JV-469 and JV-471, at pages 18–19
3. Chart of comments, at pages 20–43
4. Link A: Assem. Bill 640, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB640*

Rules 5.555, 5.570, and 5.906 of the California Rules of Court are amended, effective September 1, 2022, to read:

Rule 5.555. Hearing to consider termination of juvenile court jurisdiction over a nonminor—dependents or wards of the juvenile court in a foster care placement and nonminor dependents (§§ 224.1(b), 303, 366.31, 391, 451, 452, 607.2, 607.3, 16501.1(g)(16))

(a) Applicability

(1) This rule applies to any hearing during which the termination of the juvenile court's jurisdiction over the following nonminors will be considered:

(A)-(B) * * *

(C) A ward who was subject to an order for foster care placement at the time ~~he or she~~ the ward attained 18 years of age, or a dependent of the juvenile court who is 18 years of age or older and is living in the home of the parent or former legal guardian.

(3) This rule does not apply to a hearing on a petition for a nonminor to exit and reenter care to establish eligibility for federal financial participation under section 388(f). Those petitions may be decided with or without a hearing using mandatory forms *Petition and Order to Exit and Reenter Jurisdiction—Nonminor Dependent* (form JV-469) and *Findings and Orders Regarding Exit and Reentry of Jurisdiction—Nonminor Dependent* (form JV-471).

(b) * * *

(c) Reports

(1) The report prepared by the social worker or probation officer for a hearing under this rule must, in addition to any other elements required by law, include:

(A) * * *

(B) The specific criteria in section 11403(b) met by the nonminor that make ~~him or her~~ the nonminor eligible to remain under juvenile court jurisdiction as a nonminor dependent as defined in section 11400(v);

(C) For a nonminor to whom the Indian Child Welfare Act applies, when and how the nonminor was provided with information about the right to continue to be considered an Indian child for the purposes of the

ongoing application of the Indian Child Welfare Act to ~~him or her as a~~ the nonminor;

(D)—(F) * * *

(G) When and how the nonminor was informed that if juvenile court jurisdiction is terminated, the court maintains general jurisdiction over ~~him or her~~ the nonminor for the purpose of resuming jurisdiction and ~~he or she~~ the nonminor has the right to file a request to return to foster care and have the juvenile court resume jurisdiction over ~~him or her~~ the nonminor as a nonminor dependent until ~~he or she~~ the nonminor has attained the age of 21 years;

(H) When and how the nonminor was informed that if juvenile court dependency jurisdiction or transition jurisdiction is continued ~~over him or her~~, ~~he or she~~ the nonminor has the right to have that jurisdiction terminated;

(I) If the social worker or probation officer has reason to believe that the nonminor will not appear at the hearing, documentation of the basis for that belief, including:

(i) Documentation of the nonminor's statement that ~~he or she~~ the nonminor does not wish to appear in person or by telephone for the hearing; or

(ii) Documentation of reasonable efforts to find the nonminor when ~~his or her~~ the nonminor's location is unknown;

(J)—(K) * * *

(2)—(4) * * *

(d) Findings and orders

The court must, in addition to any other determinations required by law, make the following findings and orders and include them in the written documentation of the hearing:

(1) *Findings*

(A) Whether the nonminor had the opportunity to confer with ~~his or her~~ the nonminor's attorney about the issues currently before the court;

(B)—(C) * * *

(D) For a nonminor to whom the Indian Child Welfare Act applies, whether the nonminor was provided with information about the right to continue to be considered an Indian child for the purposes of the ongoing application of the Indian Child Welfare Act to ~~him or her~~ the nonminor;

(E)—(G) * * *

(H) Whether the nonminor has been informed that if juvenile court jurisdiction is continued, ~~he or she~~ the nonminor may have the right to have juvenile court jurisdiction terminated and that the court will maintain general jurisdiction over ~~him or her~~ the nonminor for the purpose of resuming dependency jurisdiction or assuming or resuming transition jurisdiction over ~~him or her~~ the nonminor as a nonminor dependent;

(I) Whether the nonminor has been informed that if juvenile court jurisdiction is terminated, ~~he or she~~ the nonminor has the right to file a request to return to foster care and have the juvenile court resume jurisdiction over ~~him or her~~ the nonminor as a nonminor dependent until ~~he or she~~ the nonminor has attained the age of 21 years;

(J)—(K) * * *

(L) Whether the nonminor's:

(i) Transitional Independent Living Case Plan, if required, includes a plan for a placement the nonminor believes is consistent with ~~his or her~~ the nonminor's need to gain independence, reflects the agreements made between the nonminor and social worker or probation officer to obtain independent living skills, and sets out the benchmarks that indicate how both will know when independence can be achieved;

(ii) —(iii) * * *

(M)—(N) * * *

(2) Orders

(A) * * *

(B) When juvenile court jurisdiction is continued for the nonminor to remain in placement as a nonminor dependent:

(i) * * *

(ii) Continue the nonminor's status as an Indian child for the purposes of the ongoing application of the Indian Child Welfare Act unless ~~he or she~~ the nonminor has elected not to have ~~his or her~~ the nonminor's status as an Indian child continued; and

(iii) Set a status review hearing under rule 5.903 within six months of the date of ~~his or her~~ the nonminor's most recent status review hearing.

(C)—(D) * * *

(E) For a nonminor who does not meet one or more of the eligibility criteria of section 11403(b) and is not otherwise eligible to remain under juvenile court jurisdiction or, alternatively, who meets one or more of the eligibility criteria of section 11403(b) but either does not wish to remain under the jurisdiction of the juvenile court as a nonminor dependent or is not participating in a reasonable and appropriate Transitional Independent Living Case Plan, the court may order the termination of juvenile court jurisdiction only after entering the following findings:

(i) * * *

(ii) The nonminor was informed of the options available ~~to him or her~~ to assist with the transition from foster care to independence;

(iii) The nonminor was informed that if juvenile court jurisdiction is terminated, ~~he or she~~ the nonminor has the right to file a request to return to foster care and have the juvenile court resume jurisdiction over ~~him or her~~ the nonminor as a nonminor dependent until ~~he or she~~ the nonminor has reached 21 years of age;

(iv) * * *

(v) The nonminor had an opportunity to confer with ~~his or her~~ the nonminor's attorney regarding the issues currently before the court;

(vi) * * *

(F) * * *

Rule 5.570. Request to change court order (petition for modification)

(a)–(j) * * *

(k) Petitions for juvenile court to exit and reenter jurisdiction over nonminors (§ 388(f))

This rule does not apply to a hearing on a petition for a nonminor to exit and reenter care to establish eligibility for federal financial participation under section 388(f). Those petitions may be decided with or without a hearing using mandatory forms *Petition and Order to Exit and Reenter Jurisdiction—Nonminor Dependent* (form JV-469) and *Findings and Orders Regarding Exit and Reentry of Jurisdiction—Nonminor Dependent* (form JV-471).

Rule 5.906. Request by nonminor for the juvenile court to resume jurisdiction (§§ 224.1(b), 303, 388(e), 388.1)

(a) Purpose

(1) Except as provided in (2), this rule provides the procedures that must be followed when a nonminor wants to have juvenile court jurisdiction assumed or resumed over ~~him or her~~ the nonminor as a nonminor dependent as defined in subdivisions (v) or (aa) of section 11400.

(2) This rule does not apply to a petition for a nonminor to exit and reenter care to establish eligibility for federal financial participation under section 388(f). Those petitions may be decided with or without a hearing using mandatory forms *Petition and Order to Exit and Reenter Jurisdiction—Nonminor Dependent* (form JV-469) and *Findings and Orders Regarding Exit and Reentry of Jurisdiction—Nonminor Dependent* (form JV-471).

(b) Contents of the request

(1) * * *

(2) The request must be liberally construed in favor of its sufficiency. It must be verified by the nonminor or if the nonminor is unable to provide verification due to a medical condition, the nonminor's representative, and to the extent known to the nonminor or the nonminor's representative, must include the following information:

(A)—(D) * * *

(E) If the nonminor wants ~~his or her~~ the nonminor's parents or former legal guardians to receive notice of the filing of the request and the hearing, the name and residence addresses of the nonminor's parents or former guardians;

(F) The name and telephone number of the court-appointed attorney who represented the nonminor at the time the juvenile court terminated its dependency jurisdiction, delinquency jurisdiction, or transition jurisdiction if the nonminor wants that attorney to be appointed to represent ~~him or her~~ the nonminor for the purposes of the hearing on the request;

(G) If the nonminor is an Indian child within the meaning of the Indian Child Welfare Act and chooses to have the Indian Child Welfare Act apply to ~~him or her~~ the nonminor, the name of the tribe and the name, address, and telephone number of ~~his or her~~ tribal representative;

(H) If the nonminor had a Court Appointed Special Advocate (CASA) when ~~he or she~~ the nonminor was a dependent or ward of the court and wants the CASA to receive notice of the filing of the request and the hearing, the CASA's name;

(I)—(J) * * *

(3) * * *

(c) Filing the request

(1) * * *

(2) For the convenience of the nonminor, the form JV-466 and, if the nonminor wishes to keep ~~his or her~~ the nonminor's contact information confidential, the *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468) may be:

(A) * * *

(B) Submitted to the juvenile court in the county in which the nonminor currently resides, after which:

(i) The court clerk must record the date and time received on the face of the originals submitted and provide a copy of the originals marked as received to the nonminor at no cost to ~~him or her~~ the nonminor.

(ii)—(v) * * *

(C) For a nonminor living outside the state of California, the form JV-466 and, if the nonminor wishes to keep ~~his or her~~ the nonminor's contact information confidential, the form JV-468 must be filed with the juvenile court of general jurisdiction.

(3)—(5) * * *

(d) Determination of prima facie showing

(1) Within three court days of the filing of form JV-466 with the clerk of the juvenile court of general jurisdiction, a juvenile court judicial officer must review the form JV-466 and determine whether a prima facie showing has been made that the nonminor meets all of the criteria set forth below in (d)(1)(A)–(D) and enter an order as set forth in (d)(2) or (d)(3).

(A) The nonminor is eligible to seek assumption of dependency jurisdiction under the provisions of section 388.1(c), or the nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement on the date ~~he or she~~ the nonminor attained 18 years of age, including a nonminor whose adjudication was vacated under Penal Code section 236.14;

(B)—(D) * * *

(2)—(3) * * *

(e) Appointment of attorney

(1) If the nonminor included on the form JV-466 a request for the appointment of the court-appointed attorney who represented the nonminor during the period of time ~~he or she~~ the nonminor was a ward or dependent or nonminor

dependent, the judicial officer must appoint that attorney solely for the hearing on the request, if the attorney is available to accept such an appointment.

(2) If the nonminor did not request the appointment of ~~his or her~~ the nonminor's former court-appointed attorney, the judicial officer must appoint an attorney to represent the nonminor solely for the hearing on the request. The attorney must be selected from the panel or organization of attorneys approved by the court to represent children in juvenile court proceedings.

(3) In addition to complying with the requirements in (g)(1) for service of notice of the hearing, the juvenile court clerk must notify the attorney of ~~his or her~~ the appointment as soon as possible, but no later than one court day from the date the order ~~for his or her~~ of appointment was issued under (d)(3). This notification must be made by telephone, fax, e-mail, or other method approved by the presiding juvenile court judge that will ensure prompt notification. The notice must also include the nonminor's contact information and inform the attorney that a copy of the form JV-466 will be served on ~~him or her~~ the attorney and that one is currently available in the office of the juvenile court clerk.

(4) If the request is granted, the court must continue the attorney's appointment to represent the nonminor regarding matters related to ~~his or her~~ the nonminor's status as a nonminor dependent until the jurisdiction of the juvenile court is terminated, unless the court finds that the nonminor would not benefit from the appointment of an attorney.

(A)—(B) * * *

(5) Representation of the nonminor by the court-appointed attorney for the hearing on the request to return to juvenile court jurisdiction and for matters related to ~~his or her~~ the nonminor's status as a nonminor dependent must be at no cost to the nonminor.

(6) * * *

(f) * * *

(g) Notice of hearing

(1) The juvenile court clerk must serve notice as soon as possible, but no later than five court days before the date the hearing is set, as follows:

(A) * * *

(B) The notice of the date, time, place, and purpose of the hearing must be served on the nonminor's parents only if the nonminor included in the form JV-466 a request that notice be provided to ~~his or her~~ the nonminor's parents.

(C) The notice of the date, time, place, and purpose of the hearing must be served on the nonminor's tribal representative if the nonminor is an Indian child and indicated on the form JV-466 ~~his or her~~ the nonminor's choice to have the Indian Child Welfare Act apply to ~~him or her~~ the nonminor as a nonminor dependent.

(D) The notice of the date, time, place, and purpose of the hearing must be served on the local CASA office if the nonminor had a CASA and included on the form JV-466 a request that notice be provided to ~~his or her~~ the nonminor's former CASA.

(2)—(4) * * *

(h) Reports

(1) The social worker, probation officer, or Indian tribal agency case worker (tribal case worker) must submit a report to the court that includes:

(A) Confirmation that the nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when ~~he or she~~ the nonminor attained 18 years of age and that ~~he or she~~ the nonminor has not attained 21 years of age, or is eligible to petition the court to assume jurisdiction over the nonminor pursuant to section 388.1;

(B) The condition or conditions under section 11403(b) that the nonminor intends to satisfy;

(C) —(F) * * *

(2) At least two court days before the hearing, the social worker, probation officer, or tribal case worker must file the report and any supporting documentation with the court and provide a copy to the nonminor and to ~~his or her~~ the nonminor's attorney of record; and

(3) * * *

(i) Findings and orders

The court must read and consider, and state on the record that it has read and considered, the report; the supporting documentation submitted by the social worker, probation officer, or tribal caseworker; the evidence submitted by the nonminor; and any other evidence. The following judicial findings and orders must be made and included in the written court documentation of the hearing.

(1) Findings

(A) * * *

(B) Whether the nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when ~~he or she~~ the nonminor attained 18 years of age, or meets the requirements of subparagraph (5) of subdivision (c) of section 388.1;

(C)—(G) * * *

(H) Whether a nonminor who is an Indian child chooses to have the Indian Child Welfare Act apply to ~~him or her~~ the nonminor as a nonminor dependent.

(2) Orders

(A) If the court finds that the nonminor has not attained 21 years of age, that the nonminor intends to satisfy at least one condition under section 11403(b), and that the nonminor and placing agency have entered into a reentry agreement, the court must:

(i)—(ii) * * *

(iii) Order the social worker or probation officer to consult with the tribal representative regarding a new Transitional Independent Living Case Plan for the nonminor who chooses to have the Indian Child Welfare Act apply to ~~him or her~~ the nonminor as a nonminor dependent and who is not under the supervision of a tribal case worker;

(iv)—(v) * * *

(B)—(C) * * *

(3) * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR *(name):*		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
NONMINOR'S NAME:		
PETITION AND ORDER TO EXIT AND REENTER JURISDICTION—NONMINOR DEPENDENT		CASE NUMBER:

DRAFT
Not approved by the Judicial Council
JV-469.v5.032422.ja

1. **Petitioner *(name):***
   a. ☐ Social worker
   b. ☐ Probation officer
   c. ☐ Tribal placing agency

   requests on behalf of and with the consent of the nonminor named above that the court dismiss its jurisdiction under Welfare and Institutions Code section 300 or 450 and assume general jurisdiction under section 303, and then immediately resume its jurisdiction under section 300 or 450 to establish the nonminor's eligibility for federal financial participation. Petitioner certifies that the nonminor is not categorically ineligible for federal foster care benefits and is not a member of a tribe whose services would be disrupted by seeking to establish federal eligibility. Petitioner certifies that the petition is in the nonminor's best interest, and that reasonable efforts were made to meet the nonminor's needs prior to a foster care placement.

2. Petitioner obtained the consent of the minor on *(date):* _____ via the following method *(specify how consent was obtained):*

3. Notice of this request has been provided to the nonminor and the attorney for the nonminor via first class mail, personal service, or electronic service as provided in Welfare and Institutions Code section 212.5, and a proof of service is attached.

Date:

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE)

(*The court will complete the section below only if a hearing is set.*)

ORDER

4. The court orders the following:
   a. ☐ The matter is set for hearing on *(date):* _____ *(time):* in department:

At the court address listed above.

Date: _____

_____
(JUDICIAL OFFICER)

Form Adopted for Mandatory Use
Judicial Council of California
JV-469 [New September 1, 2022]

Welfare and Institutions Code, § 388(f);
Cal. Rules of Court, rules
5.555, 5.570, and 5.906
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR *(name):*		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
NONMINOR'S NAME:		
FINDINGS AND ORDERS REGARDING EXIT AND REENTRY OF JURISDICTION—NONMINOR DEPENDENT		CASE NUMBER:

DRAFT
Not approved by the Judicial Council
JV-471.v5.032422.ja

Findings and Orders:

1. The court has read and considered *Petition and Order to Exit and Reenter Jurisdiction—Nonminor Dependent* (form JV-469), filed by *(name):* on *(date):*
2. ☐ The court makes its findings and orders on the petition without a hearing.
3. ☐ The court held a hearing on the request on *(date):* , at which the following were present

	Name	Attorney name
a. ☐	Nonminor dependent:	☐
b. ☐	Probation officer:	☐
c. ☐	County agency social worker:	☐
d. ☐	Other *(specify):*	☐

Court Grants Request

4. ☐ The court makes the findings stated below:
   a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ Notice of the request was provided to the nonminor and the attorney for the nonminor.
   c. ☐ The placing agency made reasonable efforts to meet the nonminor's needs prior to a foster care placement.
   d. ☐ It is in the best interest of the nonminor to reenter foster care as a nonminor dependent.
5. ☐ The court makes the order stated below:
   a. ☐ The court grants the request to dismiss jurisdiction under Welfare and Institutions Code section 300 or section 450 and to assume general jurisdiction over the nonminor under section 303, and then resume jurisdiction over the nonminor under section 300 or section 450 to establish the nonminor's eligibility for federal financial participation in the cost of the nonminor's care.
   b. ☐ Placement and care are vested with the placing agency.
   c. ☐ The placing agency must establish a new agreement for extended foster care with the nonminor and ensure no break in service or support.
   d. ☐ A transitional independent living case plan has not previously been established. The placing agency must develop with the nonminor a new plan and file it with the court within 60 days.
   e. ☐ A nonminor dependent review hearing under Welfare and Institutions Code section 366.31 and rule 5.903 of the California Rules of Court is set for *(date):*

Court Denies Request

6. ☐ The court finds that it is not in the nonminor's best interest to grant the request to dismiss jurisdiction and maintains jurisdiction over the nonminor under its existing order for the reasons stated on the record.

Date: _____

_____
(JUDICIAL OFFICER)

Form Adopted for Mandatory Use
Judicial Council of California
JV-471 [New September 1, 2022]

Welfare and Institutions Code, § 388(f);
Cal. Rules of Court, rules
5.555, 5.570, and 5.906
www.courts.ca.gov

W22-04

Juvenile Law: Nonminor Dependents (Amend Cal. Rules of Court, rules 5.555, 5.570 and 5.906; approve forms JV-469 and JV-471)

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

	Commenter	Position	Comment	Committee Response
1.	Children's Law Center of California by Sue Abrams, Director of Policy and Training	AM	1. Does the proposal appropriately address the stated purpose? Yes with modifications 2. Is a form that combines the request and initial order on whether a hearing is needed on the request workable? Yes 3. Does this mostly administrative process require its own rule of court, or can it be accomplished with the mandatory forms? It can be accomplished with mandatory forms. 4. Should the forms be mandatory or optional? If the forms were optional, would a rule of court then be required? The forms should be mandatory as the required process is very specific and must be followed as prescribed in the new law. The form ensures compliance with the law. If, for example, the case is terminated but not re-opened immediately in the same hearing, there could be a detrimental impact on the youth's services and funding. 5. Is a form needed to document the consent of the nonminor?	The committee appreciates the careful review. Commenters were in favor of one form and the committee has maintained this feature of the proposal. The committee agrees and has opted not to add a rule of court based on feedback from commenters. Based on the comments, the committee agrees that mandatory forms are justified here, especially since a rule has not been adopted to ensure that services are not disrupted.

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

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

	Commenter	Position	Comment	Committee Response
			As it stands the proposal does not provide adequate protection for the youth's position as required by the law. Either there should be a form to document the consent of the nonminor, or the petition should include a box for the agency to check whereby the agency: (a) verifies that the youth has provided consent, (b) provides the date of consent and (c) describes the manner in which the agency obtained the youth's consent.	The committee has added space on the form to document the date and manner by which the agency obtained the consent of the minor.
			Other areas of concern: There are some limited situations in which granting this petition could be very problematic for a non-minor dependent. The proposal does not provide any process for the non-minor dependent to object to the request. Given that most of these petitions will be approved without a hearing – as stated in the proposal – it is important to have a process to object, especially if there is no form showing the consent of the nonminor.	The petition is required to be served on the nonminor and their attorney and has been clarified to specify the optional proof of service form that can be used to document service. If the nonminor objects (despite have provided consent as documented on the petition) the attorney would be able to contact the court and request a hearing to raise any objection.
2.	Legal Aid Association of California by Alison Corn, Legal Design Attorney	AM	We are writing on behalf of the Legal Aid Association of California (LAAC) to address the recommendations of the Family and Juvenile Law Advisory Committee pertaining to the rules of court and forms implementing recent statutory changes that authorize placing agencies to petition the court on behalf of	No response required.

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

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

	Commenter	Position	Comment	Committee Response
			nonminor dependents who were ineligible for federal funding as children to terminate the nonminors from juvenile dependency or transitional jurisdiction and immediately reenter them to allow a new federal eligibility determination to be undertaken so that federal matching funds can be accessed to cover the costs of their cases. While we generally support this proposal, we wish to address our concerns and positions with respect to the following items. **A Form that Combines the Request and Initial Order on Whether a Hearing is Needed is a Workable Solution** Combining the request and initial order in one form will ensure courts have the appropriate items at the appropriate time. As such, it will increase workflow efficiencies for the court and decrease the need for continuances due to administrative delays. One form is a workable solution. **A Rule of Court is Not Needed, But, at a Minimum, Form JV-469 Requires Adjustment to Meet Federal Removal Requirements** While it does not appear to need a rule of court to administer the process as it stands, there appears to be a problem with this new mechanism. It was designed to help counties	Commenters were in favor of one form and the committee has maintained this feature of the proposal. The committee agrees that a rule is not needed to effectuate the new statutory provisions allowing for exit and reentry, but takes a different view of the mechanism by which the law allows for a

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	Commenter	Position	Comment	Committee Response
			and youth establish federal eligibility for AFDC-FC after turning 18, but as it is currently framed, it will both fail to establish eligibility and may also allow placement authority to lapse. This is not the intent of the law, but it is not yet clear whether this can be corrected through only form adjustment, or even with form adjustment and a new court rule. It may require a statutory cleanup. The crux of the problem is that the reentry order, as written in form JV-469, does not satisfy the federal removal requirements. Because the point of this provision is to end the removal and establish a new removal period, the removal requirements and placement authority must be established anew. After the age of 18, a new removal period can begin in one of two ways under the federal structure. First, when there is statutory authority to do so, a court can order a removal and authorize placement by making a contemporaneous contrary to the welfare finding and reasonable efforts determination. Such authority does not exist in California. The other way to establish a new removal and placement authority is through a voluntary placement agreement (VPA). Under this process, it is the execution of the agreement that confers placement authority, which is continued (and may only be continued past 180 days) with a court finding that continuance of the VPA and	redetermination of federal eligibility. The commenter correctly notes that there are two means to establish a new removal period, either by court order, or via a voluntary reentry agreement. However, the committee reads the amendments to section 388 to in fact authorize the court to order a removal and authorize placement after making a finding that placement into foster care is in the nonminor's best interest, and that the agency has made reasonable efforts to meet the nonminor's needs prior to a foster care placement. These are the findings needed to resume dependency jurisdiction for a nonminor, and the petition and the form have been revised to ensure that the court can make them and thereby allow the placing agency to sign an agreement with the nonminor to ensure that the nonminor can remain eligible for extended foster care. This agreement is not a voluntary placement agreement that would be signed when the nonminor is initiating the reentry, but rather it is analogous to the agreement that must be signed by all in foster care at age 18 who wish to remain in extended foster care until age 21. As a result, the statute and the form require that it be signed after the court orders a new removal and entry into foster care for the nonminor. The proposed revised forms will ensure that the court ordered process includes required federal findings so that the redetermination can be made.

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

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

	Commenter	Position	Comment	Committee Response
			remaining in foster care is in the youth's best interests, otherwise known as a best interest finding. With the form and hearing as currently structured, there is no finding that the nonminor and the agency have entered into a voluntary placement agreement as there is in the form JV-472 reentry order section. Absent this VPA, there is no removal and authority for the court to place the nonminor with the agency. This can obviously be corrected when a nonminor appears at the hearing and executes a VPA in between exit and reentry. It is also possible that a youth could execute a new VPA in advance of the hearing and that could be a required attachment to the petition. However, we would need to review whether it is possible to execute the agreement prior to the exit. If this is possible, then one solution would be to add the VPA finding to the form in a manner similar to that in JV-472 and to require the VPA to accompany the petition. Given the importance of establishing a new removal and placement authority, and the fact that a new best interest finding would also be required to complete, it would be prudent to have a court rule outlining the process and the necessary components for the petition. It is worth exploring whether there is a way to correct the problem without a statutory correction. At the very least, the hearing process and form need to account for the VPA	

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

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

	Commenter	Position	Comment	Committee Response
			requirement and the need for a new best interest finding. **The Forms Should be Mandatory** A court should not be able to grant a reentry order without simultaneously providing findings and orders regarding the granted reentry order. Allowing otherwise could place a nonminor dependent out of care. Further, there is a need for this to be a clean and unconvoluted process. The forms should be mandatory. **A Nonminor's Documented Consent Should be Included in Form JV-469 and Presented as a Finding on Form JV-471** Consistent with the goals of the extended foster care program, any form used to obtain a minor's form consent should be accessible to the nonminor. It should be easy for the nonminor to read and understand. That said, a nonminor's documented consent does not require a new form. Instead, documentation should be included in form JV-469 and be listed as one of the findings on form JV-471. As additional new forms pose a risk to all involved, documenting the nonminor's consent on existing forms will encourage a more seamless process.	Based on the comments, the committee agrees that mandatory forms are justified here, especially since a rule has not been adopted to ensure that services are not disrupted. The committee has revised the petition to require the agency to document the time and manner in which it obtained the consent of the minor.
3.	Los Angeles Department of Child and Family Services and Los Angeles County Counsel, Dependency Division by Ana Maria Herrera Murray, Principal Deputy County Counsel	AM	1. DCFS Juvenile Court Services and Principal Deputy County Counsel Ana Maria Herrera Murray believe the proposed forms do address the stated purpose.	The committee appreciates the support of the commenter.

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

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

	Commenter	Position	Comment	Committee Response
			2. DCFS Juvenile Court Services and Principal Deputy County Counsel Ana Maria Herrera Murray believe that combined forms would be workable and would simplify the process.	Commenters were in favor of one form and the committee has maintained this feature of the proposal.
			3. DCFS Juvenile Court Services is unsure if this mostly administrative process requires its own rule of court or if it can be accomplished with the mandatory forms.	After reviewing feedback from other commenters the committee is not proposing a rule, but relying on the forms to effectuate the new process.
			4. DCFS Juvenile Court Services and Principal Deputy County Counsel Ana Maria Herrera Murray believe the forms should be mandatory to ensure that the juvenile court makes all the appropriate findings. Principal Deputy County Counsel Ana Maria Herrera Murray also believes that a form to document the consent of the non minor dependent (NMD) would be helpful, as long as it is a form that the social worker can sign, affirming that the NMD has been explained the process and purpose, and that the NMD does consent to it. This would expedite matters, as opposed to creating a form for the NMD to sign. That would result in delays having to locate the NMD (not always an easy task) and then have the NMD actually sign the form. Even an electronic signature requirement could take time to obtain from the NMD.	The committee concurs that there are benefits to documenting the consent of the nonminor and has revised the petition form to require that the time and manner that consent were obtained be recorded on the petition. This will ensure that consent is obtained and documented for the court without requiring a physical signature by the nonminor.

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

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

	Commenter	Position	Comment	Committee Response
			5. DCFS Juvenile Court Services believe a form is needed to document the consent of the NMD. Principal Deputy County Counsel Ana Maria Herrera Murray believes that after the court reinstates jurisdiction, the NMD will still have to sign the "Agreement," which is form SOC 163.	The committee agrees that the statute provides that an agreement will need to be signed after the petition is granted, but that agreement is not the SOC 163 because this is not a voluntary reentry process, but rather a court ordered placement, and as a result the agreement would be the agreement signed by any foster child who elects to remain in care after age 18. That process does not involve the court, and thus does not need to be included with the court forms.
			Principal Deputy County Counsel Ana Maria Herrera Murray has the following additional comments: Regarding form JV-471: Item "3": The current item "c" should be "d". Item "c" should read: The court finds that the County Agency has complied with the case plan by making Reasonable Efforts to finalize a permanent plan.	The committee concurs that a "reasonable efforts" finding needs to be made, and has added language to both forms to allow for that finding in compliance with federal requirements.
			Item "4": Should be amended by adding: "c": The placing Agency must immediately establish an Extended Foster Care agreement between the Agency and the non minor, by securing the non minor's signature in form SOC-163. The placing Agency must ensure there is no break in services and supports.	The order text on the form reflects that specific language of the statute. The form referenced by the commenter is not a court form, and does not appear to be the correct form for this agreement, which is not a voluntary reentry agreement, thus the committee is not adding the suggested language.

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

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

	Commenter	Position	Comment	Committee Response
			"d": The non minor dependent case number is_____ and the case is assigned to Department _____.	The case number is already reflected on the form, and assignment to a court department is not something that the court would order, but rather an administrative designation that should be the same department in which the action was filed.
			**Note in item 4, part "c" of my comment, what I added to the existing proposed item "c" was the word Immediately (or it could be "within five calendar days"). The reason for this is that until the SOC 163 is signed by the NMD, there is no federal funding granted. In other words, the date in which that form is signed by the NMD is the earliest date when federal funding may apply. Therefore, if we do not ensure the order specifies that it must be done immediately, or within a very short, defined time, many cases may end up lingering and Los Angeles County will continue to have to support the case without reimbursement possibility. Currently, we are trying to find out if the State would allow the signing of the agreement (Form SOC 163), before the orders are made, but it is uncertain because the statute directs it to be done after the court makes the orders under WIC 388(f). The statute also directs that these NMDs must begin to receive benefits upon their 18th birthday, but these hearings cannot occur until after the youth is 18.	The statute does not specify a time frame for signing the new agreement for extended foster care, so the committee does not have the authority to order that it be done immediately. As the commenter notes, it is in the interest of the agency to complete the agreement in a timely way to ensure that federal eligibility is maintained and that it can comply with the statutory requirement that there be no break in services or supports to the nonminor, but how to accomplish that is an implementation issue for child welfare agencies to resolve. Similarly, the form cannot require that the agreement be signed before the petition is granted because the statute expressly provides that the court order is what triggers the redetermination of federal eligibility and then the agreement is signed to allow the nonminor to indicate how they will maintain eligibility. The committee also notes that the nonminor will have already signed such an agreement when they entered extended foster care, so it should be relatively easy to re-establish the agreement.

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	Commenter	Position	Comment	Committee Response
4.	Public Counsel by Michael Rawson, Director Los Angeles	AM	Commenter signed on to comments of Legal Aid Association of California (see item 2)	See responses to item 2
5.	San Bernardino County Children and Family Services by Keysii Parker, Program Specialist	NI	1. In order for the Court to make the findings and orders contained on the JV 471, information will need to be provided in support of 3. C. best interest. The form does not have a spot to further describe this supporting information. Will this then require another court report to support the request?	The committee has added a declaration on the petition to support the best interest finding so that the court has a basis to make that finding.
			2. The process is vague has to noticing requirements. This is also an administrative burden.	The statute requires that the petition be served as provided on the form and has clarified it to require service by first class mail, personal service or electronic service as provided in Welfare and Institutions Code section 212.5.
			3. CFS does not use the JV forms, but instead uses auto-text. [With the exception of a few] County Counsel prepares some of the JV forms. Will CFS be doing the forms themselves? CFS will need to decide whether to request an "optional use" so they can incorporate the noticing/findings and orders in the last PPR report before the Court orders NMD status. This would then save a separate process needing to be implemented. The eligibility issues and best interest could then be contained in that report and/or NAR packet avoiding additional work.	This comment appears to be arguing against the use of mandatory Judicial Council forms. The committee sought comment on that issue and concluded that mandatory forms were preferable to ensure that all required findings are made and consent is documented. The committee appreciates that this may result in additional work for child welfare agencies, but notes that the provisions of section 388(f) are optional and only need to be pursued by an agency when it determines that the workload is justified by the increased federal participation in funding the case.

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	Commenter	Position	Comment	Committee Response
			4. Who will make the eligibility determination and how with this information be provided to the SW in order to initiate this process?	The committee notes that eligibility determinations are a responsibility of the child welfare agency, and thus determinations about processes and procedures would need to be developed at the agency level.
			5. Regarding the NMD's consent, the JV form should be signed by the NMD thereby eliminating the need for a separate consent form. This would notify the Court that the minor is in agreement.	The committee agrees that an additional form is not needed, and has instead added a section to document the time and manner in which consent was obtained on the JV-469 to provide maximum flexibility for agencies.
			6. The JV 471 form does not have a place for the Court to acknowledge that a hearing was not set, but it was ordered based on the review of the request. Section 2 only indicates that a hearing was held and the following checked off participants were present.	The JV-469 has a box for the court to set a hearing, and the JV-471 has a check box for the court to indicate if a hearing was held. Thus the committee believes that the forms allow the court to accommodate both possible situations – hearing or no hearing.
			7. What impact if any will occur, if the JV 469/471 process was erroneously submitted and ordered by the Court? Does this terminate State funding otherwise available and prohibit reinstatement of that alternative funding source should federal eligibility not be in place.	Eligibility for extended foster care is distinct from eligibility for federal funding, so even if a court makes this order and it turns out that the nonminor is not federally eligible, the nonminor can still enter into a new extended foster care agreement and the case will be funded without federal dollars as was the case before the petition was filed.
6.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	A	**General comments:** Agree with proposed changes.	The committee appreciates the concurrence.

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

W22-04
Juvenile Law: Nonminor Dependents (Amend Cal. Rules of Court, rules 5.555, 5.570 and 5.906; approve forms JV-469 and JV-471)

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

	Commenter	Position	Comment	Committee Response
			Specific questions: In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following: • Does the proposal appropriately address the stated purpose? Yes. • Is a form that combines the request and initial order on whether a hearing is needed on the request workable? Yes. • Does this mostly administrative process require its own rule of court, or can it be accomplished with the mandatory forms? May require an amendment to local rules. It may also require amendments to California Rules of Court (CRC) 5.570 as it outlines the requirements and process for Welfare and Institutions Code (WIC) 388 petitions. It should also require amendments to CRC 5.555 and 5.906.	 No response required. Commenters were in favor of one form and the committee has maintained this feature of the proposal. The committee concurs that it would be beneficial to clarify that Rule 5.570 does not apply to petitions filed pursuant to section 388(f) and has added a subdivision (k) to include that exception.

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	Commenter	Position	Comment	Committee Response
			• Should the forms be mandatory or optional? If the forms were optional, would a rule of court then be required?	
			The forms should be mandatory.	Based on the feedback from the commenters, the committee agrees that the forms should be mandatory to ensure that appropriate findings are made.
			• Is a form needed to document the consent of the nonminor?	
			A form would be preferred for consistency.	The committee has added a section to the petition to document consent which should likewise promote consistency.
			The advisory committee also seeks comments from courts on the following cost and implementation matters:	
			• Would the proposal provide cost savings? If so, please quantify.	
			There may be in an increase in postage for noticing parties.	The committee will note this cost, however it is expected that notice will be provided by the agency.
			• 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?	
			• Requires approximately one hour of training for staff.	The committee will note these impacts in its report to the Judicial Council.

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	Commenter	Position	Comment	Committee Response
			• Requires revision to the WIC 388 procedure. • Requires changes to procedural guides. • Requires update to the Dependency JA Manual. • Requires CMS events for the new forms (JV-469 and JV-471). • Requires new Event Status to reflect the status of the Petition and Order to Exit and Reenter Jurisdiction – Nonminor Dependent (JV-469). • Requires new WIC 388(f) Hearing Types for appearance or nonappearance hearings. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? No. Six months is needed.	The committee appreciates the desire for additional time, but the statute requires that forms be in place by September 1, so six months is not possible.
7.	Superior Court of Orange County by Vivian Tran, Operations Analyst Family Law and Juvenile Law Division	AM	Comments JV-469 – *Petition and Order to Exit and Reenter Jurisdiction-Nonminor Dependent* ▪ Word "JURISDICTION" in the header and footer should be revised to correct the misspelling.	The committee has corrected this spelling error.

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

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	Commenter	Position	Comment	Committee Response
			JV-471 – *Findings and Orders Regarding Exit and Reentry of Jurisdiction – Nonminor Dependent* ▪ In section 2, the word "of" should be removed and sentence should read "The court held a hearing on the request on (date): _____, at which the following were present" ▪ In section 4a the recommendation is to change the word "assumed" to "assume". ▪ Remove 3.a. from JV-469 and add an option on the JV-471 to indicate the order was granted without a hearing. This is so the judge does not have to sign the order twice, once on the JV-469 and once on the JV-471. ▪ It is recommended to move 3.a. and 3.b. under section 1. See sample below. The notice of the hearing date, time and location and the notice that the request was provided to the nonminor and attorney also apply to petitions that are denied. As currently formatted, they appear only to apply when a court grants a request.	The committee has made this change to remove the extraneous word. The committee has corrected this usage. The committee has adopted this suggestion so that the only time that this form would need to be used as an order is when a hearing is set, which should be rare. The committee has adopted this recommendation which clarifies the requirements of the statute.

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W22-04

Juvenile Law: Nonminor Dependents (Amend Cal. Rules of Court, rules 5.555, 5.570 and 5.906; approve forms JV-469 and JV-471)

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	Commenter	Position	Comment	Committee Response
			Findings and Orders: 1. The court has read and considered *Petition and Order to Exit and* filed by *(name):* a. ☐ Notice of the date, time, and location of the hearing was giv b. ☐ Notice of the request was provided to the nonminor and the	
			▪ *Does the Proposal appropriately address the stated purpose?* Yes.	The committee appreciates the concurrence.
			▪ *Is a form that combines the request and initial order on whether a hearing is needed on the request workable?* Yes. As proposed, it would require 2 signatures. While it's workable, it is preferrable to use one form for the granting of the order.	The committee has adopted the commenter's suggestion to make the petition a petition and order only when a hearing is set, and thus two signatures will be required only when the court sets a hearing, which is expected to be rare.
			▪ *Does this mostly administrative process require its own rule of court, or can it be accomplished with the mandatory forms?* No, the forms would be sufficient.	After reviewing feedback from other commenters, the committee is not proposing a rule, but relying on the forms to effectuate the new process.
			▪ *Should the forms be mandatory or optional? If the forms were optional, would a rule of court then be required?* The forms should be mandatory.	Based on the feedback from the commenters, the committee agrees that the forms should be mandatory to ensure that appropriate findings are made.
			▪ *Is a form needed to document the consent of the nonminor?*	

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	Commenter	Position	Comment	Committee Response
			▪ No, it would not be needed since the agency is confirming nonminor's consent on the form. Absent a consent form, we recommend update section 2 in JV-469 to add a declaration under penalty of perjury to support the statement by the petition that notice was provided to the nonminor and the attorney for the nonminor.	The committee has opted to add a section to the form requiring that the petitioner document how consent was obtained.
			▪ *Would the proposal result in fiscal or operational costs for the courts? If so, please quantify* It would not result in any significant costs or cost savings for the courts.	The committee notes this comment regarding implementation.
			▪ *What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.* The court would need to implement new docket (event) codes for the forms, revise processes/procedures, and provide brief training for staff.	The committee has noted these impacts in its report to the Judicial Council.
			▪ *Would 3 months from Judicial Council approval of this proposal until its*	

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	Commenter	Position	Comment	Committee Response
			effective date provide sufficient time for implementation? Yes, three months should be enough time to get the system updated and the new process in place. ▪ *How well would this proposal work in courts of different sizes*? It should work well in larger courts such as Orange County.	The committee notes that the statute requires implementation by September 1, 2022, and is pleased to hear that it is workable. The committee is pleased to hear that the proposal will work well in larger courts.
8.	Superior Court of Riverside County by Susan Ryan, Chief Deputy of Legal Services	AM	Does the proposal appropriately address the stated purpose? Yes, the proposal seems to address the stated purposes. WIC § 388(f) authorizes the placing agency to file these requests with the court, this proposal provides the forms and processes for these types of requests and orders. Is a form that combines the request and initial order on whether a hearing is needed on the request workable? Typically for our court requests and orders being separate forms makes it easier to file the request for the date that it was received. That being said, the combined form for the request and initial order on whether a hearing is needed or not is workable.	The committee appreciates the support for the proposal. The committee was concerned about this issue and therefore raised it in the invitation to comment, but like this commenter, most seem to think that one form can work. To mitigate the challenges, the committee has limited the order aspect of the form to only that circumstance when a hearing is ordered, which should be a rare occurrence, as a result most of the time the form should just serve as the petition.

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	Commenter	Position	Comment	Committee Response
			Does this mostly administrative process require its own rule of court, or can it be accomplished with the mandatory forms? No, the mandatory forms and clarifications provided in the updates to CRC 5.555 and 5.906 should be sufficient.	After reviewing feedback from other commenters, the committee is not proposing a rule, but relying on the forms to effectuate the new process.
			Should the forms be mandatory or optional? If the forms were optional, would a rule of court then be required? The forms should be mandatory.	Based on the feedback from the commenters, the committee agrees that the forms should be mandatory to ensure that appropriate findings are made.
			Is a form needed to document the consent of the nonminor? A separate form to document the consent of the nonminor is not necessary. The consent is clearly stated in item #1 on the JV-469, and item #2 of the JV-469 states that the nonminor was served a copy of the JV-469.	To ensure that consent has been obtained, the committee has revised the JV-469 to document the means by which consent was obtained, but agrees that an additional form is unnecessary.
			Would the proposal provide cost savings? If so, please quantify. There is no cost savings to an individual court that does not have an existing process. However, cost savings to the state and counties could be considerable. Implementation of this new process at the individual court level will require additional staff processing time, as well	The committee will note these workload costs to the court generated by the legislation authorizing this new process.

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	Commenter	Position	Comment	Committee Response
			as additional judicial officer time. At this time the costs to the court cannot be quantified as we have not way to estimate how many of these types of requests the court can expect to receive. 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 practices? Judges would need to be notified of and trained on the new process, clerk's office and courtroom staff would also need to be trained - we estimate approximately one hour of training. Additionally, document filing codes and minute codes would need to be created in the case management system. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes How well would this proposal work in courts of different sizes? Requirements on courts are minimal for this proposal. It is likely that this proposal would work well for courts	The committee has noted these impacts in its report to the Judicial Council. The committee notes that the statute requires implementation in this timeframe. The committee is pleased that the proposal will work well for the courts.

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W22-04
Juvenile Law: Nonminor Dependents (Amend Cal. Rules of Court, rules 5.555, 5.570 and 5.906; approve forms JV-469 and JV-471)

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	Commenter	Position	Comment	Committee Response
9.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	AM	• Does the proposal appropriately address the stated purpose? **Yes.**	The committee appreciates the support for the proposal.
			• Is a form that combines the request and initial order on whether a hearing is needed on the request workable? **Yes.**	The committee agrees, but to make it simpler, has removed the order not to set a hearing, so that the court only needs to use the form as an order in the rare care that a hearing is required.
			• Does this mostly administrative process require its own rule of court, or can it be accomplished with the mandatory forms? **It does not require its own rule of court.**	The committee agrees and has not proposed a new rule of court.
			• Should the forms be mandatory or optional? If the forms were optional, would a rule of court then be required? **In general, the San Diego Superior Court prefers optional forms.**	Based on the feedback from the bulk of the commenters, the committee has determined that the forms should be mandatory to ensure that appropriate findings are made, especially as there will not be a separate rule of court.
			• Is a form needed to document the consent of the nonminor? **No, it is documented on the JV-469.**	The committee concurs that a separate form is not needed, but for clarity has added a section to the petition for documenting the time and manner in which consent was obtained.

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	Commenter	Position	Comment	Committee Response
			• Would the proposal provide cost savings? If so, please quantify. **No.**	No response required.
			• 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? **Train judges and staff; create minute order codes.**	The committee will note these impacts in its report to the Judicial Council.
			• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.**	The committee notes that the statute requires implementation in this timeframe,
			• How well would this proposal work in courts of different sizes? **It should work in courts of different sizes.**	The committee is pleased to hear that the proposal is workable.
			OTHER COMMENTS: • **"JURISDICTION" is misspelled in the title and center footer of both forms.**	The committee has corrected this spelling error.
			• **In the citations (right footer on both forms), after "Welfare and Institutions Code," only one section**	The committee has made this change to remove the extraneous section symbol, and to add the rule citation.

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	Commenter	Position	Comment	Committee Response
			symbol (§) is needed. Also, consider whether a citation to Cal. Rules of Court, rule 5.906 should be added to the footer.	
			• **JV-469, above "ORDER," insert a period in the parenthetical sentence: *(The court will complete the section below.)***	The committee has added the period, and clarified that an order is required only if a hearing is set.
			• **JV-469, item 3b: to assure notice of the hearing is given as required by law (see JV-471, item 3a), insert "*(time):*" after "*(date):*" and, after "in department:" insert "at the court address listed above."**	The committee has made these revisions for clarification.
			• **JV-471, item 2: delete "of" and insert a colon at the end -- "at which of the following were present:**	The committee has made this change to remove the extraneous word and add the colon.
			• **JV-471, item 4a: "assumed" should be "assume"**	The committee has corrected this usage.
			• **JV-471, item 4e: consider whether to add "*(time):*" and "*(location):*" after "*(date):*"**	The committee has made these additions for clarity.
10.	Youth Law Center by Erin Palacios, Staff Attorney San Francisco	AM	Commenter signed on to comments of Legal Aid Association of California (see item 2)	See responses to item 2

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Item number: 11

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: March 30, 2022

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

Title of proposal: Rules and Forms: Guardianship Objection

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Approve form GC-215

Committee or other entity submitting the proposal:
Probate and Mental Health Advisory Committee

*Staff contact (*name, phone and e-mail*): Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): November 2, 2021; amended February 15, 2022
Project description from annual agenda: Develop and recommend approval of a Judicial Council form for a parent or other interested person to use to object to a petition for appointment of a guardian. This form would promote due process and access to the courts by providing a mechanism for a parent or other interested person to challenge the proposed change of child custody to a nonparent.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

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

Additional Information for JC Staff (provide with reports to be submitted to JC)**:**

- **Form Translations** (check all that apply)
  This proposal:
  ☐ includes forms that have been translated.
  ☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
  ☒ includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)
  ☐ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
  ☐ This proposal may require changes or additions to self-help web content.

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR22-18

Title
Rules and Forms: Guardianship Objection

Proposed Rules, Forms, Standards, or Statutes
Approve form GC-215

Proposed by
Probate and Mental Health Advisory Committee
Hon. Jayne Chong-Soon Lee, Chair

Action Requested
Review and submit comments by May 13, 2022

Proposed Effective Date
January 1, 2023

Contact
Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

Executive Summary and Origin

The Probate and Mental Health Advisory Committee proposes approving one form for optional use by parents, relatives, and other interested persons to object to a petition to appoint a probate guardian of a child. In guardianship proceedings, most parties and interested persons are self-represented. The petitions, forms GC-210 and GC-210(P), provide a framework for petitioners to specify their requests and allegations in appropriate categories. There is currently no Judicial Council form for objecting to a guardianship petition. Courts and self-help centers have indicated that the lack of a simple, standard form places objectors at a disadvantage and often leaves courts unable to discern the bases for the objections. The proposed form is intended to address these concerns.

The Proposal

The Probate and Mental Health Advisory Committee proposes that the Judicial Council, effective January 1, 2023, approve *Objection to Petition for Appointment of Guardian* (form GC-215) for optional use. The form would give a person who objects to a guardianship petition a framework for articulating their objection.

The vast majority of probate guardianship petitions in California request appointment of a guardian of the child's person, and not of the estate. Most petitioners and objectors in those proceedings are self-represented. The existing petition forms, *Petition for Appointment of Guardian of Minor* (form GC-210) and *Petition for Appointment of Guardian of the Person* (form GC-210(P)), provide alternative frameworks for petitioners to clarify their requests and allegations, separating them into appropriate categories. These forms help petitioners to

articulate the issues the court needs to address; they also help the court to identify any issues of fact and determine whether it needs more evidence to resolve those issues.

No complementary Judicial Council form exists for use by persons who wish to object to a petition for appointment of a guardian. Courts and self-help centers across the state have requested the development of an objection form because the lack of a form leaves objectors without guidance on how to focus and structure their objections. This lack of focus and structure often leaves courts, in turn, unable to discern the nature of the objections or the bases for them.

Proposed form GC-215 would address these issues. First, it would require an objector to identify the petition to which their objection applies by providing the name of the petitioner. Second, it would require an objector to specify the children who fall within the scope of the objection. Frequently, a petition for appointment of a guardian of the person will include children who have different fathers. A father or a paternal relative of fewer than all the children subject to the petition may wish to object to the appointment of a guardian of only those children to whom they are related. The proposed form would give them that option. Third, the proposed form would require an objector to specify their relationship with, or connection to, the child or family.

Fourth, the proposed form would allow an objector to contest the establishment of a guardianship over the child or children covered by the objection. In most circumstances, an objection focuses on whether the child needs a guardianship at all. This element of the form would focus the objector on this issue and require them to explain why they think a guardianship is not needed.

Fifth, the proposed form would allow an objector to contest the appointment of the person proposed as guardian by the petition. An objector may agree that a guardianship is needed because the child's parent cannot care for the child—but think that appointment of a different person as guardian would be better for the child. This element of the form would focus the objection on the reasons the objector thinks the proposed guardian should not be appointed.[1]

Finally, the form would allow an objector to contest other requests made in the petition. These might include requests for specific visitation orders or for independent powers.

Alternatives Considered

The committee considered taking no action, but concluded that the form would both assist self-represented objectors to clarify their objections to the requested guardianship and help courts to identify and determine contested issues and make informed decisions about the best interests of children. The committee also considered proposing the form's adoption for mandatory use, but determined that a mandatory form would be inconsistent with Probate Code section 1043, which allows an interested person to choose to appear and object in writing at or before a hearing on a petition or to appear and object orally at the hearing.

[1] An objector would need to file a separate petition if they wanted to ask the court to appoint a different person as guardian.

Fiscal and Operational Impacts

The proposed form would impose indeterminate costs on the courts attendant to updating case management systems and changing operating procedures. It is possible that the form, by providing a framework for objecting to a guardianship petition, could lead to marginal cost savings by reducing the length of hearings and the need for continuances.

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 GC-215, at pages 4–5

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
GUARDIANSHIP OF THE ☐ PERSON ☐ ESTATE OF *(name):* MINOR(S)	CASE NUMBER:
OBJECTION TO PETITION FOR APPOINTMENT OF GUARDIAN	HEARING DATE: DEPT.: TIME:

1. I *(name):* object to the petition for appointment of a guardian filed by *(name of petitioner):* .

2. My objection concerns the following child or children *(give full name and date of birth for each):*
   a. ☐ Child *(name):* *(date of birth):*
   b. ☐ Child *(name):* *(date of birth):*
   ☐ Additional children identified on Attachment 2.

3. My relationship to the child or children named in item 2 is *(tell the court about your connection with the child, children, or family):*

   ☐ Continued on Attachment 3.

4. ☐ I object to a guardianship of the child or children named in item 2 because *(tell the court why you think it should not appoint a guardian):*

   ☐ Continued on Attachment 4.

5. ☐ I object to the person the petitioner has asked the court to appoint as guardian because *(tell the court why you think that person should not be the guardian):*

   ☐ Continued on Attachment 5.

GUARDIANSHIP OF *(name):*	CASE NUMBER:

6. ☐ I object to other requests in the petition because *(tell the court which requests you object to and why you object to each one):*

☐ Continued on Attachment 6.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ATTORNEY)

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

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF OBJECTOR)

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF OBJECTOR)

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: March 30, 2022

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

Title of proposal: Protective Orders: Elder Abuse Forms Implementing Assembly Bill 1243

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Adopt forms EA-300, EA-309, EA-315, EA-316, EA-320, and EA-330; approve forms EA-300-INFO, EA-315-INFO, and EA-320-INFO; revise forms EA-100, EA-100-INFO, EA-110, EA-120, EA-120-INFO, EA-130, EA-200, EA-200-INFO, and EA-250

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:
Annual agenda approved by Rules Committee on (*date*): November 2, 2021; amended November 16, 2021 and March 21, 2022
Project description from annual agenda: Develop form recommendations as appropriate. AB 1243 establishes new procedures and orders relating to applications for protective orders for elders and dependent adults who have suffered abuse, authorizing orders enjoining a party from isolating an elder. The new law also allows for protective orders to include a finding that specific debts were incurred as a result of elder abuse. The current forms relating to such petitions must be revised to conform to the new law and requirements, and additional forms may be required.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

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

Additional Information for JC Staff (provide with reports to be submitted to JC)**:**

- **Form Translations** (check all that apply)
  This proposal:
  ☐ includes forms that have been translated.
  ☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
  ☐ includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)
  ☒ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
  ☒ This proposal may require changes or additions to self-help web content.

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR22-21

Title
Protective Orders: Elder Abuse Forms Implementing Assembly Bill 1243

Proposed Rules, Forms, Standards, or Statutes
Adopt forms EA-300, EA-309, EA-315, EA-316, EA-320, and EA-330; approve forms EA-300-INFO, EA-315-INFO, and EA-320-INFO; revise forms EA-100, EA-100-INFO, EA-110, EA-120, EA-120-INFO, EA-130, EA-200, EA-200-INFO, and EA-250,

Proposed by
Civil and Small Claims Advisory Committee
Hon. Tamara Wood, Chair

Action Requested
Review and submit comments by May 13, 2022

Proposed Effective Date
January 1, 2023

Contact
James Barolo, 415-865-8928
james.barolo@jud.ca.gov

Executive Summary and Origin

The Civil and Small Claims Advisory Committee recommends the adoption, approval, and revision of 18 forms to implement statutory changes in Assembly Bill 1243 (Stats. 2021, ch. 273) and to make other necessary changes to accurately reflect current law. AB 1243 make two substantial changes to the laws governing protective orders for elder or dependent adults. First, it creates a new cause of action whereby an order can be issued allowing contact between an elder or dependent adult and an individual who meets certain statutory requirements. Second, the bill allows courts to issue findings related to specific debts incurred as the result of financial abuse of an elder or dependent adult. The proposal incorporates these new provisions into the council's elder abuse forms and makes other minor updates to those forms.

The Proposal

This proposal contains four distinct recommendations for council action: (1) the adoption and approval of a new series of forms to implement the legislative amendments in AB 1243 regarding a new cause of action for a restraining order allowing contact with an elder or dependent adult; (2) the revision of elder abuse forms regarding service of documents to accommodate the new series of forms in the first recommendation; (3) the revision of several elder abuse forms to implement the legislative amendments in AB 1243 regarding the new

permissible findings that specific debts were incurred by financial abuse; and (4) revisions to existing elder abuse information sheets and orders to update information about interpreters, disability and court accommodations, and the priority of enforcement among protective orders.[1]

New and revised forms for restraining orders allowing contact

EA-300 form series

AB 1243[2] provides that an elder or dependent adult or certain other individuals[3] may obtain a restraining order allowing contact between a specific person and the elder or dependent adult under the following circumstances: (1) the person who wishes to have contact with the elder or dependent adult has a preexisting relationship with the elder or dependent adult; (2) the person to be restrained repeatedly prevented the elder or dependent adult from having contact with the person who wishes to have contact; (3) the elder or dependent adult expressly desires contact with the person; and (4) the prevention of contact between the person and the elder or dependent adult was not in response to actual or threatened abuse from the person or as a result of the elder or dependent adult's desire not to have contact with the person. (Welf. & Inst. Code, § 15657.03(b)(5)(E).)[4]

The new type of order to allow contact is included in the section of the Welfare and Institutions Code that contains existing provisions on protective orders for elder or dependent adults. However, many components of existing law that apply to other protective orders for elder or dependent adults are expressly excluded from the new cause of action. Specifically, notice and a hearing are required for a restraining order allowing contact to issue, meaning temporary restraining orders are not permitted. (§ 15657.03(b)(5)(E)(i).) Additionally, these new orders based solely on isolation unaccompanied by force, threat, harassment, intimidation, or any other form of abuse, are not to be transmitted to the Department of Justice and entered into the California Law Enforcement Telecommunications System (CLETS) (§ 15657.03(p)(8)) and the restrained person is not required to relinquish any firearms or ammunition (§ 15657.03(u)(4)).

Given the unique findings that must be made in order for this new type of restraining order to issue and that many of the existing elder or dependent adult restraining order provisions do not apply to orders allowing contact, the committee recommends creating a new series of elder abuse forms for such actions.[5] Each new proposed form parallels an existing 100-series form without inapplicable items and with certain changes. The proposed new forms are:

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[1] Additionally, in accordance with Judicial Council policy to update gendered items in forms when they are revised, the new and revised forms in this proposal replace "sex" with "gender" and add a "nonbinary" option for gender selection, as applicable.

[2] AB 1243 is online at *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1243.*

[3] In addition to the elder or dependent adult themselves, the specific individuals that may seek such an order are the persons who wish to have contact with the elder or dependent adult and specified individuals who may bring the order on behalf of the elder or dependent adult. (Welf. & Inst. Code, § 15657.03(a).)

[4] All further statutory citations are to the Welfare and Institutions Code unless otherwise noted.

[5] The committee was also concerned that using the EA-100 form series for restraining orders allowing contact may result in the inadvertent and inappropriate inclusion of respondent's information in CLETS.

- *Request for Elder or Dependent Adult Restraining Order Allowing Contact* (form EA-300);
- *Can an Elder or Dependent Adult Restraining Order Allowing Contact Help Me?* (form EA-300-INFO);
- *Notice of Court Hearing to Allow Contact* (form EA-309);
- *Request to Continue Court Hearing on Request to Allow Contact* (form EA-315);
- *How to Ask for a New Date for a Hearing to Allow Contact* (form EA-315-INFO);
- *Order on Request to Continue Hearing on Request to Allow Contact* (form EA-316);
- *Response to Request for Elder or Dependent Adult Restraining Orders Allowing Contact* (form EA-320);
- *How Can I Respond to a Request for an Elder or Dependent Adult Restraining Order Allowing Contact?* (form EA-320-INFO); and
- *Elder or Dependent Adult Restraining Order After Hearing Allowing Contact* (form EA-330).

All the proposed EA-300 forms differ from the EA-100 series in several ways. First, the form titles in the EA-300 form series generally track the EA-100 form series titles but add "allowing contact" or "to allow contact" to each title. Second, the named parties in the new EA-300 forms are different than in the form EA-100 series. Rather than referring to the "elder or dependent adult in need of protection" and the "person from whom protection is sought," the new forms refer to the parties as: (1) the "elder or dependent adults to receive contact," (2) the "person preventing contact " (the equivalent of the person from whom protection is sought), and (3) the "person who wants to have contact with the elder or dependent adults." Third, because the new restraining orders allowing contact are not required to be entered into CLETS and the restrained person is not required to relinquish firearms, the proposed EA-300 forms do not contain any reference to either of those requirements (or request the identifying characteristics or address of the respondent that would be entered into CLETS). Fourth, since the EA-300 form series will only be used for orders to allow contact, the series does not contain or reference any of the various other orders that may be obtained in cases of elder or dependent adult abuse, such as orders to stay away or move out. Instead, the EA-300 form series only refer to an "order allowing contact." Finally, since orders allowing contact may only issue after notice and a hearing, the forms do not request or refer to temporary restraining orders nor contain a temporary restraining order form. Specific substantive differences in individual forms are described below.

Request (form EA-300)

The instructions at the top of proposed form EA-300 explain that orders to allow contact cannot be issued if the elder or dependent adult is a resident of a long-term care facility or a hospital patient, as provided by amended section 15657.03(b)(5)(E)(iv) and (v). Form EA-300 also moved the item for the "person requesting order" to the first item on the form.[6]

[6] The committee seeks comments on this reorganization of the items. In most instances the person requesting the order will be the person wishing to have contact or the elder or dependent adult themselves. Accordingly, item 1 in proposed form EA-300 provides checkboxes including that option.

Additionally, while form EA-100 permits applicants to request that the orders also protect other persons in the same household, as provided by section 15657.03(b)(5)(A), that section does not apply to orders allowing contact. However, it is possible that more than one elder or dependent adult in the same household is being prevented from seeing a particular person that both elder or dependent adults have a preexisting relationship with. Accordingly, item 3 on proposed form EA-300 allows the person requesting the order to request that the order also apply to additional elder or dependent adults in the same household. To conform to this possibility, other forms in the EA-300 series refer to elder or dependent adult*s* (using plural rather than singular).

As noted above, form EA-300 only supports a single type of restraining order, so the form asks for information statutorily required to support that order allowing contact, including facts showing that the elder or dependent adult wants contact with a specific individual, and what the other party has done to prevent that contact. Other questions from form EA-100 seeking more general information, regarding venue and the existence of other actions between the parties are also included.[7]

Notice (form EA-309)
Similar to the listing of the "person requesting order" first on form EA-300, items 1a and 1b on proposed form EA-309 requests the name and address of the "person requesting order" and item 1c requests the name of the elder or dependent adults to receive contact.[8]

Continuance forms (forms EA-315 and EA-316)
Proposed form EA-315 is similar to form EA-115 except that there is no item asking whether a temporary restraining order is in effect and the references to the parties in item 1b have been updated to refer to the parties related to an order allowing contact. Item 1 on proposed form EA-316 is slightly different than on form EA-116. Rather than referring to the "protected party" and the "restrained party," it refers to the "party requesting order to allow contact" and the "party preventing contact." Proposed form EA-316 also does not contain from EA-116's instructions to the clerk regarding CLETS.

Response (form EA-320)
Proposed form EA-320 reflects that the petitioner can only request a single order (to allow contact) under the relevant cause action. Specifically, item 3 does not allow the respondent to agree to some orders and not to others—the respondent can either agree to the order requested or not agree to it. In other items on the form the respondent can deny the allegations, justify their actions, and provide an explanation for not agreeing to the order requested.

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[7] Proposed form EA-300 also includes item 12, which is a request to give less than that five days' notice of the hearing as permitted in section 15657.03(k). However, given that there will not be a temporary restraining order, it is unclear on when the court would rule on such a request. Accordingly, the committee seeks comments on whether item 12 is appropriate to include on form EA-300.

[8] The committee seeks comments on the organization of this item and also on item 4. Item 4 presents a similar issue to item 12 on form EA-300. As proposed, item 4 states that service must be performed at least five days before the hearing and does not provide the option for the court to allow less time for service. In contrast, item 5 on form EA-109 allows the court to specify the number of days before the hearing by which notice must be provided.

Order after hearing (form EA-330)
In addition the elder or dependent adult and the party to be restrained (in these cases "the person preventing contact"), form EA-330 also requires the person who wants to have contact with the elder or dependent adults to be listed at the beginning of the form. The form does not require, however, any physical characteristics for the person preventing contact, as such information is not required to be entered into CLETS in these cases. With regard to orders, the form only includes an order allowing contact and "other orders" (the latter of which will be used in cases where the judge denies the request).

Information sheets (forms EA-300-INFO, EA-315-INFO, and EA-320-INFO)
The information sheets relating to the request and response describe a restraining order allowing contact and the circumstances that must be present to obtain one, in addition to providing information regarding service and other procedural issues. Form EA-300-INFO also directs potential filers to form EA-100-INFO for information about obtaining a restraining order based on abuse instead of one allowing contact. Form EA-315-INFO closely tracks form EA-115-INFO but with updated form references and descriptions of parties.

EA-200 form series
The recommended adoption and approval of a new series of elder abuse forms would also require minor revisions to existing elder abuse forms regarding service of documents. This proposal contains the following revised forms on this topic:

- *Proof of Personal Service* (form EA-200);
- *What Is "Proof of Personal Service"?* (form EA-200-INFO); and
- *Proof of Service of Response by Mail* (form EA-250).

The proposed revisions to the above forms consist of the following: (1) revising items 1 and 2 on form EA-200 to refer to the "elder or dependent adult" and the "person from whom protection is sought or person preventing contact" so the form can be used with both the EA-100 form series and the EA-300 form series; (2) adding the applicable EA-300 series forms to the list of forms that were or must be served on each of the 200 series forms; (3) expanding the "Notice to Server," (item 3 on forms EA-200 and EA-250), to explain that the parties to a case requesting an order allowing contact cannot also be the "server"; and (4) noting on the information sheet that certain the instructions regarding CLETS do not apply to forms in the EA-300 series.

Revisions relating to findings about specific debts
In addition to creating a new type of protective order allowing contact between an elder or dependent adult and a person who meets the statutory requirements, AB 1243 also authorizes courts to make specific findings about debts in elder abuse protective orders. Specifically, new Welfare and Institutions Code section 15657.03(b)(5)(D) provides that the court may issue "[a]fter notice and a hearing only, a finding that specific debts were incurred as the result of financial abuse of the elder or dependent adult by the respondent." While a finding does "not entitle the petitioner to any [other] remedies," such findings may help victims of financial abuse if they sued for the debt. (*Ibid*.)

This proposal recommends the revision of several 100-series elder abuse forms implement the provisions of AB 1243 regarding specific debt findings. The proposed revised forms are:

- *Request for Elder or Dependent Adult Abuse Restraining Orders* (form EA-100);
- *Can a Restraining Order to Prevent Elder or Dependent Abuse Help Me?* (form EA-100-INFO);
- *Response to Request for Elder or Dependent Adult Abuse Restraining Orders* (form EA-120); and
- *Elder or Dependent Adult Abuse Restraining Order After Hearing* (form EA-130).

This proposal revises form EA-100 to add item 18, in which the petitioner may list the specific debts that were incurred from financial abuse and describe the circumstances that led to the debts.[9] Similarly, the committee proposes revising form EA-100-INFO to include information about the possible finding and why it may be helpful. In light of the proposed revisions to form EA-100, the ability for respondent to agree or not agree with the requested findings has been added to proposed form EA-120 at item 9. Finally, new item 13 on proposed form EA-130 allows the court to include relevant findings in an elder or dependent adult restraining order.

Other Revisions

Information Sheets

This proposal also recommends updating the language about interpreters and disability accommodations on the following EA information sheets to reflect current law:

- *Can a Restraining Order to Prevent Elder or Dependent Abuse Help Me?* (form EA-100-INFO); and
- *How Can I Respond to a Request for Elder or Dependent Adult Abuse Restraining Orders?* (form EA-120-INFO).

The current language about interpreters on the above forms implies that anyone over age 18 and not involved in the case may serve as an interpreter. This is not correct. (Cal. Rules of Court, rule 2.893.) In addition, these forms state that parties may have to pay a fee for a court interpreter. This is also no longer correct. (Evid. Code § 756.) The committee recommends that the information regarding interpreters on those forms be revised to include the following information after the first sentence directing filers to ask the clerk if an interpreter is available: "You can also use form INT-300, *Request for Interpreter (Civil)*, or a local court form or website to request an interpreter. For more information about court interpreters, go to *www.courts.ca.gov/selfhelp-interpreter.htm*." The website provided at the link is translated into several languages, which are accessible at the top of the page.

[9] Item 6 on form EA-100 has also been revised to clarify that the information sought is about the relationship between the persons listed in item 6 and the elder or dependent adult, and whether those persons live with the elder or dependent adult. The current version of the form is unclear as it uses "you" without specifying who "you" is. A similar change has also been made to form EA-130.

This proposal also recommends broadening the language about disability and updating the name of form MC-410, which is now titled, "Disability Accommodation Request." The committee proposes broadening the language on these forms (and also includes similar language on forms EA-300-INFO and EA-320-INFO) to include reference to "disabilities," as opposed to just hearing disabilities and to also reference the information sheet about requesting court accommodations—*How to Request a Disability Accommodation for Court* (form MC-410-INFO).

Similar changes are being made in information sheets for civil harassment, school violence, and workplace violence restraining orders in a separate proposal.

Order forms—Priority of Enforcement

Finally, this proposal recommends updating the description of priorities of enforcement to reflect current law on the following forms:

- *Temporary Restraining Order (Elder or Dependent Adult Abuse Prevention)* (form EA-110); and
- *Elder or Dependent Adult Abuse Restraining Order After Hearing* (form EA-130).

Specifically, the "Conflicting Orders—Priorities of Enforcement" item in the "Instructions for Law Enforcement" on the forms does not accurately reflect the current provisions of Penal Code section 136.2(e)(2). That section prioritizes enforcement of criminal protective orders in pending cases for domestic violence offenses, specified sex offenses, and offenses requiring sex offender registration over a civil protective order against the same defendant. Additionally, AB 1171 (Stats. 2021, ch. 626) repealed Penal Code section 262 on spousal rape and amended 136.2(e)(2) to include "former 262." The committee recommends incorporating the statutory changes and some rewording for clarity and plain language. Identical language is also being proposed on forms for civil harassment, criminal, domestic violence, private postsecondary school violence, and workplace violence restraining orders in separate proposals.

Alternatives Considered

Because AB 1243 provides for issuance of an order allowing contact with an elder or dependent adult under certain circumstances and also judicial findings regarding the debts of elder or dependent adults who are victims of financial abuse, none of which is provided for on the council's current mandatory elder abuse forms, the committee determined it must act and that taking no action would be inappropriate.

In addition to this proposal, the committee considered adding items related to the new orders allowing contact to the existing EA-100 form series but concluded that doing so would result in confusion and an overly complex set of forms. Not only will cases concerning an order to allow contact require the pleading of additional facts and potentially the identification of another party (the person wishing to contact the elder or dependent adult), but many of the items on the existing EA-100 forms series would not apply in such cases. Trying to capture the additional

information and explain that certain items do not apply to certain types of cases in a single set of forms proved difficult to explain and to understand.

Fiscal and Operational Impacts

Most of the impacts arising from this new law—including education of judicial officers, staff, and justice partners as to the new provisions—are a result of the statute, not the forms proposal. The committee anticipates that this proposal will result in some costs incurred by courts to incorporate new forms into their paper or electronic processes and to train court staff. However, all the new and revised forms are intended to assist courts in dealing with the impact of the legislation by making it easier for clerks and judicial officers to process requests for orders to allow contact or findings related to specific debts.

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 organization of items 1 through 4 in form EA-300 appropriate, or should the elder or dependent adult always be listed first?
- Courts are permitted to shorten the time for service of the petition and notice of hearing. Item 12 in form EA-300 allows petitioner to make such a request but given that the court cannot issue a temporary restraining order it is unclear when the court would rule on such a request. Is item 12 on form EA-300 appropriate or should the committee develop an alternative means for petitioners to seek authority to provide less than five days' notice for future consideration?
- Is the organization of item 1 in form EA-309 appropriate, or should the elder or dependent adult always be listed first?
- Given the concerns about when a court would rule on a request to shorten time, it is appropriate that item 4 on form EA-309 states that service must be performed at least five days before the hearing?

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. Forms EA-100, EA-100-INFO, EA-110, EA-120, EA-120-INFO, EA-130, EA-200, EA-200-INFO, EA-250, EA-300, EA-300-INFO, EA-309, EA-315, EA-315-INFO, EA-316, EA-320, EA-320-INFO, EA-330, at pages 10–70
2. Link A: AB 1243, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1243*

EA-100 Request for Elder or Dependent Adult Abuse Restraining Orders

Clerk stamps date here when form is filed.

DRAFT

3/23/2022

Not approved by the Judicial Council

Read *Can an Elder or Dependent Adult Abuse Restraining Order Help Me?* (form EA-100-INFO) before completing this form. Also fill out *Confidential CLETS Information* (form CLETS-001) with as much information as you know.

1 Elder or Dependent Adult in Need of Protection

Full Name: _____

Gender: ☐ M ☐ F ☐ Nonbinary Age: _____

2 Person From Whom Protection Is Sought

Full Name: _____

Address *(if known)*: _____

City: _____ State: ____ Zip: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

3 Person Requesting Order

Who is asking the court for protection? *(Check a, b, or c)*:

a. ☐ The elder or dependent adult named in 1.

b. ☐ Name: _____

conservator of the ☐ person ☐ estate ☐ person and estate of the person named in 1, appointed by *(name of court)*: _____

Case No.: _____

c. ☐ Other *(name)* _____

(Show this person's legal authority to make this request on an attached sheet of paper. Write "Attachment 3c—Information About Person Requesting Protective Order" for a title. You may use form MC-025, Attachment.*)*

4 Contact Information

Contact information for the person asking the court for protection

a. Your Lawyer *(if you have one for this case)*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. The person in 1 does not have to give telephone, fax, or email.)*

Address: _____

City: _____ State: ____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

This is not a Court Order.

5 Description of Protected Person

The person named in 1 *(check a or b):*

a. ☐ Is age 65 or older and a resident of California.

b. ☐ Is a resident of California and an adult under age 65. This person has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights. *(Briefly describe limitations on the attached sheet of paper or form MC-025. Write "Attachment 5b—Description of Protected Person" for a title.)*

6 Additional Protected Persons

a. Are you asking for protection for any other family or household members or for the conservator of the elder or dependent adult listed in 1? ☐ Yes ☐ No *(If yes, list them):*

Full Name	Gender	Age	Relation to person in 1?	Lives with person in 1?
				☐ Yes ☐ No
				☐ Yes ☐ No
				☐ Yes ☐ No
				☐ Yes ☐ No

☐ *Check here if there are more persons. Attach a sheet of paper and write "Attachment 6a—Additional Protected Persons" for a title. You may use form MC-025, Attachment.*

b. Why do these people need protection? *(Explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 6b—Why Others Need Protection" for a title.*

7 Relationship of Parties

How does the person in 1 know the person in 2 ? *(Explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 7—Relationship of Parties" for a title.*

This is not a Court Order.

8 Description of Abuse

a. Abuse means either:

(1) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or

(2) The withholding by a caretaker of goods or services that are necessary to avoid physical harm or mental suffering.

b. Tell the court about the last time the person in 2 abused the person in 1.

(1) When did it happen? *(Provide date or estimated date):* _____

(2) Who else was there?

_____

(3) Describe what happened below.

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8b(3)—Describe Abuse" for a title.*

_____

_____

_____

_____

(4) Was the abuse **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse?

☐ Yes, only financial abuse. ☐ No, the abuse included other forms of abuse described above.

(5) Did the person in 2 use or threaten to use a gun or any other weapon?

☐ Yes ☐ No *(If yes, explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8b(5)—Use of Weapons" for a title.*

_____

_____

_____

_____

(6) Was the person in 1 harmed or injured as a result of the acts of abuse described above?

☐ Yes ☐ No *(If yes, explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8b(6)—Harm or Injury" for a title.*

_____

_____

_____

_____

(7) Did the police come? ☐ Yes ☐ No

If yes, did they give the person in 1 or the person in 2 an Emergency Protective Order? ☐ Yes ☐ No

If yes, the order protects *(check all that apply):*

☐ the person in 1 ☐ the person in 2 ☐ the persons in 6 .

(Attach a copy of the order if you have one.)

This is not a Court Order.

8 c. Is the person in 2 a care custodian who deprived the person in 1 of (kept from him or her, did not allow him or her to have or receive, or did not provide him or her with) goods or services that the person needed to avoid physical harm or mental suffering? ☐ Yes ☐ No
(If yes, describe below what the person was deprived of and how that affected him or her):

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8c—Deprivation by Care Custodian" for a title.*

d. Has the person in 2 abused the person in 1 at other times?
☐ Yes ☐ No *(If yes, describe prior incidents and provide dates below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8d—Previous Abuse" for a title.*

9 Venue

Why are you filing in this county? *(Check all that apply):*

a. ☐ The person in 2 lives in this county.
b. ☐ The person in 1 was abused by the person in 2 in this county.
c. ☐ Other *(specify):*

10 Other Court Cases

a. Has the person in 1 or any of the persons named in 6 been involved in another court case with the person in 2 ? ☐ No ☐ Yes *(If yes, specify the kind of each case and indicate where and when each was filed):*

	Kind of Case	Filed in *(County/State)*	Year Filed	Case Number *(if known)*
(1)	☐ Elder or Dependent Adult Abuse			
(2)	☐ Civil Harassment			
(3)	☐ Domestic Violence			
(4)	☐ Divorce, Nullity, Legal Separation			
(5)	☐ Paternity, Parentage, Child Custody			
(6)	☐ Eviction			
(7)	☐ Guardianship			
(8)	☐ Workplace Violence			
(9)	☐ Small Claims			
(10)	☐ Criminal			
(11)	☐ Other *(specify):*			

b. Are there now any protective or restraining orders in effect relating to the person in 1 or any of the persons named in 6 and the person in 2 ? ☐ No ☐ Yes *(If yes, attach a copy if you have one.)*

This is not a Court Order.

Check the orders you want. ☑

(11) ☐ Personal Conduct Orders

I ask the court to order the person in (2) **not** to do any of the following things to the person in (1) or to any person to be protected listed in (6):

a. ☐ Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy the personal property of, or disturb the peace of the person.

b. ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.

c. ☐ Other (*specify):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 11c—Other Personal Conduct Orders" for a title.*

_____

_____

_____

The person in (2) will be ordered not to take any action to get the addresses or locations of any protected person unless the court finds good cause not to make the order.

(12) ☐ Stay-Away Orders

a. I ask the court to order the person in (2) to stay at least _____ yards away from *(check all that apply):*

(1) ☐ The elder or dependent adult in (1) .

(2) ☐ The persons in (6).

(3) ☐ The home of the elder or dependent adult.

(4) ☐ The job or workplace of the elder or dependent adult.

(5) ☐ The vehicle of the elder or dependent adult.

(6) ☐ Other *(specify):* _____

_____

_____

b. If the court orders the person in (2) to stay away from all the places listed above, will he or she still be able to get to his or her home, school, or job? ☐ Yes ☐ No *(If no, explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 12b—Stay-Away Orders" for a title.*

_____

_____

_____

_____

This is not a Court Order.

Case Number:

13 ☐ Move-Out Order

I ask the court to order the person in 2 to move out from and not return to the residence at *(address):*

The person in 1 will suffer physical or emotional harm if the person in 2 does not leave the residence. The person in 2 is not named in the title or lease of the residence, either alone or with others beside the person in 1.

☐ I ask for this move-out order right away to last until the hearing, because:

a. The person in 2 assaulted or threatened the person in 1 ; and

b. The person in 1 has the right to live at the above residence. *(Explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 13b—My Right to Residence" for a title.*

14 ☐ Order for Counseling or Anger Management Courses

ⓘ This item is only available in instances of alleged physical abuse or deprivation of care, not in cases with only alleged financial abuse.

a. I request the person in item 2 be ordered by the court to attend clinical counseling or anger management courses provided by a professional (a counselor, psychologist, psychiatrist, therapist, clinical social worker, or mental or behavioral health professional licensed in the State of California to provide counseling or anger management courses).

b. Explain why you are requesting an order that the person in item 2 attend clinical counseling or anger management courses.

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 14b— Counseling or Anger Management" for a title.*

15 Guns or Other Firearms and Ammunition

Does the person in 2 own or possess any guns or other firearms? ☐ Yes ☐ No ☐ I don't know

Unless the abuse is only financial, if the judge grants a protective order, the person in 2 will be prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a gun, other firearm, and ammunition while the protective order is in effect. The person in 2 will also be ordered to turn in to law enforcement, or sell to or store with a gun dealer, any guns or firearms within his or her immediate possession or control.

This is not a Court Order.

Case Number:

16 ☐ Temporary Restraining Order

I request that a Temporary Restraining Order (TRO) be issued against the person in (2) to last until the hearing. I am presenting form EA-110, *Temporary Restraining Order,* for the court's signature together with this *Request*.

Has the person in (2) been told that you were going to go to court to seek a TRO against them?

☐ Yes ☐ No *(If you answered no, explain why below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 16—Temporary Restraining Order" for a title.*

17 ☐ Request to Give Less Than Five Days' Notice of Hearing

You must have your papers personally served on the person in (2) at least five days before the hearing, unless the court orders a shorter time for service. (Read form EA-200-INFO, What Is "Proof of Personal Service"?, to learn about serving legal papers. *Form EA-200,* Proof of Personal Service*, may be used to show the court that the papers have been served.)*

If you want there to be less than five days between service and the hearing, explain why:

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 17—Request to Give Less Than Five Days' Notice" for a title.*

18 ☐ Debts Caused by Financial Abuse

You can ask the judge to decide at the hearing that certain debts or bills you have were caused by the person in (2)'s financial abuse. This may help you defend against the debt if you are sued in another case.

a. If you want the judge to make this special finding, list the debts or bills you have that were caused by the person in (2)'s financial abuse.

☐ *Check here if you want to list additional debts or bills that were caused by financial abuse. You can attach form MC-025 and write "Attachment 18a—Additional Debts" for a title.*

	Money Owed To	For	Amount
(1)			$
(2)			$
(3)			$

b. Describe what the person in (2) did to cause the debts and bills that you listed above. Provide as much detail as you can about the person in (2)'s financial abuse.

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 18b—How Debt Was Incurred" for a title.*

This is not a Court Order.

19 ☐ Lawyer's Fees and Costs

I ask the court to order payment of my ☐ lawyer's fees ☐ court costs.

The amounts requested are:

Item	Amount	Item	Amount
	$		$
	$		$
	$		$

☐ *Check here if there are more items. Put the items and amounts on the attached sheet of paper or form MC-025 and write "Attachment 19—Lawyer's Fees and Costs" for a title.*

20 ☐ Possession and Protection of Animals

I ask the court to order the following:

a. ☐ That the person in (1) be given the sole possession, care, and control of the animals listed below, which they own, possess, lease, keep, or hold, or which reside in their household.
(Identify animals by, e.g., type, breed, name, color, sex.)

I request sole possession of the animals because *(specify good cause for granting order)*:

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 20a—Possession of Animals" for a title.*

b. ☐ That the person in (2) must stay at least _____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

21 No Fee to Serve Orders

If you want the sheriff or marshal to serve (notify) the person in (2) about the orders for free, ask the court clerk what you need to do.

This is not a Court Order.

Case Number:

22 ☐ Additional Orders Requested

I ask the court to make the following additional orders *(specify)*:

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 22—Additional Orders Requested" for a title.*

23 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____

Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Signature of person making this request*

This is not 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

EA-100-INFO Can a Restraining Order to Prevent Elder or Dependent Adult Abuse Help Me?

These instructions cannot cover all of the questions that may arise in a particular case. If you do not know what to do to protect your rights, you should see a lawyer.

What is a restraining order?

It is a court order that helps protect people from being abused.

Can I get a restraining order?

If you are a person 65 years or older or a dependent adult, you can ask for a restraining order if you have been or are being:

- Physically abused
- Financially abused
- Mentally or emotionally abused
- Neglected
- Abandoned or abducted
- Isolated, *or*
- Deprived by a caregiver of goods or services you needed to avoid harm or suffering

How will the order help me?

The court can order a person to:

- Not physically abuse, harass, hit, or threaten you
- Not contact or go near you, *and*
- Not have a gun

You can also ask for protection for people who live with you and family members.

Who can apply for an elder or dependent adult abuse restraining order?

In addition to the elder or dependent adult, the following persons may apply for a restraining order on behalf of the elder or dependent adult:

- A conservator or trustee of the elder or dependent adult
- An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney
- A person appointed as a guardian ad litem for the elder or dependent adult
- Any other person legally authorized to seek such relief.

How much does it cost?

There is no fee for filing a request for a restraining order.

You do not need to pay a fee for service of the order. A sheriff or marshal will serve the order for free. Or you may arrange for service by a registered process server or a private party and pay any fee that is charged.

The court can make the person who loses the case pay all the court fees and the lawyer's fees for the other party.

What forms do I need to get the order?

You must fill out all of form EA-100, *Request for Elder or Dependent Adult Abuse Restraining Orders*, and form CLETS-001, *Confidential CLETS Information.* If you need attachments, you may use form MC-025, Attachment. You must also fill out items 1 and 2 on form EA-109, *Notice of Court Hearing,* and items 1, 2, and 3 on form EA-110, *Temporary Restraining Order.*

Where can I get these forms?

You can get the forms from legal publishers or on the Internet at *www.courts.ca.gov.* You also may be able to find them at your local courthouse or county law library.

What do I need to do to get the order?

You must go to the superior court in the county where the abuse took place or the person to be restrained lives. At the court, ask where you should file your request for a restraining order. (A self-help center or legal aid association may be able to assist you in filing your request.)
At the court, give your forms to the clerk of the court. The clerk will give you a hearing date on the *Notice of Court Hearing* form, and if your request for immediate orders is granted, a copy of the *Temporary Restraining Order* signed by a judicial officer.

How soon can I get the order?

If you ask for a temporary restraining order, the court will decide within 24 hours whether or not to make the order. Sometimes the court decides sooner. Ask whether you should wait or come back later to get the signed *Notice of Court Hearing* and *Temporary Restraining Order*.

EA-100-INFO Can a Restraining Order to Prevent Elder or Dependent Adult Abuse Help Me?

How long does the order last?

If the court makes a temporary order, it will last until your hearing date. At that time, the court will decide to continue or cancel the order. The order could last for up to five years.

How will the person to be restrained know about the order?

Someone age 18 or older—**not you** or anyone else to be protected by the order—must "serve" (give) the person to be restrained a copy of the order. The server must then fill out form EA-200, *Proof of Personal Service,* and give it to you to file with the court. For help with service, ask the court clerk for form EA-200-INFO, What Is "Proof of Personal Service?".

What if the restrained person does not obey the order?

Call the police. The restrained person can be arrested and charged with a crime.

Do I have to go to court?

Yes. Go to court on the date the clerk gives you.

Do I need to bring a witness to the court hearing?

Witnesses are not required, but it helps to have more proof of the abuse than just your word. You can bring:

- Witnesses
- Written statements from witnesses made under oath
- Photos
- Medical or police reports
- Damaged property
- Threatening letters, e-mails, or telephone messages

The court may or may not let witnesses speak at the hearing. So, if possible, you should bring their written statements under oath to the hearing. (You can use form MC-030 for this.)

Do I need a lawyer?

Having a lawyer is always a good idea, but it is not required and you are not entitled to a free court-appointed attorney. Ask the court clerk about free and low-cost legal services and self-help centers in your county.

Will I see the restrained person at the court hearing?

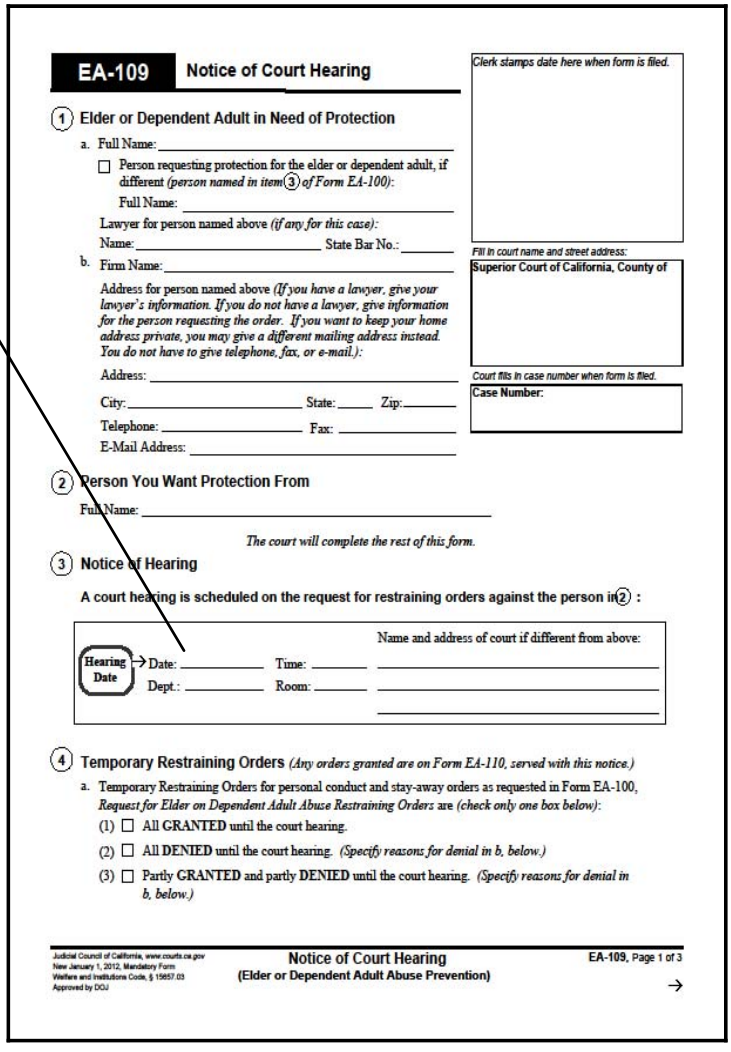
If the person comes to the hearing, yes. But that person does not have the right to speak to you. If you are afraid, tell the court officer.

Can I bring someone with me to court?

Yes. You can bring someone to sit with you during the hearing. But that person cannot speak for you in court. Only you or your lawyer (if you have one) can speak for you.

What if I don't speak English?

When you file your papers, ask the clerk if a court interpreter is available. You can also use form INT-300, *Request for Interpreter (Civil)*, or a local court form or website to request an interpreter. For more information about court interpreters, go to *www.courts.ca.gov/selfhelp-interpreter.htm.*



EA-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

(1) Elder or Dependent Adult in Need of Protection

a. Full Name:

☐ Person requesting protection for the elder or dependent adult, if different *(person named in item (3) of Form EA-100)*:

Full Name:

Lawyer for person named above *(if any for this case)*:

Name: State Bar No.:

b. Firm Name:

Address for person named above *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer, give information for the person requesting the order. If you want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*:

Address:

City: State: Zip:

Telephone: Fax:

E-Mail Address:

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(2) Person You Want Protection From

Full Name:

The court will complete the rest of this form.

(3) Notice of Hearing

A court hearing is scheduled on the request for restraining orders against the person in (2) :

Hearing Date → Date: Time: Dept.: Room:

Name and address of court if different from above:

(4) Temporary Restraining Orders *(Any orders granted are on Form EA-110, served with this notice.)*

a. Temporary Restraining Orders for personal conduct and stay-away orders as requested in Form EA-100, *Request for Elder or Dependent Adult Abuse Restraining Orders* are *(check only one box below)*:

(1) ☐ All **GRANTED** until the court hearing.

(2) ☐ All **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

(3) ☐ Partly **GRANTED** and partly **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

Judicial Council of California, www.courts.ca.gov
New January 1, 2012, Mandatory Form
Welfare and Institutions Code, § 15657.03
Approved by DOJ

Notice of Court Hearing
(Elder or Dependent Adult Abuse Prevention)

EA-109, Page 1 of 3

What if the restrained person's abuse caused me to owe money or debts?

If the restrained person's financial abuse caused you to have certain debts or bills (such as using your name to open a credit card and make purchases that you didn't agree to), you can ask the judge to make a special decision or finding that the restrained person caused you to have the debts or bills. This special finding may be helpful if you are sued for the debts or bills.

Can I agree with the restrained person to cancel the order?

No. Once the order is issued, only the judge can change or cancel it. You or the restrained person would have to file a request with the court to cancel the order.

For help in your area, contact:

[Local information may be inserted.]

What if I have a disability?

If you have a disability and need an accommodation while you are at court, you can use form MC-410, *Disability Accommodation Request*, to make your request. You can also ask the ADA Coordinator in your court for help. For more information, see form MC-410-INFO, *How to Request a Disability Accommodation for Court*.

Save This Form Print This Form

EA-110 Temporary Restraining Order

Clerk stamps date here when form is filed.

DRAFT

3/15/2022

Not approved by the Judicial Council

Person in (1) must complete items (1), (2) and (3) only.

(1) Protected Elder or Dependent Adult

a. Full Name: _____

☐ Person requesting protection for the elder or dependent adult, if different *(person named in item (3) of form EA-100)*:

Full Name: _____

Lawyer for person named above *(if any, for this case)*:

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*:

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(2) Restrained Person

Full Name: _____

Description:

Gender: ☐ M ☐ F ☐ Nonbinary Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address *(if known)*: _____

City: _____ State: _____ Zip: _____

Relationship to Protected Person: _____

(3) ☐ Additional Protected Persons

In addition to the elder or dependent adult named in (1), the following family or household members or conservator of that person are protected by the temporary orders indicated below:

Full Name	Gender	Age	Household Member?	Relation to Protected Person
			☐ Yes ☐ No	
			☐ Yes ☐ No	

☐ *Check here if there are additional protected persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use form MC-025,* Attachment.

(4) Expiration Date

This Order expires at the end of the hearing scheduled for the date and time below:

Date: _____ Time: _____ ☐ a.m. ☐ p.m.

This is a Court Order.

Case Number:

To the Person in (2):

The court has issued the temporary orders checked as granted below. If you do not obey these orders, you can be arrested and charged with a crime. You may have to go to jail for up to one year, pay a fine of up to $1,000, or both.

(5) Personal Conduct Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows:**

a. You must **not** do the following things to the elder or dependent adult named in (1)

☐ and to the other protected persons listed in (3):

(1) ☐ Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy personal property of, or disturb the peace of the person.

(2) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by email, by text messages, by fax, or by other electronic means.

(3) ☐ Take any action to obtain the person's address or location. If this item (3) is not checked, the court has found good cause not to make this order.

(4) ☐ Other *(specify):*

☐ Other personal conduct orders are attached at the end of this Order on Attachment 5a(4).

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order. However, you may have your papers served by mail on the person in (1).

(6) Stay-Away Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows:**

a. You **must** stay at least _____ yards away from *(check all that apply):*

(1) ☐ The elder or dependent adult in (1)

(2) ☐ Each person in (3)

(3) ☐ The home of the elder or dependent adult

(4) ☐ The job or workplace of the elder or dependent adult

(5) ☐ The vehicle of the person in (1)

(6) ☐ Other *(specify):*

b. This stay-away order does not prevent you from going to or from your home or place of employment.

(7) Move-Out Order

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows:**

You must immediately move out from and not return to *(address):*

This is a Court Order.

8 No Guns or Other Firearms and Ammunition

☐ **Not Issued (financial abuse only)** ☐ **Granted as Follows:**

This order must be granted unless only financial abuse is alleged.

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. You must:

(1) Sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.

(2) File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in, sold, or stored. *(You may use form EA-800,* Proof of Firearms Turned In, Sold, or Stored, *for the receipt.)*

c. ☐ The court has received information that you own or possess a firearm.

9 Financial Abuse

This case ☐ does **not** ☐ does involve **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

10 Possession and Protection of Animals

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows** *(specify):*

a. ☐ The person in (1) is given the sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by him or her, or reside in his or her household.
(Identify animals by, e.g., type, breed, name, color, sex.)

b. ☐ The person in (2) must stay at least _____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

11 Other Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows** *(specify):*

☐ Additional orders are attached at the end of this Order on Attachment 11.

This is a Court Order.

To the Person in 1 :

12 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, the petitioner or the petitioner's lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agencies listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address *(City, State, Zip)*

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 12.

13 No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal serves this Order, he or she will do it for free.

14 Number of pages attached to this Order, if any: _____

Date: _____ _____
Judicial Officer

This is a Court Order.

Warnings and Notices to the Restrained Person in (2)

Possession of Guns or Firearms

If the court grants the orders in item (8), you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control as stated in item (8). The court will require you to prove that you did so.

Notice Regarding Nonappearance at Hearing and Service of Order

If you have been personally served with this Temporary Restraining Order and form EA-109, *Notice of Court Hearing,* but you do not appear at the hearing either in person or by a lawyer, and a restraining order that does not differ from this order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the address in item (2).

If this address is not correct or you wish to verify that the Temporary Restraining Order was converted into a restraining order at the hearing without substantive change, or to find out the duration of the order, contact the clerk of the court.

After You Have Been Served With a Restraining Order

- Obey all the orders.
- Read form EA-120-INFO, *How Can I Respond to a Request for Elder or Dependent Adult Abuse Retraining Orders?,* to learn how to respond to this Order.
- If you want to respond, fill out form EA-120, *Response to Request for Elder or Dependent Adult Abuse Restraining Orders,* and file it with the court clerk. You do not have to pay any fee to file your response.
- You must have form EA-120 served on the person in (1) (the person asking the court for protection of the elder or dependent adult or the elder or dependent adult if no other person is named in that item), or that person's attorney, by mail. You cannot do this yourself. The person who does the mailing should complete and sign form EA-250, *Proof of Service of Response by Mail*. File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served signed by you and other persons who have personal knowledge of the facts. You may use form MC-030, *Declaration,* for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at *www.courts.ca.gov/forms*. If you do not know how to prepare a declaration, you should see a lawyer.
- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, the judge can make restraining orders against you that last for up to five years. Tell the judge why you disagree with the orders requested.

Instructions for Law Enforcement

Enforcing the Restraining Order

This order 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 Restraining and Protective Orders System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

This is a Court Order.

Case Number:

Start Date and End Date of Orders

This order *starts* on the date next to the judge's signature on page 4. The order *ends* on the expiration date in item ④ on page 1.

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. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- 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 informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The order can be changed only by another court order. (Pen. Code, § 13710(b).)

Conflicting Orders—Priorities of Enforcement

If more than one restraining order has been issued, the orders must be enforced according to the following priorities: (See Pen. Code, § 136.2; Fam. Code, §§ 6383(h)(2), 6405(b).)

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and 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 over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes an EPO or a no-contact order, a criminal protective order (CPO) issued in a criminal case involving domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil restraining order that conflicts with the CPO. All orders in the civil restraining order that do not conflict with the CPO must be enforced.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *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

EA-120

Response to Request for Elder or Dependent Adult Abuse Restraining Orders

Clerk stamps date here when form is filed.

DRAFT

3/15/2022

Not approved by the Judicial Council

Use this form to respond to the *Request* (form EA-100)

- Read *How Can I Respond to a Request for Elder or Dependent Adult Abuse Restraining Orders?* (form EA-120-INFO) to protect your rights.
- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—**not you**—serve the person requesting protection in (1) by mail with a copy of this form and any attached pages. *(Use form EA-250,* Proof of Service of Response by Mail.*)*

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(1) Elder or Dependent Adult Seeking Protection

Name: _____

☐ Name of person asking for the protection, if different *(This is the person named in item (3) of the request (form EA-100).)*

_____

(2) Person From Whom Protection Is Sought

a. Your Name: _____

Your Lawyer *(if you have one for this case)*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Present your response and any opposition at the hearing. Write your hearing date, time, and place from form EA-109, item (3), here:

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

If you were served with a Temporary Restraining Order, you must obey it until the hearing. At the hearing, the court may make orders against you that last for up to five years.

(3) ☐ Personal Conduct Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item (14) on page 4.)*

c. ☐ I agree to the following orders *(specify below or in item (14) on page 4):*

_____

_____

(4) ☐ Stay-Away Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item (14) on page 4.)*

c. ☐ I agree to the following orders *(specify below or in item (14) on page 4):*

_____

_____

Case Number:

5 ☐ Move-Out Orders

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 14 on page 4.)*

c. ☐ I agree to the following orders *(specify below or in item 14 on page 4):*

6 ☐ Additional Protected Persons

a. ☐ I agree that the persons listed in item 6 of form EA-100 may be protected by the order requested.

b. ☐ I do not agree that the persons listed in item 6 of form EA-100 may be protected by the order requested.

7 ☐ Order for Counseling or Anger Management Courses

ⓘ This item is only available in instances of alleged physical abuse or deprivation of care, not in cases with only alleged financial abuse.

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 14 on page 4.)*

c. ☐ I agree to the following orders *(specify below or in item 14 on page 4):*

8 Guns or Other Firearms and Ammunition

If you were served with form EA-110, *Temporary Restraining Order,* you cannot own or possess any guns, other firearms, or ammunition. (See item 8 of form EA-110.) You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control within 24 hours of being served with form EA-110. You must file a receipt with the court. You may use form EA-800, *Proof of Firearms Turned In, Sold, or Stored,* for the receipt.

a. ☐ I do not own or control any guns, firearms, magazines or ammunition.

b. ☐ I ask for an exemption from the firearms prohibition under Code of Civil Procedure section 527.9(f) because carrying a firearm is a condition of my employment, and my employer is unable to reassign me to another position where a firearm is unnecessary. *(Explain):*

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 8b—Firearms Surrender Exemption" as a title. You may use form MC-025,* Attachment.

c. ☐ I have turned in my guns and firearms to the police or sold them to or stored them with a licensed gun dealer.

A copy of the receipt ☐ is attached. ☐ has already been filed with the court.

Case Number:

9 ☐ Debts Caused by Financial Abuse

a. ☐ I agree to the findings requested.
b. ☐ I do not agree to the findings requested. *(Specify why you disagree in item 14 on page 4.)*
c. ☐ I agree to the following findings *(specify below or in item 14 on page 4):*

10 ☐ Possession and Protection of Animals

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 14 on page 4.)*
c. ☐ I agree to the following orders *(specify below or in item 14 on page 4):*

11 ☐ Other Orders

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested. *(Specify why you disagree in item 14 on page 4.)*
c. ☐ I agree to the following orders *(specify below or in item 14 on page 4):*

12 ☐ Denial

I did not do anything described in item 8 of form EA-100. *(Skip to 13.)*

13 ☐ Justification or Excuse

If I did some or all of the things that the person in 1 has accused me of, my actions were justified or excused for the following reasons *(explain):*

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 13–Justification or Excuse" as a title. You may use form MC-025,* Attachment.

Case Number:

14 ☐ Reasons I Do Not Agree to the Requests

Explain your answers to each order or finding requested that you do not agree with.

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 14—Reasons I Disagree" as a title. You may use form MC-025,* Attachment.

15 ☐ Lawyer's Fees and Costs

a. ☐ I ask the court to order payment of my ☐ lawyer's fees ☐ court costs. The amounts requested are:

Item	Amount	Item	Amount
	$		$
	$		$
	$		$

☐ *Check here if there are more items. Put the items and amounts on the attached sheet of paper and write "Attachment 15—Lawyer's Fees and Costs" for a title. You may use form MC-025,* Attachment.

b. ☐ I ask the court to deny the request of the person asking for protection named in (1) that I pay his or her lawyer's fees and costs.

16 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____

Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

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

EA-120-INFO How Can I Respond to a Request for Elder or Dependent Adult Abuse Restraining Orders?

What is an elder or dependent adult abuse restraining order?

It is a court order that prohibits you from doing certain things and going certain places.

What does the order do?

The court can order you to:

- Not contact the person who is protected by the order
- Stay away from that person and the person's home and workplace
- Move out of the place where you and that person are living together
- Not have any guns as long as the order is in effect

Who can ask for a restraining order?

A person who is being:

- Financially abused
- Abandoned or abducted
- Harmed
- Neglected
- Isolated
- Deprived by a caregiver of goods or services necessary to live on

A conservator may seek an order on behalf of an elder or dependent adult.

I've been served with a request for elder or dependent adult abuse restraining orders. What do I do now?

Read the papers served on you very carefully. The *Notice of Court Hearing* tells you when to appear in court. There may also be a *Temporary Restraining Order* forbidding you from doing certain things. You must obey the order until the hearing.

What if I don't obey the order?

The police can arrest you. You can go to jail and pay a fine.

What if I don't agree with what the order says?

You still must obey the order until the hearing. If you disagree with the orders the person is asking for, fill out Form EA-120, *Response to Request for Elder and Dependent Adult Abuse Restraining Orders,* before your hearing date and file it with the court. If you need to include attachments, you can use Form MC-025. You can get the forms from legal publishers or on the Internet at *www.courts.ca.gov.* You also may be able to find them at your local courthouse or county law library.

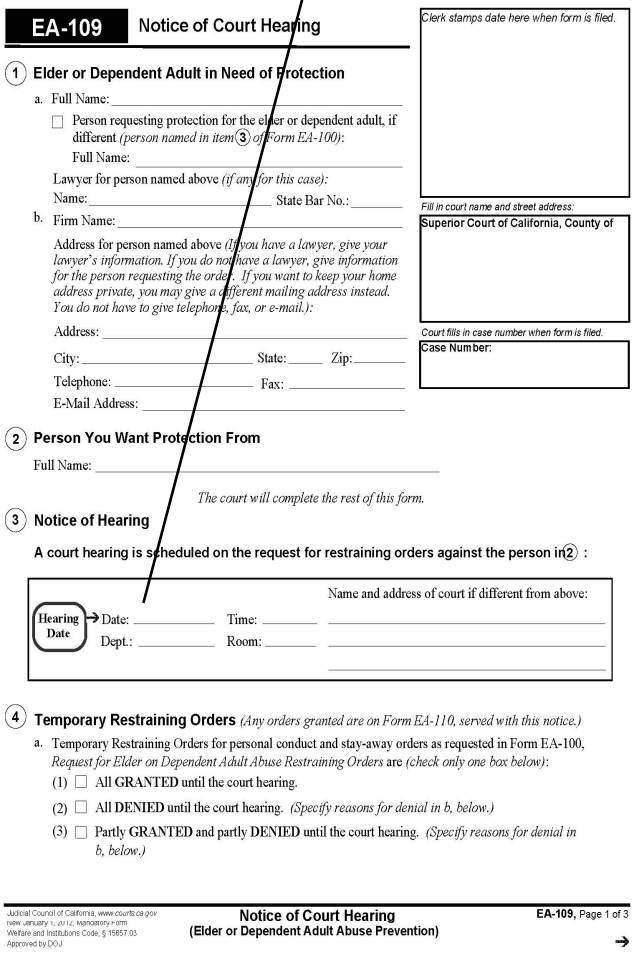
Do I have to serve the other person with a copy of my response?

Yes. Have someone age 18 or older—**not you**—mail a copy of completed Form EA-120 to the person who asked for the order (or that person's lawyer). (This is called "service by mail.")

The person who serves the form by mail must fill out Form EA-250, *Proof of Service of Response by Mail.* Have the person who did the mailing sign the original. Take the completed form back to the court clerk or bring it with you to the hearing.

Should I go to the court hearing?

Yes. You should go to court on the date listed on Form EA-109, *Notice of Court Hearing*. If you do not go to the hearing, the judge can make orders against you without hearing from you.



EA-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

1 Elder or Dependent Adult in Need of Protection

a. Full Name:

☐ Person requesting protection for the elder or dependent adult, if different *(person named in item 3 of Form EA-100)*:

Full Name:

Lawyer for person named above *(if any for this case)*:

Name: State Bar No.:

b. Firm Name:

Address for person named above *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer, give information for the person requesting the order. If you want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.)*:

Address:

City: State: Zip:

Telephone: Fax:

E-Mail Address:

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

2 Person You Want Protection From

Full Name:

The court will complete the rest of this form.

3 Notice of Hearing

A court hearing is scheduled on the request for restraining orders against the person in 2 :

Hearing Date → Date: Time: Dept.: Room:

Name and address of court if different from above:

4 Temporary Restraining Orders *(Any orders granted are on Form EA-110, served with this notice.)*

a. Temporary Restraining Orders for personal conduct and stay-away orders as requested in Form EA-100, *Request for Elder on Dependent Adult Abuse Restraining Orders* are *(check only one box below)*:

(1) ☐ All GRANTED until the court hearing.

(2) ☐ All DENIED until the court hearing. *(Specify reasons for denial in b, below.)*

(3) ☐ Partly GRANTED and partly DENIED until the court hearing. *(Specify reasons for denial in b, below.)*

Judicial Council of California, www.courts.ca.gov
new January 1, 2023, mandatory form
Welfare and Institutions Code, § 15657.03
Approved by DOJ

Notice of Court Hearing
(Elder or Dependent Adult Abuse Prevention)

EA-109, Page 1 of 3

How long does the order last?

If the court issued a temporary restraining order before the hearing, it will last until your hearing date. At that time, the court will decide to continue or cancel the order. Any order issued at the hearing can last for up to five years.

Do I need a lawyer?

Having a lawyer is always a good idea, but it is not required, and you are not entitled to a free court-appointed attorney. Ask the court clerk about free and low-cost legal services and self-help centers in your county.

Will I see the person who asked for the order at the court hearing?

Yes. Assume that the person who is asking for the order will attend the hearing. Do not talk to him or her unless the judge or that person's attorney says that you can.

Can I bring a witness to the court hearing?

Yes. You can bring witnesses or documents that support your case to the hearing. But if possible, you should also bring the witnesses' written statements of what they saw or heard. Their statements must be made under penalty of perjury. You can use Form MC-030 for this.

For help in your area, contact:

[Local information may be inserted.]

What if I have a gun?

If a restraining order is issued, unless the order is to prevent financial abuse only, you cannot own, possess, or have a gun, other firearm, or ammunition while the order is in effect. If you have a gun or other firearm in your immediate possession or control, you must sell it to or store it with a licensed gun dealer or turn it in to a law enforcement agency.

Can I agree with the protected person to cancel the order?

No. Once the order is issued, only the judge can change or cancel it. You or the protected person would have to file a request with the court to cancel the order.

What if I don't speak English?

When you file your papers, ask the clerk if a court interpreter is available. You can also use form INT-300, *Request for Interpreter (Civil)*, or a local court form or website to request an interpreter. For more information about court interpreters, go to *www.courts.ca.gov/selfhelp-interpreter.htm.*

What if I have a disability?

If you have a disability and need an accommodation while you are at court, you can use form MC-410, *Disability Accommodation Request*, to make your request. You can also ask the ADA Coordinator in your court for help. For more information, see form MC-410-INFO, *How to Request a Disability Accommodation for Court.*

EA-130 Elder or Dependent Adult Abuse Restraining Order After Hearing

Clerk stamps date here when form is filed.

DRAFT

3/23/2022

Not approved by the Judicial Council

Person in (1) must complete items (1), (2), and (3) only.

(1) Elder or Dependent Adult Seeking Protection

a. Full Name: _____

☐ Name of person asking for the protection, if different *(This is the person named in item (3) of the request (form EA-100).)*

Full Name: _____

Lawyer for person named above *(if any for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(2) Restrained Person

Full Name: _____

Description

Gender: ☐ M ☐ F ☐ Nonbinary Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address *(if known)*: _____

City: _____ State: _____ Zip: _____

Relationship to Protected Person: _____

(3) ☐ Additional Protected Persons

In addition to the elder or dependent adult named in (1), the following family or household members or conservator of the elder or dependent adult named in (1) are protected by the orders indicated below:

Full Name	Gender	Age	Lives with Person in (1)?	Relation to Person in (1)
_____	____	____	☐ Yes ☐ No	_____
_____	____	____	☐ Yes ☐ No	_____

☐ *Check here if there are additional protected persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use form MC-025,* Attachment.

(4) Expiration Date

This Order, except for any award of lawyer's fees, expires at

Time: _____ ☐ a.m. ☐ p.m. ☐ midnight on *(date):* _____

If no expiration date is written here, this Order expires three years from the date of issuance.

This is a Court Order.

5 Hearing

a. There was a hearing on *(date):* _____ *at (time):* _____ in Dept.: _____ Room: _____
(Name of judicial officer): _____ made the orders at the hearing.

b. These people were at the hearing:
(1) ☐ The elder or dependent adult in need of protection
(2) ☐ The lawyer for the elder or dependent adult *(name):* _____
(3) ☐ The person in (1) asking for protection (if not the elder or dependent adult)
(4) ☐ The lawyer for the person in (1) asking for protection *(name):* _____
(5) ☐ The person in (2)
(6) ☐ The lawyer for the person in (2) *(name):* _____
☐ Additional persons present are listed at the end of this Order on Attachment 5.

c. ☐ The hearing is continued. The parties must return to court on *(date):* _____ at *(time):* _____.

To the Person in (2):

The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.

6 ☐ Personal Conduct Orders

a. You must **not** do the following things to the elder or dependent adult named in (1)
☐ and to the other protected persons listed in (3):
(1) ☐ Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy personal property of, or disturb the peace of the person.
(2) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.
(3) ☐ Take any action to obtain the person's address or location. If this item (3) is not checked, the court has found good cause not to make this order.
(4) ☐ Other *(specify):* _____
☐ Other personal conduct orders are attached at the end of this Order on Attachment 6a(4).

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

7 ☐ Stay-Away Orders

a. You **must** stay at least _____ yards away from *(check all that apply):*
(1) ☐ The elder or dependent adult in (1).
(2) ☐ Each person in (3).
(3) ☐ The home of the elder or dependent adult.
(4) ☐ The job or workplace of the elder or dependent adult.
(5) ☐ The vehicle of the elder or dependent adult.
(6) ☐ Other *(specify):*
_____
_____
_____
_____

b. This stay-away order does not prevent you from going to or from your home or place of employment.

This is a Court Order.

8 ☐ Move-Out Order

You must immediately move out from and not return to *(address):*

_____

_____

and must take only the personal clothing and belongings you need.

9 ☐ Order for Counseling or Anger Management

a. The person in item 2 is ordered to attend:

☐ clinical counseling for _____ *(specify number)* sessions; or

☐ an anger management course

provided by a professional (a counselor, psychologist, psychiatrist, therapist, clinical social worker, or mental or behavioral health professional licensed in the State of California to provide counseling or anger management courses).

b. The person in item 2 must schedule clinical counseling or enroll in an anger management course by *(date):* _____ , or if no date is listed, within 30 days after this order is made. The person in item 2 is ordered to file written proof of scheduling or enrollment with the court.

c. ☐ Written proof of completion of the ordered number of clinical counseling sessions or written proof of completion of the court-ordered anger management course must be filed with the court by *(date):* _____ , or the person in item 2 must appear for a court date on

(date): _____ *at (time):* _____ in Dept.: _____ Room: _____

10 ☐ No Guns or Other Firearms and Ammunition

This Order must be granted unless the abuse is financial only.

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. If you have not already done so, you must:

- Sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.
- File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in, sold, or stored. *(You may use form EA-800,* Proof of Firearms Turned In, Sold, or Stored, *for the receipt.)*

c. ☐ The court has received information that you own or possess a firearm.

d. ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Code of Civil Procedure section 527.9(f). Under California law, the person in 2 is not required to relinquish this firearm *(specify make, model, and serial number of firearm):* _____

_____

The firearm must be in his or her physical possession only during scheduled work hours and during travel to and from his or her place of employment. Even if exempt under California law, the person in 2 may be subject to federal prosecution for possessing or controlling a firearm.

This is a Court Order.

Case Number:

11 Financial Abuse

This case ☐ does **not** ☐ does involve **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

12 ☐ Possession and Protection of Animals

a. ☐ The person in 1 is given the sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by him or her, or reside in his or her household.
(Identify animals by, e.g., type, breed, name, color, sex.)

b. ☐ The person in 2 must stay at least _____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

13 ☐ Specific Debts

The court finds (decides) that the following debts were incurred as a result of financial abuse of the person in 1 by the person in 2.

Money Owed To:	For:	Amount:
		$
		$
		$

☐ Additional debts are attached at the end of this Order on Attachment 13.

14 ☐ Lawyer's Fees and Costs

You must pay to the person in 1 the following amounts for ☐ lawyer's fees ☐ costs:

Item	Amount	Item	Amount
	$		$
	$		$

☐ Additional amounts are attached at the end of this Order on Attachment 14.

15 ☐ Other Orders *(specify):*

☐ Additional orders are attached at the end of this Order on Attachment 15.

This is a Court Order.

To the Person in (1):

16 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, you or your lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address *(City, State, Zip)*

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 16.

17 Service of Order on Restrained Person

a. ☐ The person in (2) personally attended the hearing. No other proof of service is needed.

b. ☐ The person in (1) was at the hearing. The person in (2) was not.

(1) ☐ Proof of service of form EA-110, *Temporary Restraining Order,* was presented to the court. The judge's orders in this form are the same as in form EA-110 except for the end date. The person in (2) must be served with this Order. Service may be by mail.

(2) ☐ Proof of service of form EA-110, *Temporary Restraining Order,* was presented to the court. The judge's orders in this form are different from the orders in form EA-110. Someone—but not anyone in (1) or (3)—must personally serve a copy of this Order on the person in (2).

18 No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal serves this Order, they will do so for free.

19 Number of pages attached to this Order, if any: _____

Date: _____ _____

Judicial Officer

This is a Court Order.

Warning and Notice to the Restrained Person in 2:

You Cannot Have Guns or Firearms

If the court grants the orders in item 10 on page 3 (unless item 10d is checked), you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control as stated in item 10. The court will require you to prove that you did so.

Instructions for Law Enforcement

Enforcing the Restraining Order

This order 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 Restraining and Protective Order System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

Start Date and End Date of Order

This order *starts* on the date next to the judge's signature on page 5. The order *ends* on the expiration date in item 4 on page 1.

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. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- 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 informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The order can be changed only by another court order. (Pen. Code, § 13710(b).)

This is a Court Order.

Case Number:

Instructions for Law Enforcement

Conflicting Orders—Priority of Enforcement

If more than one restraining order has been issued, the orders must be enforced in the following order of precedence: *(See Pen. Code, § 136.2; Fam. Code, §§ 6383(h)(2), 6405(b).)*

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and 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 over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes an EPO or a no-contact order, a criminal protective order (CPO) issued in a criminal case involving domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil restraining order that conflicts with the CPO. All orders in the civil restraining order that do not conflict with the CPO must be enforced.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Elder or Dependent Adult Abuse Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____ , Deputy

This is a Court Order.

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

EA-200 Proof of Personal Service

Clerk stamps date here when form is filed.

DRAFT

03/23/2022

Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Elder or Dependent Adult

Name: _____

2 Person From Whom Protection Is Sought or Person Preventing Contact

Name: _____

3 Notice to Server

The server must:

- Be 18 years of age or older.
- Not be listed in items 1, 3, or 6 of form EA-100 or be listed in items 1, 2, 3, or 4 on form EA-300.
- Give a copy of all documents checked in 4 to the person in 2. (You cannot send them by mail.) Then complete and sign this form and give or mail it to the person in 1.

PROOF OF PERSONAL SERVICE

4 I gave the person in 2 a copy of the forms checked below:

a. ☐ EA-109, *Notice of Court Hearing*
b. ☐ EA-110, *Temporary Restraining Order*
c. ☐ EA-100, *Request for Elder or Dependent Adult Abuse Restraining Orders*
d. ☐ EA-120, *Response to Request for Elder or Dependent Adult Abuse Restraining Orders* (blank form)
e. ☐ EA-120-INFO, *How Can I Respond to a Request for Elder or Dependent Adult Abuse Restraining Orders?*
f. ☐ EA-130, *Elder or Dependent Adult Abuse Restraining Order After Hearing*
g. ☐ EA-250, *Proof of Service of Response by Mail* (blank form)
h. ☐ EA-800, *Proof of Firearms Turned In, Sold, or Stored* (blank form)
i. ☐ EA-300, *Request for Elder or Dependent Adult Restraining Order Allowing Contact*
j. ☐ EA-309, *Notice of Court Hearing to Allow Contact*
k. ☐ EA-320, *Response to Request for Elder or Dependent Adult Restraining Order Allowing Contact* (blank form)
l. ☐ EA-320-INFO, *How Can I Respond to a Request for an Elder or Dependent Adult Restraining Order Allowing Contact?*
m. ☐ EA-330, *Elder or Dependent Adult Restraining Order After Hearing Allowing Contact*
n. ☐ Other *(specify):* _____

5 I personally gave copies of the documents checked above to the person in 2:

a. On *(date):* _____ b. At *(time):* _____ ☐ a.m. ☐ p.m.

c. At this address: _____

City: _____ State: _____ Zip: _____

Case Number:

6 Server's Information

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

(If you are a registered process server):

County of registration: _____ Registration number: _____

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print server's name *Server to sign here*

EA-200-INFO What Is "Proof of Personal Service?"

What is "Service"?

These forms cannot be served by mail. Service is the act of giving your legal papers to the other party. There are many kinds of service—in person, by mail, and others. This form is about personal or "in-person service." The *Request for Elder or Dependent Adult Abuse Restraining Orders* (form EA-100), the *Notice of Court Hearing* (form EA-109), *Temporary Restraining Order* (form EA-110), *Request for Elder or Dependent Adult Restraining Order Allowing Contact* (form EA-300), and *Notice of Court Hearing to Allow Contact* (form EA-309) must be served "in person." That means that someone must personally "serve" (give) a copy of the forms to the person to be restrained.

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3/23/2022

Not approved by the Judicial Council

Service lets the other person know:

- What orders you are asking for
- The hearing date
- How to respond

Why do I have to get the orders served?

- The police cannot arrest anyone for violating an order unless that person knows about the order.
- The judge cannot make the orders permanent unless the restrained person was served.

Don't serve it by mail!

Who can serve?

Ask someone you know, a process server, or a law enforcement agency to personally serve (give) a copy of the forms to the person to be restrained. You **cannot** send the forms to that person by mail. The server must:

- Be 18 years of age or older
- Not be you or anyone whom you are asking to be protected by the orders. The sheriff or marshal may be authorized to serve the court's orders **for free.** A "registered process server" is a business you pay to deliver court forms. Look for "Process Serving" in the Yellow Pages or on the Internet. (If a law enforcement agency or the process server uses a different proof-of-service form, make sure it lists the forms served.)

How to serve Ask the server to:

- Walk up to the person to be served.
- Make sure it is the right person. Ask the person's name.
- Give the person copies of all papers checked on form EA-200, *Proof of Personal Service*.
- Fill out and sign the *Proof of Personal Service* form.
- Give the signed *Proof of Personal Service* to you.

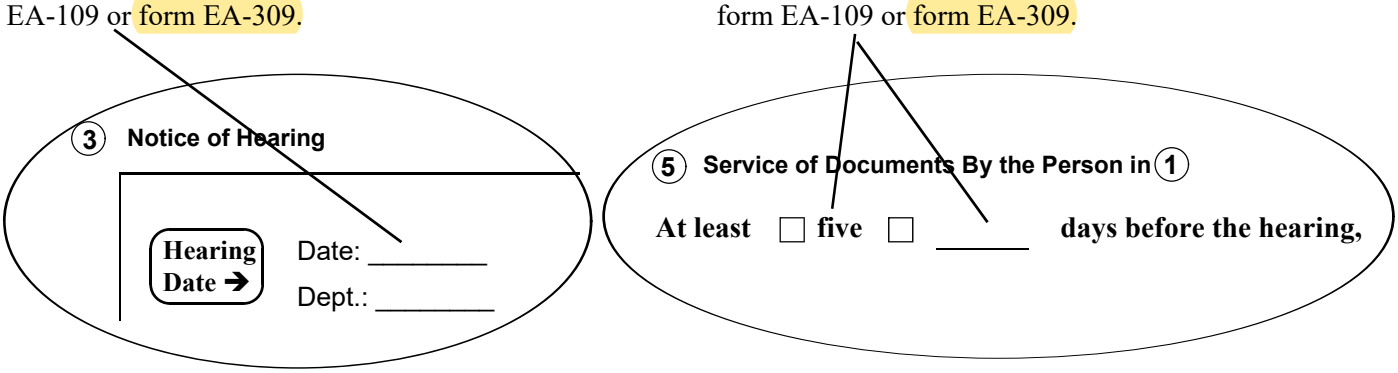
What if the person won't take the papers or tears them up?

- If the person won't take the papers, just leave them near him or her.
- It doesn't matter if the person tears them up. Service is still complete.

When do the orders have to be served? It depends. To know the exact date, you have to look at two things on form EA-109, *Notice of Court Hearing* or form EA-309, *Notice of Court Hearing to Allow Contact* :

First, look at the hearing date on page 1 of form EA-109 or form EA-309.

Next, look at the number of days in item (5) on page 2 of form EA-109 or form EA-309.



Look at a calendar. Subtract the number of days in (5) from the hearing date. That is the final date to have the orders served. It is always OK to serve earlier than that date. If nothing is checked or written in (5), you must serve the orders at least five days before the hearing.

Who signs the *Proof of Personal Service*?

Only the person who serves the forms can sign form EA-200, *Proof of Personal Service*. You do not sign it; the restrained person does not need to sign it.

What do I do with the completed *Proof of Personal Service*?

If someone other than the sheriff serves the papers, you should:

- Make several copies.
- File the original with the court before your hearing.
- Bring a copy of the completed *Proof of Personal Service* to your hearing.
- Ask the clerk to enter the *Proof of Service* (unless for form EA-300) into the California Law Enforcement Telecommunications System (CLETS), a special computer system that lets police all over the state find out about the orders protecting you.
- If the clerk tells you that the court cannot enter it into the computer, take a copy of the *Temporary Restraining Order* (form EA-110) and *Proof of Personal Service* (form EA-200) to your local police. They will put the information into the state computer system. That way, police all over the state will know that your restraining order has been served.
- If the sheriff serves the papers, he or she will send the proof of service to the court and CLETS for you.
- Always keep an extra copy of the restraining orders with you for your safety.
- **Note: Restraining orders to allow contact (which use the EA-300 form series) are not entered into CLETS.**

What happens if I can't get the orders served before the hearing date?

Before your hearing, fill out and file form EA-115, *Request to Continue Court Hearing and to Reissue Temporary Restraining Order* (or form EA-315, if you are trying to serve forms EA-300 or EA-309). This form asks the court for a new hearing date and makes your orders last until then. Ask the clerk for the form. After the court has reissued the orders, attach a copy of form EA-116, *Notice of New Hearing Date and Order on Issuance,* (or form EA-316) to a copy of your original orders. Ask the clerk to enter form EA-116 into CLETS, or the clerk may ask you or your attorney to deliver a copy to the police. That way, the police will know your orders are still in effect.

EA-250 Proof of Service of Response by Mail

Clerk stamps date here when form is filed.

DRAFT

3/23/2022

Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

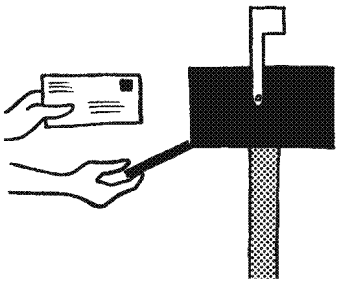
1 Elder or Dependent Adult Seeking Protection

Full Name: _____

2 Person From Whom Protection Is Sought

Your Full Name: _____

3 Notice to Server



The server must:

- Be 18 years of age or older.
- Live or be employed in the county where the mailing took place.
- Not be listed in items 1, 3, or 6 of form EA-100 or in items 1, 2, 3 or 4 on form EA-300.
- Mail a copy of all documents checked in 4 to the person in 1.
- Complete and sign this form and give it to the person in 2.

4 PROOF OF SERVICE BY MAIL

I am 18 years of age or older and not a party to this proceeding. I live or am employed in the county where the mailing took place. I mailed the person in 1 a copy of all documents checked below:

a. ☐ Form EA-120, *Response to Request for Elder or Dependent Adult Abuse Restraining Orders* (completed)
b. ☐ Form EA-320, *Response to Request for Elder or Dependent Adult Restraining Order Allowing Contact*
c. ☐ Other *(specify):* _____

_____

5

I placed copies of the documents above in a sealed envelope and mailed them as described below:

a. Mailed to *(name)*: _____
b. To this address: _____
City: _____ State: _____ Zip: _____
c. On *(date)* _____ Mailed from: City: _____ State: _____

6 Server's Information

Name: _____ Telephone: _____

Address: _____

City: _____ State: _____ Zip: _____

(If you are a registered process server):

County of registration: _____ Registration number: _____

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

▶ _____

Server to sign here

_____

Type or print server's name

EA-300 Request for Elder or Dependent Adult Restraining Order Allowing Contact

Clerk stamps date here when form is filed.

DRAFT

3/24/2022

Not approved by the Judicial Council

Use this form to obtain an order allowing contact between an elder or dependent adult and another person

- Such an order cannot be issued if the elder or dependent adult lives in a long-term care or residential facility or is a patient at a hospital.
- Read *Can an Elder or Dependent Adult Restraining Order Allowing Contact Help Me?* (form EA-300-INFO) before completing this form.

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 Person Requesting Order

Who is asking the court for an order? (*Check a, b, c, or d):*

a. ☐ An elder or dependent adult named in 3.

b. ☐ The person the elder or dependent adult wishes to contact named in 4.

c. ☐ Name: _____
conservator of the ☐ person ☐ estate ☐ person and estate of the person named in 3, appointed by *(name of court)*:
_____
Case No.: _____

d. ☐ Other person legally authorized to make this request *(name)*:
_____
(Show this person's legal authority to make this request on an attached sheet of paper. Write "Attachment 1d—Information About Person Requesting Order" for a title. You may use form MC-025, Attachment.*)*

2 Person Preventing Contact

Full Name: _____

Address *(if known):* _____

City: _____ State: _____ Zip: _____

3 Elder or Dependent Adults to Receive Contact

a. Full Name: _____ Age: _____

b. Additional elder or dependent adults to receive contact *(If there are additional elder or dependent adults in the same household that also want to have contact with the person named in 4 list those persons and their age below.)*

Full Name: _____ Age: _____

Full Name: _____ Age: _____

☐ *Check here if there are more elder or dependent adults in the same household that also want to have contact with the person named in 4. List those persons and their age on an attached sheet of paper titled, "Attachment 3—Additional Elder or Dependent Adults." You may use form MC-025,* Attachment.

This is not a Court Order.

4 Person Who Wants to Have Contact with the Elder or Dependent Adults

a. Full Name: _____

b. Describe this person's preexisting relationship to the elder or dependent adults named in 3:

_____

_____

_____

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 4—Preexisting Relationship" for a title.*

5 Contact Information

Contact information for the person asking the court for an order

a. Your Lawyer *(if you have one for this case)*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

6 Description of Elder or Dependent Adult

The person or persons named in 3 *(check a, b, or c):*

a. ☐ Are all age 65 or older and residents of California.

b. ☐ Are all residents of California and adults under age 65. These persons have physical or mental limitations that restrict their ability to carry out normal activities or to protect their rights. *(Briefly describe limitations on the attached sheet of paper or form MC-025. Write "Attachment 6b—Description of Elder or Dependent Adult" for a title.)*

c. ☐ Are all residents of California and some are adults age 65 or older and some are adults under age 65. The adults under age 65 have physical or mental limitations that restrict their ability to carry out normal activities or to protect their rights. *(Identify which persons are 65 or older and identify and briefly describe the limitations of those under age 65 on the attached sheet of paper or form MC-025. Write "Attachment 6c—Description of Elder or Dependent Adult" for a title.)*

This is not a Court Order.

Case Number:

7 Relationship to Person Preventing Contact

How do the elder or dependent adults know the person in 2? *(Explain below):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025, and write "Attachment 7—Relationship to Person Preventing Contact" for a title.*

8 Facts Supporting Order Allowing Contact

The person in 1 must show:

- That the elder or dependent adults expressly desire contact with the person named in 4;
- That the person in 2 has repeatedly prevented that contact;
- That the prevention of contact was not in response to an actual or threatened abuse of the elder or dependent adults by the person named in 4; and
- That the prevention of contact was not in response to the desire of elder or dependent adults to not have contact with the person named in 4.

a. Describe the elder or dependent adults desire to have contact with the person named in 4 and attach any documentation demonstrating such desire:

☐ Check here if documentation is attached or if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8a—Describe Desire to Contact" for a title.

b. (1) When has the person in 2 prevented the person named in 4 from seeing the elder or dependent adults? *(Provide dates or estimated dates)*:

(2) Describe how the person in 2 has prevented the person named in 4 from seeing the elder or dependent adults.

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8c—Describe Prevention."*

This is not a Court Order.

Case Number:

9 Venue

Why are you filing in this county? *(Check all that apply):*

a. ☐ The person in 2 lives in this county.

b. ☐ The person in 2 prevented the person in 4 from seeing the elder or dependent adults in this county.

c. ☐ Other *(specify):* _____

10 Other Court Cases

a. Has the person in 2 or the person in 4 been involved in another court case with the elder or dependent adults? ☐ No ☐ Yes *(If yes, specify the kind of each case and indicate where and when each was filed):*

	Kind of Case	Filed in *(County/State)*	Year Filed	Case Number *(if known)*
(1)	☐ Elder or Dependent Adult Abuse			
(2)	☐ Civil Harassment			
(3)	☐ Domestic Violence			
(4)	☐ Divorce, Nullity, Legal Separation			
(5)	☐ Paternity, Parentage, Child Custody			
(6)	☐ Eviction			
(7)	☐ Guardianship			
(8)	☐ Workplace Violence			
(9)	☐ Small Claims			
(10)	☐ Criminal			
(11)	☐ Other *(specify):* _____			

b. Are there now any protective or restraining orders in effect relating to the elder and dependent adults and the person in 2 or the person in 4? ☐ No ☐ Yes *(If yes, attach a copy if you have one.)*

11 Order Allowing Contact

I ask the court to order the person in 2 to allow the person in 4 to contact the elder or dependent adults with the following terms:

a. ☐ The person in 2 may not prevent the person named in 4 from in-person or remote online or telephonic visits with the elder or dependent adults named in 3.

b. ☐ Other terms requested for the order allowing contact (*specify):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 11b—Other Order Terms" for a title.*

_____

_____

_____

_____

_____

This is not a Court Order.

Case Number:

12 ☐ Request to Give Less Than Five Days' Notice of Hearing

You must have your papers personally served on the person in (2) at least five days before the hearing, unless the court orders a shorter time for service. (Read form EA-200-INFO, What Is "Proof of Personal Service"?, to learn about serving legal papers. *Form EA-200,* Proof of Personal Service*, may be used to show the court that the papers have been served.)*

If you want there to be less than five days between service and the hearing, explain why:

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 12—Request to Give Less Than Five Days' Notice" for a title.*

13 ☐ Lawyer's Fees and Costs

I ask the court to order payment of my ☐ lawyer's fees ☐ court costs.

The amounts requested are:

Item	Amount	Item	Amount
	$		$
	$		$
	$		$

☐ *Check here if there are more items. Put the items and amounts on the attached sheet of paper or form MC-025 and write "Attachment 13—Lawyer's Fees and Costs" for a title.*

14 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____

Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Signature of person making this request*

This is not 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

EA-300-INFO Can an Elder or Dependent Adult Restraining Order Allowing Contact Help Me?

These instructions cannot cover all of the questions that may arise in a particular case. If you do not know what to do to protect your rights, you should see a lawyer.

What is a restraining order allowing contact?

If a person repeatedly prevents contact between an elder or dependent adult and someone the elder or dependent adult wishes to have to contact with, the court may issue an order allowing contact.

When will the court grant a restraining order allowing contact?

The court will grant a restraining order allowing contact if:

- An elder or dependent adult has a preexisting relationship with and wants to have contact with a specific person;
- Someone is repeatedly preventing the elder or dependent adult from having contact with that specific person; and
- The person preventing contact is not doing so in response to actual or threatened abuse by the person the elder or dependent adult wishes to have contact with.

If you want a restraining order for other abuse, such as physical or financial abuse, read form EA-100-INFO, *Can a Restraining Order to Prevent Elder or Dependent Adult Abuse Help Me*?

How will the order help me?

The court can order the person preventing contact to stop preventing the contact.

Who can apply for an elder or dependent adult restraining order allowing contact?

In addition to the elder or dependent adult, the following persons may apply for a restraining order allowing contact on behalf of the elder or dependent adult:

- A conservator or trustee of the elder or dependent adult;
- An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney;
- A person appointed as a guardian ad litem for the elder or dependent adult;
- An individual with a preexisting relationship who the elder or dependent adult wishes to have contact with, but is being prevented from doing so; and
- Any other person legally authorized to seek such relief.

How much does it cost?

There is no fee for filing a request for a restraining order. You do not need to pay a fee for service of the order. A sheriff or marshal will serve the order for free. Or you may arrange for service by a registered process server or a private party and pay any fee that is charged. The court can make the person who loses the case pay all the court fees and the lawyer's fee for the other party.

What forms do I need to get the order?

You must fill out all of form EA-300, *Request for Elder or Dependent Adult Restraining Order Allowing Contact*. If you need attachments, you may use form MC-025, *Attachment*. You must also fill out items 1 and 2 on form EA-309, *Notice of Court Hearing to Allow Contact*.

Where can I get these forms?

You can get the forms from legal publishers or on the internet at *www.courts.ca.gov*. You also may be able to find them at your local courthouse or county law library.

What do I need to do to get the order?

You must go to the superior court in the county where the prevention of contact took place or where the person preventing contact lives. At the court, ask where you should file your request for a restraining order. (A self-help center or legal aid association may be able to assist you in filing your request.) At the court, give your forms to the clerk of the court. The clerk will give you a hearing date on the Notice of Court Hearing form.

How soon can I get the order?

Orders to stop preventing a person from seeing an elder or dependent adult can only be issued after a hearing. Accordingly, the date of the hearing is the earliest the order can be granted.

How long does the order last?

The length of the order is determined by the court and could last for up to five years.

How will the person preventing contact know about my request for an order?

Someone age 18 or older—not you or anybody else involved in the case—must "serve" (give) the person to be restrained a copy of the notice of hearing and other forms listed on that notice. The server must then fill out form EA-200, *Proof of Personal Service*, and give it to you to file with the court. For help with service, ask the court clerk for form EA-200-INFO, *What Is "Proof of Personal Service"?*

Do I have to go to court?

Yes. Go to court on the date the clerk gives you, which is found on form EA-309.

Do I need to bring a witness to the court hearing?

Witnesses are not required, but it helps to have more proof of the isolation than just your word. You can bring:

- Witnesses
- Written statements from witnesses made under oath
- Letters, e-mails

The court may or may not let witnesses speak at the hearing. So, if possible, you should bring their written statements under oath to the hearing. (You can use form MC-030 for this.)

Do I need a lawyer?

Having a lawyer is always a good idea, but it is not required and you are not entitled to a free court-appointed attorney. Ask the court clerk about free and low-cost legal services and self-help centers in your county.

Can I bring someone with me to court?

Yes. You can bring someone to sit with you during the hearing. But that person cannot speak for you in court. Only you or your lawyer (if you have one) can speak for you.

Can the elder or dependent adult and the person preventing contact agree to cancel the order?

No. Once the order is issued, only the judge can change or cancel it. The person who requested the order or the person preventing contact would have to file a request with the court to cancel the order.

What if I don't speak English?

When you file your papers, ask the clerk if a court interpreter is available. You can also use form INT-300, *Request for Interpreter (Civil)*, or a local court form or website to request an interpreter. For more information about court interpreters, go to *www.courts.ca.gov/selfhelp-interpreter.htm*.

What if I have a disability?

If you have a disability and need an accommodation while you are at court, you can use form MC-410, *Disability Accommodation Request*, to make your request. You can also ask the ADA Coordinator in your court for help. For more information, see form MC-410-INFO, *How to Request a Disability Accommodation for Court*.

For help in your area, contact:

[Local information may be inserted.]

EA-309 Notice of Court Hearing to Allow Contact

Clerk stamps date here when form is filed.

DRAFT

3/23/2022

Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Person Requesting Order

a. Full Name:

Lawyer for person named above *(if any for this case):*

Name: State Bar No.:

Firm Name:

b. Address for person named above *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer, give information for the person requesting the order. If you want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.):*

Address:

City: State: Zip:

Telephone: Fax:

Email Address:

c. Elder or Dependent Adults to Receive Contact, if not listed in a.

Name elder or dependent adults if different from above:

2 Person Preventing Contact

Full Name:

The court will complete the rest of this form.

3 Notice of Hearing

A court hearing is scheduled on the request for restraining order allowing contact against the person in 2:

Name and address of court if different from above:

Hearing Date → Date: Time:

Dept.: Room:

4 Service of Documents by The Person in 1

At least five days before the hearing, someone age 18 or older—**not you or anybody else involved in the case**—must personally give (serve) a court file-stamped copy of this form EA-309, *Notice of Court Hearing to Allow Contact,* to the person in 2 along with a copy of all the forms indicated below:

a. EA-300, *Request for Elder or Dependent Abuse Restraining Order Allowing Contact* (file-stamped)

b. EA-320, *Response to Request for Elder or Dependent Adult Restraining Order Allowing Contact* (blank form)

c. EA-320-INFO, *How Can I Respond to a Request for an Elder or Dependent Adult Restraining Order Allowing Contact?*

d. EA-250, *Proof of Service of Response by Mail* (blank form)

Date: _____ _____

Judicial Officer

To the Person in 1 :

- The court cannot make the restraining order requested unless the person in 2 has been personally given (served) a copy of your request. To show that the person in 2 has been served, the person who served the forms must fill out a proof of service form. Form EA-200, *Proof of Personal Service,* may be used.
- For information about service, read form EA-200-INFO, *What Is "Proof of Personal Service"?*
- If you are unable to serve the person in 2 in time, you may ask for more time to serve the documents. Use form EA-315, *Request to Continue Court Hearing on Request to Allow Contact*.

To the Person in 2 :

- If you want to respond to the request for an order in writing, file form EA-320, *Response to Request for Elder or Dependent Adult Restraining Order Allowing Contact,* and have someone age 18 or older—**not you or anybody else involved in the case—**mail it to the person in 1.
- The person who mailed the form must fill out a proof of service form. Form EA-250, *Proof of Service of Response by Mail,* may be used. File the completed form with the court before the hearing and bring a copy with you to the court hearing.
- Whether or not you respond in writing, go to the hearing if you want the judge to hear from you before making an order. You may tell the judge why you agree or disagree with the order requested.
- You may bring witnesses and other evidence.
- At the hearing, the judge may make a restraining order against you that could last up to five years.

Case Number:

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Disability Accommodation Request* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Court Hearing to Allow Contact* is a true and correct copy of the original on file in the court.

Clerk's Certificate
[seal]

Date: _____

Clerk, by _____ , Deputy

EA-315 Request to Continue Court Hearing on Request to Allow Contact

Clerk stamps date here when form is filed.

DRAFT

3/23/2022

NOT APPROVED BY THE JUDICIAL COUNCIL

Instructions: Use this form to ask the court to reschedule the court date listed on form EA-309, *Notice of Court Hearing to Allow Contact*. Read form EA-315-INFO, *How to Ask for a New Date for a Hearing to Allow Contact,* for more information.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Parties Information

a. My name is: _____

b. I am the *(check one of the boxes below)*:

(1) ☐ Elder or Dependent Adult to Receive Contact (*skip to* 2).

(2) ☐ Person asking for the order to allow contact

(name of elder or dependent adults): _____

_____

(*skip to* 2).

(3) ☐ Person preventing contact *(provide your information below)*

Address where I can receive mail:

This address will be used by the court and other party to notify you in this case. If you want to keep your home address private, you can use another address like a post office box or another person's address if you have their permission. If you have a lawyer, give your lawyer's address and contact information.

Address: _____

City: _____ State: ____ Zip: _____

My contact information *(optional)*:

Telephone: _____ Fax: _____

Email Address: _____

Lawyer's information *(skip if you do not have one):*

Name: _____ State Bar No.: _____

Firm Name: _____

2 Information About My Case

a. The other party in this case is *(full name)*: _____

b. I have a court date currently scheduled for *(date)*: _____

This is not a Court Order.

Case Number:

3 Why Does the Court Date Need to be Rescheduled?

a. ☐ I need more time to have the person preventing contact personally served.

b. ☐ I am the person preventing contact and this is my first request to reschedule the court date.

c. ☐ Other reason: _____

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 of
☐ Lawyer ☐ Party Without Lawyer

▶ _____
Sign your name

This is not 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

EA-315-INFO How to Ask for a New Date for a Hearing to Allow Contact

DRAFT
3/23/2022

Not approved by the Judicial Council

1 You may need to ask for a new court date if:

- You are the person asking for the order and are unable to have *Notice of Court Hearing to Allow Contact* (form EA-309) and other papers served in time before your court date.
- You are the person said to be preventing contact and making your first request to reschedule your court date.
- You have a good reason for needing a new court date. (The court may grant your request to reschedule on a showing of good cause.)

2 What does form EA-315 do?

Use *Request to Continue Court Hearing on Request to Allow Contact* (form EA-315) to ask the court to reschedule your court date.

3 Follow these steps:

- Fill out all of form EA-315.
- Fill out items 1 and 2 on *Order on Request to Continue Hearing on Request to Allow Contact* (form EA-316).
- The judge will need to review your papers. In some courts, you must give your papers to the clerk. Ask the court clerk for information on how you ask the judge to review your papers.
- After you turn in your forms as required by your local court, check with the clerk's office to see if the judge approved (granted) your request to reschedule your court date.
- If the judge grants your request, in item 3b of form EA-316, you will have a new court date. If the judge did NOT grant your request, you should go to court at the date, time, and location on form EA-309.
- Next, file both forms EA-315 and EA-316 with the clerk. The clerk will make up to three file-stamped copies for you. Keep at least one copy to bring to your court date.
- The other party must be served a copy of the court papers as described in item 5 on form EA-316.
- Ask the person who serves the papers to complete a proof of service form and give it to you. If service was in person, use *Proof of Personal Service* (form EA-200). If service was by mail, use *Proof of Service—Civil* (form POS-040). Make two copies of the completed forms.
- File the completed and signed proof of service form with the clerk's office before your court date.

4 Go to your court date

- Take at least two copies of your documents and filed forms to your court date. Include a filed proof of service form. "Documents" may include exhibits and declarations, and the court may enter them into evidence at its discretion.
- If you are the person preventing contact and you do not go to the hearing, the court can still make an order against you that can last for up to five years.

5 Need help?

Ask the court clerk about free or low-cost legal help that may be available in your county.

Print this form Save this form

EA-316 Order on Request to Continue Hearing on Request to Allow Contact

Clerk stamps date here when form is filed.

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3/23/2022

Not approved by the Judicial Council

Complete items (1) and (2) only.

(1) Party Requesting Order to Allow Contact:

_____

(2) Party Preventing Contact: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

The court will complete the rest of this form.

(3) Next Court Date

a. ☐ The request to reschedule the court date is **denied**.

Your court date is: _____

Your court date is not rescheduled because: _____

_____

_____

_____

_____

_____

b. ☐ The request to reschedule the court date is **granted**. Your court date is rescheduled for the day and time listed below. See (4)–(7) for more information.

New Court Date → Date: _____ Time: _____ Dept.: _____ Room: _____

Name and address of court, if different from above:

_____

_____

_____

(4) Reason Court Date Is Rescheduled

a. ☐ There is good cause to reschedule the court date *(check one)*:

(1) ☐ The party requesting the order has not served the party preventing contact.

(2) ☐ Other: _____

_____

_____

b. ☐ This is the first time that the party preventing contact has asked for more time to prepare.

c. ☐ The court reschedules the court date on its own motion.

This is a Court Order.

Case Number:

5 Serving (Giving) Order to Other Party

The request to reschedule was made by the:

a. ☐ **Party Requesting Order**

(1) ☐ You do not have to serve the party preventing contact because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the party preventing contact personally served with a copy of this order and a copy of all documents listed on form EA-309, item 5, by *(date):* _____

(3) ☐ You must have the party preventing contact served with a copy of this order. This can be done by mail. You must serve by *(date):* _____

(4) ☐ Other: _____

b. ☐ **Party Preventing Contact**

(1) ☐ You do not have to serve the party requesting contact because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the party requesting contact personally served with a copy of this order by *(date):* _____

(3) ☐ You must have the party requesting contact served with a copy of this order. This can be done by mail. You must serve by *(date):* _____

(4) ☐ Other: _____

c. ☐ **Court**

(1) ☐ Further notice is not required.

(2) ☐ The court will mail a copy of this order to all parties by *(date):* _____

(3) ☐ Other: _____

This is a Court Order.

Case Number:

6 No Fee to Serve

The sheriff or marshal will serve this order for **free**.
Bring a copy of all the papers that need to be served to the sheriff or marshal.

7 ☐ Other Orders

_____

_____

_____

_____

Date: _____

_____
Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms.htm* for *Disability Accommodation Request* (*form MC-410*). (Civ. Code, § 54.8.)

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order on Request to Continue Hearing on Request to Allow Contact* (form EA-316) 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

EA-320 Response to Request for Elder or Dependent Adult Restraining Order Allowing Contact

Clerk stamps date here when form is filed.

DRAFT

3/23/2022

Not approved by the Judicial Council

Use this form to respond to the *Request* (form EA-300)

- Read *How Can I Respond to a Request for an Elder or Dependent Adult Restraining Order Allowing Contact?* (form EA-320-INFO) to protect your rights.
- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—**not you or anybody else involved in the case**—serve the person or persons listed in (1) by mail with a copy of this form and any attached pages. *(Use form EA-250,* Proof of Service of Response by Mail.*)*.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(1) Elder or Dependent Adults to Receive Contact

Names: _____

☐ Name of person asking for the order allowing contact, if different *(This is the person named in item (1) of the request (form EA-300).)*

_____

(2) Person Preventing Contact

a. Your Name: _____

Your Lawyer *(if you have one for this case)*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Present your response and any opposition at the hearing. Write your hearing date, time, and place from form EA-309, item (3), here:

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

At the hearing, the court may make an order against you that last for up to five years.

(3) ☐ Order Allowing Contact

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested. *(Specify why you disagree in item (6) on page 4.)*

(4) ☐ Denial

I did not do anything I was accused of in item (8) of form EA-300. *(Skip to (6).)*

Case Number:

5 ☐ Justification or Excuse

If I did some or all of the things that the person in (1) has accused me of, my actions were justified or excused for the following reasons *(explain):*

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 5–Justification or Excuse" as a title. You may use form MC-025,* Attachment.

6 ☐ Reasons I Do Not Agree to the Order Requested

Explain why you do not agree with the requested order allowing contact.

☐ *Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 6—Reasons I Disagree" as a title. You may use form MC-025,* Attachment.

Case Number:

7 ☐ Lawyer's Fees and Costs

a. ☐ I ask the court to order payment of my ☐ lawyer's fees ☐ court costs. The amounts requested are:

Item	Amount	Item	Amount
	$		$
	$		$
	$		$

☐ *Check here if there are more items. Put the items and amounts on the attached sheet of paper and write "Attachment 7—Lawyer's Fees and Costs" for a title. You may use form MC-025,* Attachment.

b. ☐ I ask the court to deny the request of the person asking for the order named in 1 that I pay his or her lawyer's fees and costs.

8 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____

Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

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

EA-320-INFO How Can I Respond to a Request for an Elder or Dependent Adult Restraining Order Allowing Contact?

What is a restraining order allowing contact?

It is a court order that prohibits you from preventing an elder or dependent adult from having contact with someone the elder or dependent wishes to have contact with.

Who can ask for a restraining order allowing contact?

If you are preventing an elder or dependent adult from having contact with a person that the elder or dependent adult wishes to have contact with the following people can ask for a restraining order:

- The elder or dependent adult;
- The person that the elder or dependent adult is being prevented from seeing; *or*
- A conservator, attorney-in-fact, or person appointed guardian ad litem for the elder or dependent adult

I've been served with a request for elder or dependent adult restraining order allowing contact. What do I do now?

Read the papers served on you very carefully. The *Notice of Court Hearing* tells you when to appear in court.

What if I don't agree with what the request says?

If you disagree with the order the person is asking for, fill out form EA-320, *Response to Request for Elder and Dependent Adult Restraining Order Allowing Contact*, before your hearing date and file it with the court. If you need to include attachments, you can use form MC-025. You can get the forms from legal publishers or on the internet at *www.courts.ca.gov*. You also may be able to find them at your local courthouse or county law library.

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3/23/2022
Not approved by
the Judicial Council

Do I have to serve the other parties with a copy of my response?

Yes. Have someone age 18 or older**—not you or anybody else involved in the case—**mail a copy of completed form EA-320 to the other parties in the case (or their lawyers). (This is called "service by mail.")

The person who serves the form by mail must fill out form EA-250, *Proof of Service of Response by Mail*. Have the person who did the mailing sign the original. Take a completed form back to the court clerk or bring it with you to the hearing.

Should I go to the court hearing?

Yes. You should go to court on the date listed on form EA-309, *Notice of Court Hearing to Allow Contact*. If you do not go to the hearing, the judge can make an order against you without hearing from you.

How long does the order last?

The length of the order is determined by the court and could last for up to five years.

Do I need a lawyer?

Having a lawyer is always a good idea, but it is not required and you are not entitled to a free court-appointed attorney. Ask the court clerk about free and low-cost legal services and self-help centers in your county.

Will I see the person who asked for the order at the court hearing?

Yes. Assume that the person who is asking for the order will attend the hearing. Do not talk to that person unless the judge or that person's attorney says that you can.

Can I bring a witness to the court hearing?

Yes. You can bring witnesses or documents that support your case to the hearing. But if possible, you should also bring the witnesses' written statements of what they saw or heard. Their statements must be made under penalty of perjury. You can use form MC-030 for this.

EA-320-INFO How Can I Respond to a Request for an Elder or Dependent Adult Restraining Order Allowing Contact?

Can I agree with the elder or dependent adult to cancel the order?

No. Once the order is issued, only the judge can change or cancel it. You or the person who requested the order would have to file a request with the court to cancel the order.

What if I don't speak English?

When you file your papers, ask the clerk if a court interpreter is available. You can also use form INT-300, *Request for Interpreter (Civil)*, or a local court form or website to request an interpreter. For more information about court interpreters, go to *www.courts.ca.gov/selfhelp-interpreter.htm*.

What if I have a disability?

If you have a disability and need an accommodation while you are at court, you can use form MC-410, *Disability Accommodation Request*, to make your request. You can also ask the ADA Coordinator in your court for help. For more information, see form MC-410-INFO, *How to Request a Disability Accommodation for Court.*

For help in your area, contact:

[Local information may be inserted.]

EA-330 Elder or Dependent Adult Restraining Order After Hearing Allowing Contact

Clerk stamps date here when form is filed.

DRAFT

3/23/2022

Not approved by the Judicial Council

Person in (1) must complete items (1), (2), and (3) only.

(1) Elder or Dependent Adults to Receive Contact

a. Full Names: _____

☐ Name of person asking for the order, if different *(This is the person checked in item (1) of the request (form EA-300).)*

Full Name: _____

Lawyer for person named above *(if any for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(2) Person Preventing Contact

Full Name: _____

(3) Person Who Wants to Have Contact with the Elder or Dependent Adults

Full Name: _____

(4) Expiration Date

This Order, except for any award of lawyer's fees, expires at

Time: _____ ☐ a.m. ☐ p.m. ☐ midnight on *(date):* _____

If no expiration date is written here, this Order expires three years from the date of issuance.

(5) Hearing

a. There was a hearing on *(date):* _____ *at (time):* _____ in Dept.: _____ Room: _____ *(Name of judicial officer):* _____ made the orders at the hearing.

b. These people were at the hearing:

(1) ☐ The elder or dependent adults to receive contact

(2) ☐ The lawyer for the elder or dependent adults *(name):* _____

(3) ☐ The person in (1) requesting the order (if not the elder or dependent adult)

(4) ☐ The lawyer for the person in (1) requesting the order *(name):* _____

(5) ☐ The person in (2)

(6) ☐ The lawyer for the person in (2) *(name):* _____

☐ Additional persons present are listed at the end of this Order on Attachment 5.

c. ☐ The hearing is continued. The parties must return to court on *(date):* _____ at *(time):* _____.

This is a Court Order.

Case Number:

To the Person in 2 :

The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.

6 ☐ Order Allowing Contact

a. ☐ You may not prevent the person in 3 from in-person or remote online or telephonic visits with the elder or dependent adults in 1.

b. ☐ Other terms of order allowing contact *(specify)*:

7 ☐ Other Orders *(specify):*

☐ Additional orders are attached at the end of this Order on Attachment 7.

8 ☐ Lawyer's Fees and Costs

You must pay to the person who requested the order the following amounts for ☐ lawyer's fees ☐ costs:

Item	Amount	Item	Amount
	$		$
	$		$

☐ Additional amounts are attached at the end of this Order on Attachment 8.

This is a Court Order.

To the Person in (1):

(9) Service of Order

a. ☐ The person in (2) personally attended the hearing. No other proof of service is needed.

b. ☐ The person in (2) was not at the hearing. Someone—but not anyone in (1)—must personally serve a copy of this Order on the person in (2).

(10) No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal serves this Order, they will do so for free.

(11) Number of pages attached to this Order, if any: _____

Date: _____

_____
Judicial Officer

This is a Court Order.

Case Number:

Instructions for Law Enforcement

Enforcing the Restraining Order

This order is enforceable by any law enforcement agency that has received the order or is shown a copy of the order. If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

Start Date and End Date of Order

This order *starts* on the date next to the judge's signature on page 3. The order *ends* on the expiration date in item (3) on page 1.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- 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 informed of the order by an officer.

If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

Conflicting Orders—Priority of Enforcement

If more than one restraining order has been issued, the orders must be enforced in the following order of precedence: *(See Pen. Code, § 136.2; Fam. Code, §§ 6383(h)(2), 6405(b).)*

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and 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 over any other restraining or protective order.
3. *Criminal Order:* If none of the orders include an EPO or a no-contact order, a criminal protective order (CPO) issued in a criminal case involving domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil restraining order that conflicts with the CPO. All orders in the civil restraining order that do not conflict with the CPO must be enforced.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Elder or Dependent Adult Restraining Order After Hearing Allowing Contact* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____ , Deputy

This is a Court Order.

Item number: 13

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: March 30, 2022

Title of proposal: Juvenile Law: Restraining Orders

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Repeal Cal. Rules of Court, rule 5.495; amend rules 5.620, 5.625, and 5.630; adopt forms JV-258, JV-259, JV-260, JV-265, JV-268, JV-272, and JV-274; revise forms JV-245, JV-247, JV-250, and JV-255; revise form JV-251 and renumber as forms JV-251 and JV 253; revise form DV-800/JV-252 and renumber as form DV-800/JV-270; and revise form DV-800/JV-252-INFO and renumber as form DV-800-INFO/JV-270-INFO

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Kerry Doyle, 415-865-8791, kerry.doyle@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, 2021
Project description from 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 and will take action only where necessary to allow courts to implement the legislation efficiently.
Item 1d. SB 320 (Eggman) Domestic violence protective orders: possession of a firearm (Ch. 685, Stats. of 2021))
Changes court procedures for issuing domestic violence restraining orders in order to better effectuate the requirement in existing law that a party subject to such an order must relinquish their firearms and ammunition. Codifies existing Rules of Court related to the relinquishment of a firearm by a person subject to a domestic violence restraining order and requires the court to notify law enforcement and the county prosecutor's office when there has been a violation of a firearm or ammunition relinquishment order.
Item 1e. SB 374 (Min) Protective orders: reproductive coercion (Ch. 135, Stats. of 2021)
Revises existing protections against a third party's disclosure of a minor's protected information under a domestic violence restraining order.
Item 1f. SB 538 (Rubio) Domestic violence and gun violence restraining orders (Ch. 686, Stats. of 2021))
Requires courts, by July 1, 2023, to provide for electronic filing and remote appearances in the context of domestic violence restraining orders (DVROs) and gun violence restraining orders (GVROs). This bill also specifies that there are no filing fees related to a petition for a DVRO or a GVRO.

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

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR22-24

Title
Juvenile Law: Restraining Orders

Proposed Rules, Forms, Standards, or Statutes
Repeal Cal. Rules of Court, rule 5.495; amend rules 5.620, 5.625, and 5.630; adopt forms JV-258, JV-259, JV-260, JV-265, JV-268, JV-272, and JV-274; revise forms JV-245, JV-247, JV-250, and JV-255; revise form JV-251 and renumber as forms JV-251 and JV-253; revise form DV-800/JV-252 and renumber as form DV-800/JV-270; and revise form DV-800/JV-252-INFO and renumber as form DV-800-INFO/JV-270-INFO

Proposed by
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair

Action Requested
Review and submit comments by May 13, 2022

Proposed Effective Date
January 1, 2023

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Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends repealing one rule and amending three rules of the California Rules of Court, adopting seven forms, and revising seven current forms, to conform to recent statutory changes enacted by Senate Bill 1141 (Rubio; Stats. 2020, ch. 248) and Senate Bill 374 (Min; Stats. 2021, ch. 135) regarding the definition of "disturbing the peace" in restraining order cases; and to conform to recent statutory changes enacted by Senate Bill 320 (Eggman; Stats. 2021, ch. 685) and Assembly Bill 1057 (Petrie-Norris; Stats. 2021, ch. 682) regarding firearms and ammunition prohibitions. The proposal will also provide separate application and order forms relating to restraining orders against a juvenile, and includes one new proof of service form to ensure the juvenile restraining orders are entered into the California Law Enforcement Telecommunications System (CLETS) database. At the same time, the committee proposes converting the forms to plain-language forms, so they are consistent with other restraining order forms and are easier to understand, complete, and enforce.

Background

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] California Rules of Court, rule 5.630(c) provides that the definition of "abuse" in Family Code section 6203 applies to restraining orders issued under Welfare and Institutions Code section 213.5.[2] Family Code section 6203 includes in the definition of "abuse" "to engage in any behavior that has been or could be enjoined pursuant to Section 6320." Effective January 1, 2022, the Judicial Council revised several Domestic Violence forms to implement the definition in SB 1141. This proposal mirrors that language. See Judicial Council of Cal., Advisory Com. Rep., *Domestic Violence: Forms that Implement New Laws* (Sept. 3, 2021). Senate Bill 374 more recently added "reproductive coercion" as an example of "coercive control."[3]

Senate Bill 320 expands the courts' role in ensuring that firearms and ammunition are properly relinquished by people subject to domestic violence restraining orders. According to the legislative analysis, mandatory statewide policies are needed to ensure that restrained persons are promptly disarmed after an order for relinquishment is made. The statute largely codifies existing rule 5.495 of the California Rules of Court. [4] The legislative analysis indicates that the presence of a firearm in the home during an incident of domestic violence significantly increases the risk of homicide.[5]

The Proposal

Changes already approved by the Judicial Council

The request and restraining order forms in this proposal[6] follow the language to implement SB 1141's definition of "coercive control" as approved by the Judicial Council for the council's Domestic Violence (DV) forms series, effective January 1, 2022.[7] The new language includes examples of coercive control on the request and order forms, as well as definitions of disturbing the peace and coercive control on the order forms. The only definition in the coercive control items that has not yet been reviewed by the Judicial Council is the definition of "reproductive coercion," which is contained in new legislation (SB 374) and is discussed below.

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[1] Fam. Code, § 6320(c).

[2] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[3] Fam. Code, § 6320(c).

[4] For this reason, the committee is also proposing the repeal of that rule. See Invitation to Comment, Domestic Violence: Rule and Form Changes to Implement New Laws, at https://www.courts.ca.gov/policyadmin-invitationstocomment.htm .

[5] Sen. Floor Analysis, to Sen. Bill 320 (2021–2022 Reg. Sess.) Sept. 9, 2021, p. 5.

[6] JV-245, JV-250, JV-255, JV-258, JV-260, and JV-265

[7] See Judicial Council of Cal, Advisory Com. Rep., *Domestic Violence: Forms that Implement New Laws* (Sept. 3, 2021) https://jcc.legistar.com/View.ashx?M=F&ID=9785460&GUID=13510582-8DBB-4B19-AD68-118880969612

The forms in this proposal also limit questions about physical characteristics on the request forms—forms JV-245 and JV-258—as approved by the Judicial Council for the Domestic Violence forms, effective January 1, 2022.[8]

The item specifically listing existing criminal protective orders has been removed from the order forms (item 12 on the current JV-250 and item 7 on the current JV-255), as approved by the Judicial Council for the Domestic Violence forms, effective January 1, 2022.[9]

Reproductive coercion

Senate Bill 374 adds "reproductive coercion" as an example of "coercive control."[10] To implement SB 374, the committee is proposing to revise the restraining order forms with a definition of reproductive coercion. Under Family Code section 6320(c)(5), reproductive coercion is defined as "control over the reproductive autonomy of another through force, threat of force, or intimidation, and may include, but is not limited to, unreasonably pressuring the other party to become pregnant, deliberately interfering with contraception use or access to reproductive health information, or using coercive tactics to control, or attempt to control, pregnancy outcomes." The committee proposes simplifying the statutory language as follows: "[c]ontrolling someone's reproductive choices, such as using force, threat, or intimidation to pressure someone to be or not be pregnant, and to control or interfere with someone's contraception, birth control, pregnancy, or access to related health information."[11]

Firearm parts

Assembly Bill 1057 adds to the definition of a "firearm" under the Domestic Violence Prevention Act firearm parts, specifically receivers, frames, and "firearm precursor parts," which are unfinished receivers and frames.[12] This means that a restrained person may not have these parts for the duration of the order. This new definition of firearm will also apply to gun violence restraining orders. Because this bill impacts two protective order forms series, the council's

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[8] The questions regarding the proposed restrained person are limited to name, gender, race, and age, with date of birth optional, consistent with what is required by the Department of Justice to register a protective order into CLETS. All other information regarding the restrained person, including address and physical characteristics, will be requested only on the order forms and form CLETS-001. A "nonbinary" option will be included for gender. See Judicial Council of Cal., Advisory Com. Rep., *Domestic Violence: Forms that Implement New Laws* (Sept. 3, 2021), page 4 at https://jcc.legistar.com/View.ashx?M=F&ID=9785460&GUID=13510582-8DBB-4B19-AD68-118880969612

[9] The committee concluded that this item was unnecessary because criminal protective orders do not automatically have priority in enforcement over other restraining orders, as they did before the passage of Assembly Bill 176 (Campos; Stats. 2013, ch. 263). In response to an alleged violation, a law enforcement officer would need to 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. See Judicial Council of Cal. Adv. Com. Rep., *Domestic Violence: Forms that Implement New Laws* (Sept. 3, 2021), page 8 at https://jcc.legistar.com/View.ashx?M=F&ID=9785460&GUID=13510582-8DBB-4B19-AD68-118880969612

[10] Fam. Code, § 6320(c).

[11] See forms JV-250, item 10; JV-251, item 10; JV-255, item 12; and JV-256, item 12.

[12] Pen. Code, § 16531. The change is intended to include so-called "ghost guns" (unserialized and untraceable firearms that can be bought online and assembled at home) in the items that restrained people cannot possess and must surrender.

Family and Juvenile Law Advisory Committee ("the committee") worked with the council's Civil and Small Claims Advisory Committee to harmonize changes to the extent possible. Both committees propose referring to receivers, frames, and unfinished receivers/frames as "firearm parts" rather than "firearms" or "firearm precursor parts." The committees also propose using the nomenclature "ghost guns" on the information forms.

Plain-language forms

In addition to the changes needed to implement SB 1141, SB 374, SB 320, and AB 1057, the committee is proposing to convert the juvenile protective order forms to the council's plain-language format. All other protective order form series types (e.g., for domestic violence, civil harassment, and elder abuse protective orders) are in this format.

The committee proposes to convert the juvenile restraining orders to plain language for several reasons. First, the plain-language forms, although longer than traditional formatted council forms, use language that is easier for both the protected person and restrained person to understand. Second, it may be easier for judicial officers who are new to the juvenile court or who have multiple assignments to review and use the plain-language forms, since they may be familiar with the other protective order types that are currently in plain-language format. Additionally, law enforcement officers are accustomed to seeing and enforcing the plain-language forms, so converting the juvenile forms to the same format will make them easier to enforce. Places like daycare facilities and schools are also used to seeing protective orders in the plain-language format, which would make the juvenile restraining orders in plain language easier to understand by people who care for children who may be protected by the orders.

Restraining orders against a child

The orders that a court can make restraining a child in a juvenile justice (delinquency) case are very limited compared to the orders a court can make protecting a child in the juvenile court.[13] Many of the orders on the current *Notice of Hearing and Temporary Restraining Order—Juvenile* (form JV-250) and the current *Restraining Order—Juvenile* (form JV-255) cannot be made in a juvenile justice case when the child is the restrained party. To clarify what orders the court can make in these cases, the committee proposes creating a new form containing only the limited orders a court can make, and law enforcement can enforce, restraining a child under section 213.5(b). Additionally, the basis for granting the restraining order is limited in section 213.5(b) to the protected party is at risk because of the restrained person's actions.

Currently, the orders restraining a child are contained in one item on the current protective order (item 6 on JV-250 and item 4 on JV-255), while most of the other orders on those order forms cannot be made against a restrained child, including the stay-away and move-out orders. The limitations make the current orders in juvenile justice cases difficult to issue, understand, and enforce. The current request (form JV-245) does not specify which of the orders in the request are allowable against a child under the controlling statute for juvenile justice cases or have an option to request only those orders. The committee is therefore proposing to create new, separate

[13] § 213.5(b). The juvenile court may only issue orders enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child (§ 213.5(b)).

request and order forms to restrain juveniles in juvenile justice cases. This would achieve a goal of this proposal: to develop forms that are easier to issue, understand, and enforce.

Mirror the Domestic Violence Prevention Act (DVPA) forms

The committee made many items in the juvenile forms consistent with the DVPA forms. The committee considered making all items the same but given the different controlling statutes and differences in DVPA and juvenile court proceedings, this was not always appropriate. For example, there are no move-out or stay-away orders like those contained in the DV order forms in the proposed protective orders against a child because section 213.5(b) does not authorize those orders against a minor.-. Another example is that the checkboxes in item 3a on the request form JV-245—by which an applicant may indicate from a list of abusive behaviors which ones apply in this action—do not appear on the DVPA request form (form DV-100), where the behaviors are presented as examples only. Since checkboxes are on a similar item in the current form JV-245, the committee concluded that these items should be different on the two different forms series. Additionally, the list has much fewer examples of abusive behavior to choose from than the long list of examples on the DVPA forms. Since all parties in dependency proceedings have attorneys, the committee concluded that a shorter list with fewer examples of more common types of abuse was appropriate for the juvenile forms.[14] Also, the social worker or probation officer prepares written reports for the juvenile court that will describe the history and nature of the abuse. Items on the proposed request forms ask if there is a report that supports the request filed with the court (form JV-245, item 3c; form JV-246, item 3b). Because reports are not typically prepared for the court for domestic violence restraining order hearings, a similar item does not appear on the parallel DVPA forms.

Additionally, there are many orders the court can make under the DVPA that the court cannot make under section 213.5; these orders do not appear on the juvenile restraining order forms. The current DVPA forms use the word "continue" for forms regarding changing a court date. Since the committee is proposing to convert the juvenile forms to plain language, the committee concluded that "reschedule" was an easier to understand term than "continue" and proposes using that phrase for the forms to request and order a new hearing date. The use of the term "reschedule" instead of "continue" will be considered in the future for all of the committee's plain-language restraining order forms. Also of note, new Family Code section 6306(f) does not apply to juvenile court restraining orders issued under section 213.5 and, therefore, the new requirement that the court notify law enforcement about noncompliance with a firearms prohibition does not apply and was not included in the juvenile forms implementing SB 320,[15] although the items are reflected in the revisions to the DVPA forms the committee is proposing concurrently with this proposal.

Other orders

The committee considered retaining the items in the restraining order forms in which the juvenile court could include "Other orders," but decided to remove it. The language in section 213.5 does not specify that the court can make orders that are not authorized in the statute. The committee

[14] To limit the list to more common types of abuse, the committee decided to not add a choice for reproductive coercion to the list of abusive behaviors on the juvenile forms, but did include an example of it on the DVPA forms.

[15] This includes forms JV-255, item 9; JV-256, item 9; JV 272, items 2 and 3; and JV-274, item 3.

agreed that removing this item from the form does not prevent the juvenile court from making other orders outside of the restraining order process. The juvenile court has broad discretion to make "any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child" as part of the child's ongoing dependency case.[16] The committee also agreed that certain orders, such as counseling or a batterers' intervention program, could be included elsewhere, in a parent's case plan, for example, or in a restrained child's conditions of probation.

Exclusive jurisdiction

Section 213.5 gives the juvenile court exclusive jurisdiction to issue a restraining order to protect the child who is the subject of a petition under section 300, or any other child in the household.[17] Section 213.5 is a very dense statute that is difficult to understand. To emphasize when the court has exclusive jurisdiction in these proceedings, the committee proposes adding this statutory provision to the rules of court.[18]

Proof of service

Currently, *Proof of Service—Juvenile* (form JV-510) may be used by parties in juvenile proceedings as the form to record proof of service of the juvenile restraining order forms. That form, however, is not specific to the restraining order process. It also does not have a CLETS identifier on the form, which indicates to court clerks that the form must be entered into CLETS. The committee proposes creating a new proof of service form specific to the juvenile restraining order series with a CLETS identifier, which would make it easier for courts to identify the proofs of service that should be entered into this important database. It is critical that these proofs of service be entered into CLETS so that law enforcement can confirm the existence and content of the orders on the scene of an alleged violation of the order.

Conflicting Orders

The committee also proposes to revise the "Conflicting Orders—Priorities for Enforcement" found on the last page of the new and revised restraining order forms. The Criminal Law Advisory Committee identified that the existing language does not accurately reflect the requirements under Penal Code section 136.2(e)(2), which prioritizes enforcement of criminal protective orders in pending cases for domestic violence offenses, specified sex offenses, and offenses requiring sex offender registration over a civil protective order against the same defendant. The specified sex offenses and offenses requiring sex offender registration were added as priorities in Assembly Bill 1498 (Stats. 2014, ch. 665). Further, Assembly Bill 1171 (Stats. 2021, ch. 626) repealed section 262 on spousal rape and amended 136.2(e)(2) to include "former 262." Currently, all protective orders include the same language regarding priority for enforcement. This new language would be used on all the order forms, as they become due for revisions.

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[16] Section 362(a).

[17] Section 213.5(a).

[18] See proposed rule 5.630(a) included in this Invitation to Comment.

Proposed rules

Rule 5.495

Rule 5.495, relating to firearms relinquishment procedures, would be repealed as it is now codified by the provisions in SB 320.[19]

Rule 5.620

Rule 5.620, relating to orders that a court may make after a petition has been filed to make a child a dependent of the court under section 300, including restraining orders, would be amended to use the new plain-language titles of the restraining order forms referenced in the rule.

Rule 5.625

Rule 5.625, relating to orders that a court may make after a petition has been filed to make a child a ward of the court under sections 601 or 602, including restraining orders, would be amended to add two new forms (discussed below) as alternative forms to prepare restraining orders on when the restrained person is the child in a juvenile justice (delinquency) proceeding and to use the new plain-language titles of the other forms referenced in the rule.

Rule 5.630

Rule 5.630, relating to juvenile court restraining orders, would be amended to add three new forms (discussed below) as alternative forms to request and prepare restraining orders on when the restrained person is the child in a juvenile justice (delinquency) proceeding, and to use the new plain-language titles of the other forms referenced in the rule that are being revised in this proposal.

Subpart (a) of the rule would be amended to clarify that the juvenile court has exclusive jurisdiction under section 213.5 to issue a restraining order to protect the child who is the subject of a petition under section 300, or any other child in the household. It would also be amended to repeat the court's authority in section 304 to, on its own motion, issue an order as provided for in section 213.5, or as described in Family Code section 6218.

Subpart (b) of the rule would be amended to include the procedure to follow if the court issues a temporary restraining order by oral motion.

Additionally, the rule would be amended at subpart (d) to reflect the holding in the California Supreme Court case *In re E.F.*[20] that section 213.5incorporates the notice requirements in Code of Civil Procedure section 527(c).

Subpart (h), relating to firearms relinquishments, would be amended to remove the reference to the procedures in rule 5.495 and would replace it with the procedures in Family Code sections 6322.5 and 6389. It would also be amended to add ammunition as required by SB 320.

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[19] Committee is also circulating an Invitation to Comment on proposed revisions to Domestic Violence restraining order forms. See Invitation to Comment, Domestic Violence: Rule and Form Changes to Implement New Laws, at https://www.courts.ca.gov/policyadmin-invitationstocomment.htm The proposed repeal of rule 5.495 is included here for the convenience of commenters.

[20] (2021) 11 Cal.5th 320.

Subpart (k) of the rule would also be amended to remove the repealed statutory language that the criminal records search requirements only apply in courts identified by the Judicial Council as having resources available to perform the searches.

Proposed revised forms

Four forms would be revised to include the new definition of "disturbing the peace" from SB 1141 and SB 374 and to convert the forms to plain-language forms.[21] These forms are *Request for Juvenile Restraining Order* (form JV-245), *Response to Request for Juvenile Restraining Order* (form JV-247), *Notice of Court Hearing and Temporary Restraining Order (Juvenile)* (form JV-250), and *Restraining Order After Hearing (Juvenile)* (form JV-255).

Form JV-245 would also be revised to include an item about notice of the request for a temporary order to reflect the holding in the California Supreme Court case *In re E.F.*[22] that section 213.5 incorporates the notice requirements in Code of Civil Procedure section 527(c).

In developing the plain language forms, the committee paralleled the format for the forms used for domestic violence restraining orders, whenever possible. The plain language changes include simplifying language, eliminating unnecessary repetition, providing more white space on each page, reorganizing content, and minimizing the use of italics. These changes will make the forms easier to understand, complete, and enforce as discussed above under "Plain-language forms."

The current *Answer to Request for Restraining Order* (form JV-247) is an ineffective way to respond to a request for a restraining order. It only allows the person to agree or not agree with the personal conduct order, the move-out order, or the stay-away order. The multiple other orders that can be made are not included on the form. The committee proposes revising this response form and creating another, one for use when the restrained person is an adult, and one for use when the restrained person is a child in a juvenile justice (delinquency) proceeding. Both of these forms are modeled after the current DV response form. Revised form JV-247 would include all the potential orders the petitioner may request and separate items for the person filling out the form to indicate for each requested order why they disagree with the request or to describe a different order they would agree to rather than only a single item where the person can state why the court should not make a restraining order against them, as is on the current form. The form would also be renamed *Response to Request for Juvenile Restraining Order.* (The proposed new form for use when the restrained person is a child in a juvenile justice (delinquency) proceeding is discussed below.)

The committee is also—in another Invitation to Comment—proposing revising two forms relating to the statutory requirements that restrained parties cannot own or possess firearms. The same forms are used for both domestic violence and juvenile law restraining order and the

[21] The format of the forms is different in several ways from the traditional Judicial Council plain-language style but is the same as that in DV forms approved by the Judicial Council effective January 1, 2022. The differences are described in more detail in the invitation to comment on those forms prior to the council's action. See Invitation to Comment, Domestic Violence: Revising Forms to Implement New Laws at https://www.courts.ca.gov/documents/spr21-14.pdf

[22] (2021) 11 Cal.5th 320.

proposed revisions can be viewed in this committee's current Invitation to Comment titled *Domestic Violence: Rule and Form Changes to Implement New Laws*.[23] The proposed revisions are summarized here as well for the convenience of commenters.

Proof of Firearms Turned In, Sold, or Stored (form DV-800/JV-252) would be revised to include the new provisions about firearm parts from AB 1057. It would also be renamed *Proof of Surrender of Firearms, Firearm Parts, and Ammunition* and renumbered as form DV-800/JV-270. Similar revisions would be made to the current *How Do I Turn In, Sell, or Store My Firearms?* (form DV-800-INFO/JV-252-INFO). It would be renamed *How Do I Turn In, Sell, or Store Firearms, Firearm Parts, and Ammunition?* and renumbered as form DV-800-INFO/JV-270-INFO.

For the revised forms DV-800/JV-270, the committees propose reorganizing the form to improve usability. Specifically, the form has been reorganized so that all the information fields the restrained person must complete are listed consecutively on pages 1 and 2. At the top of the form, all users (restrained person, licensed gun dealer, and law enforcement) can clearly see a list of the pages they are responsible for completing. The committees are also interested in collecting additional information, such as whether a specific firearm was stored or sold to a licensed gun dealer (see page 3 of form DV-800/JV-270).

Proposed new forms

***Request for Juvenile Restraining Order Against a Child* (form JV-258), *Response to Request for Juvenile Restraining Order* (form JV-259), *Court Hearing and Temporary Restraining Order Against a Child* (form JV-260), and *Juvenile Restraining Order After Hearing—Against Child* (form JV-265)**

These would be new mandatory forms to request a restraining order and issue restraining orders when the restrained person is the child in a juvenile justice (delinquency) proceeding. As discussed above, the orders that a court can make restraining a child in a juvenile justice (delinquency) case are very limited in section 213.5(b)[24] so a separate set of forms is appropriate. Many of the orders on the current *Notice of Hearing and Temporary Restraining Order—Juvenile* (form JV-250) and the current *Restraining Order—Juvenile* (form JV-255) cannot be made in a juvenile justice case when the child is the restrained party. To clarify what orders the court can make in these cases, the committee decided it was best to create new request and order forms with the limited orders allowed under section 213.5(b).

The order forms would also include the new provisions about ammunition from SB 320, as well as the new provisions about gun parts from AB 1057. Form JV-258 would also be revised to include an item about notice of the request for a temporary order to reflect the holding in the California Supreme Court case *In re E.F.*[25] that section 213.5 incorporates the notice requirements in Code of Civil Procedure section 527(c).

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[23] Invitations to comment may be viewed at https://www.courts.ca.gov/policyadmin-invitationstocomment.htm

[24] The juvenile court may issue orders enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child (§ 213.5(b)).

[25] (2021) 11 Cal.5th 320.

***Response to Request for Juvenile Restraining Order Against a Child* (form JV-259)**
This would be a mandatory form for a child in a juvenile justice (delinquency) proceeding to use to respond to a request for a restraining order against them and to indicate whether they agree with the requested orders. This form is modeled after the current DV response form and includes all the potential orders that have been requested and, for each, space for the child to indicate why they agree or disagree, or to describe a different order they would agree to.

***Request to Reschedule Restraining Order Hearing* (form JV-253); *Order on Request to Reschedule Hearing* (form JV-254)**
The current *Request and Order to Continue Hearing* (form JV-251) would be separated and two individual plain-language forms are proposed in its place, one for the request and one for the order, and numbered as forms JV-253 and JV-254, respectively. Creating two forms will allow for both the request and the order to be filed separately with the court.

***Proof of Personal Service* (form JV-268)**
This would be a new mandatory form to file with the court to show what forms were served on the restrained person and when. Please see the discussion of this form above on page 6.

***Prohibited Items Finding and Orders* (form JV-272)**
This mandatory form would be attached to the temporary restraining order forms JV-250 or JV-260, or *Order on Request to Reschedule Hearing* (form JV-254). It implements SB 320 and AB 1057, contains a finding the court can make that the restrained person has prohibited items (firearms, firearm parts, or ammunition), and allows the court to set a hearing to review firearms and ammunition compliance.

***Noncompliance with Firearms and Ammunition Order* (form JV-274)**
This mandatory form implements SB 320 and AB 1057 and would be used to provide notice to agencies that a restrained person has guns, firearms, firearm parts, or ammunition in violation of a restraining order. Because some information shared with law enforcement may be confidential, like certain information obtained in warrants or a background check, the committee proposes that this form be confidential.

Alternatives Considered

Plain-language forms
The committee considered maintaining the juvenile protective order forms in standard format instead of converting them to plain language. For the reasons stated above in this invitation to comment, the committee is proposing to convert the forms in this proposal to the plain language format.

Restraining orders against a child
The committee considered not creating a new set of forms for restraining orders against children in juvenile justice (delinquency) proceedings and continuing to use the current forms. However, the committee concluded that the new forms would be of assistance to both parties and the courts, by clarifying what orders—much more limited than in other juvenile restraining orders—

are available in such cases. For the reasons discussed above, the committee decided it was best to create new forms with the limited orders allowed under section 213.5(b).

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. In implementing the revised forms, courts will incur standard reproduction costs. While the plain-language forms have more pages than the standard forms, most people requesting and obtaining restraining orders in the juvenile court have lawyers, so the lawyers will bear a good deal of the reproduction costs, but on a much smaller scale than court reproduction would cost.

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 changing the juvenile restraining order forms to plain language as proposed here be helpful to parties and the courts?
- Would the proposed second set of juvenile restraining order forms, solely for the proceedings where the restrained person is a child in the juvenile justice system, be helpful to parties and courts?
- Rather than a narrative description of abuse, would it be better for proposed form JV-258 at item 3 to have a checkbox list of items similar to what is on the proposed JV-245 at item 3?
- Are there additional examples of abuse that should be added to the list of behaviors on the proposed JV-245 at item 3?

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

- Would implementing these forms in a new plain-language format be unduly burdensome to implement during the pandemic? Or does the benefit of having forms that are easier to understand, complete, and enforce outweigh the implementation burden?
- 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, rules 5.495, 5.620, 5.625 and 5.630, at pages 14-21
2. Forms JV-245, JV-247, JV-250, JV-253, JV-254, JV-255, JV-258, JV-259, JV-260, JV-265, JV-268, DV-800/JV-270, DV-800-INFO/JV-270-INFO, JV-272, and JV-274 at pages 22-78
3. Link A: Assembly Bill 1057, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1057*
4. Link B: Senate Bill 320, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB320*
5. Link C: Senate Bill 374, *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB374*

6. Link D: Senate Bill 1141, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1141*

Rule 5.495 of the California Rules of Court would be repealed and rules 5.620, 5.625, and 5.630 would be amended, effective January 1, 2023, to read:

Chapter 4. Protective Orders [Repealed]

Rule 5.495. Firearm relinquishment procedures [Repealed]

~~(a) Application of rule~~

~~This rule applies when a family or juvenile law domestic violence protective order as defined in Family Code section 6218 or Welfare and Institutions Code section 213.5 is issued or in effect.~~

~~(b) Purpose~~

~~This rule addresses situations in which information is presented to the court about firearms and provides the court with options for appropriately addressing the issue. This rule is intended to:~~

~~(1) Assist courts issuing domestic violence protective orders in determining whether a restrained person has a firearm in or subject to his or her immediate possession or control.~~

~~(2) Assist courts that have issued domestic violence protective orders in determining whether a restrained person has complied with the court's order to relinquish, store, or sell the firearm under Family Code section 6389(c).~~

~~(c) Firearm determination~~

~~When relevant information is presented to the court at any noticed hearing that a restrained person has a firearm, the court must consider that information to determine, by a preponderance of the evidence, whether the person subject to a protective order as defined in Family Code section 6218 or Welfare and Institutions Code section 213.5 has a firearm in or subject to his or her immediate possession or control in violation of Family Code section 6389.~~

~~(d) Determination procedures~~

~~(1) In making a determination under this rule, the court may consider whether the restrained person filed a firearm relinquishment, storage, or sales receipt or if an exemption from the firearm prohibition was granted under Family Code section 6389(h).~~

~~(2) The court may make the determination at any noticed hearing when a domestic violence protective order is issued, at a subsequent review hearing, or at any subsequent family or juvenile law hearing while the order remains in effect.~~

~~(3) If the court makes a determination that the restrained person has a firearm in violation of Family Code section 6389, the court must make a written record of the determination and provide a copy to any party who is present at the hearing and, upon request, to any party not present at the hearing.~~

~~(e) Subsequent review hearing~~

~~(1) When presented with information under (c), the court may set a review hearing to determine whether a violation of Family Code section 6389 has taken place.~~

~~(2) The review hearing must be held within 10 court days after the noticed hearing at which the information was presented. If the restrained person is not present when the court sets the review hearing, the protected person must provide notice of the review hearing to the restrained person at least 2 court days before the review hearing, in accordance with Code of Civil Procedure 414.10, by personal service or by mail to the restrained person's last known address.~~

~~(3) The court may for good cause extend the date of the review hearing for a reasonable period or remove it from the calendar.~~

~~(4) The court must order the restrained person to appear at the review hearing.~~

~~(5) The court may conduct the review hearing in the absence of the protected person.~~

~~(6) Nothing in this rule prohibits the court from permitting a party to appear by telephone under California Rules of Court, rule 5.9.~~

~~(f) Child custody and visitation~~

~~(1) If the court determines that the restrained person has a firearm in violation of Family Code section 6389, the court must consider that determination when deciding whether the restrained person has overcome the presumption in Family Code section 3044.~~

(2) An order for custody or visitation issued at any time during a family law matter must be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members, as specified in Family Code section 3020. The court must consider whether the best interest of the child, based on the circumstances of the case, requires that any visitation or custody arrangement be limited to situations in which a third person, specified by the court, is present, or that visitation or custody be suspended or denied, as specified in Family Code section 6323(d).

(3) An order for visitation issued at any time during a juvenile court matter must not jeopardize the safety of the child, as specified in Welfare and Institutions Code section 362.1.

(g) Other orders

(1) The court may consider a determination that the restrained person has a firearm in violation of Family Code section 6389 in issuing:

(A) An order to show cause for contempt under section 1209(a)(5) of the Code of Civil Procedure for failure to comply with the court's order to surrender or sell a firearm; or

(B) An order for money sanctions under section 177.5 of the Code of Civil Procedure.

(2) This rule should not be construed to limit the court's power to issue orders it is otherwise authorized or required to issue.

Advisory Committee Comment

When issuing a family or juvenile law domestic violence protective order as defined in Family Code section 6218 or Welfare and Institutions Code section 213.5, ex parte or after a noticed hearing, the court is required to order a restrained person "to relinquish any firearm in [that person's] immediate possession or control or subject to [that person's] immediate possession or control." (Fam. Code, § 6389(c)(1).) Several mandatory Judicial Council forms—*Temporary Restraining Order* (form DV-110), *Restraining Order After Hearing* (form DV-130), and *Notice of Hearing and Temporary Restraining Order—Juvenile* (form JV-250)—include mandatory orders in bold type that the restrained person must sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms within his or her immediate possession or control within 24 hours after service of the order and must file a receipt with the court showing compliance with the order within 48 hours of receiving the order. California law requires personal service of the request for and any temporary protective order at least five days

~~before the hearing, unless the court issues an order shortening time for service. Therefore, by the date of the hearing, the restrained person should have relinquished, stored, or sold his or her firearms and submitted a receipt to the court.~~

~~Courts are encouraged to develop local procedures to calendar firearm relinquishment review hearings for restrained persons.~~

~~Section (f) of this rule restates existing law on the safety and welfare of children and family members and recognizes the safety issues associated with the presence of prohibited firearms.~~

~~Although this rule does not require the court to compel a restrained person to testify, the court may wish to advise a party of his or her privilege against self-incrimination under the Fifth Amendment to the United States Constitution. The court may also consider whether to grant use immunity under Family Code section 6389(d).~~

Rule 5.620. Orders after filing under section 300

(a) * * *

(b) Restraining orders (§ 213.5)

After a petition has been filed under section 300, and until the petition is dismissed or dependency is terminated, the court may issue restraining orders as provided in rule 5.630. A temporary restraining order must be prepared on *Notice of Court Hearing and Temporary Restraining Order ~~– Juvenile~~ (Juvenile)* (form JV-250). An order after hearing must be prepared on ~~*Restraining Order – Juvenile*~~ *Restraining Order After Hearing (Juvenile)* (form JV-255).

(c)–(e) * * *

Rule 5.625. Orders after filing of petition under section 601 or 602

(a) Restraining orders (§ 213.5)

After a petition has been filed under section 601 or 602, and until the petition is dismissed or wardship is terminated, the court may issue restraining orders as provided in rule 5.630. A temporary restraining order must be prepared on *Notice of Court Hearing and Temporary Restraining Order ~~– Juvenile~~ (Juvenile)* (form JV-250) or if the restrained person is the subject of a petition under section 601 or 602, *Court Hearing and Temporary Restraining Order Against a Child (Juvenile)* (form JV-260). An order after hearing must be prepared on ~~*Restraining Order – Juvenile*~~ *Restraining Order After Hearing (Juvenile)* (form JV-255) or, if the

restrained person is the subject of a petition under section 601 or 602, *Restraining Order After Hearing—Against Child (Juvenile)* (form JV-265).

(b)–(c) * * *

Rule 5.630. Restraining orders

(a) Court's authority (§§ 213.5, 304)

(1) After a petition has been filed under section 300, 601, or 602, and until the petition is dismissed or dependency or wardship is terminated, or the ward is no longer on probation, the court may issue restraining orders as provided in section 213.5. The juvenile court has exclusive jurisdiction under section 213.5 to issue a restraining order to protect the child who is the subject of a petition under section 300, or any other child in the household.

(2) The juvenile court, on its own motion, may issue an order as provided for in section 213.5, or as described in Family Code section 6218.

~~(c)~~**(b)** * * *

~~(b)~~**(c) Application for restraining orders**

(1) Application for restraining orders may be made orally at any scheduled hearing regarding the child who is the subject of a petition under section 300, 601, or 602, or may be made by written application, or may be made on the court's own motion.

(2) If the application is made orally and the court grants a temporary order, the court may direct the requesting party to prepare a temporary order, as directed in (8) below, obtain the judicial officer's signature, file the order with the court, and serve the order on the restrained person.

~~(2)~~(3) ~~The written~~ If the application is made in writing, it must be submitted on ~~*Request for Restraining Order—Juvenile*~~ *Request for Juvenile Restraining Order* (form JV-245) or, if the request is for a restraining order against the child or youth who is the subject of a petition under section 601 or 602, *Request for Juvenile Restraining Order Against a Child* (form JV-258).

~~(3)~~(4) A person ~~requesting~~ applying for a restraining order in writing must submit to the court with the ~~request~~ application a completed *Confidential CLETS Information ~~Form~~* (form CLETS-001) under rule 1.51.

~~(d) Applications—procedure~~

(5) If the application is related to domestic violence, the ~~The~~ application may be submitted without notice, and the court may grant the ~~petition~~ request and issue a temporary order.

(6) If the application is not related to domestic violence, the notice requirements in Code of Civil Procedure section 527 apply.

~~(1)~~(7) In determining whether or not to issue the temporary restraining order ~~without notice~~, the court must consider all documents submitted with the application and may review the contents of the juvenile court file regarding the child.

~~(2)~~(8) The temporary restraining order must be prepared on *Notice of Court Hearing and Temporary Restraining Order ~~—Juvenile~~ (Juvenile)* (form JV-250) or, if the restrained person is the subject of a petition under section 601 or 602, *Court Hearing and Temporary Restraining Order Against a Child (Juvenile)* (form JV-260), and must state on its face the date of expiration of the order.

~~(e)~~(d) Continuance

(1) The court may grant a continuance under ~~Welfare and Institutions Code~~ section 213.5.

(2) The court must grant one request for continuance by the restrained party for a reasonable period of time to respond to the petition.

~~(2)~~(3) Either ~~*Request and Order to Continue Hearing (Temporary Restraining Order—Juvenile)* (form JV-251)~~ *Order on Request to Reschedule Hearing* (form JV-254) or a new *Notice of Court Hearing and Temporary Restraining Order ~~—Juvenile~~ (Juvenile)* (form JV-250) must be used for this purpose. If the restrained person is the subject of a petition under section 601 or 602, either *Order on Request to Reschedule Hearing* (form JV-254) or a new *Court Hearing and Temporary Restraining Order Against a Child (Juvenile)* (form JV-260) must be used.

~~(f)~~(e) Hearing on application for restraining order

(1) Proof may be by the application and any attachments, additional declarations or documentary evidence, the contents of the juvenile court file, testimony, or any combination of these.

(2) The restraining order hearing may be held at the same time as any regularly scheduled hearing to declare the child a dependent or ward of the juvenile court pursuant to section 300, 601, or 602, or subsequent hearings regarding the dependent or ward.

(3) The restraining order hearing must be held within the timelines in section 213.5(c)(1).

~~(2)~~(4) The order after hearing must be prepared on ~~*Restraining Order—Juvenile*~~ *Restraining Order After Hearing (Juvenile)* (form JV-255) or, if the restrained person is the subject of a petition under section 601 or 602, *Restraining Order After Hearing—Against Child (Juvenile)* (form JV-265), and must state on its face the date of expiration of the order.

~~(g)~~(f) Service of restraining order

When service of *Notice of Court Hearing and Temporary Restraining Order—~~Juvenile~~ (Juvenile)* (form JV-250), *Court Hearing and Temporary Restraining Order Against a Child (Juvenile)* (form JV-260), ~~or~~ *Juvenile Restraining Order After Hearing—~~Juvenile~~* (form JV-255), or *Restraining Order After Hearing—Against Child (Juvenile)* (form JV-265) is made, it must be served with a blank ~~*Proof of Firearms Turned In, Sold, or Stored*~~ *Proof of Surrender of Firearms, Firearm Parts, and Ammunition* (form DV-800/~~JV-252~~ JV-270) and *How Do I Turn In, Sell, or Store ~~My~~ Firearms?~~2~~ ,Firearm Parts, and Ammunition?* (form DV-800-INFO/~~JV-252-INFO~~ JV-270-INFO). Failure to serve form ~~JV-252 or JV-252-INFO~~ JV-270 or JV-270-INFO does not make service of form JV-250, ~~or~~ form JV-255, form JV-260, or form JV-265 invalid.

~~(h)~~(g) The firearm and ammunition relinquishment procedures in ~~rule 5.495~~ Family Code sections 6322.5 and 6389 apply also to restraining orders issued under section 213.5.

~~(i)~~(h) * * *

~~(j)~~(i) Criminal records search (§ 213.5(k) ~~and Stats. 2001, ch. 572, § 7~~)

(1) ~~Except as provided in (3), before~~ Before any hearing on the issuance or denial of a restraining order, the court must ensure that a criminal records search is or has been conducted as described in Family Code section 6306(a). Before deciding whether to issue a restraining order, the court must consider the information obtained from the search.

(2) If the results of the search indicate that an outstanding warrant exists against the subject of the search, or that the subject of the search is currently on parole or probation, the court must proceed under section 213.5(k)(3).

~~(3) The requirements of (1) and (2) must be implemented in those courts identified by the Judicial Council as having resources currently available for these purposes. All other courts must implement the requirements to the extent that funds are appropriated for this purpose in the annual Budget Act.~~

~~(k)~~(j) Modification of restraining order

(1) A restraining order may be modified on the court's own motion or in the manner provided for in ~~Welfare and Institutions Code~~ section 388 and rule ~~5.560~~ 5.570.

(2) A termination or modification order must be made on *Change to Restraining Order After Hearing* (form JV-257). A new ~~*Restraining Order—Juvenile*~~ *Restraining Order After Hearing (Juvenile)* (form JV-255) or, if the restrained person is the subject of a petition under section 601 or 602, a new *Restraining Order After Hearing—Against Child (Juvenile)* (form JV-265), may be prepared in addition to form JV-257.

DV-800/JV-270 Proof of Surrender of Firearms, Firearm Parts, and Ammunition

Clerk stamps date here when form is filed.

Draft- Not approved by the Judicial Council- 3.22..22

Instructions
Who should complete this form?
- Restrained Person- pages 1 and 2
- Licensed Gun Dealer- page 3
- Law Enforcement-page 4

(1) Protected Person

Name: _____

Fill in court name and street address:

Superior Court of California, County of

(2) Restrained Person

a. **Your name:** _____

b. (!) **Address where you can receive court papers**
(This address could be used by the court and by the person in (1) to send you official court dates, orders, 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: _____

Court fills in case number when form is filed.

Case Number:

c. (!) **Your contact information** *(optional)*
(The court could use this information to contact you. If you don't want the person in (1) to have this information, leave it blank or provide a safe phone number or email address. If you have a lawyer, give their information.)

Telephone: _____ Email Address: _____ Fax: _____

d. **Your lawyer's information** *(if you have one)*
Name: _____ State Bar No.: _____
Firm Name: _____

(3) To the Respondent/Restrained Person

The court has ordered you to surrender all of your firearms, firearm parts (any receiver, frame, or unfinished receiver or frame as defined in Penal Code section 16531), and ammunition, by turning them in to law enforcement or by selling them to or storing them with a licensed gun dealer. You may use this form to prove to the court that you have obeyed its orders. Ask the licensed gun dealer to complete item (6) or the law enforcement officer to complete item (7).

After the form is signed, make two copies. File the original with the court clerk. File a copy with the law enforcement agency that served you with the gun violence restraining order. Keep a copy for yourself. Failure to file a receipt with the court and with the law enforcement agency is a violation of the court's order. For help filling out this form, read *How Do I Turn In, Sell, or Store My Firearms?* (form DV-800-INFO/JV-720-INFO).

Case Number:

4 Do you have, own, possess, or control any other firearms, firearm parts, or ammunition besides the items listed in 6 or 7?

☐ No

☐ Yes *(If yes, check one of the boxes below:)*

a. ☐ I filed a *Proof of Surrender of Firearms and Firearm Parts, and Ammunition* (form DV-800) or other proof for those items with the court o*n (date):* _____

b. ☐ I am filing the proof for those firearms, firearm parts, or ammunition along with this proof.

c. ☐ I have not yet filed the proof for the other firearms, firearm parts, or ammunition. *(Explain why not):*

_____
_____
_____
_____
_____
_____
_____

☐ Check here if there is not enough space below for your answer. Use form MC-025 and write "Attachment 4c" for a title.

5 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

Case Number:

6 Licensed Gun Dealer

a. Name of Licensed Gun Dealer: _____

b. License number: _____

c. Address: _____

d. Telephone number: _____ Email address: _____

e. Date of transfer of firearms/ammunition: _____ at: _____ ☐ a.m. ☐ p.m.

f. **Firearms and firearm parts**

	Make	Model	Serial Number, if there is one	Sold	Stored
(1)				☐	☐
(2)				☐	☐
(3)				☐	☐
(4)				☐	☐
(5)				☐	☐
(6)				☐	☐
(7)				☐	☐
(8)				☐	☐

g. **Ammunition**

	Brand	Type	Amount	Sold	Stored
(1)				☐	☐
(2)				☐	☐
(3)				☐	☐
(4)				☐	☐
(5)				☐	☐
(6).				☐	☐
(7)				☐	☐
(8).				☐	☐

☐ Check this box if more space is needed or to use a separate document to list all firearms or ammunition. Write "DV-800/JV-270, item 6" at the top, and attach it to this form.

h. I declare under penalty of perjury under the laws of the State of California that the information listed in 6 is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Signature of licensed gun dealer*

Case Number:

7 Law Enforcement

a. Name of Law Enforcement Agency: _____

b. Name of Law Enforcement Agent: _____

c. Address: _____

d. Telephone number: _____ Email address: _____

e. Date of transfer of firearms/ammunition: _____ at: _____ ☐ a.m. ☐ p.m.

f. **Firearms and firearm parts**

	Make	Model	Serial Number, if there is one	Stored	Seized
(1)				☐	☐
(2)				☐	☐
(3)				☐	☐
(4)				☐	☐
(5)				☐	☐
(6)				☐	☐
(7)				☐	☐
(8)				☐	☐

g. **Ammunition**

	Brand	Type	Amount	Stored	Seized
(1)				☐	☐
(2)				☐	☐
(3)				☐	☐
(4)				☐	☐
(5)				☐	☐
(6)				☐	☐
(7)				☐	☐
(8)				☐	☐

☐ Check this box if more space is needed or to use a separate document to list all firearms or ammunition. Write "DV-800/JV-270, item 7" at the top, and attach it to this form.

h. I declare under penalty of perjury under the laws of the State of California that the information listed in 7 is true and correct.

Date: _____

_____ _____

Type or print your name *Signature of law enforcement agent*

DV-800-INFO/JV-270-INFO How Do I Turn In, Sell, or Store Firearms, Firearm Parts, and Ammunition?

Draft-3.7.22.Not approved by Judicial Council

What do I need to turn in?

You must turn in all **firearms, firearm parts, and ammunition** that you have or control.

Firearms include any:

- Handgun
- Rifle
- Shotgun
- Assault weapon

Firearm parts include:

- Receivers
- Frames
- Unfinished receivers and frames, also called "ghost guns"

How do I turn in my firearms, firearm parts, and ammunition?

You must turn them in to a licensed gun dealer, or law enforcement. You must do so within 24 hours of being served with the restraining order. If you were just in court and the judge granted a restraining order against you, follow the judge's orders right away. If you don't, the judge may be required to notify law enforcement or the local prosecutor of your violation.

How do I sell my firearm?

You can only sell or transfer your firearm to a licensed gun dealer.

How do I store my firearm?

License gun dealers and law enforcement agencies can store firearms but not all of them do. Contact them to find out if they will store your firearms and ask how much the fee is.

How do I take my firearm to law enforcement?

Call your local law enforcement agency to ask about their procedures. They will give you specific instructions, like making sure your firearms are unloaded. Take a copy of the restraining order with you. **Do not** bring your firearms to court.

If I turn in my firearm to law enforcement, how long will they keep it?

It depends. There are procedures for getting your firearm back after a restraining order expires. Ask the law enforcement agency.

After I give my firearm to law enforcement, can I change my mind?

Yes. You are allowed to make one sale through a licensed gun dealer. To do this, a licensed gun dealer must present a bill of sale to your local law enforcement agency. The law enforcement agency will give the licensed gun dealer the firearm you are selling.

How do I prove to the judge that I have complied with the orders?

1. Make sure you get a receipt from the licensed gun dealer or law enforcement for everything you turned in or sold. Bring a copy of form DV-800/JV-270, *Proof of Surrender of Firearms, Firearm Parts, and Ammunition*, with you and ask the dealer or officer to complete and sign the form.
2. File the receipt with the court. Make sure you get two copies. All receipts must be filed with the court within 48 hours from the time you were served with the restraining order, unless the judge gave you another deadline.
3. Give a copy of your receipts to the law enforcement agency that served you the restraining order. If you don't know who served you with the restraining order, ask the court clerk for a copy of the proof of service form for the restraining order. The law enforcement agency is listed on that form.

JV-245 Request for Juvenile Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
JV-245.3.30.22

When to use this form
Use this form to ask for a restraining order if a child in juvenile court needs protection, or you want a restraining order and you have a relationship to the child as listed in item 1b below. If you have a lawyer in this case, the lawyer should fill out this form. **Do not** use this form if you want a restraining order against a child in a juvenile justice (delinquency) case; instead use form JV-247, *Request for Juvenile Restraining Order Against a Child*.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name

Child's name:

Court fills in case number when form is filed.

Case Number:

(1) Person in Need of Protection

a. **Name:** _____

(If additional people need to be protected, list them in (4).)

Age: _____

b. **Relationship to child**:

- ☐ person in (1) is the child
- ☐ parent
- ☐ guardian
- ☐ social worker
- ☐ probation officer
- ☐ child who lives in same household
- ☐ present caregiver of child
- ☐ court-appointed special advocate
- ☐ representative of Indian child's tribe
- ☐ other: _____

c. **Lawyer's information** (*skip if you do not have a lawyer*)

Name: _____ State Bar No.: _____

Firm name: _____

d. (!) **Address where you or your lawyer can receive mail**

(This address will be used by the court and by the person in (2) to send you official court dates, orders, 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 address.)

Address: _____

City: _____ State: _____ Zip: _____

e. **Your contact information** (*optional*) **or your lawyer's contact information**

Telephone: _____ Email Address: _____ Fax: _____

(2) Person to Be Restrained

a. **Name:** _____

b. **Date of birth** (*if known*): _____ **Age** (*give estimate if you do not know exact age*): _____

c. **Gender**: ☐ Male ☐ Female ☐ Nonbinary

d. **Relationship to person in (1) a:** _____

This is not a Court Order.

3 Describe Why You Need a Restraining Order

a. **Did the person in 2 do any of these things to the person in 1?**

Check all that apply
(*Note: These are only some examples of why someone might need a restraining order.*)

- ☐ Physically hurt or tried to physically hurt
- ☐ Sexually abused or tried to sexually abuse
- ☐ Used or threatened to use gun or weapon
- ☐ Stalked
- ☐ Harassed by phone, online, or by any other means
- ☐ Isolated me from friends or family
- ☐ Kept me from eating or getting other basic necessities
- ☐ Destroyed property (*examples: breaking phone, door, window*)
- ☐ Other (*please explain*): _____

b. **Give details about what the person in 2 did that was abusive or harassing.** Start with the most recent incident, then write about any other incidents. Be sure to include details like dates and any emotional or physical harm. Details can also include how often something happened, what was said, or use of weapons, etc.

_____
_____
_____
_____
_____
_____
_____
_____
_____

☐ Check here if you need more space to describe abuse or harassment. Attach a sheet of paper and write JV-245, Item 3 at the top.

c. ☐ Check here if you know if there is a report that supports your request that has been filed with the court, and complete the section below.

Who wrote the report and when was the report filed? *(check all that apply)*

- ☐ Social worker *(date report was filed):* _____
- ☐ Probation officer *(date report was filed):* _____
- ☐ Other *(name):* _____ *(date report was filed):* _____

This is not a Court Order.

4 Do other people need protection from the person in 2?

☐ No
☐ Yes (*if yes, list them*)

a.

Full name	Age	Relationship to the child

b. Why do these people need protection?

☐ Check here if you need more space to describe why these people need protection. Attach a sheet of paper and write "JV-245, Item 4" at the top.

5 Did you provide notice to the person in 2 of this request for a restraining order?

(Skip this item if your request is based on domestic violence.)

a. ☐ **No** *(If no, complete the section below.)*

(1) ☐ I did not notify the person in 2 or their attorney because I am afraid that the person in 2 will threaten or harm the person in 1**a** if they receive notice of this request before protection can be granted *(explain):*

(2) ☐ Other *(describe):*

b. ☐ **Yes** (*If yes, complete section below.*)

(1) Who did you notify? ☐ Person in 2 ☐ Lawyer of Person in 2

(2) When did you provide notice? *(date):* _____ *(time):* _____ ☐ a.m. ☐ p.m.

(3) How did you provide notice? *(check all that apply)*

☐ Telephone *(list number):* _____
☐ Fax *(list number):* _____
☐ Email or other electronic means *(specify):* _____
☐ Other *(describe):* _____

This is not a Court Order.

6 Does Person in 2 Have Firearms (Guns), Firearm Parts, or Ammunition?

a. ☐ I don't know

b. ☐ No

c. ☐ Yes *(If you have information, complete the section below.)*

	Describe guns, firearms, firearm parts, or ammunition	How many or amount?	Location, if known
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			

Choose the 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).***

7 ☐ Order to Not Abuse

I ask the judge to order the person in 2 to not do the following things to any person listed in 1 or 4 :

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, annoy by phone or other electronic means (including repeatedly contact), or disturb the peace.

If this restraining order is needed to prevent domestic violence, "disturbing the peace" includes, but is not limited to:

- Destroying your mental or emotional well-being. This can be done directly or indirectly, such as through someone else. This can also be done in any way, including by phone, text, or online.
- Isolating you from friends, relatives, or other support; keeping you from food or basic needs; controlling or keeping track of you, including your movements, contacts, actions, money, or access to services; controlling or interfering with someone's contraception, birth control, pregnancy, or access to related health information; using force, threat, or intimidation to pressure someone to be or not be pregnant; and making you do something by force, threat, or intimidation, including threats related to actual or suspected immigration status.

This is not a Court Order.

8 ☐ No-Contact Order

I ask the judge to order the person in (2) to not contact any person listed in (1) or (4).

9 ☐ Stay-Away Order

a. I ask the judge to order the person in (2) to stay away from the following persons and places:

Check all that apply

- ☐ Person listed in (1)
- ☐ Each person listed in (4)
- ☐ The home of any protected person
- ☐ The workplace of any protected person
- ☐ The vehicle of any protected person
- ☐ The school or child care of any protected person
- ☐ Other (*please explain*): _____

b. 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*): _____

c. Do you and the person in (2) live together or live close to each other?

☐ No ☐ Yes *(If yes, check one):*

- ☐ Live together *(If you live together, you can ask that the person in (2) move out in (13).)*
- ☐ Live in the same building, but not in the same home
- ☐ Live in the same neighborhood
- ☐ Other *(please explain):* _____

d. Do you and the person in (2) have the same workplace or go to the same school?

☐ No ☐ Yes *(If yes, check all that apply):*

- ☐ Work together at *(name of company):* _____
- ☐ Go to the same school *(name of school):* _____
- ☐ Other *(please explain):* _____

10 ☐ Order to Move-Out

(You can make this request if: (1) The person in (2) lives with the child who is in juvenile court, and (2) the person in (1) is the child in juvenile court, or has care, custody, and control of the child. Complete the section below if you want to ask for this order.)

a. I ask the judge to order the person in (2) to move out of the home, located at:

Address: _____

This is not a Court Order.

10 b. What right does person in (1) have to live at the address listed above?

Check all that apply

The person in (1):

- ☐ owns the home.
- ☐ is on the lease.
- ☐ lives at the address with a child in this case.
- ☐ has lived at the address for _____ years, _____ months.
- ☐ pays for some or all of the rent or mortgage.
- ☐ other (*please explain):* _____

11 ☐ Visitation with Children

Check this box if you have a child or children with the person in (2) and want the judge to make orders to protect your children. You must also fill out form JV-205, *Visitation (Parenting Time) Order—Juvenile*, and attach it to this form.

12 ☐ Protect Animals

a. (You may ask the judge to protect your animals, your children's animals, or the person in (2)'s animals.)

	Name *(or other way to ID animal)*	Type of animal	Breed *(if known)*	Color
(1)				
(2)				
(3)				
(4)				

b. I ask the judge to protect the animals listed above by ordering the person in (2) to:

Check all that apply

(1) ☐ Stay away from the animals by at least:
- ☐ 100 yards (300 feet)
- ☐ Other *(give distance in yards):* _____

(2) ☐ **Not** take, sell, hide, molest, attack, strike, threaten, harm, get rid of, transfer, or borrow against the animals.

(3) ☐ Give 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):* _____

This is not a Court Order.

Case Number:

Automatic Orders

(13) No Guns, Other Firearms, Firearm Parts, or Ammunition

If the judge grants you a restraining order, the person in (2) must turn in, sell, or store any guns, other firearms, firearm parts, or ammunition that they have or control. The person in (2) would also be prohibited from buying firearms and ammunition.

(14) Cannot Look for Address or Location of Protected People and Others

If the judge grants a restraining order, the person in (2) will not be allowed to look for the address or location of any person protected by the restraining. The person in (2) will also not be allowed to look for the locations of family members, caretakers, or guardians of the person in (1). The court may choose not to grant this order, if it is shown the order is not needed.

(15) Additional pages

If you used additional paper or forms, enter the number of extra pages attached to this form: _____

(16) 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*

(17) Your lawyer's signature *(if you have one)*

Date: _____

_____ ▶ _____

Lawyer's name *Lawyer's signature*

Your Next Steps

❶ **You must complete two additional forms**:

- Form JV-250, *Notice of Court Hearing and Temporary Restraining Order(only items 1, 2 and 3)*
- Form CLETS-001, *Confidential CLETS Information*

❷ Turn in your completed forms to the court. Find out when your forms will be ready for pick-up.

This is not a Court Order.

JV-247 Response to Request for Juvenile Restraining Order

Clerk stamps date here when form is filed.

Draft- Not approved by Judicial Council. 3.28.22

Use this form if someone has asked for a restraining order against you, and you want to respond in writing. If you have a lawyer in this case, the lawyer should fill out this form. You will need a copy of form JV-245, *Request for Juvenile Restraining Order*, that was filled out by the person who asked for a restraining order against you. There is no cost to file this form with the court.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name

Child's name:

Fill in case number:

Case Number:

1 Name of Person Asking for Protection:

(See form JV-245, item 1a):

_____

2 Restrained Person: _____

! Address where you can receive court papers

(**This address will be used by the court and by the person in 1 to send you official court dates, orders, 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, work with them to fill out this form and give their information.)

Address: _____

City: _____ State: _____ Zip: _____

! Your contact information *(optional)*

(The court could use this information to contact you. If you don't want the person in 1 to have this information, leave it blank or provide a safe phone number or email address. If you have a lawyer, give their information.)

Email Address: _____ Telephone: _____ Fax: _____

Your lawyer's information *(if you have one)*

Name: _____ State Bar No.: _____

Firm Name: _____

3 Your Hearing Date (Court Date)

Your hearing date is listed on form JV-250, *Notice of Court Hearing and Temporary Restraining Order*. If you do not agree to having a restraining order against you, attend your hearing. If you do not attend your hearing, the judge could grant a restraining order that could last up to three years.

This is not a Court Order.

How to complete this form: To answer the questions below, look at the form JV-245 filled out by the person in (1). Tip: When the restraining order forms say "the person in (2)" that means you, and the "person in (1)" means the person who is asking for a restraining order against you.

(4) Information About You *(see (2) on form JV-245)*

The person in (1) listed your name, age, gender, and date of birth. If any of the information is incorrect, use the space below to give the correct information.

(5) Your Relationship to the Person in (1)

In item (2) of form JV-245, has the person in (1) correctly described your relationship with the child?

☐ Yes ☐ No If no, what is your relationship with the child?:

(6) ☐ Other Protected People

If the judge grants a restraining order, it can include other people. See (4) on form JV-245 to see if the person in (1) is asking for other people to be protected by the restraining order.

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to:

(7) ☐ Order to Not Abuse *(see (7) on form JV-245)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to:

(8) ☐ No-Contact Order *(see (8) on form JV-245)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to:

This is not a Court Order.

9 ☐ **Stay-Away Order** *(see 9 on form JV-245)*

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

10 ☐ **Order to Move Out** *(see 10 on form JV-245)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

11 ☐ **Protect Animals** *(see 11 on form JV-245)*

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

12 ☐ **Visitation of Children** *(see 12 on form JV-245)*

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

13 **Guns, Other Firearms, Firearm Parts, or Ammunition** *(see 13 on form JV-245)*

If you were served with form JV-250, *Temporary Restraining Order*, you must follow the orders in 7 on form JV-250. 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 JV-250. You may use form DV-800/JV-270, *Proof of Surrender of Firearms, Firearm Parts and Ammunition,* for the receipt.

☑ *Check all that apply*

a. ☐ I do not own or have any prohibited items (guns, firearms, prohibited firearm parts, or ammunition).

b. ☐ I have turned in all prohibited items that I have or control 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 the prohibited items *(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):* _____

This is not a Court Order.

14 Cannot Look for Protected People *(see 14 on form JV-245)*

a. ☐ I agree to the order.

b. ☐ I do not agree to the order.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

15 ☐ Additional Reasons I Do Not Agree with the Request *(optional)*

Explain why you do not agree to any of the orders requested by the person in 1 *(give specific facts and reasons):*

_____

_____

_____

_____

_____

_____

_____

☐ Check here if you need more space. Attach a sheet of paper, and write "JV-247, Additional Reasons I Do Not Agree" at the top.

16 Additional Pages

Number of pages attached to this form, if any: _____

17 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*

18 Your lawyer's signature *(if you have one)*

Date: _____

_____ ▶ _____

Lawyer's name *Lawyer's signature*

This is not a Court Order.

JV-250 Notice of Court Hearing and Temporary Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
JV-250.v8.03.30.22

Instruction: 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

*__Full Name__: _____

*__Gender__: ☐ M ☐ F ☐ Nonbinary

*__Age__: _____ *(Give estimate, if age unknown.)*

Date of Birth: _____ Height: _____ Weight: _____

Hair Color: _____ Eye Color: _____

*__Race__: _____

Relationship to person in (1): _____

Address of restrained person: _____

City: _____ State: _____ Zip: _____

Type, number, and location of firearms or ammunition:

_____

_____

_____

(**Information that has a star (*) next to it is required** to add this order into a California police database. Give all the information you know.)

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name

Child's name:

Court fills in case number when form is filed.

Case Number:

(3) Other Protected People

In addition to the person named in (1), the people listed below are protected by the orders listed in (9) through (15).

Full name	Age	Relationship to child

(The court will complete the rest of this form.)

(4) Notice of Hearing Date (Court Date)

The judge scheduled a court date to review a request for restraining orders against the person in (2).
Any temporary orders granted on this form end on the court date listed below.

Date: _____ Dept.: _____

Time: _____ Room: _____

Name and address of court, if different from above:

_____

_____

This is a Court Order.

Case Number:

5 The temporary orders you requested are:

a. ☐ **Not granted**. The court denies the request for a temporary restraining order but will consider the request for restraining order at the court date listed in 4. *(Explain reason for denial):*

b. ☐ **Granted**. The court grants a temporary restraining order as checked below and through page 5. This does not always mean that every order that was requested was granted.

This order must be enforced throughout the United States. See page 6.

To the Person in 2

The judge has granted temporary orders. See items 6 through 15. 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, Other Firearms, Firearm Parts, or Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get any prohibited item listed below in b.

b. Prohibited items are:
- Firearms, including any handgun, rifle, shotgun, and assault weapon;
- Firearm parts (any receiver, frame, or unfinished receiver/frame as defined in Penal Code section 16531); and
- Ammunition.

c. Within 24 hours of receiving this order, you must sell to or store with a licensed gun dealer, or turn in to law enforcement, any prohibited items you have in your immediate possession or control.

d. Within 48 hours of receiving this order, you must file a receipt with the court that proves all prohibited items have been turned in or sold. (You may use form DV-800/JV-270, *Proof of Surrender of firearms, firearm parts or ammunition,* for the receipt.)

e. If a law enforcement officer served you with the restraining order, you must immediately surrender any prohibited items you have upon request by the officer. Within 48 hours, you must file a receipt with the law enforcement agency that proves all prohibited items have been turned in or sold.

7 ☐ Restrained Person Has Prohibited Items

The court finds that you have the following:

a. **Firearms and/or firearm parts**

	Description	Location, if known	Check here if proof of compliance was received
(1)			☐
(2)			☐
(3)			☐
(4)			☐

This is a Court Order.

7 b. **Ammunition**

Description	Amount, if known	Location, if known	Check here if proof of compliance was received
(1)			☐
(2)			☐
(3)			☐
(4)			☐

8 ☐ Court Hearing to Review Firearms, Firearm Parts, and Ammunition Compliance

In addition to the hearing listed in item 4, you must attend the court hearing listed below to prove that all prohibited items that you have or own were turned in, sold, or stored. If the judge listed any items in 7 of this order, this means that the judge has found that you have those items. If you do not attend the court hearing listed below, a judge may find that you have violated the restraining order and notify the prosecuting attorney of the violation.

Date: _____ Dept.: _____
Time: _____ Room: _____

Name and address of court, if different than court address listed on page 1

_____
_____
_____

9 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.

10 Order to Not 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, annoy by phone or other electronic means (including repeatedly contact), or disturb the peace.

☐ *(If this box is checked, this case involves domestic violence and you must not do any of the actions listed below.)*

"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 limit 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; making them do something by force, threat, or intimidation, including threats based on actual or suspected immigration status; and reproductive coercion, meaning controlling someone's reproductive choices, such as using force, threat, or intimidation to pressure someone to be or not be pregnant, and to control or interfere with someone's contraception, birth control, pregnancy, or access to related health information.

This is a Court Order.

(11) 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 to 11a:

(1) ☐ You may have brief and peaceful contact with the person in (1) only to communicate about your children for court-ordered visits.

(2) ☐ You may have contact with your children 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.

(12) 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):*

- ☐ 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).
- ☐ Persons in (3).
- ☐ Children's school or child care.
- ☐ Other *(explain):* _____

b. ☐ Exception to 12a:

The stay-away orders do not apply:

(1) ☐ For you to exchange your children for court-ordered visits. You must do so briefly and peacefully.

(2) ☐ For you to visit with your children for court-ordered contact or visits.

(3) ☐ Other *(explain):* _____

_____

(13) 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):* _____

(14) ☐ Visitation with Children ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The court has ordered visitation with the children in this case.

a. ☐ The orders are in the attached form JV-205, *Visitation (Parenting Time) Order—Juvenile*.

b. ☐ The orders are in an attached document.

This is a Court Order.

Case Number:

15 Protect Animals

☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

a. ☐ You must stay at least _____ yards away from the animals listed below.

b. ☐ You must not take, sell, hide, molest, attack, strike, threaten, harm, get rid of, transfer, or borrow against the animals.

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

16 Service

a. ☐ **No other service is needed.** The person in (2) attended the hearing on (*date*): _____ when these orders were made.

b. ☐ **The person in (2) must be personally served** with a copy of this order and request form by *(date):* _____

17 Enter Restraining Order Into Database

Within one business day, this order must be entered into the California Law Enforcement Telecommunications System (CLETS).

a. ☐ The court will enter the order into CLETS.

b. ☐ The court or someone it designates will send a copy of this order to a local law enforcement agency.

If the court designates someone, provide their name: _____

18 ☐ Attached pages

Number of pages attached to this five-page form: _____

Judge's Signature

Date: _____

_____

Judge or Judicial Officer

Certificate of Compliance With Violence Against Women Act for Temporary Orders

This temporary protective order meets all full faith and credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994) 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 all jurisdictions throughout the 50 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.

Case Number:

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. (Penal Code sections 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. (Penal Code section 13710(b).)

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 Penal Code section 136.2; Family 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 include an EPO or a no-contact order, a criminal protective order (CPO) issued in a criminal case involving domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil restraining order that conflicts with the CPO. All orders in the civil restraining order that do not conflict with the CPO must be enforced.

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 fill out this part.)

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that the foregoing *Notice of Court Date and Temporary Juvenile 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.

JV-251 Request to Reschedule Restraining Order Hearing

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
3.28.22

Instructions: Use this form to ask the judge to reschedule your restraining order court date listed on:

- Form JV-250, *Notice of Court Hearing and Temporary Restraining Order*, or
- Form JV-260, *Court Hearing and Temporary Restraining Order Against a Child*.

If you have a lawyer in this case, your lawyer should fill out this form.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name

Child's name:

Fill in case number:

Case Number:

1 My Information

a. My name is: _____

b. I am the:

(1) ☐ **Protected party** *(skip to 2)*.

(2) ☐ **Restrained party** *(give your contact information below)*.

Address where I can receive mail:
This address will be used by the court and other party to notify you in this case. If you want to keep your home address private, you can use another address like a post office box or another person's address, if you have their permission. If you have a lawyer, give your lawyer's address and contact information.

Address: _____

City: _____ State: ____ Zip: _____

My contact information *(optional)*:

Telephone: _____ Fax: _____

Email Address: _____

Lawyer's information *(skip if you do not have one)*:

Name: _____ State Bar No.: _____

Firm Name: _____

2 Information About My Case

a. The other party in this case is *(full name)*: _____

b. I have a court date currently scheduled for *(date)*: _____

This is not a Court Order.

Case Number:

3 Is a Temporary Restraining Order in Effect?

a. ☐ Yes. Date the order was made, if known: _____
(Please attach a copy of the order if you have one.)

b. ☐ No.

c. ☐ I don't know.

Notice: If your court date is rescheduled, any temporary restraining order will remain in effect until the end of the new court date, unless otherwise ordered by the court.

4 Why Does Your Court Date Need to Be Rescheduled?

a. ☐ I am the person asking for protection, and I need more time to have the restrained party personally served.

b. ☐ I am the restrained party, and this is my first request to reschedule the court date.

c. ☐ Other reason:

_____
_____
_____
_____
_____
_____
_____
_____

5 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*

6 Your lawyer's signature *(if you have one)*

Date: _____

_____ ▶ _____
Lawyer's name *Lawyer's signature*

This is not 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

JV-253 Order on Request to Reschedule Hearing

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
JV-253.v7.3.28.22

Complete items (1) and (2) only.

(1) **Protected Party:** _____

(2) **Restrained Party:** _____

(The court will complete the rest of this form)

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name

Child's name:

Fill in case number:

Case Number:

(3) Next Court Date

a. ☐ The request to reschedule the court date is **denied**.

Your court date is: _____

(1) Any temporary restraining order already granted stays in full force and effect until the next court date.

(2) Your court date is not rescheduled because: _____

b. ☐ The request to reschedule the court date is **granted**. Your court date is rescheduled for the day and time listed below. See (4)–(8) for more information.

New Court Date → Date: _____ Time: _____
Dept.: _____ Room: _____

Name and address of court, if different from above:

(4) Temporary Restraining Order

a. ☐ **There is no temporary restraining order (TRO) in this case until the next court date** because:

(1) ☐ A TRO was not previously granted by the court.

(2) ☐ The court terminates (cancels) the previously granted TRO because: _____

b. ☐ **A temporary retraining order (TRO) is in full force and effect** because:

(1) ☐ The court extends the TRO previously granted on *(date)*: _____
It now expires on *(date)*: _____

(*If no expiration date is listed, the TRO expires at the end of the court date listed in (3) b).*

(2) ☐ The court changes the TRO previously granted and signs a new TRO. The new TRO is attached to this order.

Warning and Notice to the Restrained Party: If (4) b is checked, a temporary restraining order has been issued against you. You must follow the orders until they expire.

c. ☐ Other *(specify)*: _____

This is a Court Order.

Case Number:

5 Reason Court Date Is Rescheduled

a. ☐ There is good cause to reschedule the court date *(check one)*:
   (1) ☐ The protected party has not served the restrained party.
   (2) ☐ Other: _____

b. ☐ This is the first time that the restrained party has asked for more time to prepare.

c. ☐ The court reschedules the court date on its own motion.

6 Serving (Giving) Order to Other Party

The request to reschedule was made by the:

a. ☐ **Protected party**

(1) ☐ You do not have to serve the restrained party because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the restrained party personally served with a copy of this order, the request for restraining order, and any temporary restraining order granted, by *(date)*: _____

(3) ☐ You must have the restrained party served with a copy of this order. This can be done by mail. You must serve by *(date)*: _____

(4) ☐ Other: _____

b. ☐ **Restrained party**

(1) ☐ You do not have to serve the protected party because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the protected party personally served with a copy of this order by *(date)*: _____

(3) ☐ You must have the protected party served with a copy of this order. This can be done by mail. You must serve by *(date)*: _____

(4) ☐ Other: _____

c. ☐ **Court**

(1) ☐ Further notice is not required.

(2) ☐ The court will mail a copy of this order to all parties by *(date)*: _____

(3) ☐ Other: _____

This is a Court Order.

Case Number:

7 Enter Restraining Order into Database

Within one business day, this order must be entered into the California Law Enforcement Telecommunications System (CLETS).

a. ☐ The court will enter the order into CLETS.

b. ☐ The court or someone it designates will send a copy of this order to a local law enforcement agency.

If the court designates someone, provide their name: _____

8 ☐ Other Orders

_____

_____

_____

_____

9 ☐ Attached pages *(All of the attached pages are part of this order.)*

a. Number of pages attached to this three-page form: _____

b. Attachments include forms *(check all that apply):*

☐ JV-250 ☐ JV-260 ☐ JV-272 ☐ Other: _____

Judge's Signature

Date: _____

_____

Judge or Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to www.courts.ca.gov/forms.htm for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civil Code section 54.8.)

Instructions to Clerk

If the hearing is rescheduled and the court extended, modified, or terminated a temporary restraining order, then the court must enter this order into CLETS or send this order to law enforcement to enter into CLETS. This must be done by the court within one business day from the day the order is made, unless the court has designated someone in item 7b.

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order on Request to Reschedule Hearing (Temporary Restraining Order-Juvenile) (CLETS-JUV)* (form JV-253) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by: _____, Deputy

This is a Court Order.

JV-255 Restraining Order After Hearing

☐ **Original Order** ☐ _____ **Amended Order**

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council
JV-255.v9.3.28.22

(1) Protected Person *(name)*: _____

(2) Restrained Person

***Full Name**: _____

***Gender**: ☐ M ☐ F ☐ Nonbinary

***Age**: _____ *(Give estimate, if age unknown.)*

Date of Birth: _____ Height: _____ Weight: _____

Hair Color: _____ Eye Color: _____

***Race**: _____

Relationship to person in (1): _____

Address of restrained person: _____

City: _____ State: _____ Zip: _____

(**Information that has a star (*) next to it is required** to add this order into a California police database. Give all the information you know.)

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name

Child's name:

Court fills in case number when form is filed.

Case Number:

(3) ☐ Other Protected People

In addition to the person in (1), the following persons are protected by orders as indicated in items (11) through (14).

Full name	Relationship to person in (1)	Age

(4) Expiration Date

This restraining order, except the orders noted below,* end on:

(date): _____ at *(time):* _____ ☐ a.m. ☐ p.m. or ☐ midnight

***Custody and visitation orders remain in effect after the restraining order ends. Custody and visitation orders usually end when the child is 18.**

- 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.

This order must be enforced throughout the United States. See page 4.

This is a Court Order.

Case Number:

5 Hearing

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):* _____

6 ☐ Future Court Hearing

☐ The person in 1 ☐ The person in 2 must attend court on:
Date: _____ Department: _____
Time: _____ ☐ a.m. ☐ p.m. to review *(list issues):* _____

To the Person in 2

The court has granted a long-term restraining order. See 7 through 17. 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.

7 No Guns, Other Firearms, Firearm Parts, or Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get any prohibited item listed below in b.

b. Prohibited items are:
- Firearms, including any handgun, rifle, shotgun, and assault weapon;
- Firearm parts (any receiver, frame, or unfinished receiver/frame as defined in Penal Code section 16531); and
- Ammunition.

c. Within 24 hours of receiving this order, you must sell to or store with a licensed gun dealer, or turn in to law enforcement, any prohibited items you have in your immediate possession or control.

d. Within 48 hours of receiving this order, you must file a receipt with the court that proves all prohibited items have been turned in or sold. (You may use form DV-800/JV-270, *Proof of Surrender of firearms, firearm parts or ammunition,* for the receipt.)

e. If a law enforcement officer served you with the restraining order, you must immediately surrender any prohibited items you have upon request by the officer. Within 48 hours, you must file a receipt with the law enforcement agency that proves all prohibited items have been turned in or sold.

f. ☐ Limited Exemption: The judge 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 *(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.

This is a Court Order.

8 ☐ Restrained Person Has Prohibited Items

The court finds that you have the following:

a. **Firearms and/or firearm parts**

	Description	Location, if known	Check here if proof of compliance was received
(1)			☐
(2)			☐
(3)			☐
(4)			☐

b. **Ammunition**

	Description	Amount, if known	Location, if known	Check here if proof of compliance was received
(1)				☐
(2)				☐
(3)				☐
(4)				☐

9 ☐ Restrained Person Has Not Complied With Surrendering Prohibited Items

a. Restrained person has not fully complied with the orders previously granted on *(date):* _____

The court has not received a receipt or proof of compliance for all the items listed in 8.

b. Notify Prosecutor

If you do not provide a receipt or proof of compliance within two days of today's hearing, by:
(date and time): _____ the court will notify the
(name of prosecuting agency): _____

10 ☐ Court Hearing to Review Firearms, Firearm Parts, and Ammunition Compliance

You must attend the court hearing in 6 to prove that all prohibited items have been properly turned in, sold, or stored.

11 Cannot Look for Protected People and Others

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 court found good cause not to make this order.

12 ☐ Order to Not 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, annoy by phone or other electronic means (including repeatedly contact), or disturb the peace.

This is a Court Order.

12 ☐ *(If this box is checked, this case involves domestic violence and you must not do any of the actions listed below.)*
"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 limit 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; making them do something by force, threat, or intimidation, including threats based on actual or suspected immigration status; and reproductive coercion, meaning controlling someone's reproductive choices, such as using force, threat, or intimidation to pressure someone to be or not be pregnant, and to control or interfere with someone's contraception, birth control, pregnancy, or access to related health information.

13 ☐ 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 to 13a:
(1) ☐ You may have brief and peaceful contact with the person in (1) to only communicate about your children for court-ordered visits.
(2) ☐ You may have contact with your children 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.

14 ☐ Stay-Away Order

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).
☐ Persons in (3).
☐ Children's school or child care.
☐ Other *(specify):* _____

b. ☐ Exception to 14a:
The stay-away orders do not apply:
(1) ☐ For you to exchange your children for court-ordered visits. You must do so briefly and peacefully.
(2) ☐ For you to visit with your children for court-ordered contact or visits.
(3) ☐ Other *(explain):* _____

15 ☐ Order to Move-Out

You must move out immediately from *(address):* _____

16 ☐ Visitation with Children

The judge has ordered visitation with the children in this case. They are on the attached form JV-205, *Visitation (Parenting Time) Order—Juvenile*

Or *(specify other form)*: _____

This is a Court Order.

17 ☐ Protect Animals

a. ☐ You must stay at least _____ yards away from the animals listed below.

b. ☐ You must not take, sell, hide, molest, attack, strike, threaten, harm, get rid of, transfer, or borrow against the animals.

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

18 Service

a. ☐ **No other proof of service is needed.** The person in (2) attended the hearing on (*date*): _____ .

b. ☐ **The person in (2) did not attend the hearing.** Proof of service of the request and notice of hearing was presented to the court. *(Check all that apply):*

(1) ☐ This order can be served by mail. The judge's orders in this form are the same as the orders in form JV-251 except for the expiration date. The person in (2) must be served (given), either by mail or in person.

(2) ☐ This order must be personally served. The judge's orders in this form are different from the orders in form JV-251. The person in (2) must be personally served (given) a copy of this order.

(3) ☐ The court has scheduled a firearms and ammunition compliance hearing. The person in (1) must have a copy of this order served on the person in (2) by:

(A) ☐ Personal service by *(date):* _____

(B) ☐ Mail at the person in (2) 's last known address by *(date):* _____

19 Enter Restraining Order Into Database

Within one business day, this order must be entered into the California Law Enforcement Telecommunications System (CLETS).

a. ☐ The court will enter the order into CLETS.

b. ☐ The court or someone it designates will send a copy of this order to a local law enforcement agency.

If the court designates someone, provide their name: _____

Judge's Signature

Date: _____

_____

Judge or Judicial Officer

Certificate of Compliance With Violence Against Women Act

This restraining (protective) order meets all "full faith and credit" requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994), 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.

Case Number:

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. (Penal Code sections 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code Sections 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. (Penal Code section 836(c)(1); Family 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. (Family Code section 6383; Penal 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). (Family Code section 6381(b)–(c).)

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 Penal Code section 136.2; Family 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 include an EPO or a no-contact order, a criminal protective order (CPO) issued in a criminal case involving domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil restraining order that conflicts with the CPO. All orders in the civil restraining order that do not conflict with the CPO must be enforced.
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 fill out this part.)

Clerk's Certificate
[seal]

—Clerk's Certificate—

I certify that this *Restraining Order After Hearing (Juvenile)* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

JV-258 Request for Juvenile Restraining Order Against a Child

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
JV-258.v13.3.29.22

When to use this form
Use this form if you want a restraining order **against a child or youth** in a juvenile justice (delinquency) case. If you have a lawyer in this case, the lawyer should fill out this form. If you want a restraining order in a juvenile case but against someone who is not the child, use form JV-245, *Request for Juvenile Restraining Order.*

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name

Child's name:

Court fills in case number when form is filed.

Case Number:

(1) Person in Need of Protection

a. **Name:** _____

If you are lawyer asking for a restraining order for someone else, like a victim in this case, write your name below in (1)e. If additional people need to be protected, list them in (4).)

b. **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, orders, 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**
(If you have a lawyer, list your lawyer's information. If you don't have a lawyer, you may provide your information but doing so is optional.)
Telephone: _____ Email Address: _____ Fax: _____

e. ☐ **Lawyer Making This Request** (*if not the person in* (1))
Name: _____ Title: _____
Firm Name: _____ State Bar No.: _____

(2) Child or youth to be restrained

a. **Name:** _____

b. **Date of birth** (*if known*): _____ **Age** (*give estimate if you do not know exact age*): _____

c. **Gender**: ☐ Male ☐ Female ☐ Nonbinary

d. **Relationship to person in (1)a:** _____

This is not a Court Order.

3 Describe why a restraining order is needed.

A judge can grant you a restraining order if the person in 1 a is at risk because of the person in 2's actions.

a. Explain why you need a restraining order. Be sure to include details like:

- When incidents happened (dates, if known)
- Use of guns or other weapons
- Emotional or physical harm caused by person in 2

☐ Check here if you need more space to describe emotional or physical harm. Attach a sheet of paper and write "JV-258, Item 3" at the top.

b. ☐ Check here if you know if there is a report that supports your request that has been filed with the court, and complete the section below.

Who wrote the report and when was the report filed? *(check all that apply)*

☐ Social worker *(date report was filed):* _____

☐ Probation officer *(date report was filed):* _____

☐ Other *(name):* _____ *(date report was filed):* _____

4 Do other people need protection from the person in 2?

☐ No

☐ Yes (*if yes, list them*)

a. Full name	Age	Relationship to the child

b. Why do these people need protection?

This is not a Court Order.

5 Did you provide notice to the person in 2 of this request for a restraining order?

(Skip this item if your request is based on domestic violence.)

a. ☐ **No** *(If no, complete the section below.)*

(1) ☐ I did not notify the person in 2 or their attorney because I am afraid that the person in 2 will threaten or harm the person in 1 a if they receive notice of this request before protection can be granted *(explain):*

_____

_____

(2) ☐ Other *(describe):*

_____

_____

b. ☐ **Yes** (*If yes, complete section below.*)

(1) Who did you notify? ☐ Person in 2 ☐ Lawyer of Person in 2

(2) When did you provide notice? *(date):* _____ *(time):* _____ ☐ a.m. ☐ p.m.

(3) How did you provide notice? *(check all that apply)*

☐ Telephone *(list number):* _____

☐ Fax *(list number):* _____

☐ Email or other electronic means *(specify):* _____

☐ Other *(describe):* _____

6 Does Person in 2 Have Firearms (Guns), Firearm Parts, or Ammunition?

a. ☐ I don't know

b. ☐ No

c. ☐ Yes *(If you have information, complete the section below.)*

	Describe guns, firearms, firearm parts, or ammunition	How many or amount?	Location, if known
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			

This is not a Court Order.

Choose the 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. Check all the orders that you want the judge to make (order).

7 ☐ Order to Not Abuse

I ask the judge to order the person in (2) to not threaten, stalk, or disturb the peace of anyone listed (1) or (4).

If this restraining order is needed to prevent domestic violence, "disturbing the peace" includes, but is not limited to:

- Destroying your mental or emotional well-being. This can be done directly or indirectly, such as through someone else. This can also be done in any way, including by phone, text, or online.
- Isolating you from friends, relatives, or other support; keeping you from food or basic needs; controlling or keeping track of you, including your movements, contacts, actions, money, or access to services; controlling or interfering with someone's contraception, birth control, pregnancy, or access to related health information; using force, threat, or intimidation to pressure someone to be or not be pregnant; and making you do something by force, threat, or intimidation, including threats related to actual or suspected immigration status.

8 ☐ No-Contact Order

I ask that the person in (2) not contact me or any person listed in (4).

9 ☐ Protect Animals

a. (You may ask the court to protect your animals, your children's animals, or the person in (2)'s animals.)

	Name *(or other way to ID animal)*	Type of animal	Breed *(if known)*	Color
(1)				
(2)				
(3)				
(4)				

b. I ask the judge to protect the animals listed above by ordering the person in (2) to:

☑ *Check all that apply*

(1) ☐ Stay away from the animals by at least:
☐ 100 yards (300 feet) ☐ Other *(give distance in yards):* _____

(2) ☐ **Not** take, sell, hide, molest, attack, strike, threaten, harm, get rid of, transfer, or borrow against the animals.

(3) ☐ Give 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):* _____

This is not a Court Order.

Case Number:

Automatic Orders That a Judge Can Make Right Away

(10) No Guns, Other Firearms, Firearm Parts, or Ammunition

If the judge grants you a restraining order, the person in (2) must turn in, sell, or store any guns, other firearms, firearm parts, or ammunition that they have or control. The person in (2) would also be prohibited from buying firearms and ammunition.

(11) Cannot Look for Address or Location of Protected People and Others

If the judge grants a restraining order, the person in (2) will not be allowed to look for the address or location of any person protected by the restraining. The person in (2) will also not be allowed to look for the locations of family members, caretakers, or guardians of the person in (1). The court may not grant this order, if there is good cause.

(12) Number of pages attached to this form, if any: _____

(13) 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*

(14) Your lawyer's signature *(if you have one)*

Date: _____

_____ ▶ _____

Lawyer's name *Lawyer's signature*

Your Next Steps

❶ **You must complete two additional forms**:

- Form JV-260, *Court Hearing and Temporary Restraining Order Against a Child (only items 1, 2, and 3)*
- Form CLETS-001, *Confidential CLETS Information*

❷ Turn in your completed forms to the court. Find out when your forms will be ready for pick up.

This is not a Court Order.

JV-259 Response to Request for Juvenile Restraining Order Against a Child

Clerk stamps date here when form is filed.

Draft- Not approved by Judicial Council-3.28.22

Use this form if someone has asked for a restraining order against you, and you want to respond in writing. If you have a lawyer in this case, the lawyer should fill out this form. You will need a copy of form JV-258, *Request for Juvenile Restraining Order Against a Child*, that was filled out by the person who asked for a restraining order against you. There is no cost to file this form with the court.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name

Child's name:

Fill in case number:

Case Number:

1 Name of Person Asking for Protection:

(See form JV-258, item 1):

_____

2 Your Name: _____

! Address where you can receive court papers

(**This address will be used by the court and by the person in 1 to send you official court dates, orders, 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, work with them to fill out this form and give their information.)

Address: _____

City: _____ State: _____ Zip: _____

! Your contact information *(optional)*

(The court could use this information to contact you. If you don't want the person in 1 to have this information, leave it blank or provide a safe phone number or email address. If you have a lawyer, give their information.)

Email Address: _____ Telephone: _____ Fax: _____

Your lawyer's information *(if you have one)*

Name: _____ State Bar No.: _____

Firm Name: _____

3 Your Hearing Date (Court Date)

Your hearing date is listed on form JV-260, *Court Hearing and Temporary Restraining Order Against a Child*. If you do not agree to having a restraining order against you, go to your hearing date. If you do not attend your hearing, the judge could grant a restraining order that could last up to three years.

This is not a Court Order.

How to complete this form: To answer the questions below, look at the form JV-258 filled out by the person in (1). Tip: When the restraining order forms say "the person in (2)" that means you, and the "person in (1)" means the person who is asking for a restraining order against you.

(4) Information About You *(see (2) on form JV-258)*

The person in (1) listed your name, age, gender, and date of birth. If any of the information is incorrect, use the space below to give the correct information.

(5) ☐ Other Protected People

If the judge grants a restraining order, it can include other people. See (4) on form JV-258 to see if the person in (1) is asking for other people to be protected by the restraining order.

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested.
Explain why you disagree, or describe a different order that you would agree to:

(6) ☐ Order to Not Abuse *(see (7) on form JV-258)*

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested.
Explain why you disagree, or describe a different order that you would agree to:

(7) ☐ No-Contact Order *(see (8) on form JV-258)*

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested.
Explain why you disagree, or describe a different order that you would agree to:

(8) ☐ Protect Animals *(see (9) on form JV-258)*

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the orders requested.
Explain why you disagree, or describe a different order that you would agree to:

This is not a Court Order.

9 Guns, Other Firearms, Firearm Parts, or Ammunition *(see 6 on form JV-258)*

If you were served with form JV-260, *Court Hearing and Temporary Juvenile Restraining Order Against a Child* you must follow the orders in 6 on form JV-260. 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 JV-260. You may use form DV-800/JV-270, *Proof of Surrender of Firearms, Firearm Parts and Ammunition,* for the receipt.

☑ *Check all that apply*

a. ☐ I do not own or have any prohibited items (guns, firearms, prohibited firearm parts, or ammunition).

b. ☐ I have turned in all prohibited items that I have or control 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 the prohibited items *(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):* _____

10 Cannot Look for Protected People *(see 11 on form JV-258)*

a. ☐ I agree to the order.

b. ☐ I do not agree to the order.

Explain why you disagree, or describe a different order that you would agree to: _____

11 ☐ Additional Reasons I Do Not Agree with the Request *(optional)*

Explain why you do not agree to any of the orders requested by the person in 1 *(give specific facts and reasons):*

☐ Check here if you need more space. Attach a sheet of paper, and write "JV-259, Additional Reasons I Do Not Agree" at the top.

12 Additional Pages

Number of pages attached to this form, if any: _____

This is not a Court Order.

13 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*

14 Your lawyer's signature *(if you have one)*

Date: _____

_____ ▶ _____

Lawyer's name *Lawyer's signature*

This is not a Court Order.

JV-260 Court Hearing and Temporary Restraining Order Against a Child

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
JV-260.v12.3.25.22

Instruction: Use this form if you want a restraining order **against a child or youth** in a juvenile justice (delinquency) case. The person asking for a restraining order must complete (1), (2), and (3) only. The court will complete the rest of this form.

(1) Protected Person *(name)*: _____

(2) Restrained Person (Child or Youth)

***Full Name**: _____

***Gender**: ☐ M ☐ F ☐ Nonbinary

***Age**: _____ *(Give estimate, if age unknown.)*

Date of Birth: _____ Height: _____ Weight: _____

Hair Color: _____ Eye Color: _____

***Race**: _____

Relationship to person in (1): _____

Address of restrained person: _____

City: _____ State: _____ Zip: _____

Type, number, and location of firearms or ammunition:

_____

_____

_____

(**Information that has a star (*) next to it is required** to add this order into a California police database. Give all the information you know.)

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name

Child's name:

Court fills in case number when form is filed.

Case Number:

(3) Other Protected People

In addition to the person named in (1), the people listed below are protected by the orders listed in (9) through (12).

Full name	Age	Relationship to child

(The court will complete the rest of this form.)

(4) Notice of Hearing

A court hearing is scheduled on the request for restraining orders against the person in (2):

Name and address of court if different from above:

_____

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

This is a Court Order.

Case Number:

5 The temporary restraining orders requested are:

a. ☐ **Not granted**. The court denies the request for a temporary restraining order but will consider the request for restraining order at the court date listed in 4. *(Explain reasons for denial):*

b. ☐ **Granted**. The court grants a temporary restraining order as checked below and through page 3. This does not always mean that every order that was requested was granted.

This order must be enforced throughout the United States. See page 5.

To the Person in 2

The judge has granted temporary orders. See items 6 through 12. If you do not obey these orders, you can be charged with a crime, go to juvenile hall, jail, or prison, and/or pay a fine.

6 No Guns, Other Firearms, Firearm Parts, or Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get any prohibited item listed below in b.

b. Prohibited items are:
- Firearms, including any handgun, rifle, shotgun, and assault weapon;
- Firearm parts (receiver, frame, or unfinished receiver/frame as defined in Penal Code section 16531); and
- Ammunition.

c. Within 24 hours of receiving this order, you must sell to or store with a licensed gun dealer, or turn in to law enforcement, any prohibited items you have in your immediate possession or control.

d. Within 48 hours of receiving this order, you must file a receipt with the court to prove that all prohibited items have been turned in or sold. (You may use form DV-800/JV-270, *Proof of Surrender of Firearms, Firearm Parts, and Ammunition,* for the receipt.)

e. If a law enforcement officer served you with the restraining order, you must immediately surrender any prohibited items you have upon request by the officer. Within 48 hours, you must file a receipt with the law enforcement agency that proves all prohibited items have been turned in or sold.

7 ☐ Restrained Person Has Prohibited Items

The court finds that you have the following firearms, firearm parts, or ammunition:

a. **Firearms and/or firearm parts**

	Description	Location, if known	Check here if proof of compliance was received
(1)			☐
(2)			☐
(3)			☐
(4)			☐

This is a Court Order.

7 b. **Ammunition**

Description	Amount, if known	Location, if known	Check here if proof of compliance was received
(1)			☐
(2)			☐
(3)			☐
(4)			☐

☐ Check here if you need more space to list items. List them on a separate piece of paper, write "JV-260, Restrained Person Has Prohibited Items" at the top, and attach it to this form.

8 ☐ Court Hearing to Review Firearms, Firearm Parts, and Ammunition Compliance

In addition to the hearing listed in item **4**, you must attend the court hearing listed below to prove that all prohibited items that you have or own were turned in, sold, or stored. If the judge listed any items in **7** of this order, this means that the judge has found that you have those items. If you do not attend the court hearing listed below, a judge may find that you have violated the restraining order and will notify law enforcement and a prosecuting attorney of the violation.

Name and address of court, if different than court address listed on page 1

Date: _____ Dept.: _____

Time: _____ Room: _____

9 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.

10 Order to Not Abuse ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

You must not threaten, stalk or disturb the peace of the person in 1 and any person listed in 3.

☐ *(If this box is checked, this case involves domestic violence and you must not do any of the actions listed below.)*

"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 limit 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; making them do something by force, threat, or intimidation, including threats based on actual or suspected immigration status; and reproductive coercion, meaning controlling someone's reproductive choices, such as using force, threat, or intimidation to pressure someone to be or not be pregnant, and to control or interfere with someone's contraception, birth control, pregnancy, or access to related health information.

This is a Court Order.

Case Number:

(11) 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. 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.

(12) Protect Animals ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

a. ☐ You must stay at least _____ yards away from the animals listed below.

b. ☐ You must not take, sell, hide, molest, attack, strike, threaten, harm, get rid of, transfer, or borrow against the animals.

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) Service

a. ☐ **No other service is needed.** The person in (2) attended the hearing on (*date*): _____ when these orders were made.

b. ☐ **The person in (2) must be personally served** with a copy of this order and request form by *(date):* _____

(14) Enter Restraining Order Into Database

Within one business day, this order must be entered into the California Law Enforcement Telecommunications System (CLETS).

a. ☐ The court will enter the order into CLETS.

b. ☐ The court or someone it designates will send a copy of this order to a local law enforcement agency.

If the court designates someone, provide their name: _____

Judge's Signature

Date: _____

_____
Judge or Judicial Officer

Certificate of Compliance With Violence Against Woman Act for Temporary Orders

This temporary protective order meets all "full faith and credit" requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994), 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 jurisdictions 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.

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. (Penal Code sections 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. (Penal Code section 13710(b).)

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 Penal Code section 136.2; Family 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 include an EPO or a no-contact order, a criminal protective order (CPO) issued in a criminal case involving domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil restraining order that conflicts with the CPO. All orders in the civil restraining order that do not conflict with the CPO must be enforced.
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 fill out this part.)

Clerk's Certificate
[seal]

—Clerk's Certificate—

I certify that this *Court Date and Temporary Restraining Order Against a Child (Juvenile)* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

JV-265 Restraining Order After Hearing—Against a Child

☐ **Original Order** ☐ _____ **Amended Order**

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council
JV-265.v10.3.28.22

(1) Protected Person *(name)*: _____

(2) Restrained Person (Child or Youth)

***Full Name**: _____

***Gender**: ☐ M ☐ F ☐ Nonbinary

***Age**: _____ *(Give estimate, if age unknown.)*

Date of Birth: _____ Height: _____ Weight: _____

Hair Color: _____ Eye Color: _____

***Race**: _____

Relationship to person in (1): _____

Address of restrained person: _____

City: _____ State: _____ Zip: _____

(**Information that has a star (*) next to it is required** to add this order into a California police database. Give all the information you know.)

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name

Child's name:

Court fills in case number when form is filed.

Case Number:

(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

(4) Expiration Date

This restraining order, except the orders noted below,* end on:

(date): _____ at *(time):* _____ ☐ a.m. ☐ p.m. or ☐ midnight

- If no date is written, the restraining order ends three years after the date of the hearing in item (5)a.
- If no time is written, the restraining order ends at midnight on the expiration date.

This order must be enforced throughout the United States. See page 4.

This is a Court Order.

Case Number:

5 Hearing

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):* _____

6 ☐ Future Court Hearing

☐ The person in 1 ☐ The person in 2 must attend court on:

Date: _____ Department: _____

Time: _____ ☐ a.m. ☐ p.m. to review *(list issues):* _____

_____

To the Person in 2

The court has granted a long-term restraining order. See 7 through 14. If you do not obey these orders, you can be charged with a crime, go to juvenile hall, jail, or prison, and/or pay a fine.

7 No Guns, Other Firearms, Firearm Parts, or Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get any prohibited item listed below in b.

b. Prohibited items are:

- Firearms, including any handgun, rifle, shotgun, and assault weapon;
- Firearm parts (receiver, frame, or unfinished receiver/frame as defined in Penal Code section 16531); and
- Ammunition.

c. Within 24 hours of receiving this order, you must sell to or store with a licensed gun dealer, or turn in to law enforcement, any prohibited items you have in your immediate possession or control.

d. Within 48 hours of receiving this order, you must file a receipt with the court to prove that all prohibited items have been turned in or sold. (You may use form DV-800/JV-270, *Proof of Surrender of Firearms, Firearm Parts, and Ammunition,* for the receipt.)

e. If a law enforcement officer served you with the restraining order, you must immediately surrender any prohibited items you have upon request by the officer. Within 48 hours, you must file a receipt with the law enforcement agency that proves all prohibited items have been turned in or sold.

This is a Court Order.

8 ☐ Restrained Person Has Prohibited Items

The court finds that you have the following firearms, firearm parts, or ammunition:

a. **Firearms and/or firearm parts**

	Description	Location, if known	Check here if proof of compliance was received
(1)			☐
(2)			☐
(3)			☐
(4)			☐

b. **Ammunition**

	Description	Amount, if known	Location, if known	Check here if proof of compliance was received
(1)				☐
(2)				☐
(3)				☐
(4)				☐

☐ Check here if you need more space to list items. List them on a separate piece of paper, write "JV-265, Restrained Person Has Prohibited Items" at the top, and attach it to this form.

9 ☐ Restrained Person Has Not Complied With Surrendering Prohibited Items

a. Restrained person has not fully complied with the orders previously granted on *(date):* _____

The court has not received a receipt or proof of compliance for all the items listed in 8.

b. Notify Prosecutor

If you do not provide a receipt or proof of compliance within two days of today's hearing, by: *(date and time):* _____ the court will notify the *(name of prosecuting agency):* _____

10 ☐ Court Hearing to Review Firearms, Firearm Parts, and Ammunition Compliance

You must attend the court hearing in 6 to prove that all prohibited items have been properly turned in, sold, or stored.

This is a Court Order.

(11) 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 court found good cause not to make this order.

(12) ☐ Order to Not Abuse

You must not threaten, stalk or dsturb the peace of the person in (1) and any person listed in (3).

☐ *(If this box is checked, this case involves domestic violence and you must not do any of the actions listed below.)*

"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 limit 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; making them do something by force, threat, or intimidation, including threats based on actual or suspected immigration status; and reproductive coercion, meaning controlling someone's reproductive choices, such as using force, threat, or intimidation to pressure someone to be or not be pregnant, and to control or interfere with someone's contraception, birth control, pregnancy, or access to related health information.

(13) ☐ 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. 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.

(14) ☐ Protect Animals

a. ☐ You must stay at least _____ yards away from the animals listed below.

b. ☐ You must not take, sell, hide, molest, attack, strike, threaten, harm, get rid of, transfer, or borrow against the animals.

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

This is a Court Order.

Case Number:

15 Service

a. ☐ **No other proof of service is needed.** The person in 2 attended the hearing on (*date*): _____ .

b. ☐ **The person in 2 did not attend the hearing.** Proof of service of the request and notice of hearing was presented to the court. *(Check all that apply):*

(1) ☐ This order can be served by mail. The judge's orders in this form are the same as the orders in form JV-251 except for the expiration date. The person in 2 must be served (given), either by mail or in person.

(2) ☐ This order must be personally served. The judge's orders in this form are different from the orders in form JV-251. The person in 2 must be personally served (given) a copy of this order.

(3) ☐ The court has scheduled a firearms and ammunition compliance hearing. The person in 1 must have a copy of this order served on the person in 2 by:

(A) ☐ Personal service by *(date):* _____

(B) ☐ Mail at the person in 2 's last known address by *(date):* _____

16 Enter Restraining Order Into Database

Within one business day, this order must be entered into the California Law Enforcement Telecommunications System (CLETS).

a. ☐ The court will enter the order into CLETS.

b. ☐ The court or someone it designates will send a copy of this order to a local law enforcement agency.

If the court designates someone, provide their name: _____

Judge's Signature

Date: _____

_____

Judge or Judicial Officer

Certificate of Compliance With Violence Against Women Act

This restraining (protective) order meets all "full faith and credit" requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994), 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.

This is a Court Order.

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. (Penal 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. (Penal Code sections 836(c)(1); Family 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. (Family Code section 6383; Penal 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). (Family Code section 6381(b)–(c).)

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 Penal Code section 136.2; Family 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 include an EPO or a no-contact order, a criminal protective order (CPO) issued in a criminal case involving domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil restraining order that conflicts with the CPO. All orders in the civil restraining order that do not conflict with the CPO must be enforced.
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 fill out this part.)

Clerk's Certificate
[seal]

—Clerk's Certificate—

I certify that this *Restraining Order After Hearing — Against Child* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

JV-268 Proof of Personal Service

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council
JV-268.3.28.22

(1) Name of Party Asking for Protection:

(2) Name of Party to Be Restrained:

(3) Notice to Server

You must:

- Be 18 years of age or older.
- Not be listed in items (1), or (3) of form JV-245, *Request for Juvenile Restraining Order* or JV-258, *Request for Juvenile Restraining Order Against a Child*.
- Give a copy of all documents checked in (4) to the restrained party in (2) (you cannot send them by mail). Then complete and sign this form, and give it to the party in (1).

Fill in court name and street address:

Superior Court of California, County of

Court clerk fills in case number when form is filed.

Case Number:

(4) I gave the party in (2) a copy of all the documents checked:

a. ☐ JV-245, *Request for Juvenile Restraining Order*
b. ☐ JV-258, *Request for Juvenile Restraining Order Against a Child*
c. ☐ JV-250, *Notice of Court Hearing and Temporary Restraining Order*
d. ☐ JV-260, *Court Hearing and Temporary Restraining Order Against a Child*
e. ☐ Blank form JV-247, *Response to Request for Juvenile Restraining Order*
f. ☐ Blank form JV-259, *Response to Request for Juvenile Restraining Order Against a Child*
g. ☐ JV-251, *Request to Reschedule Restraining Order Hearing*
h. ☐ JV-253, *Order on Request to Reschedule Hearing*
i. ☐ JV-255, *Restraining Order After Hearing*
j. ☐ JV-265, *Restraining Order After Hearing—Against a Child*
k. ☐ Other *(specify):*

(5) I personally gave copies of the documents checked above to the party in (2) on:

a. Date: _____ b. Time: _____ ☐ a.m. ☐ p.m.

c. At this address: _____
City: _____ State: _____ Zip: _____

(6) Server's Information

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____
(*If you are a registered process server*):
County of registration: _____ Registration number: _____

(7) I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____
Type or print server's name *Server to sign here*

JV-272 Prohibited Items Finding and Orders

Case Number:

This form is attached to *(check one):* ☐ JV-250 ☐ JV-254 ☐ JV-260 ☐ Other: _____

Draft- 3.30.22
Not approved
by Judicial Council

(1) Restrained Person Has Prohibited Items

The court finds that you have firearms, firearm parts, or ammunition:

☐ Listed on form JV-250, *Notice of Court Hearing and Temporary Restraining Order*

☐ Listed on form JV-260, *Court Hearing and Temporary Restraining Order Against a Child*

☐ Listed below:

a. **Firearms and/or firearm parts**

	Description	Location, if known	Check here if proof of compliance was received
(1)			☐
(2)			☐
(3)			☐
(4)			☐
(5)			☐
(6)			☐

b. **Ammunition**

	Description	Amount, if known	Location, if known	Check here if proof of compliance was received
(1)				☐
(2)				☐
(3)				☐
(4)				☐
(5)				☐
(6)				☐

☐ Check here if you need more space to list items. List them on a separate piece of paper, write "JV-272, Restrained Person Has Prohibited Items" at the top, and attach it to this form.

(2) ☐ Court Hearing to Review Firearms, Firearm Parts, and Ammunition Compliance

You must attend the court hearing listed below to prove that all prohibited items that you have or own were turned in, sold, or stored. If the judge listed any items in (1) of this order, this means that the judge has found that you have those items. If you do not attend the court hearing listed below, a judge may find that you have violated the restraining order and will notify law enforcement and a prosecuting attorney of the violation.

Name and address of court, if different than court address listed on the front of this order

Date: _____ Dept.: _____

Time: _____ Room: _____

This is a Court Order.

(3) ☐ Restrained Person Has Not Complied With Surrendering Prohibited Items

a. The court finds that you have not fully complied with the orders previously granted on *(date):* _____
The court has not received a receipt or proof of compliance for all the items listed in (1).

b. Notify Prosecutor
If you do not provide a receipt or proof of compliance within two days of today's hearing, by:
(date and time): _____ , the court will notify the
(name of prosecuting agency): _____ .

This is a Court Order.

JV-274 Noncompliance with Firearms and Ammunition Order

CONFIDENTIAL

Clerk stamps date here when form is filed.

Draft-3.21.22
Not approved by Judicial Council

This notice is provided to the agency or agencies listed below, as required by the Family Code.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Protected Party

Name: _____

2 Restrained Party

Name: _____

3 ☐ Restrained Party Has Not Complied with Surrendering Firearms, Firearm Parts, and Ammunition

The court has found that the person listed in 2 has guns, firearms, firearm parts, or ammunition in violation of a restraining order. The restraining order granted by the court is attached to this form.

Notice is given to the prosecuting agency (*name of agency):* _____ provided under Family Code section 6389(c)(4).

4 ☐ Outstanding Warrant(s)

The court has found that the person listed in 2 has one or more outstanding warrants. The restraining order granted by the court is attached to this form. Notice of the warrant is provided to the agency listed below, as required by Welfare and Institutions Code section 213.5(k) and Family Code section 6306(e). The agency must take all actions necessary to execute the warrant(s).

Notice to Law Enforcement Agency *(name of agency):* _____

5 ☐ Additional Information

The court has conducted a background search pursuant to Welfare and Institutions Code section 213.5(k) and Family Code section 6306. In addition to the information provided above, the court is attaching the following information found in the background search.

(briefly describe information): _____

6 Number of pages attached to this form, if any: _____

Judge's Signature

Date: _____

_____
Judge or Judicial Officer

Case Number:

—Clerk's Certificate—

I certify that I am not a party to this case and that a true copy of the *Notice of Non-Compliance with Firearms, Ammunition, or Warrant* (form JV-274), was sent to the agency or agencies listed on page 1:

[seal]

a. ☐ **Prosecuting agency listed in 3b**

(1) ☐ by fax, email, or other electronic means ☐ by mail

(2) *(number, email address, or address):* _____

_____

_____

(3) Date of transmission or mailing: _____

(4) Transmitted or mailed from the courthouse listed on page 1.

b. ☐ **Law enforcement agency listed in 4.**

(1) ☐ by fax, email, or other electronic means ☐ by mail

(2) *(number, email address, or address):* _____

_____

_____

(3) Date of transmission or mailing: _____

(4) Transmitted or mailed from the courthouse listed on page 1.

Date: _____ Clerk, by _____, Deputy

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 04/06/22

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

Title of proposal: Rules: Remote Access to Criminal Electronic Records

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend Cal. Rules of Court, rule 2.519

Committee or other entity submitting the proposal:
Information Technology Advisory Committee

*Staff contact (*name, phone and e-mail*): Andrea L. 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:
Annual agenda approved by Rules Committee on (*date*): N/A Approved by Technology Committee on 02/14/22
Project description from annual agenda: Consider amending the California Rules of Court on remote access to criminal electronic records to provide parity between private defense attorneys and public defenders.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

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

Additional Information for JC Staff (provide with reports to be submitted to JC)**:**

- **Form Translations** (check all that apply)
  This proposal:
  ☐ includes forms that have been translated.
  ☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
  ☐ includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)
  ☐ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)
  ☐ This proposal may require changes or additions to self-help web content.

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR22-27

Title
Rules: Remote Access to Criminal Electronic Records

Action Requested
Review and submit comments by May 20, 2022

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 2.519

Proposed Effective Date
January 1, 2023

Proposed by
Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair

Contact
Andrea L. Jaramillo, 916-263-0991,
andrea.jaramillo@jud.ca.gov

Executive Summary and Origin

The Information Technology Advisory Committee (ITAC) proposes the Judicial Council amend rule 2.519 of the California Rules of Court[1] to authorize trial courts to provide private criminal defense attorneys broader remote access to criminal electronic records. The proposal originates with the California Attorneys for Criminal Justice, an advocacy organization comprised of criminal defense lawyers and associated professionals.

Background

The Judicial Council built "practical obscurity" into the rules governing access to electronic records by prohibiting public remote access to certain types of electronic records, including criminal electronic records, and limiting the viewing of such records to the courthouse.[2] This was intentional to help prevent widespread public dissemination of such records, which can contain highly sensitive personal information.[3]

[1] All further references to rules are to the California Rules of Court unless otherwise noted.

[2] Administrative Office of the Courts Manager Charlene Hammitt and Special Consultant Victor Rowley, mem. to Chief Justice Ronald M. George and Members of the Judicial Council, Dec. 10, 2001, pp. 1–6 (discussing the reasons for precluding remote access to specific electronic records in proposed rule 2073(c), the predecessor to current rule 2.503(c)). A copy of the memorandum is attached at pages 8–23.

[3] *Ibid.*

However, the Judicial Council recognized that there are persons and entities that are not the public at large, such as parties and their counsel, that the rules did not address and that courts were addressing in a piecemeal, ad hoc fashion.[4] Accordingly, nine Judicial Council advisory committees formed a subcommittee that developed rules for remote access to electronic records that is different than public access.[5] Under the remote access rules, criminal electronic records are available to specified users, including district attorneys, public defenders, and private criminal defense attorneys, but private attorneys are currently limited to remotely accessing their clients' records.[6]

The Proposal

The proposal would amend rule 2.519 to authorize the court to allow an attorney representing a party in a criminal action to remotely access any criminal electronic records the attorney would be legally entitled to view at the courthouse.

The purpose of the proposal is to ensure the rules on remote access treat private criminal defense counsel on par with public defenders and prosecutors. According to California Attorneys for Criminal Justice (CACJ), this change is needed because the current rules do not provide parity between private defense counsel and public defenders. For example, the current rules do not allow a private attorney to remotely access criminal electronic records other than those of their clients; thus, they could not remotely access electronic records in cases of witnesses or codefendants.

CACJ proposed amending rule 2.540 to include private counsel within its scope. However, rule 2.540 specifically addresses remote access by persons working for government entities only and is located in an article of the rules exclusive to government entities. As such, ITAC determined the proposed changes would be more suitable in amendments to rule 2.519, which includes private attorneys within its scope. Accordingly, ITAC developed a revised proposal to amend rule 2.519 instead of rule 2.540.

The proposed amendments authorize courts to allow attorneys representing a party in a criminal case to remotely access any criminal electronic records that the attorney would be entitled to view at the courthouse. The terms for remote access will apply in this instance. Specifically, the attorney:

- May remotely access the electronic records only for the purpose of assisting a party with that party's court matter.

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[4] Judicial Council of Cal., Advisory Com. Rep., *Rules and Forms: Remote Access to Electronic Records* (Aug. 31, 2018), *https://jcc.legistar.com/View.ashx?M=F&ID=6613671&GUID=DA39F21F-B0F6-464E-8E33-1A771C41B679*.

[5] *Ibid.*

[6] Rule 2.519(a) & (b); rule 2.540(b)(1)(C) & (D).

- May not distribute for sale any electronic records obtained remotely under the rules in this article. Such sale is strictly prohibited.

- Must comply with any other terms of remote access required by the court.[7]

Failure to comply with these terms can result in sanctions, including termination of remote access.[8] These terms should help guard against the use of remote access for purposes such as selling access to electronic criminal records. The rule does not exclude additional consequences beyond termination of remote access for failure to comply with the terms of remote access. However, ITAC seeks specific comments on whether the rule should expressly identify additional potential consequences to convey the gravity of a violation more strongly.

In addition to the terms for remote access, the rules include other provisions designed to protect against unauthorized remote access or improper use of remote access. For example, rule 2.523 requires user identity verification, rule 2.524 requires remote access to sealed or confidential records to be "provided through a secure platform and any electronic transmission of the information must be encrypted," rule 5.525 limits searches to searches by case number or case caption, and rule 5.526 encourages courts to utilize audit trails so when an electronic record is accessed remotely, there is a record of that remote access.

Alternatives Considered

As discussed above, ITAC considered CACJ's proposal to amend rule 2.540, but determined that revising the proposal to amend rule 2.519 instead was more appropriate. Additional alternatives considered were the status quo, limiting remote access by public defenders rather than broadening remote access by private attorneys, and providing attorneys remote access to any electronic record they could access at the courthouse.

The Status Quo

ITAC considered taking no action. The problem with the status quo raised by CACJ is that a private attorney would still need to visit a courthouse to access certain criminal court records, for example, criminal court records of a codefendant, whereas a public defender or prosecutor would not. This is a concern if it may impact the quality of representation of a criminal defendant if needed records are burdensome to obtain. ITAC seeks specific comments on that issue.

The benefit of the status quo is that it limits the dissemination of criminal electronic records. Broadening remote access to criminal electronic records by private counsel would lessen the "practical obscurity" of such records. However, given that the proposed amendment is limited in scope as it applies only to attorneys representing parties in criminal cases, attorneys are bound by

[7] Rule 2.519(d)(1)–(3).

[8] Rule 2.519(d)(4).

professional obligations to be honest with the court,[9] and attorneys are bound by the terms of remote access described in rule 2.519(d), ITAC determined the proposed amendments should strike an appropriate balance between privacy and access to provide private criminal defense counsel with access on par with public defenders. ITAC seeks specific comments on this issue, however.

Limiting remote access by public defenders

Instead of expanding the scope of electronic records that private counsel can access remotely, one alternative to provide parity of remote access with public defenders would be limiting the scope of public defenders' remote access to only those clients represented by the public defender's office.

ITAC considered this approach undesirable for a few reasons. First, it may be impractical and controversial, especially for courts that have already established remote access for public defenders. Second, it would also create a new parity issue: all criminal defense attorneys would have remote access that is less than what prosecutors could have under the rules. Even if prosecutors were limited to the cases they were prosecuting, they would practically have greater access than defense counsel in each county because there is one district attorney's office in each county but multiple defense counsel. Thus, remote users from the district attorney's office would be able to access significantly more criminal electronic records than public and private defense counsel. As such, there would be a parity issue since district attorneys would have the ability to remotely access criminal electronic records in cases of witnesses or codefendants, while defense counsel would not necessarily have the same access. Accordingly, this was the least desirable alternative to the proposed amendments and the status quo.

Providing attorneys remote access to any electronic record they could access at the courthouse

ITAC considered whether there was a broader issue of providing attorneys remote access to *any* electronic records that they could access at the courthouse. This also raised concerns about remote access versus practical obscurity. Ultimately, ITAC decided to keep the scope of the proposal limited to address the specific problem CACJ identified, but may explore broader access to other case types in the future with the participation of other Judicial Council advisory committees.

Fiscal and Operational Impacts

While the proposed rule amendment would authorize courts to allow remote access to electronic criminal records by private criminal defense counsel, courts would need to implement appropriate technological updates in their systems to accomplish it and provide training to staff about the update. While the aim of the remote access rules is for courts to provide remote access to certain users, including private counsel, the rules recognize that courts have varying financial

[9] Rules Prof. Conduct, rule 3.3 (candor toward tribunal), *https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_3.3-Exec_Summary-Redline.pdf* (as of Feb. 15, 2022).

means, security resources, or technical capabilities to allow them to implement remote access systems.[10] Thus, implementation is only required to the extent it is feasible for a court to do so.[11]

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?
- If the rule is *not* amended, in what ways would that impact the quality of a defendant's representation for a defendant represented by private counsel?
- Does the proposal adequately strike a balance between privacy and remote access to criminal electronic records by criminal defense attorneys? If not, why not?
    - Should remote access be broader than what the proposal provides?
    - Should remote access be narrower than what the proposal provides?
- Should there be any additional consequences identified in the rule for failure to comply with the terms of remote access? If yes, what consequences should be included?

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?
- Is implementation feasible at present or in the near future? If not, what are the barriers to implementation?

Attachments and Links

1. Cal. Rules of Court, rule 2.519, at pages 6–7
2. Administrative Office of the Courts Manager Charlene Hammitt and Special Consultant Victor Rowley, memorandum to Chief Justice Ronald M. George and Members of the Judicial Council, Dec. 10, 2001, regarding proposed rules on electronic access to court records, at pages 8–23
3. Link A: California Rules of Court, Title 2, *https://www.courts.ca.gov/cms/rules/index.cfm?title=two*

[10] Rule 2.516.

[11] Rule 2.516.

Rule 2.519 of the California Rules of Court would be amended, effective January 1, 2023, to read:

Rule 2.519. Remote access by a party's attorney

(a) Remote access generally permitted

(1) A party's attorney may have remote access to electronic records ~~in the party's actions or proceedings~~ under this rule or under rule 2.518. If a party's attorney gains remote access under rule 2.518, the requirements of rule 2.519 do not apply.

(2) If a court notifies an attorney of the court's intention to appoint the attorney to represent a party in a criminal, juvenile justice, child welfare, family law, or probate proceeding, the court may grant remote access to that attorney before an order of appointment is issued by the court.

(b) Level of remote access

(1) A party's attorney may be provided remote access to the same electronic records in the party's actions or proceedings that the party's attorney would be legally entitled to view at the courthouse.

(2) An attorney representing a party in a criminal action may be provided remote access to any electronic criminal records that the attorney would be legally entitled to view at the courthouse.

(c) Terms of remote access applicable to an attorney who is not the attorney of record

Except as provided in subdivision (b)(2), an attorney who represents a party, but who is not the party's attorney of record in the party's actions or proceedings, may remotely access the party's electronic records, provided that the attorney:

(1) Obtains the party's consent to remotely access the party's electronic records; and

(2) Represents to the court in the remote access system that he or she has obtained the party's consent to remotely access the party's electronic records.

(d) Terms of remote access applicable to all attorneys

(1) ~~A party's~~ An attorney may remotely access the electronic records only for the purpose of assisting ~~the~~ a party with ~~the~~ that party's court matter.

(2) ~~A party's~~ An attorney may not distribute for sale any electronic records obtained remotely under the rules in this article. Such sale is strictly prohibited.

(3) ~~A party's~~ An attorney must comply with any other terms of remote access required by the court.

(4) Failure to comply with these rules may result in the imposition of sanctions, including termination of access.

Judicial Council of California
Administrative Office of the Courts

Information Services Division
455 Golden Gate Avenue ◆ San Francisco, CA 94102-3660
Telephone 415-865-7400 ◆ Fax 415-865-7496 ◆ TDD 415-865-4272

RONALD M GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C VICKREY
Administrative Director of the Courts

RONALD G OVERHOLT
Chief Deputy Director

PATRICIA YERIAN
Director
Information Services Division

TO:	Chief Justice Ronald M. George Members of the Judicial Council
FROM:	Charlene Hammitt, Manager Victor Rowley, Special Consultant
DATE:	December 10, 2001
SUBJECT/ PURPOSE OF MEMO:	Proposed Rules on Electronic Access to Court Records

CONTACT FOR FURTHER INFORMATION:	**NAME:**	**TEL:**	**FAX:**	**EMAIL:**
	Charlene Hammitt	415-865-7410	415-865-7497	charlene.hammitt@jud.a.gov

QUESTION PRESENTED

Why should the rule prohibit remote electronic access (other than to the register and calendar) in case types other than civil?

REASONS FOR PRECLUDING REMOTE ACCESS TO SPECIFIC CATEGORIES OF CASE FILES

Proposed rules 2070-2076 require courts to provide electronic access to general information about court cases and prohibit them from providing access to case files in certain types of cases.

Rule 2073(b) would require courts to provide remote access to registers of actions (as defined in Government Code section 69845) and calendars when they can feasibly do so.

Rule 2073(c), however, would require courts to restrict access to electronic versions of the documents and other records that are found in case files. Under this rule, only case files in civil cases would be available remotely. Files in other types of cases, which are listed in 2073(c), would not be accessible remotely at this time.

The proposed rules represent an initial approach to providing remote access to electronic case files that are likely to contain sensitive and personal information. Electronic records in all case types could be available through terminals at the courthouse. This approach provides them the same de facto privacy protection traditionally afforded paper records. The United States Supreme Court has characterized this protection as a "practical obscurity" that is attributable to the relative difficulty of gathering paper files. See *United States Dep't of Justice* v. *Reporters Committee for Freedom of the Press* 489 U.S. 749 [109 S.Ct. 1468, 103 L.Ed.2d 774].

Delivery of court records on the Internet constitutes publication and typically facilitates republication. With the exception of docket information, trial courts generally have not been publishers of case records. Electronically published data can be easily copied disseminated, and its dissemination is irretrievably beyond the court's control. Publication of court records on the Internet creates a much greater threat to privacy interests than does access to paper records, or access to electronic records through terminals at the courthouse.

The case-types set out in rule 2073 (c) would be precluded from remote access for the following reasons:

- *Sensitive personal information unrelated to adjudication.* Courts sometimes collect sensitive personal information that has no bearing on the merits of a case but that assists the court in contacting parties or in record keeping. Such information could include unlisted home telephone numbers, home addresses, driver's license numbers, and Social Security numbers. Before such information is published on the Internet, the Judicial Council should survey trial courts to identify the sensitive or personal information they collect, determine whether or not this information is essential to workload management, and then consider how to protect such information when it is legitimately needed.

- *Privacy of involuntary participants.* Individuals who are sued, subpoenaed, or summoned for jury duty are involuntary participants in legal proceedings and may be

compelled to provide the court with sensitive personal information. As records custodians, courts should proceed with caution in publishing such information, as it has relatively little relevance to the public's ability to monitor the institutional operation of the courts but relatively great impact on the privacy of citizens who come in contact with the court as defendants, litigants, witnesses, or jurors. Publication of sensitive financial, medical, or family information provided by involuntary court participants could, for instance, harm individuals by holding them up to ridicule, damaging their personal relationships, and foreclosing business opportunities.

- *Investigations in criminal cases.* The Federal Judicial Conference[1] in September 2001 adopted a policy that makes criminal cases unavailable remotely for a two-year period. The Judicial Conference identified two reasons for this exclusion of criminal cases. First, electronic publication of criminal case records could jeopardize investigations that are under way and create safety risks for victims, witnesses, and their families. Second, access to preindictment information, such as unexecuted arrest and search warrants, could severely hamper law enforcement efforts and put law enforcement personnel at risk. These reasons would apply to the proposed California policy as well.

- *Criminal histories.* Allowing remote electronic access to criminal cases would greatly facilitate the compilation of individual criminal histories, in contravention of public policy as established in statute. (See *Westbrook v. City of Los Angeles* (1994) 27 Cal.App.4th 157 [court note required to provide to public database containing criminal case information].) For this reason, the Attorney General supports excluding criminal cases from remote electronic access:

  > Our principal concern is with criminal records and the threat that the electronic release of these records poses to individual privacy and to the legislative and judicial safeguards that have been created to insure that only accurate information is disclosed to authorized recipients. (See, e.g., Penal Code sec. 11105.) The

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[1] "The federal court system governs itself on the national level through the Judicial Conference of the United States The Judicial Conference is a body of 27 federal judges It is composed of the Chief Justice of the United States, who serves as the presiding officer, the chief judges of the 13 courts of appeal, the chief judge of the Court of International Trade, and 12 district judges from the regional circuits who are chosen by the judges of their circuit to serve terms of three years The Judicial Conference meets twice yearly to consider policy issues affecting the federal courts, to make recommendations to Congress on legislation affecting the judicial system, to propose amendments to the federal rules of practice and procedure, and to consider the administrative problems of the courts " See http://www.uscourts gov/understanding_courts/89914 htm

electronic dissemination of criminal records is a tremendous danger to individual privacy because it will enable the creation of virtual rap sheets or private databases of criminal proceedings which will not be subject to the administrative, legislative or judicial safeguards that currently regulate disclosure of criminal record information. (Letter from Attorney General Daniel E. Lungren commenting on draft rules (March 6, 1997); See letter from Attorney General Bill Lockyer (Dec. 15, 2000), reaffirming position taken in March 6, 1997 letter.)

- *Risk of physical harm to victims and witnesses.* The safety of victims and witnesses could be compromised if courts were to publish their addresses, telephone numbers, and other information that would allow them to be located. Such risk is perhaps most common in criminal and family cases.

- *Fraud and identity theft.* Although sensitive personal information, such as Social Security and financial account numbers, may already be available in paper files at the courthouse, its "practical obscurity" has provided it with de facto privacy protection. Publishing such information on the Internet exposes it to a substantial risk of criminal misuse. Participation in court proceedings, whether voluntary or involuntary, should not expose participants to such victimization.

- *Determination of reliability.* Ex parte allegations, particularly in family cases, present a problem in that they may be skewed by self-interest and subsequently determined to be unreliable. Although such allegations could be read in case files at the courthouse, the physical demands of accessing such files would afford them "practical obscurity." Courts should not broadcast ex parte allegations on the Internet until there are policies and procedures to address the problems of unvetted ex parte allegations.

- *Statutory rehabilitation policies.* Various sections of the Penal Code allow for sealing of a defendant's criminal record provided that certain conditions are met. Such sealing does not occur by operation of law; see for instance the entries on arrest or conviction for marijuana possession and the record of a "factually innocent" defendant in Table 1. If such information is published before conditions for sealing are met, the publication would make the subsequent sealing ineffectual and thus thwart the rehabilitative intent of the authorizing legislation. Admittedly, information could be published from files accessed at the courthouse, but the "practical obscurity" of such files has lessened the likelihood of publication and reduced the risk of thwarting rehabilitation policies. Publication on the Internet would make it difficult to implement such policies.

- *Tools to apply confidentiality policies.* By statute, courts are obligated to protect confidential information in many types of case records, including some of the types of case records specified in rule 2073(c) (see Table 1). This obligation may be absolute or defined by statutorily set or judicially determined time limits. Courts have traditionally met these obligations on an ad hoc basis, as individual case records have been requested at the courthouse. To respond in a responsible manner to remote electronic requests, courts would need to meet these obligations by applying appropriately protective criteria to all records, not only those that are requested but those that might be. Courts simply do not have staff who can review and monitor all records to make them available for remote electronic access. They will need to use automated tools to address the review and monitoring problem. Effective tools should be based on standards. Standards should then be applied by case management systems. Until these standards can be developed and applied by case management systems, the proposed rules would make specified case types unavailable by remote electronic access.

- *Inadvertent exposure of sensitive or personal information* Parties to the excepted case types (particularly family law) who are unaware that sensitive or personal information included in court filings is publicly accessible will also be unaware they can take steps to protect such information, by requesting a sealing or protective order. For example, in family law proceedings, it is not unusual for litigants to attach copies of their tax returns to their filings, even though tax returns are made confidential by statute. Similarly, in family law proceedings, allegations of abuse are not uncommon; however, litigants may not be aware that there are procedures for limiting public access to this highly sensitive and personal information to protect not only their own privacy, but that of their minor children. The exceptions to remote access in rule 2073 (c) afford time for the Judicial Council to consider how the privacy interests of litigants, particularly the self-represented, might be protected before courts electronically publish case files that include sensitive or personal information that litigants have inadvertently disclosed.

Policy development. While the proposed rules encourage courts to use technology to facilitate access to court records (in accordance with long-term goals of the judicial branch), they do so cautiously, providing breathing room while privacy issues and records policies are more thoroughly reexamined at state and federal levels. The rules allow remote access to civil case files. Civil cases do present some of the same privacy

concerns discussed above, but generally to a lesser degree than in the types of case records that are unavailable under 2073(c). The courts' experiences with remote access to civil cases will guide the council's policy-making in the future. This incremental approach allows further debate and experimentation. Such an approach is in line with the approach adopted by the Judicial Conference of the United States and other states.

Proposed Rule 2073(c)

RECORDS NOT AVAILABLE BY REMOTE ELECTRONIC ACCESS

Under proposed Rule 2073(c), the public would be provided with electronic access to court records in specified case types only at the courthouse and not remotely, pending the development and implementation of software standards that enable the courts to meet their legal obligations to protect confidentiality and privacy. This table illustrates the confidentiality and privacy issues that the courts must resolve before providing such remote electronic access to the public.

Case type	*Record type*	*Restricted data*	*Legal authority*	*Comment*
CIVIL				
Civil or criminal	Subpoenaed business records	Entire record	Evid Code § 1560(d) (confidential until introduced into evidence or entered into record)	As with court records generally, these records are not accessible by public unless and until relied on by court as part of adjudicative process See *Copley Press Inc v Superior Court* (1992) 6 CA4th 106, 113-15 (public right of access to court records does not apply to all of court's records and files, but only to records that officially reflect work of court)
All cases involving fee waiver application	Fee waiver application	Entire record	Cal Rules of Court, rule 985(h) (records of application to proceed without paying court fees and costs are confidential)	Purpose is to prevent disclosure of applicant's financial information
All cases involving attachment	Records in attachment action	Entire record	Code Civ Proc § 482 050(a) (attachment action records are confidential for 30 days from filing complaint or return of service, on plaintiff's request).	
All cases involving garnishment	Judicial Council forms 982 5 (11S) and 982 5 (14S)	Entire form	Judicial Council forms 982 5 (11S) and 982 5 (14S)	Purpose is to prevent disclosure of debtor's Social Security Number (SSN)
Unlawful detainer	Register of Actions	Case title, date of commencement, memorandum of	Code Civ Proc § 1162(a) (in certain unlawful detainer actions, Register of Actions unavailable for 60 days from	

		every subsequent proceeding and date (see Gov Code § 69845)	filing of complaint)	
CIVIL HARASSMENT				
Harassment generally		Address and telephone number of applicant for restraining order.	CCP § 527 6 (requires showing of unlawful violence, credible threat of violence, or course of conduct resulting in "substantial emotional distress," including stalking)	No explicit statutory authority, but publication of the restricted information might facilitate further harassment Analogous to authority given to court under Fam Code to prohibit disclosure of identifying information in proceeding under Domestic Violence Prevention Act (see below)
Domestic Violence		Address and telephone number of applicant for restraining order and or his or her minor children.	Fam Code § 6322 5 (court may issue ex parte order prohibiting disclosure of address or other identifying information of a party, child, parent, guardian, or other caretaker of child in proceeding under Domestic Violence Prevention Act)	Publication of the restricted information might facilitate further harassment
CRIMINAL				
	Grand jury proceedings		Pen Code § 938 1(b) (transcript not subject to disclosure until 10 days after delivery to defendant or attorney, subject to specified conditions)	Records not public unless indictment returned
	Search warrants and affidavits	Entire record until return of service or 10 days after issuance, whichever is first	Pen Code § 1534(a) (these records are confidential for time period specified)	
	Police reports	Address or telephone number of victims, witnesses	Pen Code § 1054 2 (no attorney may disclose unless permitted to do so by the court after a hearing and a showing of good cause)	Conforms to policy of Pen Code § 841 5 (no law enforcement officer or employee of law enforcement agency shall disclose to any arrested person, or to any person who may be a defendant in a criminal action, address or telephone number of victim or witness in alleged offense)
	Pre-sentence	Entire record	Pen Code § 1203 05 (pre-sentence	Publication on Internet would effectively be

	probation report		probation report is confidential after 60 days from sentencing or granting of probation and under certain other conditions)	permanent and thus thwart policy behind making record unavailable after 60 days
	Pre-sentence diagnostic report	Entire record	Pen Code § 1203 03 (report is confidential)	Unavailable as public record in any form absent change in legislative policy
	Defendant's statement of assets	Entire record	Pen Code § 1202 4 (mandatory Judicial Council form (CR-115) is confidential)	Purpose is to prevent disclosure of defendant's financial information
	Criminal history information	Summaries of criminal history information	Summaries of criminal history information are confidential (*Westbrook v Los Angeles* (1994) 27 CA4th 157, 164, Pen Code §§ 11105, 13300-13326) Public officials have duty to preserve confidentiality of defendant's criminal history (*Craig v Municipal Court* (1979) 100 CA3d 69, 76)	Court in *Westbrook* noted adverse impact of disseminating this information with its potential for frustrating policies permitting subsequent sealing or destruction of records, or limiting dissemination of similar records by other criminal justice agencies (pp 166-67) Pen Code § 11105 limits access to state summary criminal history information to public agencies and others given express right of access by statute Pen Code § 13300 contains similar limitations on public access with respect to local summary criminal history information
	Arrest or conviction for marijuana possession	All records except for transcripts or appellate opinions, see Health & Saf Code § 11361 5(d)	Health & Saf Code §§ 11361 5-11361 7 (generally, records of arrest or conviction for marijuana possession to be destroyed two years from date of arrest or conviction)	Publication on Internet would effectively be permanent and thus thwart policy behind sealing after sentencing
		Any information	42 CFR 2.12 (restricts disclosure of patient identity in federally assisted alcohol or drug abuse rehabilitation program)	Publication is antithetical to goal of rehabilitation
	Record of "factually innocent" defendant	Entire record	Pen Code §§ 851 8, 851 85 (on acquittal, or if no accusatory pleading is filed or, after filing, there is a judicial determination that defendant was	Publication on Internet would effectively be permanent and thus thwart policy behind sealing

			"factually innocent" of the charges, court records, including arrest records may be sealed)	
	Indigent defendant requests	Indigent defendant's in forma pauperis records and request for experts in capital case	Cal Rules of Ct 985(h) (indigent defendant's in forma pauperis records are confidential) and Pen Code § 987 9 (request for experts in capital case are confidential)	Purpose of Rule 985(h) is to prevent disclosure of defendant's financial information Purpose of sec 987 9 is to preserve confidentiality of defense
	Plea based on insanity or defense based on defendant's mental or emotional condition	Entire record	Evid Code § 1017 (psychotherapist appointed by order of court on request of lawyer for defendant in criminal proceeding, to provide lawyer with information to advise defendant whether to enter or withdraw plea based on insanity or to present defense based on mental or emotional condition)	Purpose is to preserve confidentiality of defense
	Reports concerning mentally disordered prisoners	Entire record	Pen Code § 4011 6 (reports to evaluate whether prisoners are mentally disordered are confidential	
	Victim/witness information	Specified victim personal identifying information and victim impact statements	Gov Code § 6254(f)(2) and Pen Code § 293 (in specified abuse and sexual assault cases, victim's name and address, and the offense, confidential on victim's request). Pen. Code § 293 5(a) (at request of victim of certain sexual offenses, court may order that victim's identity in all records be either Jane Doe or John Doe, on finding that order is reasonably necessary to protect victim's privacy and will not unduly prejudice prosecution or defense) Pen. Code § 1191.15 (victim impact	Purpose is to protect victim's privacy

10

			statements are confidential before judgment and sentencing and may not be copied After judgment and sentencing, statement must be made available as public record of court)	
Misdemeanor proceedings	Dismissal of accusatory pleading and setting aside of guilty verdict		Pen Code § 1203 4a (misdemeanor proceedings resulting in conviction may be modified on petition and proof that one year has elapsed from date of judgment, sentence has been fully complied with, and no other crimes have been committed)	Publication is antithetical to goal of rehabilitation
Fines, fees, forfeitures	Any record containing Social Security Number (SSN)	Social Security Number	Gov Code § 68107 (court may order criminal defendant on whom fine, forfeiture, or penalty is imposed to disclose social security number to assist court in collection, but number is not a public record and is not to be disclosed except for collection purposes), see also 42 U S C § 405(c)(2)(C)(viii) (I)	Purpose is to prevent disclosure of defendant's Social Security Number (SSN)
FAMILY				
Child or spousal support	Tax return	Entire record	Fam Code § 3552 (parties' tax returns filed in support proceedings must be sealed)	Unavailable as public record in any form absent change in legislative policy
Child custody	Custody evaluation report	Entire record	Fam Code § 3111 (report is available only to court, parties, and their attorneys)	In general, these records are made confidential to protect privacy of parties and their minor children
	All, when noncustodial parent is registered sex offender, or convicted of child	Custodial parent's place of residence and employment, and child's school	Fam Code § 3030(e) (this information may not be disclosed unless court finds that disclosure would be in child's best interest)	

	abuse, child molestation, or rape that resulted in child's conception		
Other	Records in conciliation proceedings	Entire record	Fam Code § 1818(b) (files of family conciliation court shall be closed)
	Records in action under Uniform Parentage Act (UPA)	All records, except for final judgment	Fam Code § 7643(a) (records are subject to public inspection only in exceptional cases, on court order for good cause shown).
	Petition and probation or social services report in proceeding to terminate parental rights	Entire record	Fam Code § 7805 (records are to be disclosed only to court personnel, the parties, and persons designated by the judge)
	Adoption records	Entire record	Fam Code § 9200(a) (judge may not authorize public inspection except in exceptional circumstances and for good cause "approaching the necessitious")
	Support enforcement, child abduction	Entire record	Fam Code § 17212 (records generally confidential with specified exceptions)
	Support enforcement under Uniform Interstate Family Support	Address of child or party or other identifying information	Fam Code § 4926 (on finding that health, safety, or liberty of party or child would be unreasonably put at risk by disclosure of identifying information, court shall order that address of child or party or other identifying information not be disclosed in any pleading or other document filed

	Act		in proceeding under Act)	
	Confidential Counseling Statement (Marriage)	Judicial Council Form 1284	Judicial Council Form 1284	
GUARDIANSHIP, CONSERVATORSHIP				
	Confidential Guardian Screening Form (Probate Guardianship)	Entire Judicial Council Form GC-212	Prob Code § 1516, Cal Rules of Court, rule 7 1001	
	Confidential Conservator Screening Forms (Probate Conservatorship)	Entire Judicial Council Forms GC-314 and GC-312	Prob Code § 1821(a), Cal Rules of Court, rule 7 1050	
	Report and recommendation re proposed guardianship	Entire record	Prob Code § 1513(d) (report of investigation and recommendation concerning proposed guardianship is confidential)	Unavailable as public record in any form absent change in legislative policy
	Report and recommendation re proposed conservatorship	Entire record	Prob Code § 1826(n) (report of investigation and recommendation concerning proposed conservatorship is confidential, except that court has discretion to release report if it would serve conservatee's interests)	
	Report arising from periodic review of conservatorship	Entire record	Prob Code § 1851(e) (report is confidential, except that court has discretion to release report if it would serve conservatee's interests)	
	Periodic accounting of assets in estate or	Accounting containing ward's or conservatee's	Prob Code § 2620(d) [AB 1286, 1517] (accounting containing this information should be filed under seal)	

	ward or conservatee	Social Security number or any other personal information not otherwise required to be submitted to court		
JUROR RECORDS				
	Juror questionnaires and personal identifying information	Jurors' names, addresses, and telephone numbers	Code Civ Proc § 237 (juror personal identifying information after verdict in criminal case, to be confidential) *Bellas v Superior Court* (2000) 85 CA4th 636, 646 (jurors' responses to questionnaires used in voir dire are accessible by public unless judge orders them to be sealed) *Townsel v Superior Court* (1999) 20 C4th 1084, 1091 (trial courts have inherent power to protect juror safety and juror privacy) *Copley Press, Inc v Superior Court* (1991) 228 CA3d 77, 88 (public should not be given access to personal information furnished to determine juror qualification or necessary for management of the jury system, but not properly part of voir dire, *e g*, the prospective juror's telephone number, SSN, or driver's license number) See also Cal Rules of Court, rule 33 6 (sealing juror-identifying information in record on appeal).	Do courts have an obligation to protect the privacy of these nonparties to the proceeding?
JUVENILE				
All	All	Entire record	Welf & Inst Code § 827 and Cal Rules of Court 1423 (access to case files in juvenile court proceedings is generally restricted), Pen Code § 676 (certain violent offenses excepted)	General purpose behind confidentiality of these records is to promote rehabilitation of juvenile offenders

14

	Adult court criminal records		Pen Code § 851 7 and Welf & Inst Code § 707 4 (adult court criminal records involving minors that do not result in conviction to be sent to juvenile court, to obliterate minor's name in adult court index or record book) Pen Code § 1203 45 (minor would qualify for judgment modification as a probationer or misdemeanant)	
	Record of "factually innocent" defendant	Entire record, including arrest record	Pen. Code § 851 85 (any criminal proceedings, after acquittal plus judicial finding of factual innocence)	
	Judgments		Pen. Code § 1203 4 (criminal judgments may be modified for convicted probationers after successful completion of probationary period) or Pen Code § 1203 4a (criminal judgments may be modified for convicted misdemeanants after one year and successful completion of sentence)	
	All records, papers, and exhibits in the person's case in the custody of the juvenile court (see Welf. & Inst Code §781)	Entire juvenile court record, minute book entries, and entries on dockets, and any other records relating to the case	Welf & Inst. Code §781 (juveniles declared wards of the court may on petition have their juvenile court records (including those made public by Welf & Inst Code § 676) sealed five years after the jurisdiction of the court ceases or the juvenile reaches 18, if there are no subsequent convictions involving felonies or moral turpitude, and there is a finding of rehabilitation)	
MENTAL HEALTH				

15

Civil and criminal	Mental health service records	Entire record	Welf & Inst Code §§ 5328-5330 (specified records confidential and can be disclosed only to authorized recipients, including records related to the Dept. of Mental Health; Developmental Services; Community Mental Health Services, services for developmentally disabled, voluntary admission to mental hospitals and mental institutions)	Publication on Internet would effectively be permanent and thus thwart policy behind sealing after sentencing
	Developmentally Disabled Assessment Reports	Entire record	Welf & Inst Code § 4514 (Developmentally Disabled Assessment Reports, to be sealed after sentencing)	Publication on Internet would effectively be permanent and thus thwart policy behind sealing after sentencing

16

SOCIAL SECURITY NUMBERS By statute SSNs are required in the following court proceedings

(1) The judgment debtor's SSN (if known to the judgment creditor) must be set forth on the abstract of judgment CCP § 674(a)(6)
(2) The application for an earnings withholding order must include the judgment debtor's SSN (if known to the judgment creditor CCP § 706 121(a) The earnings withholding order and the employer's return must also include this SSN if known CCP §§ 706 125(a) (order), 706 126(a)(3) (return)
(3) As noted above with regard to criminal cases, courts are authorized to collect SSNs from criminal defendants with fines, forfeitures, or penalties imposed, but these numbers are not to become public records and are not to be disclosed except for collection purposes Govt Code § 68107

In civil and bankruptcy cases in the federal courts, only the last four digits of a party's SSN should be set forth in any document filed with the court See http //www uscourts gov/Press_Releases/att81501 pdf

JUDICIAL COUNCIL OF CALIFORNIA

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www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: May 13, 2022

Title
Rules and Forms: Miscellaneous Technical Changes

Rules, Forms, Standards, or Statutes Affected
Revise form AT-167/EJ-152.

Recommended by
Judicial Council staff
Anne M. Ronan, Supervising Attorney
Legal Services

Agenda Item Type
Action Required

Effective Date
September 1, 2022

Date of Report
April 6, 2022

Contact
Anne M. Ronan, 415-865-8933
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Executive Summary

Judicial Council staff has noted a minor error in *Memorandum of Garnishee* (form AT-167/EJ-152), in which a party is misidentified in item 2. Judicial Council staff recommends making a correction to that form to avoid causing confusion for court users, clerks, and judicial officers.

Recommendation

Judicial Council staff recommend that the council, effective September 1, 2022

1. Revise form AT-167/EJ-152, *Memorandum of Garnishee*, item 2, to replace the incorrect reference to "Judgment Creditor" with "Judgment Debtor

The text of the revised form is attached at pages 3–4.

Relevant Previous Council Action

Although the Judicial Council has acted on this form, this proposal recommends only minor corrections unrelated to any prior action.

Analysis/Rationale

The changes to this form are technical in nature and necessary to correct inadvertent use of an incorrect party title in item 2.

Policy implications

There are no policy implications to this proposal.

Comments

This proposal was suggested by several members of the public to fix the error in the form. It was not circulated for public comment because the change is noncontroversial, involves technical revisions, 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 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. Form, AT-167/EJ-152, at pages 3–4.

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*LEVYING OFFICER (Name and Address):*
NAME:		DRAFT
FIRM NAME:		11/18/2021
STREET ADDRESS:		NOT APPROVED BY JUDICIAL COUNCIL
CITY: STATE: ZIP CODE:		
TELEPHONE NO.: FAX NO.:		
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PLAINTIFF/PETITIONER:		LEVYING OFFICER FILE NO.:
DEFENDANT/RESPONDENT:		
MEMORANDUM OF GARNISHEE (Attachment—Enforcement of Judgment)		CASE NUMBER:

NOTICE TO PERSON SERVED WITH WRIT AND NOTICE OF LEVY OR NOTICE OF ATTACHMENT: This memorandum must be completed and mailed or delivered to the levying officer within 10 days after service on you of the writ and notice of levy or attachment unless you have fully complied with the levy. Failure to complete and return this memorandum may render you liable for the costs and attorney fees incurred in obtaining the required information.

— RETURN ALL COPIES OF THIS MEMORANDUM TO THE LEVYING OFFICER —

This memorandum does *not* apply to garnishment of earnings.

1. **a.** Garnishee *(name):*
   b. Address:
2. Judgment Debtor *(name):*
3. ☐ *(Check if applicable.)* The garnishee holds neither any property nor any obligations in favor of the judgment debtor.
4. If you will not deliver to the levying officer any property levied upon, describe the property and the reason for not delivering it:

5. **For writ of execution only.** Describe any property of the judgment debtor not levied upon that is in your possession or under your control:

(Continued on reverse)

SHORT TITLE	LEVYING OFFICER FILE NO.:	CASE NUMBER:

6. If you owe money to the judgment debtor which you will not pay to the levying officer, describe the amount and the terms of the obligation and the reason for not paying it to the levying officer:

7. Describe the amount and terms of any obligation owed to the judgment debtor that is levied upon but is not yet due and payable:

8. **For writ of execution only.** Describe the amount and terms of any obligation owed to the judgment debtor that is not levied upon:

9. Describe any claims and rights of other persons to the property or obligation levied upon that are known to you and the names and addresses of the other persons:

DECLARATION OF GARNISHEE

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)

If you need more space to provide the information required by this memorandum, you may attach additional pages.

☐ **Total number of pages attached:** _____