



# JUDICIAL COUNCIL OF CALIFORNIA

RULES COMMITTEE

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[rulesmeetings@jud.ca.gov](mailto:rulesmeetings@jud.ca.gov)

## RULES COMMITTEE

### MINUTES OF OPEN MEETING

Thursday, September 22, 2022

4:10 - 5:10 p.m.

Videoconference

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**Advisory Body Members Present:** Hon. Carin T. Fujisaki, Hon. Kevin C. Brazile, Hon. Samuel K. Feng, Mr. Shawn C. Landry, Hon Kimberly Merrifield, Hon. Glenn Mondo, and Hon. David Rosenberg

**Advisory Body Members Absent:** Ms. Rachel W. Hill

**Staff Present:** Ms. Anne M. Ronan and Ms. Benita Downs

**Other Staff Present** Hon. Stephanie E. Hulse, Mr. James Barolo, Mr. Alex Bender, Ms. Kerry Doyle, Ms. Audrey Fancy, Ms. Bonnie Hough, Ms. Tracy Kenny, and Ms. Marymichael Smrdeli.

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#### OPEN MEETING

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#### Call to Order and Roll Call

The chair called the meeting to order at 4:12 p.m., and Ms. Downs took roll call.

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#### DISCUSSION AND ACTION ITEMS (ITEMS 1 – 6)

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##### Item 01

#### **Protective Orders: Civil Protective Order Forms Implementing Assembly Bill 1621**

The committee reviewed a recommendation from the Civil and Small Claims Advisory Committee proposing revisions to 30 Judicial Council civil restraining orders forms. Many of the forms in the proposal were circulated for comment between April and May 2022 to update the information on the forms related to interpreters, disability and court accommodations, and the priority of enforcement among protective orders. After the comment period closed, the Legislature enacted Assembly Bill 1621 (Stats. 2022, ch. 76), which took effect immediately on June 30, 2022. The new legislation prohibits persons restrained under these restraining orders from possessing firearm parts (in addition to the already prohibited firearms). The proposal recommended additional revisions to 12 previously circulated forms and recommended revisions to 18 forms that were not previously circulated to reflect the new law

**Action: The committee unanimously approved the proposal for circulation on a special shortened cycle through October 11.**

**Item 02**

**Protective Orders: Elder Abuse Forms Implementing Assembly Bill 1621**

The committee reviewed a recommendation from the Civil and Small Claims Advisory Committee proposing revisions to nine Judicial Council elder or dependent adult restraining orders forms. Most of the forms in the proposal were circulated for comment between April and May 2022 to implement the statutory changes in Assembly Bill 1243 (Stats. 2021, ch. 273) and to make other updates. After the comment period closed, the Legislature enacted Assembly Bill 1621 (Stats. 2022, ch. 76), which took effect immediately on June 30, 2022. The new legislation prohibits persons restrained under elder or dependent adult restraining orders from possessing firearm parts (in addition to the already prohibited firearms). The proposal recommended additional revisions to seven previously circulated forms and recommended revisions to two forms that were not previously circulated to reflect the new law.

***Action: The committee unanimously approved the proposal for circulation on a special shortened cycle through October 11.***

**Item 03**

**Criminal Procedure: Criminal Protective Orders and Firearm Relinquishment Orders**

The committee reviewed a recommendation for the Criminal Law Advisory Committee proposing revisions to two mandatory Judicial Council criminal protective orders to (1) reflect statutory changes to the definition of firearm in Penal Code section 16520(b), with an impact on Penal Code section 136.2 and Code of Civil Procedure section 527.9; (2) reflect statutory changes adding “reproductive coercion” as an example of “coercive control” in Family Code section 6320; (3) be consistent with similar provisions in the civil protective orders; and (4) improve the forms’ useability and accuracy. The committee circulated the proposed revisions to the two mandatory criminal protective orders from April to May 2022. In light of recent statutory changes, the committee proposed further revisions to the forms. The committee also recommended revisions to a mandatory Judicial Council order to surrender firearms in domestic violence criminal cases to reflect statutory changes to the definition of firearms as described above and to be consistent with previously circulated proposed revisions to the criminal protective orders.

***Action: The committee unanimously approved the proposal for circulation on a special shortened cycle through October 11.***

**Item 04****Criminal Law: Definition of Firearm**

The committee reviewed a recommendation from the Criminal Law Advisory Committee proposing revisions to two optional Judicial Council plea forms and the optional Judicial Council firearm relinquishment findings form to reflect statutory changes to the definition of *firearm* in Penal Code section 16520(b). The committee also recommended additional revisions to one of the plea forms to reflect accurate mandatory minimum probation terms and make minor, nonsubstantive technical changes.

***Action: The committee unanimously approved the proposal for circulation on a special shortened cycle through October 11.***

**Item 05****Criminal Procedure: Request for Dismissal of Conviction for Violation of Penal Code Section 653.22**

The committee reviewed a recommendation from the Criminal Law Advisory Committee proposing two optional forms relating to resentencing, dismissal, and sealing of Penal Code section 653.22 convictions. Senate Bill 357 (Weiner; Stats. 2022, ch. 86), effective January 1, 2023, repeals Penal Code section 653.22 (loitering with the intent to commit prostitution) and adds Penal Code section 653.29, which outlines the process for resentencing, dismissal, and sealing of section 653.22 convictions. Penal Code section 653.29(f) specifically instructs the Judicial Council to “promulgate and make available all necessary forms to enable the filing of petitions and applications provided in this section.” The proposal included a request for relief and a court order granting or denying relief.

***Action: The committee unanimously approved the proposal for circulation on a special shortened cycle through October 11.***

**Item 06****Juvenile Law: Secure Youth Treatment Facility Offense-Based Classification Matrix**

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee proposing that the Judicial Council adopt a rule of court to implement Welfare and Institutions Code section 875(h), which requires the council to develop and adopt a matrix of offense-based classifications to be used by all juvenile courts when setting baseline terms for youth whose disposition is a commitment to a Secure Youth Treatment Facility (SYTF). The statute calls for the matrix to assign a baseline term of years to each offense for which a youth can be committed to an SYTF. The offenses are to be grouped into offense categories that are linked to a standard baseline term of years for each offense category. The statute was recently amended to allow the standard term to be a range of years as designated by the council. The proposed matrix in the rule would include four total offense categories, and each category is assigned a range of years as the standard baseline term. To assist the court in determining a baseline term for each youth within the range, the rule sets forth criteria for the court to weigh in making its decision.

***Action: The committee unanimously approved the proposal for circulation on a special shortened cycle through November 4.***

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**A D J O U R N M E N T**

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There being no further business, the meeting was adjourned at 4:52 p.m.

Approved by the advisory body on enter date.

## RULES COMMITTEE ACTION REQUEST FORM

**Rules Committee Meeting Date:** 11/1/22

**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 42)

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

Judicial Council of California Civil Jury Instructions (CACI), Add Nos. 2760, 2761, 2762, 2765, 2766A, 2766B, 2767, 2770, 2771, 2775, VF-2706, and VF-2707; and revise Nos. 601, 730, 1004, 1007, 2525, 4603, 4604, VF-4601, and VF-4602.

*Committee or other entity submitting the proposal:*

Advisory Committee on Civil Jury Instructions  
Hon. Adrienne M. Grover, Chair

*Staff contact (name, phone and e-mail):* Eric Long, 415-865-7691, [eric.long@jud.ca.gov](mailto: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. 22-186*

For business meeting on December 1–2, 2022

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**Title**

Jury Instructions: Civil Jury Instructions  
(Release 42)

**Agenda Item Type**

Action Required

**Effective Date**

December 2, 2022

**Rules, Forms, Standards, or Statutes Affected**

*Judicial Council of California Civil Jury  
Instructions (CACI)*

**Date of Report**

October 12, 2022

**Recommended by**

Advisory Committee on Civil Jury  
Instructions  
Hon. Adrienne M. Grover, Chair

**Contact**

Eric Long, 415-865-7691  
[eric.long@jud.ca.gov](mailto:eric.long@jud.ca.gov)

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### Executive Summary

The Advisory Committee on Civil Jury Instructions recommends approval of new and revised civil jury instructions prepared by the committee. Among other things, these changes bring the instructions up to date with developments in the law over the previous six months and add new instructions in the Labor Code Actions series. Upon Judicial Council approval, the instructions will be published in the official 2023 edition of the *Judicial Council of California Civil Jury Instructions (CACI)*.

### Recommendation

The Advisory Committee on Civil Jury Instructions recommends that the Judicial Council, effective December 2, 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 12 new jury instructions and verdict forms in the Labor Code Actions series: CACI Nos. 2760, 2761, 2762, 2765, 2766A, 2766B, 2767, 2770, 2771, 2775, VF-2706, and VF-2707; and

2. Revisions to 9 instructions and verdict forms: CACI Nos. 601, 730, 1004, 1007, 2525, 4603, 4604, VF-4601, and VF-4602.

A table of contents and the proposed new and revised civil jury instructions and verdict forms are attached at pages 6–64.

### **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.<sup>1</sup> 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 42 of *CACI*. The council approved release 41 at its July 2022 meeting.

### **Analysis/Rationale**

A total of 21 instructions and verdict forms are presented in this release. The Judicial Council’s Rules Committee has also approved, at its meeting on August 23, 2022, changes to 14 additional instructions under a delegation of authority from the council to the Rules Committee.<sup>2</sup>

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 recommends further expansion in the Labor Code Actions series. The committee has been considering the possibility of new instructions since the Supreme Court issued its decision in *Brinker Restaurant Group v. Superior Court*.<sup>3</sup> Wage and hour litigation in California,

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<sup>1</sup> 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.”

<sup>2</sup> 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.

<sup>3</sup> (2012) 53 Cal.4th 1004 [139 Cal.Rptr.3d 315, 273 P.3d 513].

especially claims related to meal and rest breaks, have only become more common in the past decade. Last spring following the Supreme Court’s decisions in *Donohue v. AMN Services, LLC*,<sup>4</sup> the committee circulated for public comment five new instructions in this area. The committee deferred a recommendation on adopting new instructions due to the number of detailed comments it received from commenters.

The committee has now implemented many of the commenters’ previous suggestions and has made further refinements based on additional comments received during this comment cycle. The committee is mindful that the law in this area is complex and sometimes involves industry-specific exceptions. As noted in the *Guide for Using Judicial Council of California Civil Jury Instructions*, the absence of a *CACI* instruction on a claim, defense, rule, or other situation does not indicate that no instruction would ever be appropriate. These new instructions are a start. The committee will continue to consider augmenting the meal and rest break instructions and adding more new wage and hour instructions as appropriate.

**Rest break violations, CACI Nos. 2760, 2761, 2762, and VF-2706.** The committee recommends adoption of three new jury instructions and one new verdict form on rest break violations under the Labor Code and several Industrial Welfare Commission wage orders. Consistent with its charge to express the law accurately and in plain English, the committee has chosen to use “rest break” instead of the legal term, “rest period,” used in the wage orders and many cases.

The new instructions include an introductory instruction on the basic requirements of rest breaks (CACI No. 2760), an instruction on the essential elements of a rest break violation (CACI No. 2761), and an instruction on calculating the pay owed for any violations proved (CACI No. 2762). These three instructions are the basis for the proposed new verdict form (CACI No. VF-2706).

**Meal break violations, CACI Nos. 2765, 2766A, 2766B, 2767, 2770, 2771, and VF-2707.** The committee recommends adoption of six new jury instructions and one new verdict form in the meal break context. The instructions include an introductory instruction on the basic requirements of meal breaks (CACI No. 2765), an instruction on the essential elements (CACI No. 2766A), and an instruction on calculating the pay owed for any violations proved (CACI No. 2767). These three instructions are the basis for the proposed new verdict form (CACI No. VF-2707).

The committee also recommends an instruction addressing the rebuttable presumption of a meal break violation based on employer records (CACI No. 2766B). The instruction also addresses calculating any pay owed for any violations that have been established. One commenter suggested a new verdict form based on CACI No. 2766B, which the committee will consider in a future release cycle.

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<sup>4</sup> (2021) 11 Cal.5th 58 [275 Cal.Rptr.3d 422, 481 P.3d 661].

Finally, the committee recommends two affirmative defense instructions involving waiver of certain meal breaks (CACI No. 2770) and consent to off-duty meal breaks (CACI No. 2771).

### **Revised instructions**

**Premises liability, CACI Nos. 1004 and 1007.** An attorney questioned why these two instructions in the Premises Liability series offered different variable text options (“owner/lessor/occupier/one who controls the property” in CACI No. 1004 versus “An owner of/A lessee of/An occupier of/One who controls” in CACI No. 1007). The committee examined the authority underlying both instructions and concluded that both instructions would be accurate without retaining either “lessor” or “lessee” in the optional text. The committee also believes that these terms are commonly confused by jurors. For consistency and clarity, the committee recommends deleting these terms without any intended change to the substance of the instructions.

### **Policy implications**

The committee endeavors to express the law in plain English; there are no policy implications.

### **Comments**

The proposed additions and revisions in *CACI* circulated for comment from July 26 through September 9, 2022. Comments were received from 7 different commenters. All commenters submitted comments on multiple instructions and verdict forms.<sup>5</sup> For the 21 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. New instructions on rest breaks and meal breaks generated a relatively large number of comments that were generally supportive.

A chart of the comments received on all instructions and the committee’s responses is attached at pages 65–142.

### **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 official 2023 edition of *CACI* and

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<sup>5</sup> The committee received one additional comment from a member of the public who did not comment on any jury instruction or any of the proposals circulated for comment. That irrelevant comment has been excluded from the comment chart.

pay royalties to the Judicial Council. Other licensing agreements with other publishers generate 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 6–64
2. Chart of comments, at pages 65–142

DRAFT

<p style="text-align: center;"><b>TABLE OF CONTENTS</b> <b>CIVIL JURY INSTRUCTIONS</b> <b>Release 42; December 2022</b></p>
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Draft—Not Approved by Judicial Council

601. ~~Negligent Handling of Legal Matter~~ Legal Malpractice—Causation

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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.

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New September 2003; Revised June 2015, May 2020, December 2022

**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 result~~. (*Viner v. Sweet* (2003) 30 Cal.4th 1232, ~~1241~~1244 [135 Cal.Rptr.2d 629, 70 P.3d 1046].) The second sentence expresses this “but for” standard.

**Sources and Authority**

- “If the allegedly negligent conduct does not cause damage, it generates no cause of action in tort. The mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm—not yet realized—does not suffice to create a cause of action for negligence.” (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 749–750 [76 Cal.Rptr.2d 749, 958 P.2d 1062].)
- “In the legal malpractice context, the elements of causation and damage are particularly closely linked.” (*Namikas v. Miller* (2014) 225 Cal.App.4th 1574, 1582 [171 Cal.Rptr.3d 23].)
- “In a client’s action against an attorney for legal malpractice, the client must prove, among other things, that the attorney’s negligent acts or omissions caused the client to suffer some financial harm or loss. When the alleged malpractice occurred in the performance of transactional work (giving advice or preparing documents for a business transaction), must the client prove this causation element according to the ‘but for’ test, meaning that the harm or loss would not have occurred without the attorney’s malpractice? The answer is yes.” (*Viner, supra*, 30 Cal.4th at p. 1235.)
- “[The trial-within-a-trial method] is the most effective safeguard yet devised against speculative and conjectural claims in this era of ever expanding litigation. It is a standard of proof designed to limit damages to those actually *caused* by a professional’s malfeasance.” (*Mattco Forge Inc., supra*, 52 Cal.App.4th at p. 834.)

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- “ ‘Damage to be subject to a proper award must be such as follows the act complained of *as a legal certainty* ... .’ Conversely, ‘ “[t]he mere probability that a certain event would have happened, upon which a claim for damages is predicated, will not support the claim or furnish the foundation of an action for such damages.’ ” ” (*Filbin v. Fitzgerald* (2012) 211 Cal.App.4th 154, 165–166 [149 Cal.Rptr.3d 422], original italics, footnote and internal citations omitted.)
- “One who establishes malpractice on the part of his or her attorney *in prosecuting a lawsuit* must also prove that careful management of it would have resulted in a favorable judgment and collection thereof, as there is no damage in the absence of these latter elements.” (*DiPalma v. Seldman* (1994) 27 Cal.App.4th 1499, 1506–1507 [33 Cal.Rptr.2d 219], original italics.)
- “[W]hen an attorney breaches the duty of care by failing to advise the client of reasonably foreseeable risks of litigation before a complaint is filed, the client need not prove the subsequently filed litigation would have been successful to establish the causation element of his professional negligence claim. Rather, the client can demonstrate he ‘would have obtained a more favorable result’, by proving that, but for the attorney’s negligence, he would not have pursued the litigation and thus would not have incurred the damages attributable to the foreseeable risks that the attorney negligently failed to disclose. In other words, to answer the ‘crucial causation inquiry’ articulated in *Viner*—‘what would have happened if the defendant attorney had not been negligent’—the client may respond with evidence showing he would not have filed the litigation in the first place and he would have been better off as a result.” (*Mireskandari v. Edwards Wildman Palmer LLP* (2022) 77 Cal.App.5th 247, 262 [292 Cal.Rptr.3d 410], internal citations omitted.)
- “ ‘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.” (*Arciniaga 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

## Draft—Not Approved by Judicial Council

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].)
- “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) 171 Cal.App.4th 336, 357–358 [89 Cal.Rptr.3d 710].)

### Secondary Sources

1 Witkin, California Procedure (5th ed. 2008) Attorneys, §§ ~~319–322~~330–331, 333

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.~~30 (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)

**Draft—Not Approved by Judicial Council**

**730. Emergency Vehicle Exemption (Veh. Code, § 21055)**

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*[Name of defendant]* **claims that** *[name of public employee]* **was not required to comply with Vehicle Code section** *[insert section number]* **because** *[he/she/nonbinary pronoun]* **was operating an authorized emergency vehicle and was responding to an emergency at the time of the accident.**

**To establish that** *[name of public employee]* **was not required to comply with section** *[insert section number]*, *[name of defendant]* **must prove all of the following:**

1. **That** *[name of public employee]* **was operating an authorized emergency vehicle;**
2. **That** *[name of public employee]* **was responding to an emergency situation at the time of the accident; and**
3. **That** *[name of public employee]* **sounded a siren when reasonably necessary and displayed front red warning lights.**

**If you decide that** *[name of defendant]* **proved all of these things, then you cannot find it negligent for a violation of section** *[insert section number]*. **However, even if you decide that** *[name of defendant]* **proved all of these things, you may find it negligent if** *[name of public employee]* **failed to operate** *[his/her/nonbinary pronoun]* **vehicle with reasonable care, taking into account the emergency situation.**

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*New September 2003; Revised December 2022*

**Directions for Use**

*This instruction assumes that the public employer is the only defendant. Change the “it” pronouns in the final paragraph if there are other defendants in the case (e.g., if the public employee is also a defendant).*

For a definition of “emergency,” see CACI No. 731, *Definition of “Emergency.”*

**Sources and Authority**

- Authorized Emergency Vehicle Exemption. Vehicle Code section 21055.
- “Authorized Emergency Vehicle” Defined. Vehicle Code section 165.
- Authorized Emergency Vehicle: Public Employee Immunity. Vehicle Code section 17004.
- Emergency Vehicle Drivers: Duty Regarding Public Safety. Vehicle Code section 21056.
- “The purpose of the statute is to provide a ‘clear and speedy pathway’ for these municipal vehicles on their flights to emergencies in which the entire public are necessarily concerned.” (*Peerless Laundry*

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*Services v. City of Los Angeles* (1952) 109 Cal.App.2d 703, 707 [241 P.2d 269].)

- ~~• Vehicle Code section 21056 provides: “Section 21055 does not relieve the driver of a vehicle from the duty to drive with due regard for the safety of all persons using the highway, nor protect him from the consequences of an arbitrary exercise of the privileges granted in that section.”~~
- “The effect of Vehicle Code sections 21055 and 21056 is: where the driver of an authorized emergency vehicle is engaged in a specified emergency function he may violate certain rules of the road, such as speed and right of way laws, if he activates his red light and where necessary his siren in order to alert other users of the road to the situation. In such circumstances the driver may not be held to be negligent solely upon the violation of specified rules of the road, but may be held to be negligent if he fails to exercise due regard for the safety of others under the circumstances. Where the driver of an emergency vehicle fails to activate his red light, and where necessary his siren, he is not exempt from the rules of the road even though he may be engaged in a proper emergency function, and negligence may be based upon the violation of the rules of the road.” (*City of Sacramento v. Superior Court* (1982) 131 Cal.App.3d 395, 402–403 [182 Cal.Rptr. 443], internal citations omitted.)
- “Notwithstanding [Vehicle Code section 17004], a public entity is liable for injuries proximately caused by negligent acts or omissions in the operation of any motor vehicle by an employee of the public entity, acting within the scope of his or her employment.” (*City of San Jose v. Superior Court* (1985) 166 Cal.App.3d 695, 698 [212 Cal.Rptr. 661], internal citations omitted.)
- “If the driver of an authorized emergency vehicle is responding to an emergency call and gives the prescribed warnings by red light and siren, a charge of negligence against him may not be predicated on his violation of the designated Vehicle Code sections; but if he does not give the warnings, the contrary is true; and in the event the charged negligence is premised on conduct without the scope of the exemption a common-law standard of care is applicable.” (*Grant v. Petronella* (1975) 50 Cal.App.3d 281, 286 [123 Cal.Rptr. 399], internal citations omitted.)
- “Where the driver of an emergency vehicle responding to an emergency call does not give the warnings prescribed by section 21055, the legislative warning policy expressed in that section dictates the conclusion [that] the common-law standard of care governing his conduct does not include a consideration of the emergency circumstances attendant upon his response to an emergency call.” (*Grant, supra*, 50 Cal.App.3d at p. 289, footnote omitted.)
- ~~• The exemption created by section 21055 is an affirmative defense, and the defendant must prove compliance with the conditions. “It will be remembered that the exemption provided by section 454 [from which section 21055] of the Vehicle Code [was derived] was available to appellant as an affirmative defense, and upon appellant rested the burden of proving the necessary compliance with its provisions.” (*Washington v. City and County of San Francisco* (1954) 123 Cal.App.2d 235, 242 [266 P.2d 828].)~~
- “In short the statute exempts the employer of such a driver from liability for negligence attributable to his failure to comply with specified statutory provisions, but it does not in any manner purport to exempt the employer from liability due to negligence attributable to the driver’s failure to maintain that standard of care imposed by the common law.” (*Torres v. City of Los Angeles* (1962) 58 Cal.2d

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35, 47 [22 Cal.Rptr. 866, 372 P.2d 906].)

***Secondary Sources***

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ ~~358~~, 394–398

2 Government Tort Liability Practice (Cont.Ed.Bar 4th ed.) §§ 11.140-11.144

2 Levy et al., California Torts, Ch. 20, *Motor Vehicles*, § 20.55 (Matthew Bender)

20 California Forms of Pleading and Practice, Ch. 246, *Emergency Vehicles*, § 246.13 (Matthew Bender)

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### 1004. Obviously Unsafe Conditions

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**If an unsafe condition of the property is so obvious that a person could reasonably be expected to observe it, then the [owner/~~lessor~~/occupier/one who controls the property] does not have to warn others about the dangerous condition.**

**However, the [owner/~~lessor~~/occupier/one who controls the property] still must use reasonable care to protect against the risk of harm if it is foreseeable that the condition may cause injury to someone who because of necessity encounters the condition.**

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*New September 2003; Revised May 2018, December 2022*

#### Directions for Use

Give this instruction with CACI No. 1001, *Basic Duty of Care*, if it is alleged that the condition causing injury was obvious. The first paragraph addresses the lack of a duty to warn of an obviously unsafe condition. (*Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal.App.5th 438, 447 [221 Cal.Rptr.3d 701].)

The second paragraph addresses when there may be a duty to take some remedial action. Landowners may have a duty to take precautions to protect against the risk of harm from an obviously unsafe condition, even if they do not have a duty to warn. (*Osborn v. Mission Ready Mix* (1990) 224 Cal.App.3d 104, 121–122 [273 Cal.Rptr. 457].)

#### Sources and Authority

- “Foreseeability of harm is typically absent when a dangerous condition is open and obvious. ‘Generally, if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no further duty to remedy or warn of the condition.’ In that situation, owners and possessors of land are entitled to assume others will ‘perceive the obvious’ and take action to avoid the dangerous condition.” (*Jacobs, supra*, 14 Cal.App.5th at p. 447, internal citations omitted.)
- “[T]here may be situations ‘in which an obvious hazard, for which no warning is necessary, nonetheless gives rise to a duty on a landowner’s part to remedy the hazard because knowledge of the hazard is inadequate to prevent injury.’ This is so when, for example, the practical necessity of encountering the danger, when weighed against the apparent risk involved, is such that, under the circumstances, a person might choose to encounter the danger.” (*Johnson v. The Raytheon Co., Inc.* (2019) 33 Cal.App.5th 617, 632 [245 Cal.Rptr.3d 282], internal citation omitted.)
- “[I]t is foreseeable that even an obvious danger may cause injury, if the practical necessity of encountering the danger, when weighed against the apparent risk involved, is such that under the circumstances, a person might choose to encounter the danger. The foreseeability of injury, in turn, when considered along with various other policy considerations such as the extent of the burden to

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the defendant and consequences to the community of imposing a duty to remedy such danger may lead to the legal conclusion that the defendant ‘owes a duty of due care “to all persons who are foreseeably endangered by his conduct, with respect to all risks which make the conduct unreasonably dangerous.” ’ ” (*Osborn, supra*, 224 Cal.App.3d at p. 121, internal citation omitted.)

- “[W]hen a worker, whose work requires him or her to encounter a danger which is obvious or observable, is injured, ‘[t]he jury [is] entitled to balance the [plaintiff’s] necessity against the danger, even if it be assumed that it was an apparent one. This [is] a factual issue. [Citations.]’ In other words, under certain circumstances, an obvious or apparent risk of danger does not automatically absolve a defendant of liability for injury caused thereby.” (*Osborn, supra*, 224 Cal.App.3d at p. 118, original italics, internal citations omitted.)
- “[T]he obvious nature of a danger is not, in and of itself, sufficient to establish that the owner of the premises on which the danger is located is not liable for injuries caused thereby, and that although obviousness of danger may negate any duty to warn, it does not necessarily negate the duty to remedy.” (*Osborn, supra*, 224 Cal.App.3d at p. 119.)
- “The issue is whether there is any evidence from which a trier of fact could find that, as a practical necessity, [plaintiff] was foreseeably required to expose himself to the danger of falling into the empty pool.” (*Jacobs, supra*, 14 Cal.App.5th at p. 447.)
- ~~It is incorrect to instruct a jury categorically that a business owner cannot be held liable for an injury resulting from an obvious danger. There may be a duty to remedy a dangerous condition, even though there is no duty to warn thereof, if the condition is foreseeable. ¶¶ ... The jury was free to consider whether [the business owner] was directly negligent in failing to correct any foreseeable, dangerous condition of the cables which may have contributed to the cause of [the plaintiff’s] injuries.”~~ (*Felmlee v. Falcon Cable TV* (1995) 36 Cal.App.4th 1032, ~~1039-1040~~ [43 Cal.Rptr.2d 158], ~~internal citation omitted~~ ~~the court found that an instruction stating that the defendant “owed no duty to warn plaintiff of a danger which was obvious or which should have been observed in the exercise of ordinary care” was proper: “The jury was free to consider whether Falcon was directly negligent in failing to correct any foreseeable, dangerous condition of the cables which may have contributed to the cause of Felmlee’s injuries.”~~ (*Id.* at p. ~~1040~~.)
- “[T]he ‘obvious danger’ exception to a landowner’s ordinary duty of care is in reality a recharacterization of the former assumption of the risk doctrine, i.e., where the condition is so apparent that the plaintiff must have realized the danger involved, he assumes the risk of injury even if the defendant was negligent. ... [T]his type of assumption of the risk has now been merged into comparative negligence.” (*Donohue v. San Francisco Housing Authority* (1993) 16 Cal.App.4th 658, 665 [20 Cal.Rptr.2d 148], internal citations omitted.)

### Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ [1233](#), 1267–1269

1 Levy et al., California Torts, Ch. 15, *General Premises Liability*, § 15.04[4] (Matthew Bender)

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11 California Real Estate Law and Practice, Ch. 381, *Tort Liability of Property Owners*, §§ 381.20, 381.32 (Matthew Bender)

36 California Forms of Pleading and Practice, Ch. 421, *Premises Liability*, § 421.14 (Matthew Bender)

17 California Points and Authorities, Ch. 178, *Premises Liability*, § 178.25 et seq. (Matthew Bender)

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### 1007. Sidewalk Abutting Property

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[An owner of/~~A lessee of~~/An occupier of/One who controls] property must avoid creating an unsafe condition on the surrounding public streets or sidewalks.

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*New September 2003; Revised December 2022*

#### Sources and Authority

~~Generally, absent statutory authority to the contrary, a landowner is under no duty to maintain in a safe condition a public street or sidewalk abutting his property~~

- ~~“It is the general rule that in the absence of a statute a landowner is under no duty to maintain in a safe condition a public street abutting upon his property. There is, however, an exception to this rule . . . . It has been held that an abutting owner is liable for the condition of portions of the public sidewalk which he has altered or constructed for the benefit of his property and which serve a use independent of and apart from the ordinary and accustomed use for which sidewalks are designed.”~~ (*Sexton v. Brooks* (1952) 39 Cal.2d 153, 157 [245 P.2d 496], ~~internal citation omitted.~~);
- ~~However,~~ “[a]n abutting owner has always had a duty to refrain from ~~affirmative conduct doing an affirmative act~~ which would render the sidewalk dangerous to the public.” (*Selger v. Steven Brothers, Inc.* (1990) 222 Cal.App.3d 1585, 1592 [272 Cal.Rptr. 544], internal citations omitted.)
- ~~The occupier must maintain his or her land in a manner so as not to injure the users of an abutting street or sidewalk.~~ “[A] landowner may face liability for injury to another, incurred outside of the former’s property (on an adjacent street), if the injury is found to be caused by a traffic obstruction in the form of shrubbery growing from the property.” (*Swanberg v. O’Mectin* (1984) 157 Cal.App.3d 325, 330 [203 Cal.Rptr. 701]);
- “The occupier of real property owes a duty to exercise ordinary care in the use and management of his or her land. The occupier must maintain such land in a manner as to not injure the users of an abutting street or sidewalk.” (*Lompoc Unified School Dist. v. Superior Court* (1993) 20 Cal.App.4th 1688, 1693 [26 Cal.Rptr.2d 122], ~~internal citations omitted.~~)
- “An ordinance requiring the abutting landowner to maintain the sidewalk would be construed to create a duty of care to third persons only if the ordinance clearly and unambiguously so provided.” (*Selger, supra*, 222 Cal.App.3d at p. 1590, internal citations omitted.)
- “Persons who maintain walkways—whether public or private—are not required to maintain them in absolutely perfect condition. ‘The duty of care imposed on a property owner, even one with actual notice, does not require the repair of minor defects.’ The rule is no less applicable in a privately owned townhome development. Moreover, what constitutes a minor defect may be a question of law.” (*Cadam v. Somerset Gardens Townhouse HOA* (2011) 200 Cal.App.4th 383, 388–389 [132 Cal.Rptr.3d 617], internal citations omitted.)

**Draft—Not Approved by Judicial Council*****Secondary Sources***

6 Witkin, *Summary of California Law* (11th ed. 2017) Torts, §§ 1231–1234

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

Friedman et al., *California Practice Guide: Landlord-Tenant*, Ch. 6-B, *Landlord Liability For Injuries From Acts Of Others*, ¶ 6:48 et seq. (The Rutter Group)

1 Levy et al., *California Torts*, Ch. 15, *General Premises Liability*, § 15.03[4] (Matthew Bender)

11 *California Real Estate Law and Practice*, Ch. 381, *Tort Liability of Property Owners*, § 381.03 (Matthew Bender)

17 *California Points and Authorities*, Ch. 178, *Premises Liability*, § 178.29 (Matthew Bender)

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## 2525. Harassment—“Supervisor” Defined (Gov. Code, § 12926(t))

[Name of alleged harasser] was a supervisor of [name of defendant] if [he/she/nonbinary pronoun] had any of the following:

- a. The authority to hire, transfer, promote, assign, reward, discipline, [or] discharge [or] [insert other employment action] ~~[name of plaintiff]~~ other employees [or effectively to recommend any of these actions];
- b. The responsibility to act on ~~[name of plaintiff]~~'s other employees' grievances [or effectively to recommend action on grievances]; or
- c. The responsibility to direct ~~[name of plaintiff]~~'s other employees' daily work activities.

[Name of alleged harasser]'s exercise of this authority or responsibility must not be merely routine or clerical, but must require the use of independent judgment.

New September 2003; Revised June 2006, December 2015, December 2022

#### Directions for Use

The FEHA's definition of “supervisor” refers to the “authority” for factor (a) and the “responsibility” for factors (b) and (c). The difference, if any, between “authority” and “responsibility” as used in the statute is not clear. The FEHA's definition of “supervisor” also expressly refers to authority and responsibility over “other employees.” (Gov. Code, § 12926(t).) The statute further requires that “the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” (See Gov. Code, § 12926(t) ~~[emphasis added]~~, italics added.) However, at least one court has found the independent-judgment requirement to be applicable to the *responsibility* for factor (c). (See *Chapman v. Enos* (2004) 116 Cal.App.4th 920, 930–931 [10 Cal.Rptr.3d 852] ~~[emphasis added]~~, italics added.) Therefore, the last sentence of the instruction refers to “authority or responsibility.”

#### Sources and Authority

- Harassment Prohibited Under Fair Employment and Housing Act. Government Code section 12940(j)(1).
- “Supervisor” Defined. Government Code section 12926(t).
- “The FEHA imposes two standards of employer liability for sexual harassment, depending on whether the person engaging in the harassment is the victim’s supervisor or a nonsupervisory coemployee. The employer is liable for harassment by a nonsupervisory employee only if the employer (a) knew or should have known of the harassing conduct and (b) failed to take immediate and appropriate corrective action. This is a negligence standard. Because the FEHA imposes this negligence standard only for harassment ‘by an employee other than an agent or supervisor’ by

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implication the FEHA makes the employer strictly liable for harassment by a supervisor.” (*State Dept. of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1040–1041 [6 Cal.-Rptr. 3d 441, 79 P.3d 556], internal citations omitted.)

- “Unlike discrimination in hiring, the ultimate responsibility for which rests with the employer, sexual or other harassment perpetrated by a supervisor with the power to hire, fire and control the victimized employee’s working conditions is a particularly personal form of the type of discrimination which the Legislature sought to proscribe when it enacted the FEHA.” (*Matthews v. Superior Court* (1995) 34 Cal.App.4th 598, 605–606 [40 Cal.Rptr.2d 350].)
- “This section has been interpreted to mean that the employer is strictly liable for the harassing actions of its supervisors and agents, but that the employer is only liable for harassment by a coworker if the employer knew or should have known of the conduct and failed to take immediate corrective action. Thus, characterizing the employment status of the harasser is very significant.” (*Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1046 [58 Cal.Rptr.2d 122], internal citations omitted.)
- “The case and statutory authority set forth three clear rules. First, . . . a supervisor who personally engages in sexually harassing conduct is personally liable under the FEHA. Second, . . . if the supervisor participates in the sexual harassment or substantially assists or encourages continued harassment, the supervisor is personally liable under the FEHA as an aider and abettor of the harasser. Third, under the FEHA, the employer is vicariously and strictly liable for sexual harassment by a supervisor.” (*Fiol v. Doellstedt* (1996) 50 Cal.App.4th 1318, 1327 [58 Cal.Rptr.2d 308].)
- “[W]hile an employer’s liability under the [FEHA] for an act of sexual harassment committed by a supervisor or agent is broader than the liability created by the common law principle of respondeat superior, respondeat superior principles are nonetheless relevant in determining liability when, as here, the sexual harassment occurred away from the workplace and not during work hours.” (*Doe, supra*, 50 Cal.App.4th at pp. 1048–1049.)
- “The FEHA does not define ‘agent.’ Therefore, it is appropriate to consider general principles of agency law. An agent is one who represents a principal in dealings with third persons. An agent is a person authorized by the principal to conduct one or more transactions with one or more third persons and to exercise a degree of discretion in effecting the purpose of the principal. A supervising employee is an agent of the employer.” (*Fiol, supra*, 50 Cal.App.4th at p. 1328, internal citations omitted.)
- “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.)
- “[W]hile full accountability and responsibility are certainly indicia of supervisory power, they are not *required* elements of . . . the FEHA definition of supervisor. Indeed, many supervisors with responsibility to direct others using their independent judgment, and whose supervision of employees is not merely routine or clerical, would not meet these additional criteria though they would otherwise be within the ambit of the FEHA supervisor definition.” (*Chapman, supra*, 116 Cal.App.4th at p. 930, footnote omitted.)

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- “Defendants take the position that the court’s modified instruction is, nonetheless, accurate because the phrase ‘responsibility to direct’ is the functional equivalent of being ‘fully accountable and responsible for the performance and work product of the employees. ...’ In this, they rely on the dictionary definition of ‘responsible’ as ‘marked by accountability.’ But as it relates to the issue before us, this definition is unhelpful for two reasons. First, one can be accountable for one’s own actions without being accountable for those of others. Second, the argument appears to ignore the plain language of the statute which *itself* defines the circumstances under which the exercise of the responsibility to direct will be considered supervisory, i.e., ‘if ... [it] is not of a merely routine or clerical nature, but requires the use of independent judgment.’ ” (*Chapman, supra*, 116 Cal.App.4th at pp. 930–931.)

### Secondary Sources

Chin et al., California Practice Guide: Employment Litigation, Ch. 10-A, *Sources Of Law Prohibiting Harassment*, ¶ 10:17 (The Rutter Group)

Chin et al., California Practice Guide: Employment Litigation, Ch. 10-D, *Employer Liability For Workplace Harassment*, ¶¶ 10:308, 10:310, 10:315–10:317, 10:321, 10:322 (The Rutter Group)

Chin et al., California Practice Guide: Employment Litigation, Ch. 10-E, *Harasser’s Individual Liability*, ¶ 10:499 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Sexual and other Harassment, § 3.21

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § ~~41.81~~41.80 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, §§ 115.20, 115.36, 115.54 (Matthew Bender)

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

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**2760. Rest Break Violations—Introduction (Lab. Code, § 226.7)**

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*[Name of plaintiff]* **claims that** *[name of defendant]* **owes** *[him/her/nonbinary pronoun]* **pay because** *[name of defendant]* **did not authorize and permit one or more paid rest breaks.**

**An employee is entitled to a paid 10-minute rest break during every four-hour work period** *[. / , or major fraction of four hours.]* **[However, an employee is not entitled to a rest break if the total daily work time is less than three and one-half hours.]** **This means that over the course of a workday** *[name of plaintiff]* **was due** *[specify which rest breaks are at issue, e.g., a paid 10-minute rest break after working longer than three and one-half hours and a second paid 10-minute rest break after working more than six hours but no more than ten hours].* **[Rest breaks must occur, if practical under the circumstances, in the middle of each four-hour work period.** *[Specify any additional timing requirement(s) of the rest breaks at issue if delay is at issue.]*

**An employer must relieve the employee of all work duties and relinquish control over how the employee spends time during each 10-minute rest break. This includes not requiring employees to remain on call or on-site during rest breaks. An employer, however, does not have an obligation to keep records of employee rest breaks or to ensure that an employee takes each rest break.**

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

**[Rest breaks, which are paid, and meal breaks, which are unpaid, have different requirements. You should consider claims for rest break violations separately from claims for meal break violations. A rest break cannot be combined with a meal break or with another 10-minute rest break. For example, providing an unpaid meal break does not satisfy the employer’s obligation to authorize and permit a paid 10-minute rest break.]**

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*New December 2022*

**Directions for Use**

Give this instruction with CACI No. 2761, *Rest Break Violations—Essential Factual Elements*.

This instruction is intended for use by nonexempt employees subject to section 12(C) of Industrial Welfare Commission wage orders 1-2001 through 11-2001, 13-2001 through 15-2001, and 17-2001. Other wage orders contain exceptions to the common rule. Different rest period rules apply to certain employees of emergency ambulance providers; do not give this instruction in a case involving those employees. (See Lab. Code, §§ 880–890, added by initiative, Gen. Elec. (Nov. 6, 2018), commonly known as Prop. 11.) Different on-call rest period rules apply to security officers employed in the security services industry. (See Lab. Code, § 226.7(f).) This instruction should be modified in a case involving security officers.

Specify in the second paragraph which breaks the plaintiff claims to have missed if there is uniformity in that allegation. Rest break claims can also involve noncompliant timing. If so, specify the noncompliant

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timing issue in the second paragraph. Rest breaks are based on “the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” (See, e.g., Cal. Code Regs., tit. 8, § 11010, subd. 12(A).) The wage orders’ language means that “[e]mployees are entitled to 10 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1029 [139 Cal.Rptr.3d 315, 273 P.3d 513].) Include the bracketed phrase “or major fraction of four hours” in the second paragraph only if it will assist the jury in understanding the scheduling of rest breaks. “Though not defined in the wage order, a ‘major fraction’ long has been understood—legally, mathematically, and linguistically—to mean a fraction greater than one-half.” (*Brinker Restaurant Corp., supra*, 53 Cal.4th at p. 1028.)

The definition of “workday” may be omitted if it is included in another instruction.

Give the optional final paragraph only if both rest breaks and meal breaks are at issue in the case.

### Sources and Authority

- Right of Action for Missed Meal and Rest and Recovery Periods. Labor Code section 226.7.
- “Workday” Defined. Labor Code section 500.
- Rest Periods. Cal. Code Regs., tit. 8, § 11010 et seq., subd. 12.
- “An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—it has violated the wage order and is liable. No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.” (*Brinker Restaurant Corp., supra*, 53 Cal. 4th at p. 1033.)
- “What we conclude is that state law prohibits on-duty and on-call rest periods. During required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260 [211 Cal.Rptr.3d 634, 385 P.3d 823], abrogated in part by Lab. Code, § 226.7(f)(5).)
- “[O]ne cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to particular locations or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods.” (*Augustus, supra*, 2 Cal.5th at p. 269, abrogated in part by Lab. Code, § 226.7(f)(5).)
- “Because rest periods are 10 minutes in length (Wage Order 4, subd. 12(A)), they impose practical limitations on an employee’s movement. That is, during a rest period an employee generally can travel at most five minutes from a work post before returning to make it back on time. Thus, one would expect that employees will ordinarily have to remain on site or nearby.

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This constraint, which is of course common to all rest periods, is not sufficient to establish employer control.” (*Augustus, supra*, 2 Cal.5th at p. 270.)

- “Although section 12(A) of Wage Order 1-2001 does not describe the considerations relevant to such a justification, we conclude that a departure from the preferred schedule is permissible only when the departure (1) will not unduly affect employee welfare and (2) is tailored to alleviate a material burden that would be imposed on the employer by implementing the preferred schedule.” (*Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1040 [201 Cal.Rptr.3d 337].)
- “[W]e hold that the Court of Appeal erred in construing section 226.7 as a penalty and applying a one-year statute of limitations. The statute’s plain language, the administrative and legislative history, and the compensatory purpose of the remedy compel the conclusion that the ‘additional hour of pay’ is a premium wage intended to compensate employees, not a penalty.” (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [56 Cal.Rptr.3d 880, 155 P.3d 284], internal citation omitted.)

### *Secondary Sources*

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, § 390

1 Wilcox, California Employment Law, Ch. 2, *Applicability of Rules Governing Hours Worked*, §§ 2.08, 2.09 (Matthew Bender)

1 Wilcox, California Employment Law, Ch. 3, *Determining Hours Worked*, § 3.01 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 250, *Employment Law: Wage and Hour Disputes*, § 250.14 (Matthew Bender)

**Draft—Not Approved by Judicial Council**

**2761. Rest Break Violations—Essential Factual Elements (Lab. Code, § 226.7)**

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To establish a rest break violation, *[name of plaintiff]* must prove both of the following:

1. That *[name of plaintiff]* worked for *[name of defendant]* on one or more workdays for at least three and one-half hours; and
  2. That *[name of defendant]* did not authorize and permit *[name of plaintiff]* to take one or more 10-minute rest breaks to which *[name of plaintiff]* was entitled.
- 

*New December 2022*

**Directions for Use**

Element 1 states the minimum shift length for a rest break. Depending on the length of the shift, multiple rest breaks could be at issue. Element 1 can be modified to cover longer shifts and multiple rest breaks.

The jury must also decide how much pay is owed for any rest break violations. (See CACI No. 2762, *Rest Break Violations—Pay Owed*.)

**Sources and Authority**

- Right of Action for Missed Meal and Rest and Recovery Periods. Labor Code section 226.7.
- Rest Periods. Cal. Code Regs., tit. 8, § 11010 et seq., subd. 12.
- “An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—it has violated the wage order and is liable. No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.” (*Brinker Restaurant Corp.*, *supra*, 53 Cal.4th at p. 1033.)

***Secondary Sources***

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, § 390

1 Wilcox, California Employment Law, Ch. 2, *Applicability of Rules Governing Hours Worked*, §§ 2.08, 2.09 (Matthew Bender)

1 Wilcox, California Employment Law, Ch. 3, *Determining Hours Worked*, § 3.01 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 250, *Employment Law: Wage and Hour Disputes*, § 250.14 (Matthew Bender)

## Draft—Not Approved by Judicial Council

### 2762. Rest Break Violations—Pay Owed

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**For each workday on which [name of plaintiff] has proved one or more rest break violations, [name of defendant] must pay one additional hour of pay at [name of plaintiff]’s regular rate of pay. You must determine the amount of pay owed for the rest break violations that [name of plaintiff] has proved.**

**The “regular rate of pay” for [name of plaintiff] from [insert beginning date] to [insert ending date] was [insert applicable formula]. [Repeat as necessary for date ranges with different regular rates of pay.] Multiply the regular rate of pay by the number of workdays for which [name of plaintiff] has proved one or more rest break violations.**

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#### Directions for Use

Give this instruction with CACI No. 2760, *Rest Break Violations—Introduction*, and CACI No. 2761, *Rest Break Violations—Essential Factual Elements*.

Regular rate of pay includes the employee’s base hourly rate of pay and all other forms of nondiscretionary compensation earned during the same pay period, including, for example, nondiscretionary bonuses, commissions, and shift differentials. (See *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878 [280 Cal.Rptr.3d 783, 489 P.3d 1166] [holding that “the term ‘regular rate of compensation’ in [Labor Code] section 226.7(c) has the same meaning as ‘regular rate of pay’ in [Labor Code] section 510(a) and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee”].) The regular rate of pay may be different over different periods of time. The court must determine the method for calculating plaintiff’s regular rate of pay. If different regular rates of pay are at issue, define the plaintiff’s regular rate of pay for all relevant date ranges.

An employer must pay a premium wage of one hour of pay at the employee’s regular rate of compensation for any rest breaks not provided. (Lab. Code, § 226.7(c).) This instruction may need to be modified if there is evidence of an employer’s paying premium wages for any rest break violations.

The definition of “regular rate of pay” may be omitted if it is included in another instruction.

#### Sources and Authority

- Right of Action for Missed Meal and Rest and Recovery Periods. Labor Code section 226.7.
- Rest Periods. Cal. Code Regs., tit. 8, § 11010 et seq., subd. 12.
- “[W]e hold that the term ‘regular rate of compensation’ in section 226.7(c) has the same meaning as ‘regular rate of pay’ in section 510(a) and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee. This interpretation of section

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226.7(c) comports with the remedial purpose of the Labor Code and wage orders and with our general guidance that the ‘state’s labor laws are to be liberally construed in favor of worker protection.’ ” (*Ferra, supra*, 11 Cal.5th at p. 878.)

- “[W]e hold that the Court of Appeal erred in construing section 226.7 as a penalty and applying a one-year statute of limitations. The statute’s plain language, the administrative and legislative history, and the compensatory purpose of the remedy compel the conclusion that the ‘additional hour of pay’ is a premium wage intended to compensate employees, not a penalty.” (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [56 Cal.Rptr.3d 880, 155 P.3d 284], internal citation omitted.)

***Secondary Sources***

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, § 390

1 Wilcox, California Employment Law, Ch. 2, *Applicability of Rules Governing Hours Worked*, §§ 2.08, 2.09 (Matthew Bender)

1 Wilcox, California Employment Law, Ch. 3, *Determining Hours Worked*, § 3.01 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 250, *Employment Law: Wage and Hour Disputes*, § 250.14 (Matthew Bender)

California Civil Practice: Employment Litigation, §§ 4.1, 4.74, 4.76 (Thomson Reuters)

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**2765. Meal Break Violations—Introduction (Lab. Code, §§ 226.7, 512)**

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*[Name of plaintiff]* claims that *[name of defendant]* owes *[him/her/nonbinary pronoun]* pay because *[name of defendant]* did not provide one or more meal breaks.

**Employers are required to provide meal breaks at specified times during a workday.** *[Specify any scheduling requirement(s) of the meal breaks at issue if delay or interruption is at issue.]* **In this case, *[name of plaintiff]* was entitled to a 30-minute unpaid meal break for each period of work lasting longer than five hours. This means that over the course of a workday, *[name of plaintiff]* was due *[specify which meal breaks are at issue, e.g., a first meal break that starts after no more than five hours of work and a second meal break to start after no more than ten hours of work.]***

**A meal break complies with the law if the employer does all of the following:**

- 1. Provides a reasonable opportunity to take uninterrupted 30-minute meal breaks on time;**
- 2. Does not impede the employee from taking 30-minute meal breaks;**
- 3. Does not discourage the employee from taking 30-minute meal breaks;**
- 4. Relieves the employee of all duties during 30-minute meal breaks; and**
- 5. Relinquishes control over the employee’s activities during 30-minute meal breaks, including not requiring the employee to stay on the premises.**

**An employer, however, is not required to police meal breaks, ensure that an employee takes a meal break, or ensure that an employee does no work during a meal break.**

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

**[Meal breaks, which are unpaid, and rest breaks, which are paid, have different requirements. You should consider claims for meal break violations separately from claims for rest break violations. For example, providing an unpaid meal break does not satisfy the employer’s obligation to provide an employee with a paid 10-minute rest break.]**

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**Directions for Use**

This instruction assumes a nonexempt employee who is entitled to one or more meal breaks. It should be read before the other meal break instructions. (See CACI No. 2766A, *Meal Break Violations—Essential Factual Elements*, and CACI No. 2766B, *Meal Break Violations—Rebuttable Presumption—Employer Records*.) It may need to be modified in certain limited circumstances, for example, if waiver of meal

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breaks is at issue. (See CACI No. 2770, *Affirmative Defense—Meal Breaks—Waiver by Mutual Consent*, and CACI No. 2771, *Affirmative Defense—Meal Breaks—Written Consent to On-Duty Meal Breaks*.)

Specify the meal breaks at issue and any scheduling requirements in the second paragraph.

Wage and hour claims are governed by two sources of authority: the provisions of the Labor Code and a series of 18 wage orders, adopted by the Industrial Welfare Commission. (See *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833, 838 [182 Cal.Rptr.3d 124, 340 P.3d 355].) Different meal period rules apply to certain employees of emergency ambulance providers; do not give this instruction in a case involving those employees. (See Lab. Code, §§ 880–890, added by initiative, Gen. Elec. (Nov. 6, 2018), commonly known as Prop. 11.) Other exceptions to the meal period rules exist, which may require modifying this instruction. For example, persons employed in the motion picture and broadcasting industries are entitled to a meal break after six hours of work. (See Lab. Code, § 512(d); Wage Order 12-2001.) Other exceptions to the meal period rules include most instances where the Industrial Welfare Commission authorized adoption of a working condition order permitting a meal period to commence after six hours of work, certain commercial drivers, certain workers in the wholesale baking industry, and workers covered by collective bargaining agreements that meet specified requirements. (Lab. Code, § 512(b)–(e).)

The Labor Code and the wage orders exempt certain employees from receiving premium pay for meal period violations (for example, executives). The assertion of an exemption from wage and hour laws is an affirmative defense, which presents a mixed question of law and fact. (See *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 794 [85 Cal.Rptr.2d 844, 978 P.2d 2].)

The definition of “workday” may be omitted if it is included in another instruction.

Give the optional final paragraph only if both meal breaks and rest breaks are at issue in the case.

### Sources and Authority

- Right of Action for Meal and Rest and Recovery Period Violations. Labor Code section 226.7.
- Meal Periods. Labor Code section 512.
- Meal Periods. Cal. Code Regs., tit. 8, § 11010 et seq., subd. 11.
- Employer Duty to Keep Time Records. Cal. Code Regs., tit. 8, §§ 11010–11030, 11060–11110, 11150, ¶ 11(C), 11040–11050 & 11130–11140, ¶ 11(A), § 11120, ¶ 11(B), § 11160, ¶ 10(D).
- “Workday” Defined. Labor Code section 500.
- “An employer’s duty with respect to meal breaks under both section 512, subdivision (a) and Wage Order No. 5 is an obligation to provide a meal period to its employees. The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so. What will suffice may vary from industry to industry, and we cannot

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in the context of this class certification proceeding delineate the full range of approaches that in each instance might be sufficient to satisfy the law.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040 [139 Cal.Rptr.3d 315, 273 P.3d 513].)

- “[U]nder the relevant statute and wage order, an employee becomes entitled to premium pay for missed or noncompliant meal and rest breaks precisely because she was required to work when she should have been relieved of duty: required to work too long into a shift without a meal break; required in whole or part to work through a break; or, as was the case here, required to remain on duty without an appropriate agreement in place authorizing on-duty meal breaks.” (*Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 106–107 [293 Cal.Rptr.3d 599, 509 P.3d 956].)
- “Accordingly, we conclude that Wage Order No. 5 imposes no meal timing requirements beyond those in section 512. Under the wage order, as under the statute, an employer’s obligation is to provide a first meal period after no more than five hours of work and a second meal period after no more than 10 hours of work.” (*Brinker Restaurant Corp., supra*, 53 Cal.4th at p. 1049.)
- “An employee who remains on duty during lunch is providing the employer services; so too the employee who works without relief past the point when permission to stop to eat or rest was legally required. Section 226.7 reflects a determination that work in such circumstances is worth more—or should cost the employer more—than other work, and so requires payment of a premium.” (*Naranjo, supra*, 13 Cal.5th at p. 107.)

### Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 390–391

1 Wilcox, California Employment Law, Ch. 2, *Applicability of Rules Governing Hours Worked*, §§ 2.08, 2.09 (Matthew Bender)

1 Wilcox, California Employment Law, Ch. 3, *Determining Hours Worked*, § 3.01 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 250, *Employment Law: Wage and Hour Disputes*, § 250.14 (Matthew Bender)

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**2766A. Meal Break Violations—Essential Factual Elements (Lab. Code, §§ 226.7, 512)**

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To establish a meal break violation, [*name of plaintiff*] must prove both of the following:

1. That [*name of plaintiff*] worked for [*name of defendant*] for one or more workdays for a period lasting longer than five hours; and
  2. That [*name of defendant*] did not provide [*name of plaintiff*] with the opportunity to take [a/an] [timely] uninterrupted meal break of at least 30 minutes [for each five-hour period worked].
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**Directions for Use**

If the case involves allegedly untimely meal breaks or more than one meal break, select either or both of the bracketed options in element 2.

Do not give this instruction for any meal break claims involving the rebuttable presumption of a violation based on an employer's records. (See CACI No. 2766B, *Meal Break Violations—Rebuttable Presumption—Employer Records*.)

The jury must also decide how much pay is owed for any meal break violations. (See CACI No. 2767, *Meal Break Violations—Pay Owed*.)

**Sources and Authority**

- Right of Action for Meal and Rest and Recovery Period Violations. Labor Code section 226.7.
- Meal Periods. Labor Code section 512.
- Meal Periods. Cal. Code Regs., tit. 8, § 11010 et seq., subd. 11.

***Secondary Sources***

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 390–391

1 Wilcox, California Employment Law, Ch. 2, *Applicability of Rules Governing Hours Worked*, §§ 2.08, 2.09 (Matthew Bender)

1 Wilcox, California Employment Law, Ch. 3, *Determining Hours Worked*, § 3.01 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 250, *Employment Law: Wage and Hour Disputes*,

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§ 250.14 (Matthew Bender)

California Civil Practice: Employment Litigation, §§ 4.1, 4.4 (Thomson Reuters)

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**2766B. Meal Break Violations—Rebuttable Presumption—Employer Records**

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**An employer must keep accurate records of the start and end times of each meal break.** *[Specify noncompliance in records that gives rise to rebuttable presumption of meal break violation, e.g., missing time records, records showing missed meal breaks, meal breaks of less than 30 minutes, or meal breaks taken too late in a workday may prove a meal break violation.]*

**If you decide that [name of plaintiff] has proved that [[name of defendant] did not keep accurate records of compliant meal breaks/[name of defendant]’s records show [missed/ [,/or] shortened/ [,/or] delayed] meal breaks], then your decision on [name of plaintiff]’s meal break claim must be for [name of plaintiff] unless [name of defendant] proves all of the following:**

- 1. That [name of defendant] provided [name of plaintiff] a reasonable opportunity to take uninterrupted 30-minute meal breaks on time;**
- 2. That [name of defendant] did not impede [name of plaintiff] from taking 30-minute meal breaks;**
- 3. That [name of defendant] did not discourage [name of plaintiff] from taking 30-minute meal breaks;**
- 4. That [name of defendant] relieved [name of plaintiff] of all duties during 30-minute meal breaks; and**
- 5. That [name of defendant] relinquished control over [name of plaintiff]’s activities during 30-minute meal breaks.**

**If you decide that [name of defendant] has proved all of the above for each meal break, then there have been no meal break violations and your decision must be for [name of defendant].**

**However, if you decide that [name of defendant] has not proved all of the above for each meal break, then you must still decide how many workdays [name of defendant] did not prove all of the above and you must determine the amount of pay owed.**

**[Name of defendant] must pay one additional hour of pay at [name of plaintiff]’s regular rate of pay for each workday on which [name of defendant] did not prove all of the above.**

**The “regular rate of pay” for [name of plaintiff] from [insert beginning date] to [insert ending date] was [insert applicable formula]. [Repeat as necessary for date ranges with different regular rates of pay.] Multiply the regular rate of pay by the number of workdays for which [name of defendant] did not prove all of the above.]**

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**Directions for Use**

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Employer records showing noncompliant meal breaks raise a rebuttable presumption of a meal break violation. (See *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61 [275 Cal.Rptr.3d 422, 481 P.3d 661] [“time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations”].) Note that employers need not record meal breaks during which all operations cease. (See, e.g., Cal. Code Regs., tit. 8, § 11010, subd. 7(A)(1).)

Regular rate of pay includes the employee’s base hourly rate of pay and all other forms of non-discretionary compensation earned during the same pay period, including, for example, nondiscretionary bonuses, commissions, and shift differentials. (See *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878 [280 Cal.Rptr.3d 783, 489 P.3d 1166] [holding that “the term ‘regular rate of compensation’ in [Labor Code] section 226.7(c) has the same meaning as ‘regular rate of pay’ in [Labor Code] section 510(a) and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee”].) The regular rate of pay may be different over different periods of time. The court must determine the method for calculating plaintiff’s regular rate of pay. If different regular rates of pay are at issue, define the plaintiff’s regular rate of pay for all relevant date ranges.

An employer must pay a premium wage of one hour of pay at the employee’s regular rate of compensation for any meal breaks not provided. (Lab. Code, § 226.7(c).) This instruction may need to be modified if there is evidence of an employer’s paying premium wages for any meal breaks.

The definition of “regular rate of pay” may be omitted if it is included in another instruction.

### Sources and Authority

- Right of Action for Missed Meal and Rest and Recovery Periods. Labor Code section 226.7.
- Meal Periods. Labor Code section 512.
- Meal Periods. Cal. Code Regs., tit. 8, § 11010 et seq., subd. 11.
- Employer Duty to Keep Time Records. Cal. Code Regs., tit. 8, §§ 11010–11030, 11060–11110, 11150, ¶ 11(C), 11040–11050 & 11130–11140, ¶ 11(A), § 11120, ¶ 11(B), § 11160, ¶ 10(D).
- “[W]e hold that time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” (*Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61 [275 Cal.Rptr.3d 422, 481 P.3d 661].)
- “The practice of rounding time punches for meal periods is inconsistent with the purpose of the Labor Code provisions and the IWC wage order. The text of Labor Code section 512 and Wage Order No. 4 sets precise time requirements for meal periods. Each meal period must be ‘not less than 30 minutes,’ and no employee shall work ‘more than five hours per day’ or ‘more than 10 hours per day’ without being provided with a meal period. These provisions speak directly to the calculation of time for meal period purposes. [¶] The precision of the time requirements set out in Labor Code section 512 and Wage Order No. 4—‘not less than 30 minutes’ and ‘five hours per day’ or ‘10 hours per day’—is at odds with the imprecise calculations that rounding involves. The

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regulatory scheme that encompasses the meal period provisions is concerned with small amounts of time. For example, we have ‘requir[ed] strict adherence to’ the Labor Code’s requirement that employees receive two daily 10-minute rest periods and ‘scrupulously guarded against encroachments on’ these periods. The same vigilance is warranted here. Given the relatively short length of a 30-minute meal period, the potential incursion that might result from rounding is significant.” (*Donohue, supra*, 11 Cal.5th at p. 68, internal citations omitted.)

- “Because time records are required to be accurate, it makes sense to apply a rebuttable presumption of liability when records show noncompliant meal periods. If the records are accurate, then the records reflect an employer’s true liability; applying the presumption would not adversely affect an employer that has complied with meal period requirements and has maintained accurate records. If the records are incomplete or inaccurate—for example, the records do not clearly indicate whether the employee chose to work during meal periods despite bona fide relief from duty—then the employer can offer evidence to rebut the presumption. It is appropriate to place the burden on the employer to plead and prove, as an affirmative defense, that it genuinely relieved employees from duty during meal periods. ‘To place the burden elsewhere would offer an employer an incentive to avoid its recording duty and a potential windfall from the failure to record meal periods.’ ” (*Donohue, supra*, 11 Cal.5th at p. 76, internal citations omitted.)
- “[Defendant] misunderstands how the rebuttable presumption operates at the summary judgment stage. Applying the presumption does not mean that time records showing missed, short, or delayed meal periods result in ‘automatic liability’ for employers. If time records show missed, short, or delayed meal periods with no indication of proper compensation, then a rebuttable presumption arises. Employers can rebut the presumption by presenting evidence that employees were compensated for noncompliant meal periods or that they had in fact been provided compliant meal periods during which they chose to work. ‘Representative testimony, surveys, and statistical analysis,’ along with other types of evidence, ‘are available as tools to render manageable determinations of the extent of liability.’ Altogether, this evidence presented at summary judgment may reveal that there are no triable issues of material fact. The rebuttable presumption does not require employers to police meal periods. Instead, it requires employers to give employees a mechanism for recording their meal periods and to ensure that employees use the mechanism properly. (*Donohue, supra*, 11 Cal.5th at 77, internal citation omitted.)
- “[W]e hold that the term ‘regular rate of compensation’ in section 226.7(c) has the same meaning as ‘regular rate of pay’ in section 510(a) and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee. This interpretation of section 226.7(c) comports with the remedial purpose of the Labor Code and wage orders and with our general guidance that the ‘state’s labor laws are to be liberally construed in favor of worker protection.’ ” (*Ferra, supra*, 11 Cal.5th at p. 878.)
- “[W]e construe the Legislature’s use of the disjunctive as permitting an additional hour of pay for each work day that either type of break period is violated. We agree with the district court in *Marlo* [*v. United Parcel Service, Inc.*] that allowing an employee to recover one additional hour of pay for each type of violation per work day is not contrary to the ‘one additional hour’ and ‘per work day’ wording in subdivision (b). [¶] We further agree with *Marlo* that construing section 226.7, subdivision (b), as permitting one premium payment for each type of break violation is in

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accordance with and furthers the public policy behind the meal and rest break mandates.” (*United Parcel Service Wage & Hour Cases* (2011) 196 Cal.App.4th 57, 69 [125 Cal.Rptr.3d 384].)

***Secondary Sources***

3 Witkin, *Summary of California Law* (11th ed. 2017) Agency and Employment, §§ 390–391

1 Wilcox, *California Employment Law, Ch. 2, Applicability of Rules Governing Hours Worked*, §§ 2.08, 2.09 (Matthew Bender)

1 Wilcox, *California Employment Law, Ch. 3, Determining Hours Worked*, § 3.01 (Matthew Bender)

21 *California Forms of Pleading and Practice, Ch. 250, Employment Law: Wage and Hour Disputes*, § 250.14 (Matthew Bender)

*California Civil Practice: Employment Litigation*, §§ 4.4, 4.21 (Thomson Reuters)

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### 2767. Meal Break Violations—Pay Owed

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**For each workday on which [name of plaintiff] has proved one or more meal break violations, [name of defendant] must pay one additional hour of pay at [name of plaintiff]’s regular rate of pay. You must determine the amount of pay owed for the meal break violations that [name of plaintiff] has proved.**

**The “regular rate of pay” for [name of plaintiff] from [insert beginning date] to [insert ending date] was [insert applicable formula]. [Repeat as necessary for date ranges with different regular rates of pay.] Multiply the regular rate of pay by the number of workdays for which [name of plaintiff] has proved one or more meal break violations.**

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#### Directions for Use

Give this instruction with CACI No. 2765, *Meal Break Violations—Introduction*, and CACI No. 2766A, *Meal Break Violations—Essential Factual Elements*. Do not give this instruction for any meal break claims involving the rebuttable presumption of a violation based on an employer’s records. (See CACI No. 2766B, *Meal Breaks Not Provided—Rebuttable Presumption—Employer Records*.)

Regular rate of pay includes the employee’s base hourly rate of pay and all other forms of nondiscretionary compensation earned during the same pay period, including, for example, nondiscretionary bonuses, commissions, and shift differentials. (See *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878 [280 Cal.Rptr.3d 783, 489 P.3d 1166] [holding that “the term ‘regular rate of compensation’ in [Labor Code] section 226.7(c) has the same meaning as ‘regular rate of pay’ in [Labor Code] section 510(a) and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee”].) The regular rate of pay may be different over different periods of time. The court must determine the method for calculating plaintiff’s regular rate of pay. If different regular rates of pay are at issue, define the plaintiff’s regular rate of pay for all relevant date ranges.

An employer must pay a premium wage of one hour of pay at the employee’s regular rate of compensation for any meal breaks not provided. (Lab. Code, § 226.7(c).) This instruction may need to be modified if there is evidence of an employer’s paying premium wages for any meal breaks.

The definition of “regular rate of pay” may be omitted if it is included in another instruction.

#### Sources and Authority

- Right of Action For Missed Meal Period. Labor Code section 226.7.
- Meal Periods. Labor Code section 512.
- “[W]e hold that the term ‘regular rate of compensation’ in section 226.7(c) has the same meaning as ‘regular rate of pay’ in section 510(a) and encompasses not only hourly wages but all

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nondiscretionary payments for work performed by the employee. This interpretation of section 226.7(c) comports with the remedial purpose of the Labor Code and wage orders and with our general guidance that the ‘state’s labor laws are to be liberally construed in favor of worker protection.’ ” (*Ferra, supra*, 11 Cal.5th at p. 878.)

- “Section 226.7 missed-break premium pay does differ from these examples in that it aims to remedy a legal violation. The law permits an employer to allow an employee to work overtime hours, or to work a split shift, provided the employee is paid extra for it, but the law generally does not permit an employer to deprive an employee of a meal or rest break. But why should this difference matter? That missed-break premium pay serves as a remedy for a legal violation does not change the fact that the premium pay also compensates for labor performed under conditions of hardship. One need not exclude the other.” (*Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 108 [293 Cal.Rptr.3d 599, 509 P.3d 956].)
- “[T]he Legislature requires employers to pay missed-break premium pay on an ongoing, running basis, just like other forms of wages.” (*Naranjo, supra*, 13 Cal.5th at p. 110, internal citations omitted.)
- “The employee who remains on duty without a timely break has ‘earned’ premium pay within any ordinary sense of the word.” (*Naranjo, supra*, 13 Cal.5th at p. 115.)
- “[W]e construe the Legislature’s use of the disjunctive as permitting an additional hour of pay for each work day that either type of break period is violated. We agree with the district court in *Marlo* [*v. United Parcel Service, Inc.*] that allowing an employee to recover one additional hour of pay for each type of violation per work day is not contrary to the ‘one additional hour’ and ‘per work day’ wording in subdivision (b). [¶] We further agree with *Marlo* that construing section 226.7, subdivision (b), as permitting one premium payment for each type of break violation is in accordance with and furthers the public policy behind the meal and rest break mandates.” (*United Parcel Service Wage & Hour Cases* (2011) 196 Cal.App.4th 57, 69 [125 Cal.Rptr.3d 384].)
- “[U]nder the law as enacted, ‘an employee is entitled to the additional hour of pay *immediately* upon being forced to miss a rest or meal period.’ ” (*Naranjo, supra*, 13 Cal.5th at p. 115, original italics.)

### Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 390–391

1 Wilcox, California Employment Law, Ch. 2, *Applicability of Rules Governing Hours Worked*, §§ 2.08, 2.09 (Matthew Bender)

1 Wilcox, California Employment Law, Ch. 3, *Determining Hours Worked*, § 3.01 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 250, *Employment Law: Wage and Hour Disputes*, § 250.14 (Matthew Bender)

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California Civil Practice: Employment Litigation, §§ 4.1, 4.4, 4.21, 4.74, 4.76 (Thomson Reuters)

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**2770. Affirmative Defense—Meal Breaks—Waiver by Mutual Consent**

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*[Name of defendant]* **claims that there was no meal break violation because *[name of plaintiff]* gave up *[his/her/nonbinary pronoun]* right to a *[first/second]* meal break on one or more workdays. This is called “waiver.” To succeed on this defense, *[name of defendant]* must prove all of the following:**

1. That *[name of plaintiff]* worked no more than six total hours in a workday; and
2. That *[name of plaintiff]* and *[name of defendant]* freely, knowingly, and mutually consented to waiving the meal break of that workday.

*[or]*

*[Name of defendant]* **claims that there was no meal break violation because *[name of plaintiff]* gave up *[his/her/nonbinary pronoun]* right to a second meal break on one or more workdays. This is called “waiver.” To succeed on this defense, *[name of defendant]* must prove all of the following:**

1. That *[name of plaintiff]* worked no more than twelve total hours in a workday;
  2. That *[name of plaintiff]* did not waive *[his/her/nonbinary pronoun]* first meal break of that workday; and
  3. That *[name of plaintiff]* and *[name of defendant]* freely, knowingly, and mutually consented to waiving the second meal break.
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**Directions for Use**

This instruction sets forth the affirmative defense of waiver of a meal break by mutual consent. Employees in most industries can waive their first or second meal break but not both. (Lab. Code, § 512(a).) Give only the paragraph of the instruction that applies to the meal break waived under the applicable wage order. (See, e.g., Cal. Code Regs., tit. 8, § 11010, subd. ¶ 11(A) & (B).)

For an instruction on waiver of off-duty meal breaks, see CACI No. 2771, *Affirmative Defense—Meal Breaks—Written Consent to On-Duty Meal Breaks*.

**Sources and Authority**

- Meal Periods. Labor Code section 512.
- Meal Periods. Cal. Code Regs., tit. 8, §§ 11010–11030, 11060–11110, 11130–11150, ¶ 11, § 11160, ¶ 10, § 11170, ¶ 9.

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- “Workday” Defined. Labor Code section 500.
- “An employer’s assertion that it did relieve the employee of duty, but the employee waived the opportunity to have a work-free break, is not an element that a plaintiff must disprove as part of the plaintiff’s case-in-chief. Rather, as the Court of Appeal properly recognized, the assertion is an affirmative defense, and thus the burden is on the employer, as the party asserting waiver, to plead and prove it.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1052–1053 [139 Cal.Rptr.3d 315, 273 P.3d 513], conc. opn. of Werdegar, J., internal citations omitted.)

***Secondary Sources***

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 390, 391

1 Wilcox, California Employment Law, Ch. 2, *Applicability of Rules Governing Hours Worked*, §§ 2.08, 2.09 (Matthew Bender)

1 Wilcox, California Employment Law, Ch. 9, *Wage and Hour Class Claims*, § 9.02 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 250, *Employment Law: Wage and Hour Disputes*, §§ 250.14, 250.34 (Matthew Bender)

California Civil Practice: Employment Litigation, § 4:4

**Draft—Not Approved by Judicial Council**

**2771. Affirmative Defense—Meal Breaks—Written Consent to On-Duty Meal Breaks**

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*[Name of defendant]* **claims that there was no meal break violation because *[name of plaintiff]* agreed in writing to be on duty during meal breaks. To succeed on this defense, *[name of defendant]* must prove the following:**

1. That *[name of plaintiff]* worked more than [five/six] hours in a workday;
  2. That the nature of *[name of plaintiff]*'s work prevents [him/her/nonbinary pronoun] from being relieved of all duty during meal breaks;
  3. That *[name of plaintiff]* and *[name of defendant]* freely, knowingly, and mutually consented in writing to on-duty meal breaks during which [he/she/nonbinary pronoun] would not be relieved of all duties; [and]
  - [4. That *[name of plaintiff]* has not revoked in writing [his/her/nonbinary pronoun] written consent; and]
  5. That *[name of defendant]* paid *[name of plaintiff]* at [his/her/nonbinary pronoun] regular rate of pay during the on-duty meal breaks.
- 

*New December 2022*

**Directions for Use**

This instruction sets forth an employer's affirmative defense of a written waiver of off-duty meal breaks. Give this instruction only if the defendant claims that the plaintiff freely entered into a written agreement for on-duty meal breaks. (See, e.g., Cal. Code Regs., tit. 8, § 11040, subd. 11(A).)

Persons employed in the motion picture industry are entitled to a meal break after six hours of work (Wage Order 12-2001), rather than the five-hour rule applicable in other industries. Select the appropriate option in element 1 depending on the industry's applicable wage order.

Omit optional element 4 if the plaintiff's revocation of written consent is not at issue.

For an instruction on waiver of meal breaks by mutual consent, see CACI No. 2770, *Affirmative Defense—Meal Breaks—Waiver by Mutual Consent*.

**Sources and Authority**

- Meal Periods. Labor Code section 512.
- Meal Periods. Cal. Code Regs., tit. 8, §§ 11010–11030, 11060–11110, 11150, ¶ 11(C), 11040–11050 & 11130–11140, ¶ 11(A), § 11120, ¶ 11(B), § 11160, ¶ 10(D).

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- “Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.” Cal. Code Regs., tit. 8, § 11010, subd. 11(C).
- “[The on-duty meal period] exception is exceedingly narrow, applying only when (1) ‘the nature of the work prevents an employee from being relieved of all duty’ and (2) the employer *and* employee have agreed, in writing, to the on-duty meal period. Even then, the employee retains the right to ‘revoke the agreement at any time.’ These narrow terms undercut the argument that the provision creates, by implication, a broad rest period exception permitting employers to unilaterally require that employees take on-duty rest breaks without receiving additional compensation.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 266–267 [211 Cal.Rptr.3d 634, 385 P.3d 823], original italics, internal citation omitted.)
- “An on-duty meal period is one in which an employee is not ‘relieved of all duty’ for the entire 30-minute period.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1035 [139 Cal.Rptr.3d 315, 273 P.3d 513].)
- “[A]bsent a waiver, the statute’s plain terms required [the defendant] to provide ‘a meal period’—whether off-duty or on-duty—of at least 30 minutes any time an employee worked at least five hours.” (*L’Chaim House, Inc. v. Department of Industrial Relations* (2019) 38 Cal.App.5th 141, 149 [250 Cal.Rptr.3d 413].)

### Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 390, 391

1 Wilcox, California Employment Law, Ch. 2, *Applicability of Rules Governing Hours Worked*, §§ 2.08, 2.09 (Matthew Bender)

1 Wilcox, California Employment Law, Ch. 3, *Determining Hours Worked*, § 3.01 (Matthew Bender)

1 Wilcox, California Employment Law, Ch. 9, *Wage and Hour Class Claims*, § 9.02 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 250, *Employment Law: Wage and Hour Disputes*, §§ 250.14, 250.34 (Matthew Bender)

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**2775. Nonpayment of Wages Under Rounding System—Essential Factual Elements**

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*[Name of plaintiff]* claims that *[name of defendant]* owes *[him/her/nonbinary pronoun]* wages for unpaid work time because *[name of defendant]*'s policy or practice of adjusting employees' recorded time to the nearest *[specify preset increment of time]* failed to compensate *[name of plaintiff]* for all time worked. This practice is often referred to as "rounding."

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

1. **[That *[name of defendant]*'s rounding policy is not fair and neutral on its face];**

*[or]*

**[That, over time, *[name of defendant]*'s method of rounding resulted in failure to pay its *[employees/specify subset of employees to which plaintiff belonged]* for all time actually worked];**

2. **That *[name of defendant]*'s method of rounding resulted in lost compensation for *[name of plaintiff]*; and**
  3. **The amount of wages owed to *[name of plaintiff]*.**
- 

*New December 2022*

**Directions for Use**

This instruction is intended for use in cases involving the rounding of time clock entries at the start or end of shifts. Do not use this instruction for cases involving the rounding of time entries in the meal break context, which is unlawful. (See *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 68 [275 Cal.Rptr.3d 422, 481 P.3d 661] ["The practice of rounding time punches for meal periods is inconsistent with the purpose of the Labor Code provisions and the IWC wage order"].)

If the court has determined that the defendant's rounding method was fair and neutral on its face, use only the second option for element 1. (See *AHMC Healthcare, Inc. v. Superior Court* (2018) 24 Cal.App.5th 1014, 1028 [234 Cal.Rptr.3d 804]; See's *Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907 [148 Cal.Rptr.3d 690].) The jury will need to resolve any factual disputes concerning (1) whether the rounding method consistently resulted in failure to pay all employees or a subset of employees to which plaintiff belonged for all hours worked and (2) whether the plaintiff has lost wages over time as a result of the defendant's rounding method.

**Sources and Authority**

- Use of Time Clocks. 29 C.F.R. § 785.48(b).

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- “Nothing in our analysis precludes a trial court from looking at multiple datapoints to determine whether the rounding system at issue is neutral as applied. Such analysis could uncover bias in the system that unfairly singles out certain employees. For example, as the trial court discussed, a system that in practice overcompensates lower paid employees at the expense of higher paid employees could unfairly benefit the employer.” (*AHMC Healthcare, Inc.*, *supra*, 24 Cal.App.5th at p. 1028.)
- “Although California employers have long engaged in employee time-rounding, there is no California statute specifically authorizing or prohibiting this practice.” (*See’s Candy Shops, Inc.*, *supra*, 210 Cal.App.4th at p. 901.)
- “Relying on the DOL rounding standard, we have concluded that the rule in California is that an employer is entitled to use the nearest-tenth rounding policy if the rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’ ” (*See’s Candy Shops, supra*, 210 Cal.App.4th at p. 907, internal citations omitted.)
- “Whether a rounding policy will ‘result in undercompensation *over time* is a factual’ issue. Summary adjudication on a rounding claim may be appropriate where the employer can show the rounding policy does not systematically underpay the employee, even if the employee loses some compensation over time.” (*David v. Queen of Valley Medical Center* (2020) 51 Cal.App.5th 653, 664 [264 Cal.Rptr.3d 279], internal citation omitted, original italics.)
- “[T]he regulation does not require that every employee gain or break even over every pay period or set of pay periods analyzed; fluctuations from pay period to pay period are to be expected under a neutral system. We further agree with the court in *See’s I* and *See’s II* that a system is fair and neutral and does not systematically undercompensate employees where it results in a net surplus of compensated hours and a net economic benefit to employees viewed as a whole.” (*AHMC Healthcare, Inc.*, *supra*, 24 Cal.App.5th at p. 1027–1028.)

### *Secondary Sources*

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, § 434

1 Wilcox, California Employment Law, Ch. 3, *Determining Compensable Hours and Proper Payment Amounts*, § 3.02 (Matthew Bender)

California Civil Practice: Employment Litigation, §§ 4.1, 4.21 (Thomson Reuters)

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## VF-2706. Rest Break Violations (Lab. Code, § 226.7)

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We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] work for [*name of defendant*] on one or more workdays for at least three and one-half hours?  
 \_\_\_ Yes \_\_\_ No

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

2. Did [*name of plaintiff*] prove at least one rest break violation?  
 \_\_\_ 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. On how many workdays did one or more rest break violations occur?  
 \_\_\_ workdays

Answer question 4.

4. What is the amount of pay owed? \$\_\_\_\_\_

Signed: \_\_\_\_\_  
 Presiding Juror

Dated: \_\_\_\_\_

[After this verdict form has/After all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New December 2022*

### Directions for Use

This verdict form is based on CACI No. 2760, *Rest Break Violations—Introduction*, CACI No. 2761, *Rest Break Violations—Essential Factual Elements*, and CACI No. 2762, *Rest Break Violations—Pay Owed*.

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

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

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## VF-2707. Meal Break Violations (Lab. Code, §§ 226.7, 512)

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We answer the questions submitted to us as follows:

1. Did [name of plaintiff] work for [name of defendant] for one or more workdays for a period lasting longer than five hours?  
 \_\_\_ Yes \_\_\_ No

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

2. Did [name of plaintiff] prove at least one meal break violation?  
 \_\_\_ 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. On how many workdays did one or more meal break violations occur?  
 \_\_\_ workdays

Answer question 4.

4. What is the amount of pay owed? \$ \_\_\_\_\_

Signed: \_\_\_\_\_  
 Presiding Juror

Dated: \_\_\_\_\_

[After this verdict form has/After all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

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*New December 2022*

#### Directions for Use

This verdict form is based on CACI No. 2765, *Meal Break Violations—Introduction*, CACI No. 2566A, *Meal Break Violations—Essential Factual Elements*, and CACI No. 2767, *Meal Break Violations—Pay Owed*.

The special verdict forms in this section are intended only as models. They may need to be modified

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depending on the facts of the case.

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

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

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## 4603. Whistleblower Protection—Essential Factual Elements (Lab. Code, § 1102.5)

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[Name of plaintiff] claims that [name of defendant] [discharged/[other adverse employment action]] [him/her/nonbinary pronoun] in retaliation for [his/her/nonbinary pronoun] [disclosure of information of/refusal to participate in] an unlawful act. ~~In order to~~ To establish this claim, [name of plaintiff] must prove all of the following:

1. That [name of defendant] was [name of plaintiff]'s employer;
2. [That [[name of plaintiff] disclosed/[name of defendant] believed that [name of plaintiff] [had disclosed/might disclose]] to a [government agency/law enforcement agency/person with authority over [name of plaintiff]/ [or] an employee with authority to investigate, discover, or correct legal [violations/noncompliance]] that [specify information disclosed];]

[or]

[That [name of plaintiff] [provided information to/testified before] a public body that was conducting an investigation, hearing, or inquiry;]

[or]

[That [name of plaintiff] refused to [specify activity in which plaintiff refused to participate];]

3. [That [name of plaintiff] had reasonable cause to believe that the information disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation];]

[or]

[That [name of plaintiff] had reasonable cause to believe that the [information provided to/testimony before] the public body disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation];]

[or]

[That [name of plaintiff]'s participation in [specify activity] would result in [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation];]

4. That [name of defendant] [discharged/[other adverse employment action]] [name of plaintiff];
5. That I[name of plaintiff]'s [disclosure of information/refusal to [specify]]/[name of defendant]'s belief that [name of plaintiff] [had disclosed/might disclose] information was a contributing factor in [name of defendant]'s decision to [discharge/[other adverse employment action]] [name of plaintiff];

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

**[The disclosure of policies that an employee believes to be merely unwise, wasteful, gross misconduct, or the like, is not protected. Instead, *[name of plaintiff]* must have reasonably believed that *[name of defendant]*'s policies violated federal, state, or local statutes, rules, or regulations.]**

**[It is not *[name of plaintiff]*'s motivation for *[his/her/nonbinary pronoun]* disclosure, but only the content of that disclosure, that determines whether the disclosure is protected.]**

**[A disclosure is protected even though disclosing the information may be part of *[name of plaintiff]*'s job duties.]**

*New December 2012; Revised June 2013, December 2013; Revoked June 2014; Restored and Revised December 2014; Renumbered from CACI No. 2730 and Revised June 2015; Revised June 2016, November 2019, May 2020, December 2022*

**Directions for Use**

The whistleblower protection statute of the Labor Code prohibits retaliation against an employee who, or whose family member, discloses information about, or refuses to participate in, an illegal activity. (Lab. Code, § 1102.5(b), (c), (h).) Liability may be predicated on retaliation by “any person acting on behalf of the employer.” (Lab. Code, § 1102.5(a)–(d).) Select any of the optional paragraphs as appropriate to the facts of the case. For claims under Labor Code section 1102.5(c), the plaintiff must show that the activity in question actually would result in a violation of or noncompliance with a statute, rule, or regulation, which is a legal determination that the court is required to make. (*Nejadian v. County of Los Angeles* (2019) 40 Cal.App.5th 703, 719 [253 Cal.Rptr.3d 404].)

Modifications to the instruction may be required if liability is predicated on an agency theory and the agent is also a defendant. Modifications will also be required if the retaliation is against an employee whose family member engaged in the protected activity.

Select the first option for elements 2 and 3 for claims based on actual disclosure of information or a belief that plaintiff disclosed or might disclose information. (Cf. *Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 648–649 [163 Cal.Rptr.3d 392] [under prior version of statute, no liability for anticipatory or preemptive retaliation based on fear that plaintiff might file a complaint in the future].) Select the second options for providing information to or testifying before a public body conducting an investigation, hearing, or inquiry. Select the third options for refusal to participate in an unlawful activity, and instruct the jury that the court has made the determination that the specified activity would have been unlawful.

It has been held that a report of publicly known facts is not a protected disclosure. (*Mize-Kurzman v. Marin Community College Dist.* (2012) 202 Cal.App.4th 832, 858 [136 Cal.Rptr.3d 259].) Another court,

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however, has held that protection is not necessarily limited to the first public employee to report unlawful acts to the employer. (*Hager v. County of Los Angeles* (2014) 228 Cal.App.4th 1538, 1548–1553 [176 Cal.Rptr.3d 268], disapproved on other grounds by *Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, 718 [289 Cal.Rptr.3d 572, 503 P.3d 659]; see Lab. Code, § 1102.5(b), (e).)

“Adverse employment action” is viewed the same as it is under the Fair Employment and Housing Act. (*Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1387 [37 Cal.Rptr.3d 113]; see CACI No. 2505, *Retaliation—Essential Factual Elements*.) Element 4 may be modified to allege constructive discharge or adverse acts that might not be obviously prejudicial. See CACI No. 2509, “*Adverse Employment Action*” Explained, and CACI No. 2510, “*Constructive Discharge*” Explained, for instructions that may be adapted for use with this instruction.

The employee must demonstrate by a preponderance of evidence that a protected activity was a contributing factor in the adverse action against the employee. (*Lawson, supra*, 12 Cal.5th at p. 718.) The employer may then attempt to prove by clear and convincing evidence that the action would have been taken anyway for legitimate, independent reasons even if the employee had not engaged in the protected activities. (See Lab. Code, § 1102.6; CACI No. 4604, *Affirmative Defense—Same Decision*.)

### Sources and Authority

- Retaliation Against Whistleblower Prohibited. Labor Code section 1102.5.
- ~~Affirmative Defense: Same Decision. Labor Code section 1102.6.~~
- “[W]e now clarify that section 1102.6, and not *McDonnell Douglas*, supplies the applicable framework for litigating and adjudicating section 1102.5 whistleblower claims.” (*Lawson, supra*, 12 Cal.5th at p. 712.)
- “By its terms, section 1102.6 describes the applicable substantive standards and burdens of proof for both parties in a section 1102.5 retaliation case: First, it must be ‘demonstrated by a preponderance of the evidence’ that the employee’s protected whistleblowing was a ‘contributing factor’ to an adverse employment action. Then, once the employee has made that necessary threshold showing, the employer bears ‘the burden of proof to demonstrate by clear and convincing evidence’ that the alleged adverse employment action would have occurred ‘for legitimate, independent reasons’ even if the employee had not engaged in protected whistleblowing activities.” (*Lawson, supra*, 12 Cal.5th at p. 712, internal citation omitted.)
- ~~“The elements of a section 1102.5(b) retaliation cause of action require that (1) the plaintiff establish a prima facie case of retaliation, (2) the defendant provide a legitimate, nonretaliatory explanation for its acts, and (3) the plaintiff show this explanation is merely a pretext for the retaliation. [¶] We are concerned here with the first element of a section 1102.5(b) retaliation claim, establishing a prima facie case of retaliation. To do that, a plaintiff must show (1) she engaged in a protected activity, (2) her employer subjected her to an adverse employment action, and (3) there is a causal link between the two.” (*Patten, supra*, 134 Cal.App.4th at p. 1384, internal citations omitted.)~~

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- “In order to prove a claim under section 1102.5(b), the plaintiff must establish a prima facie case of retaliation. It is well-established that such a prima facie case includes proof of the plaintiff’s employment status.” (*Bennett v. Rancho California Water Dist.* (2019) 35 Cal.App.5th 908, 921 [248 Cal.Rptr.3d 21], internal citations omitted.)
- “In 1984, our Legislature provided ‘whistle-blower’ protection in section 1102.5, subdivision (b), stating that an employer may not retaliate against an employee for disclosing a violation of state or federal regulation to a governmental or law enforcement agency. This provision reflects the broad public policy interest in encouraging workplace whistle-blowers to report unlawful acts without fearing retaliation. Section 1102.5, subdivision (b), concerns employees who report to public agencies. It does not protect plaintiff, who reported his suspicions directly to his employer. Nonetheless, it does show the Legislature’s interest in encouraging employees to report workplace activity that may violate important public policies that the Legislature has stated. The state’s whistle-blower statute includes administrative regulations as a policy source for reporting an employer’s wrongful acts and grants employees protection against retaliatory termination. Thus, our Legislature believes that fundamental public policies embodied in regulations are sufficiently important to justify encouraging employees to challenge employers who ignore those policies.” (*Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 76–77 [78 Cal.Rptr.2d 16, 960 P.2d 1046].)
- “[T]he purpose of ... section 1102.5(b) ‘is to ‘“encourag[e] workplace whistle-blowers to report unlawful acts without fearing retaliation.” ’ ’ (*Diego v. Pilgrim United Church of Christ* (2014) 231 Cal.App.4th 913, 923 [180 Cal.Rptr.3d 359].)
- “Once it is determined that the activity would result in a violation or noncompliance with a statute, rule, or regulation, the jury must then determine whether the plaintiff refused to participate in that activity and, if so, whether that refusal was a contributing factor in the defendant’s decision to impose an adverse employment action on the plaintiff.” (*Nejadian, supra*, 40 Cal.App.5th at p. 719.)
- “As a general proposition, we conclude the court could properly craft instructions in conformity with law developed in federal cases interpreting the federal whistleblower statute. As the court acknowledged, it was not bound by such federal interpretations. Nevertheless, the court could properly conclude that the jury required guidance as to what did and did not constitute ‘disclosing information’ or a ‘protected disclosure’ under the California statutes.” (*Mize-Kurzman, supra*, 202 Cal.App.4th at p. 847.)
- “The court erred in failing to distinguish between the disclosure of policies that plaintiff believed to be unwise, wasteful, gross misconduct or the like, which are subject to the [debatable differences of opinion concerning policy matters] limitation, and the disclosure of policies that plaintiff reasonably believed violated federal or state statutes, rules, or regulations, which are not subject to this limitation, even if these policies were also claimed to be unwise, wasteful or to constitute gross misconduct.” (*Mize-Kurzman, supra*, 202 Cal.App.4th at pp. 852–853.)
- “[I]t is not the *motive* of the asserted whistleblower, but the nature of the communication that determines whether it is covered.” (*Mize-Kurzman, supra*, 202 Cal.App.4th at p. 852, original

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italics.)

- “[I]f we interpret section 1102.5 to require an employee to go to a different public agency or directly to a law enforcement agency before he or she can be assured of protection from retaliation, we would be encouraging public employees who suspected wrongdoing to do nothing at all. Under the scenario envisioned by the [defendant], if the employee reports his or her suspicions to the agency, ... , he or she will *have to suffer any retaliatory* conduct with no legal recourse. If the employee reports suspicions to an outside agency or law enforcement personnel, he or she risks subjecting the agency to negative publicity and loss of public support which could ensue without regard to whether the charges prove to be true. At the same time, a serious rift in the employment relationship will have occurred because the employee did not go through official channels within the agency which was prepared to investigate the charges. We see no reason to interpret the statute to create such anomalous results.” (*Gardenhire v. Housing Authority* (2000) 85 Cal.App.4th 236, 243 [101 Cal.Rptr.2d 893].)
- “Labor Code section 1102.5, subdivision (b) protects employee reports of unlawful activity by third parties such as contractors and employees, as well unlawful activity by an employer. In support of our conclusion, we note that an employer may have a financial motive to suppress reports of illegal conduct by employees and contractors that reflect poorly on that employer.” (*McVeigh v. Recology San Francisco* (2013) 213 Cal.App.4th 443, 471 [152 Cal.Rptr.3d 595], internal citation omitted.)
- “We are persuaded that [instructing the jury that reporting publicly known facts is not a protected disclosure] was a proper limitation on what constitutes disclosure protected by California law.” (*Mize-Kurzman, supra*, 202 Cal.App.4th at p. 858.)
- “The report of ‘publicly known’ information or ‘already known’ information is distinct from a rule in which only the first employee to report or disclose unlawful conduct is entitled to protection from whistleblower retaliation.” (*Hager, supra*, 228 Cal.App.4th at p. 1552, disapproved on other grounds in *Lawson, supra*, 12 Cal.5th at p. 718.)
- “Protection only to the first employee to disclose unlawful acts would defeat the legislative purpose of protecting workplace whistleblowers, as employees would not come forward to report unlawful conduct for fear that someone else already had done so. The ‘first report’ rule would discourage whistleblowing. Thus, the [defendant]’s interpretation is a disincentive to report unlawful conduct. We see no such reason to interpret the statute in a manner that would contradict the purpose of the statute.” (*Hager, supra*, 228 Cal.App.4th at p. 1550, disapproved on other grounds in *Lawson, supra*, 12 Cal.5th at p. 718.)
- “Matters such as transferring employees, writing up employees, and counseling employees are personnel matters. ‘To exalt these exclusively internal personnel disclosures with whistleblower status would create all sorts of mischief. Most damagingly, it would thrust the judiciary into micromanaging employment practices and create a legion of undeserving protected “whistleblowers” arising from the routine workings and communications of the job site. ... ’ ” (*Mueller v. County of Los Angeles* (2009) 176 Cal.App.4th 809, 822 [98 Cal.Rptr.3d 281].)

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- “‘A wrongful termination action is viable where the employee alleges he [or she] was terminated for reporting illegal activity which could cause harm, not only to the interests of the employer but also to the public.’ ‘An action brought under the whistleblower statute is inherently such an action.’ To preclude a whistleblower from revealing improper conduct by the government based on confidentiality would frustrate the legislative intent underlying the whistleblower statutes. For reasons of public policy, actions against a public entity for claims of discharge from or termination of employment grounded on a whistleblower claim are not barred by governmental immunity.” (*Whitehall v. County of San Bernardino* (2017) 17 Cal.App.5th 352, 365 [225 Cal.Rptr.3d 321], internal citations omitted.)
- “Although [the plaintiff] did not expressly state in his disclosures that he believed the County was violating or not complying with a specific state or federal law, Labor Code section 1102.5, subdivision (b), does not require such an express statement. It requires only that an employee disclose information and that the employee reasonably believe the information discloses unlawful activity.” (*Ross v. County of Riverside* (2019) 36 Cal.App.5th 580, 592–593 [248 Cal.Rptr.3d 696].)

### *Secondary Sources*

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ [302](#), 373, 374

Chin et al., California Practice Guide: Employment Litigation, Ch. 5(II)~~–~~A, *Retaliation Under Title VII and FEHA*, ¶ 5:1538 (The Rutter Group)

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.03[2][c] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 249, *Employment Law: Termination and Discipline*, §§ 249.12, 249.15 (Matthew Bender)

10 California Points and Authorities, Ch. 100, *Public Entities and Officers: False Claims Actions*, § 100.42, ~~et seq.~~ [100.60–100.61A](#) (Matthew Bender)

## Draft—Not Approved by Judicial Council

## 4604. Affirmative Defense—Same Decision (Lab. Code, § 1102.6)

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If [name of plaintiff] proves that [his/her/nonbinary pronoun] [disclosure of information of/refusal to participate in] an unlawful act was a contributing factor to [his/her/nonbinary pronoun] [discharge/[other adverse employment action]], [name of defendant] is not liable if [he/she/nonbinary pronoun/it] proves by clear and convincing evidence that [he/she/nonbinary pronoun/it] would have [discharged/[other adverse employment action]] [name of plaintiff] anyway at that time for legitimate, independent reasons.

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New December 2013; Renumbered from CACI No. 2731 and Revised June 2015, December 2022

## Directions for Use

Give this instruction in a so-called mixed-motive case under the whistleblower protection statute of the Labor Code. (See Lab. Code, § 1102.5; CACI No. 4603, *Whistleblower Protection—Essential Factual Elements*.) A mixed-motive case is one in which there is evidence of both a retaliatory and a legitimate reason for the adverse action. Even if the jury finds that the retaliatory reason was a contributing factor, the employer may avoid liability if it can prove by clear and convincing evidence that it would have made the same decision anyway for a legitimate reason. (Lab. Code, § 1102.6.) For an instruction on the clear and convincing standard of proof, see CACI No. 201, *Highly Probable—Clear and Convincing Proof*.

## Sources and Authority

- Same-Decision Affirmative Defense. Labor Code section 1102.6.
- “[W]e now clarify that section 1102.6, and not *McDonnell Douglas*, supplies the applicable framework for litigating and adjudicating section 1102.5 whistleblower claims.” (*Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, 712 [289 Cal.Rptr.3d 572, 503 P.3d 659].)
- “By its terms, section 1102.6 describes the applicable substantive standards and burdens of proof for both parties in a section 1102.5 retaliation case: First, it must be ‘demonstrated by a preponderance of the evidence’ that the employee’s protected whistleblowing was a ‘contributing factor’ to an adverse employment action. Then, once the employee has made that necessary threshold showing, the employer bears ‘the burden of proof to demonstrate by clear and convincing evidence’ that the alleged adverse employment action would have occurred ‘for legitimate, independent reasons’ even if the employee had not engaged in protected whistleblowing activities.” (*Lawson, supra*, 12 Cal.5th at p. 712, internal citation omitted.)
- “[Plaintiff] points to Labor Code section 1102.6, which requires the employer to prove a same-decision defense by clear and convincing evidence when a plaintiff has proven by a preponderance of the evidence that the employer’s violation of the whistleblower statute was a ‘contributing factor’ to the contested employment decision. Yet the inclusion of the clear and convincing evidence language in one statute does not suggest that the Legislature intended the same standard to apply to other statutes implicating the same-decision defense.” (*Harris v. City of Santa Monica* (2013) 56 Cal. 4th 203, 239 [152 Cal.Rptr.3d 392, 294 P.3d 49]; internal citation

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omitted.)

- “[W]hen we refer to a same-decision showing, we mean proof that the employer, in the absence of any discrimination, would have made the same decision *at the time it made its actual decision.*” (*Harris, supra*, 56 Cal.4th at p. 224, original italics.)

***Secondary Sources***

3 Witkin, Summary of California Law (10th ed. 2005) Agency and Employment, §§ 373, 374

Chin et al., California Practice Guide: Employment Litigation, Ch. 5(II)-A, *Retaliation Under Title VII and FEHA*, ¶ 5:1538 (The Rutter Group)

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.03 (Matthew Bender)

[10 California Points and Authorities, Ch. 100, Public Entities and Officers: False Claims Actions, § 100.60 \(Matthew Bender\)](#)

21 California Forms of Pleading and Practice, Ch. 249, *Employment Law: Termination and Discipline*, § 249.12 (Matthew Bender)

## Draft—Not Approved by Judicial Council

## VF-4601. Protected Disclosure by State Employee—California Whistleblower Protection Act—Affirmative Defense—Same Decision (Gov. Code, § 8547.8(c))

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We answer the questions submitted to us as follows:

1. Did [*name of plaintiff*] [*specify protected disclosure, e.g., report waste, fraud, abuse of authority, violation of law, threats to public health, bribery, misuse of government property*]?  
 Yes  No

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

2. Did [*name of plaintiff*]'s communication [*disclose/ [or] demonstrate an intention to disclose*] evidence of [*an improper governmental activity/ [or] a condition that could significantly threaten the health or safety of employees or the public*]?  
 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*] make this communication in good faith [*for the purpose of remediating the health or safety condition*]?  
 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*] [*discharge/~~specify~~ other adverse action*] [*name of plaintiff*]?  
 Yes  No

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

5. Was [*name of plaintiff*]'s communication a contributing factor in [*name of defendant*]'s decision to [*discharge/other adverse action*] [*him/her/nonbinary pronoun*]?  
 Yes  No

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

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6. Was [name of defendant]'s conduct 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. Did [name of defendant] prove by clear and convincing evidence that [name of defendant] ~~W~~would [name of defendant] have [discharged/~~specify~~ other adverse action] [name of plaintiff] anyway at that time, for legitimate, independent reasons?
- \_\_\_\_\_ Yes \_\_\_\_\_ No

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

8. What are [name of plaintiff]'s damages?

[a. Past economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]

Total Past Economic Damages: \$ \_\_\_\_\_]

[b. Future economic loss

[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]

Total Future Economic Damages: \$ \_\_\_\_\_]

[c. Past noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

\$ \_\_\_\_\_]

TOTAL \$ \_\_\_\_\_

Signed: \_\_\_\_\_

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**Presiding Juror**

**Dated:** \_\_\_\_\_

**After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.**

*New December 2015; Revised December 2016, December 2022*

**Directions for Use**

This verdict form is based on CACI No. 4601, *Protected Disclosure by State Employee—California Whistleblower Protection Act—Essential Factual Elements*, and CACI No. 4602, *Affirmative Defense—Same Decision*.

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 a health or safety violation is presented in question 2, include the bracketed language at the end of question 3.

Questions 4 and 5 may be modified to allege constructive discharge. Questions 2 through 5 of CACI No. VF-2408, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy*, should be adapted and included in such a case.

Question 7 presents the employer’s affirmative defense that it would have made the same decision anyway for legitimate reasons even though the jury finds that retaliation for whistleblowing was also a contributing factor for the adverse action. ~~Question 7 must be proved by clear and convincing evidence.~~ (See Gov. Code, § 8547.8(e).)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

## Draft—Not Approved by Judicial Council

## VF-4602. Whistleblower Protection—Affirmative Defense of Same Decision (Lab. Code, §§ 1102.5, 1102.6)

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We answer the questions submitted to us as follows:

1. Was *[name of defendant]* *[name of plaintiff]*'s employer?  
 Yes  No

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

2. **[Did *[name of plaintiff]* disclose/*[name of defendant]* believe that *[name of plaintiff]* [had disclosed/might disclose]] to a [government agency/law enforcement agency/person with authority over *[name of plaintiff]*/ [or] an employee with authority to investigate, discover, or correct legal [violations/noncompliance]] that *[specify information disclosed]*?]**

[or]

**[Did *[name of plaintiff]* [provide information to/testify before] a public body that was conducting an investigation, hearing, or inquiry?]**

[or]

**[Did *[name of plaintiff]* refuse to *[specify activity in which plaintiff refused to participate]*?]**

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 reasonable cause to believe that the information disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation]?]**

[or]

**[Did *[name of plaintiff]* have reasonable cause to believe that the [information provided to/testimony before] the public body disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation]?]**

[or]

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[Would *[name of plaintiff]*'s participation in *[specify activity]* result in a violation of a *[state/federal]* statute/*[a violation of/noncompliance with]* a *[local/state/federal]* rule or regulation]?

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]* [~~discharge~~/*specify* other adverse action] *[name of plaintiff]*?  
 Yes  No

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

5. Was *[name of plaintiff]*'s [disclosure of information/refusal to *[specify]*]/*[name of defendant]*'s belief that *[name of plaintiff]* [had disclosed/might disclose] information] a contributing factor in *[name of defendant]*'s decision to [~~discharge~~/*other adverse action*] *[him/her/nonbinary pronoun]*?  
 Yes  No

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

6. Was *[name of defendant]*'s conduct 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. Did *[name of defendant]* prove by clear and convincing evidence that *[name of defendant]* ~~Would~~ *[name of defendant]* have [~~discharged~~/*specify* other adverse action] *[name of plaintiff]* anyway at that time, for legitimate, independent reasons?  
 Yes  No

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

8. What are *[name of plaintiff]*'s damages?

[a. Past economic loss

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[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other past economic loss	\$ _____]
<b>Total Past Economic Damages: \$ _____]</b>	

<b>[b. Future economic loss</b>	
[lost earnings	\$ _____]
[lost profits	\$ _____]
[medical expenses	\$ _____]
[other future economic loss	\$ _____]
<b>Total Future Economic Damages: \$ _____]</b>	

<b>[c. Past noneconomic loss, including [physical pain/mental suffering:]</b>	
	\$ _____]

<b>[d. Future noneconomic loss, including [physical pain/mental suffering:]</b>	
	\$ _____]

**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 December 2015; Revised December 2016, May 2020, December 2022*

### Directions for Use

This verdict form is based on CACI No. 4603, *Whistleblower Protection—Essential Factual Elements*, and CACI No. 4604, *Affirmative Defense—Same Decision*.

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.

~~Questions 2 and 3 may be replaced with one of the other~~ Use the appropriate options in questions 2 and 3

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**as used** for elements 2 and 3 in CACI No. 4603. Omit question 3 entirely, however, if the plaintiff allegedly refused to participate in an activity that would result in a violation or noncompliance with a statute, rule, or regulation. (*Nejadian v. County of Los Angeles* (2019) 40 Cal.App.5th 703, 719 [253 Cal.Rptr.3d 404].) If the plaintiff allegedly refused to participate in an activity that would result in a violation or noncompliance with a statute, rule, or regulation, replace “disclosure of information” in question 5 with “refusal to [*specify activity employee refused to participate in and what specific statute, rule, or regulation would be violated by that activity*].”

Questions 4 and 5 may be modified to allege constructive discharge. Questions 2 through 5 of CACI No. VF-2408, *Constructive Discharge in Violation of Public Policy—Plaintiff Required to Endure Intolerable Conditions for Improper Purpose That Violates Public Policy*, should be adapted and included in such a case.

Question 7 presents the employer’s affirmative defense that it would have made the same decision anyway for legitimate reasons even though the jury finds that retaliation for whistleblowing was also a contributing factor for the adverse action. ~~Question 7 must be proved by clear and convincing evidence.~~ (See Lab. Code, § 1102.6.)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize “economic” and “noneconomic” damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat’l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

**Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (CACI)**

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

	<b>Instruction</b>	<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
1.	601. Legal Malpractice—Causation (Revise)	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	Agree	No response required.
		Orange County Bar Association by Daniel S. Robinson, President	Agree	No response required.
2.	730. Emergency Vehicle Exemption (Revise)	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	Agree	No response required.
		Consumer Attorneys of California by Saveena Takhar, Senior Legislative Counsel	<p>PAGE 7: <del>“Vehicle Code section 21056 provides: “Section 21055 does not relieve the driver of a vehicle from the duty to drive with due regard for the safety of all persons using the highway, nor protect him from the consequences of an arbitrary exercise of the privileges granted in that section.”</del></p> <p>Comment: <b>We disagree that the above language in the sources and authority section should be struck. This language should be preserved.</b> It is a clear message that the driver of an emergency vehicle is not relieved of responsibility to drive with “due regard for the safety of all persons”</p>	The committee appreciates the commenter’s concern, but the entry contains a quotation from a statute, which is no longer the format used for statutes in the Sources and Authority of the <i>Judicial Council of California Civil Jury Instructions (CACI)</i> publication. Applicable statutes are listed at the beginning of the Sources and Authority without quoting statutory language. (CACI includes quotes from cases, not statutes. To the extent quotes from statutes remain in some instructions, when the instruction is next considered, the committee will recommend updating any out-of-format entries as it has done here.)

**Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (CACI)**

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

	Instruction	Commenter	Comment	Committee Response
			merely because they are operating the vehicle with lights and siren. It is also the singular use instruction that clearly and without disassembling makes this statement. The other use instructions stress the driver is immune unless they fail to activate the red lights or siren, etc.	
		Orange County Bar Association by Daniel S. Robinson, President	Agree	No response required.
3.	1004. Obviously Unsafe Conditions (Revise)	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	Agree	No response required.
		Bruce Greenlee Attorney Richmond	No authority is provided for deleting “lessor” from the instruction. On the other hand, there’s no authority for why “lessor” was ever there to begin with. Why is this change proposed?	The committee believes that the terms “lessor” and “lessee” commonly are misunderstood by jurors, and that the instruction accurately states the law without the inclusion of lessor as an option.
		Orange County Bar Association by Daniel S. Robinson, President	Disagree. The Judicial Council’s proposal to remove the word “lessor” from the actual jury instruction is without any supporting authority or basis. Further, several CACI jury instructions including CACI 1000 (Premises Liability – Essential Factual Elements) and 1001 (Basic Duty of Care) reference holding a defendant liable for “leasing” a property.	The committee believes that unlike the term “leasing,” which is used in other instructions in this series, the terms “lessor” and “lessee” commonly are misunderstood by jurors, and that the instruction accurately states the law without the inclusion of lessor as an option.

**Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (CACI)**

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

	Instruction	Commenter	Comment	Committee Response
			As such, removing “lessor” from CACI 1004 could cause confusion as to the liability of a lessor or lessee.	
			The revisions to the Sources and Authority citation of <i>Felmler v. Falcon Cable TV</i> (1995) 36 Cal.App.4th 1032, 1039-1040, should indicate “internal citations omitted” because the quote attributed to <i>Felmler</i> comes from another case that was specifically cited: <i>Osborn v. Mission Ready Mix</i> (1990) 224 Cal. App. 3d 104 [273 Cal. Rptr. 457].	The committee agrees and recommends adding the notation “internal citation omitted” to the entry in the Sources and Authority.
4.	1007. Sidewalk Abutting Property (Revise)	California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	Agree	No response required.
		Consumer Attorneys of California by Saveena Takhar, Senior Legislative Counsel	PAGE 12: “Sources and Authority” Bullet #1: It is the general rule that in the absence of a statute a landowner is under no duty to maintain in a safe condition a public street abutting upon his property. ” (Sexton v. Brooks (1952) 39 Cal.2d 153,157 [245 P.2d 496]). <u>COMMENT:</u> The first citation under sources and authority is to <u>Sexton v. Brooks</u> (1952) 39 Cal.2d 153. We recommend the addition of the rest of that citation, so that the complete citation reads as follows (Note: Proposed	The committee agrees and has added more language from <i>Sexton v. Brooks</i> content to the Sources and Authority.

**Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (CACI)**

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

	Instruction	Commenter	Comment	Committee Response
			<p>additional language from <u>Sexton</u> added in blue bold italics.)</p> <p>It is the general rule that in the absence of a statute a landowner is under no duty to maintain in a safe condition a public street abutting upon his property. <i>There is, however, an exception to this rule [i.e.] . . . that an abutting owner is liable for the condition of portions of the public sidewalk which he has altered or constructed for the benefit of his property and which serve a use independent of and apart from the ordinary and accustomed use for which sidewalks are designed. <u>Sexton, supra, 157.</u></i></p>	
		<p>Bruce Greenlee Attorney Richmond</p>	<p>No authority is provided for deleting “lessee” from the instruction. On the other hand, there’s no authority for why “lessee” was ever there to begin with. Why is this change proposed?</p>	<p>See the committee’s response to CACI No. 1004, above, which also applies to the deletion of “a lessee of” from this instruction.</p>
		<p>Orange County Bar Association by Daniel S. Robinson, President</p>	<p>Disagree. The Judicial Council’s proposal to remove the words “a lessee of” from the actual jury instruction is without any supporting authority or basis. Further, several CACI jury instructions including CACI 1000 (Premises Liability – Essential Factual Elements) and 1001 (Basic Duty of Care) reference holding a defendant liable for “leasing” a property. As such, removing “a lessee of” from</p>	<p>See the committee’s response to CACI No. 1004, above, which also applies to the deletion of “a lessee of” from this instruction.</p>

ITC CACI 22-02

**Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (CACI)**

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

	Instruction	Commenter	Comment	Committee Response
			CACI 1007 could cause confusion as to the liability of a lessor or lessee.	
5.	2525. Harassment— “Supervisor” Defined (Revise)	California Employment Lawyers Association by Laura L. Horton, Chair	<p>We at the California Employment Lawyers Association (“CELA”) write to comment on the additional CACI 22-02 proposals for wage-and-hour jury instructions. CELA is a statewide organization of more than 1,200 private attorneys who practice primarily employment law on behalf of workers. CELA was established to assist California lawyers representing employees and unions in matters related to employment. CELA’s mission is to help our members protect and expand the legal rights of workers through litigation, education, and advocacy.</p> <p>Today, CELA submits comments on the proposals for 2760, 2765A, 2765B, 2766, VF-2706, and VF-2707. CELA also provides an additional model verdict form for your consideration. We have reviewed the remaining wage-and-hour proposed instructions and believe that they are appropriate for adoption in current form without further revisions.</p> <p>CELA strongly supports the proposed revision to this instruction, and also respectfully suggests a minor modification to ensure that the goal of the Judicial Council is achieved. Specifically,</p>	<p>No response required.</p> <p>See the committee’s responses to the substantive comments, below.</p> <p>The committee does not believe that the suggested modification is supported by the statute, or that it would be sufficiently clear to use and/or in the instruction’s text.</p>

**Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (CACI)**

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

	Instruction	Commenter	Comment	Committee Response
			<p>CELA proposes that the proposed language be modified slightly to state “[plaintiff] and/or [other employees].” Otherwise, it might be confusing to the jury in situations where the supervisor supervised only the plaintiff, when it is clear that the goal of the Judicial Council is to ensure that this instruction is reflective the current state of the law.</p> <p>As explained in prior comments, while Government Code section 12926(t) defines a supervisor as an individual “having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline <i>other employees...</i>,” CACI 2525 currently imposes a new requirement that the individual engaging in the harassing conduct be the supervisor of <i>the plaintiff</i>. Gov Code section 2940(j)(1) does not require that the harasser be the supervisor of <i>the plaintiff</i> in order for a defendant to face strict liability. Rather, the statute refers to “an agent or supervisor,” not an agent of supervisor of <i>the plaintiff</i>. “The case and statutory authority set forth three clear rules. First, ... a supervisor who personally engages in sexually harassing conduct is personally liable under the FEHA. Second, ... if the supervisor participates in the sexual harassment or substantially assists or encourages</p>	

**Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (CACI)**

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

	Instruction	Commenter	Comment	Committee Response
			<p>continued harassment, the supervisor is personally liable under the FEHA as an aider and abettor of the harasser. Third, under the FEHA, the employer is vicariously and strictly liable for sexual harassment by a supervisor.” <i>Fiol v. Doellstedt</i> (1996) 50 Cal.App.4th 1318, 1327.</p> <p>Ever since <i>Kelly-Zurian v. Wohl</i>, the California Supreme Court has consistently held that Government Code section 12940(j)(1) imposes strict liability for the harassing conduct of any supervisory employee. “[A]ll that needed to be shown was Lawicki’s position as a supervisor.” <i>Kelly-Zurian v. Wohl Shoe Co.</i> (1994) 22 Cal.App.4th 397, 416. “Because the FEHA imposes [a] negligence standard only for harassment ‘by an employee other than an agent or supervisor’ by implication the FEHA makes the employer strictly liable for harassment by a supervisor.” <i>State Dept. of Health Services v. Superior Court</i>, 31 Cal.4th 1026, 1040-41 (2003) (emphasis added).</p> <p>For these reasons, we strongly support the proposed revision that clarifies that the FEHA’s definition of “supervisor” also expressly refers to authority and responsibility over “other employees,” and/or the plaintiff.</p>	

**Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (CACI)**

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

	Instruction	Commenter	Comment	Committee Response
		<p>California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair</p>	<p>a. We agree with the proposed revisions to the instruction.</p> <p>b. We would delete the words “not just the plaintiff” in the proposed new sentence in the Directions for Use as superfluous and potentially inaccurate. We believe “other employees” in Government Code section 12926, subdivision (t) refers to employees other than the supervisor rather than employees other than the plaintiff.</p>	<p>No response required.</p> <p>The committee agrees that the phrase is not necessary and has deleted it from the Directions for Use.</p>
		<p>Consumer Attorneys of California by Saveena Takhar, Senior Legislative Counsel</p>	<p>PAGE 14: [Name of alleged harasser] was a supervisor of [name of defendant] if [he/she/nonbinary pronoun] had any of the following:</p> <p>a. The authority to hire, transfer, promote, assign, reward, discipline, [or] discharge [or] [insert other employment action] <b>[name of plaintiff] other employees</b> [or effectively to recommend any of these actions];</p> <p>b. The responsibility to act on <b>[name of plaintiff]’s other employees’</b> grievances [or effectively to recommend action on grievances]; or</p> <p>c. The responsibility to direct <b>[name of plaintiff]’s other employees’</b> daily work activities.</p> <p>[Name of alleged harasser]’s exercise of this authority or responsibility must not be</p>	<p>See the committee’s responses to the substantive comments, below.</p>

**Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (CACI)**

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

	Instruction	Commenter	Comment	Committee Response
			merely routine or clerical, but must require the use of independent judgment.	
			<p><u>Comment:</u> CAOC strongly supports this revision to include “other employees” with one modification. Rather than deleting the “[name of plaintiff]” we recommend that the language read “[plaintiff and/or other employees].” Only naming the plaintiff could cause confusion for the jury that the supervisor only supervised the plaintiff.</p>	The committee does not believe that the suggested modification is supported by the statute, or that it would be sufficiently clear to use and/or in the instruction’s text.
			Further, the definition of “supervisor” also contributes to this confusion. The instruction seems to conflict with the “Directions for Use” section below it. For one to qualify as a “Supervisor”, do they need to supervise plaintiff <i>AND</i> other employees, or just other employees (which may not include plaintiff)? That is an open question under this instruction as phrased.	The committee believes the instruction as proposed is consistent with the statute. Based on the comment (above) of the California Lawyers Association, the committee has revised the Directions for Use to eliminate the potential for confusion noted.
		Orange County Bar Association by Daniel S. Robinson, President	Agree	No response required.
6.	2760. Rest Break Violations—Essential Factual Elements (New) [separated into two new instructions	Association of Southern California Defense Counsel (ASCDC) by Eric C. Schwettmann Ballard Rosenberg Golper & Savitt, LLP	We write on behalf of the Association of Southern California Defense Counsel (ASCDC) to comment on the proposed changes to the Employment Law-related CACI instructions. These jury instructions address rest breaks, meal breaks, and	No response required.

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Instruction	Commenter	Comment	Committee Response
<p>after public comment: 2760. Rest Break Violations— Introduction, and 2761. Rest Break Violations—Essential Factual Elements.]</p>		<p>affirmative defenses and verdict forms relating thereto.</p>	
		<p>ASCDC submits this comment as the nation’s largest and preeminent regional organization of lawyers who specialize in defending civil actions. Its members include over 1,100 attorneys in Central and Southern California, among whom are some of the leading trial and appellate lawyers of California’s civil defense bar. ASCDC appears often as amicus curiae in appellate matters of interest to its members, and has similarly weighed in on proposed legislation, rules changes, and jury instructions affecting matters of civil procedure and other aspects of ASCDC members’ practices.</p>	<p>No response required.</p>
		<p>ASCDC agrees with some of the proposed changes to these important instructions, but requests clarification, correction, and/or submits proposals as to the employment instructions as set forth herein.</p>	<p>See the committee’s responses to ASCDC’s substantive comments below.</p>
		<p><b>Nos. 2760, 2761, and VF-2706 – Re: Rest Break Violations</b>                      First, these instructions and related verdict form appear to take an improper and overly expansive interpretation of the <i>Augustus v. ABM Security Services, Inc.</i> (2016) 2 Cal.5th 257 case. Augustus does not stand for the proposition that</p>	<p>The committee agrees in part. “During required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time.” (<i>Augustus v. ABM Security Services, Inc.</i> (2016) 2 Cal.5th 257, 260 [211 Cal.Rptr.3d 634, 385 P.3d 823].) The committee agrees that practical considerations may prevent an employee from leaving the work site during a 10-minute rest break, but an</p>

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			<p>employees cannot be required to stay “on-site.” We submit, respectfully, that it stands for the proposition that they cannot be required to be “tethered to a particular location” at the employer’s premises. The Supreme Court did not explicitly address whether an employee can be required to remain on the premises during a rest break. It instead said that an employee should be allowed to take a walk during a break. An employee cannot be tethered to a location but is allowed to remain "on-site." An instruction that allows an employee to leave the work site entirely would, in practicality, trigger violations in almost every instance since a paid rest break is only 10 minutes. In most instances, an employee could not practicably fully leave the workplace and return in 10 minutes. The requirement that an employee not be "tethered to a particular location" is consistent with how federal court rulings have interpreted Augustus.</p> <p>Second, requirement that the “rest breaks must be <i>scheduled</i>, if practical under the circumstances” is an overly expansive and unworkable reading of <i>Brinker Restaurant Corp. v. Superior Court</i>, 53 Cal.4th 1004 (2012). In <i>Brinker</i>, the California Supreme Court ruled that employers are “subject to a duty to make a good faith effort to authorize and permit rest breaks</p>	<p>employer’s prohibition on an employee’s movement is different from a practical limitation. The committee believes the instruction (as refined) accurately states the law. The committee has added an entry to the Sources and Authority on the practical constraints of a 10-minute rest break.</p> <p>The committee agrees that “scheduled” may confuse jurors and has rephrased the requirement.</p>

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	Instruction	Commenter	Comment	Committee Response
			<p>in the middle of each work period.” The court stated that “in the context of an eight hour shift, [a]s a general matter, one rest break should fall on either side of the meal break ... .” Employers are given latitude and may “deviate from that preferred course where practical considerations render it infeasible.”</p> <p>Further, the language in the Wage Orders states: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.” There is no obligation to “schedule” a rest break for an employee. The instruction should be consistent with the "authorize and permit" language of Brinker and not include mandatory language such as “must be scheduled,” which is not supported by authority.</p> <p>From a practical perspective, requiring a rest break to be "scheduled" would imply that it would need to actually show up on the employee's daily schedule. Thus, it would be mandatory for an employee’s schedule to read, as an example, 8:30-10, 10-10:10 (rest break), 10:10 to 12:30, 12:30-1 (lunch), 1-3:30, 3:30-3:40 (rest break), 3:40-5. This is not the law, is not workable, and would unquestionably lead</p>	

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			<p>to a multitude of class action and PAGA actions.</p> <p>Further, again from a practical perspective, the time that rest breaks are going to be taken varies from day to day depending on the ordinary course of business. It might be taken earlier or later than "scheduled" for a variety of reasons.</p> <p>In sum, the only constraint on the timing of rest periods requires that they fall in the middle of work periods “insofar as practicable.” So long as the employee is authorized and permitted a 10-minute rest break during every four-hour work period, or major fraction thereof, which falls in the middle of the four hour work period “insofar as practicable” the employer is in compliance with the Labor Code and Wage Orders. There is no mandatory requirement to “schedule” a rest break.</p>	
		<p>California Employment Lawyers Association by Laura L. Horton, Chair</p>	<p>In Sources and Authority, the <i>Naranjo</i> decision of the California Supreme Court from May 2022 should be included. We suggest:</p> <ul style="list-style-type: none"> <li>• “[M]issed-break premium pay constitutes wages for purposes of Labor Code section 203. Thus, waiting time penalties are available under that statute if the premium pay is not timely paid.” <i>Naranjo v. Spectrum Security Services, Inc.</i> (2022) 13 Cal.5th 93, 117 [293 Cal.Rptr.3d 599, 615, 509 P.3d 956, 969]</li> </ul>	<p>This comment is beyond the scope of the invitation to comment. The committee will consider this suggestion in a future release.</p>

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			<p>Given <i>Naranjo</i>, we suggest including a direction to use CACI No. 2704, Waiting-Time Penalty for Nonpayment of Wages, in cases where there is a Labor Code § 203 claim that defendant failed to pay rest-break premium wages upon separation from employment.</p>	
			<p>In Sources and Authority, point-citing <i>Rodriguez v. E.M.E. Inc.</i> (2016) 246 Cal.App.4th 1027, 1040 (“Although section 12(a) of Wage Order...” seems misplaced. It is appropriate for 2760, not 2761.</p>	<p>The committee agrees that the entry is appropriate for the Sources &amp; Authority of CACI No. 2760. (It has been deleted from CACI No. 2762’s Sources &amp; Authority.)</p>
		<p>California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair</p>	<p>a. We believe jurors would better understand this instruction if the employer’s rest break obligations were explained prior to listing the elements. We suggest a separate instruction on required rest breaks be given prior to an instruction on the essential factual elements. Our proposed separate instruction is shown below.</p>	<p>The committee agrees and has separated the proposed instruction into two new instructions: Introduction and Essential Factual Elements.</p>
			<p>b. We would delete the language “as required by law” in the introductory paragraph. All instructions state the law. Referring to “the law” in some instructions but not others might suggest that some instructions are more important than others. Explaining the law before listing the elements, as we propose, would</p>	<p>The committee has deleted the phrase as suggested.</p>

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			<p>make clear what rest breaks the employee is entitled to and avoid for the need for “as required by law” or any similar reference.</p>	
			<p>c. We would revise the explanation of the number and timing of rest breaks to which an employee is entitled for greater clarity as shown below. This also avoids the need to include the optional and opaque language “major fraction thereof.”</p>	<p>The committee has refined the explanation to rephrase “thereof.”</p>
			<p>d. We would explain the nature of a rest break without characterizing that explanation as a definition of “authorizes and permits.” We believe framing this as a definition unnecessarily complicates rather than simplifies this instruction.</p>	<p>The committee agrees and has refined the paragraph as suggested.</p>
			<p>e. We believe “An employer has no obligation” is more direct and preferable to “An employer does not, however, have an obligation.”</p>	<p>The committee does not agree that the suggested phrasing is clearer or more direct. The committee has refined the sentence by moving “however” after “An employer.”</p>
			<p>f. We propose the following language as a separate instruction to be given prior to instructing on the essential factual elements:</p> <p><b>CACI No. _____. Rest Break Violations—Employer’s Obligation</b></p> <p><i>[Name of plaintiff] claims that [name of defendant] owes [him/her/nonbinary pronoun] pay because [name of</i></p>	<p>The committee thanks the commenter for preparing draft language for a separate instruction and has made: (1) CACI No. 2760, an introductory instruction for rest break claims, (2) CACI No. 2761, an essential elements instruction, and (3) CACI No. 2762, a pay owed instruction.</p>

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			<p><i>defendant</i>] did not authorize and permit one or more paid rest breaks.</p> <p><b>Over the course of a workday, an employee who works at least 3½ hours is entitled to a paid 10-minute rest break, an employee who works more than 6 hours is entitled to a second paid 10-minute rest break, and an employee who works more than 10 hours is entitled to a third paid 10-minute rest break. [Rest breaks must be scheduled, if practical under the circumstances, in the middle of each four-hour work period. [Specify any additional timing requirement(s) of the rest breaks at issue if delay is at issue.]]</b></p> <p><b>An employer must relieve the employee of all work duties and relinquish control over how the employee spends time during each 10-minute rest break. An employer cannot require employees to remain on-call or on-site during rest breaks. An employer has no obligation to keep records of employee rest breaks or to ensure that an employee takes each rest break.</b></p> <p><b>“Workday” means any consecutive 24-hour period beginning at the same time each calendar day.</b></p>	

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			<p>g. We would revise the essential factual elements instruction as follows:</p> <p><del><i>[Name of plaintiff] claims that [name of defendant] owes [him/her/nonbinary pronoun] pay because [name of defendant] did not authorize and permit one or more paid rest breaks as required by law. To establish a rest break violation, [name of plaintiff] must prove both of the following:</i></del></p> <ol style="list-style-type: none"> <li>1. That <i>[name of plaintiff] worked for [name of defendant] on one or more workdays for at least three and one-half hours; and</i></li> <li>2. That <i>[name of defendant] did not authorize and permit [name of plaintiff] to take one or more 10-minute rest breaks to which [name of plaintiff] was entitled.</i></li> </ol> <p><del><i>An employer “authorizes and permits” a rest break only when it both relieves the employee of all work duties and relinquishes control over how the employee spends time during each 10-minute rest break. This includes not requiring employees to remain on-call or on-site during rest breaks. An employer does not, however, have an obligation to keep records of employee</i></del></p>	<p>The committee thanks the commenter for preparing an instruction showing the suggested revisions. The committee has made several refinements as noted above.</p>

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			<p><del>rest breaks or to ensure that an employee takes each rest break.</del></p> <p><del>An employee is entitled to a paid 10-minute rest break during every four-hour work period[, /, or major fraction thereof.] [However, an employee is not entitled to a rest break if the total daily work time is less than three and one-half hours.] This means that over the course of a workday [name of plaintiff] was due [specify which rest breaks are at issue, e.g., a paid 10-minute rest break after working longer than three and one-half hours and a second paid 10-minute rest break after working more than six hours but no more than ten hours]. [Rest breaks must be scheduled, if practical under the circumstances, in the middle of each four-hour work period. [Specify any additional timing requirement(s) of the rest breaks at issue if delay is at issue.]]</del></p> <p><del>“Workday” means any consecutive 24-hour period beginning at the same time each calendar day.</del></p> <p>[Rest breaks, which are paid, and meal breaks, which are unpaid, have different requirements. You should consider claims for rest break violations separately from claims for meal break violations. A rest break</p>	

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			<p><b>cannot be combined with a meal break or with another 10-minute rest break. For example, providing an unpaid meal break does not satisfy the employer’s obligation to authorize and permit a paid 10-minute rest break.]</b></p>	
		<p>Bruce Greenlee Attorney Richmond</p>	<p>Third paragraph: Can we get rid of “thereof?” How about: “or major fraction of four hours?”</p>	<p>The committee agrees that replacing the adverb “thereof” with the unit of time mentioned earlier in the sentence is clearer and has made the suggested change.</p>
		<p>Lewis, Brisbois, Bisgaard, &amp; Smith LLP’s California Wage and Hour Jury Instruction Committee by William C. Sung, Attorney</p>	<p>As currently contemplated, CACI 2760 (draft) provides, in relevant part, the following: [Name of plaintiff] claims that [name of defendant] owes [him/her/nonbinary pronoun] pay because [name of defendant] did not authorize and permit one or more paid rest breaks as required by law. To establish a rest break violation, [name of plaintiff] must prove both of the following:</p> <ol style="list-style-type: none"> <li>1. That [name of plaintiff] worked for [name of defendant] on one or more workdays for at least three and one-half hours; and</li> <li>2. That [name of defendant] did not authorize and permit [name of plaintiff] to take one or more 10-minute rest breaks to which [name of plaintiff] was entitled.</li> </ol>	<p>No response required.</p>
			<p>CACI 2760 (draft) does not factor in an employer’s payment of premium pay for any rest period not provided. Further, CACI 2760 (draft) appears to provide for</p>	<p>See the committee’s responses to the specific comments below.</p>

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			<p>liability regardless of whether the employer knew or should have known that an employee worked through a rest period. In addition, CACI 2760 (draft) states, “paid 10-minute rest break after working longer than three and one-half hours and a second paid 10-minute rest break after working more than six hours but no more than ten hours].” Also, CACI 2760 (draft) uses the term “workday.” At the same time, one item that is conspicuously absent is guidance reflecting governing law that an employee who waives a rest period does not trigger employer liability. Lastly, CACI 2760 (draft) forbids employers from “requiring employees to remain ... on-site during rest breaks.”</p> <p>We believe each of these items has room for improvement, including room to be brought into harmony with existing law. For one, an employer’s liability for failing “to provide” a rest period can be ameliorated by the payment of a premium wage of one hour of pay at the employee’s regular rate of compensation. Cal. Lab. Code § 226.7(c). CACI 2760 (draft) must acknowledge that by adding to the <i>prima facie</i> elements whether the employer paid the requirement premium pay in order to be brought in harmony with governing law, to avoid confusion, and to continue to incentivize employers</p>	<p>The committee acknowledges that a rest break violation can be ameliorated by the employer’s payment of a premium wage. The committee, however, is unaware of any authority for including as an essential element that the employer failed to pay a premium wage. The committee, however, will add a sentence to the Directions for Use in CACI No. 2762 (Rest Break Violations—Pay Owed) about the potential need for modification if payment of a premium wage is at issue.</p>

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		to provide premium pay when properly due.	
		In addition, an employer’s liability has always remained contingent on proof the employer knew or should have known of non-compliant rest periods. <i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1004, 1051 (2012). CACI 2760 (draft) is defective because it does not contain this critical boundary.	The authority cited relates to off-the-clock meal breaks, not rest breaks. Moreover, the employee has the burden to prove that the employer did not authorize and permit a rest break to which the employee was entitled.
		Further, CACI 2760 (draft) use of the term “workday” is in disharmony with governing Wage Orders, which uses the term “daily,” not “workday.”	Labor Code section 226.7 uses “workday,” which the committee has used in this instruction.
		CACI 2760 (draft) should also be clarified by specifying the rule under governing law that an employee who voluntarily waives or does not take a “provided” rest period does not trigger the employer’s liability.	The proposed instruction states that an employer does not have an obligation to ensure that an employee takes a rest break.
		Another issue presents with respect to CACI 2760 (draft)’s attempt to render an otherwise “provided” rest period non-compliant if an employer “requir[es] employees to remain ... on-site during rest breaks.” In <i>Augustus v. ABM Security Services, Inc.</i> , 2 Cal. 5th 257, 270 (2016), the California Supreme Court held that security guards, who were on-call during rest period by virtue of being required to listen to radio calls for security incidents,	The committee agrees that practical considerations may prevent an employee from leaving the work site during a 10-minute rest break, but an employer’s prohibition on an employee’s movement is different from a practical limitation. The committee believes the instruction (as refined) accurately states the law. The committee has added an entry to the Sources and Authority on the practical constraints of a 10-minute rest break.

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			<p>were not provided compliant rest periods. The court used the example—among others—of an employee who could not take a brief walk away from the worksite as one indicia of “employer control” reflecting a non-compliant rest period. <i>Id.</i> Our concern is that CACI 2760 (draft) appears to conflate an on-call rest period with a rest period featuring reasonable limitations on an employee, such as not leaving the work area. <i>Augustus</i> arose in the context of employees undeniably on “on-call” rest periods but the court also recognized “practical limitations on an employee’s movement” because of the 10 minute length of time. <i>Id.</i> “That is, during a rest period an employee generally can travel at most five minutes from a work post before returning to make it back on time. Thus, one would expect that employees will ordinarily have to remain f or nearby.” <i>Id.</i> Crucially, <i>Augustus</i> then held that “[t]his constraint, which is of course common to all rest periods, is not sufficient to establish employer control” and thus transmute the rest period from a compliant one to a non-complaint one. <i>Id.</i> To be sure, <i>Augustus</i> used an example of an employee who could not take a brief walk—however, the inability of employees in <i>Augustus</i> to take brief walks was only a one factor among a constellation of others that combined to transform the policy into one that imposed</p>	

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			<p>a “broad and intrusive degree of control” over employees. <i>Augustus</i>, 2 Cal. 5th, at 269. Nothing suggests the <i>Augustus</i> court presupposed that employees were entitled to use their rest periods to go off-premises.</p> <p>Lastly, the derivative verdict form, VF-2706 (draft) requires updating to match the foregoing edits.</p>	<p>The committee has refined the corresponding verdict form based on suggestions from commenters.</p>
		<p>Orange County Bar Association by Daniel S. Robinson, President</p>	<p>In the instruction, delete “or on-site” from the second sentence in the second paragraph. This revision is being requested because it is unsettled whether a rest policy requiring employees to stay on site is facially invalid. In <i>Augustus v. ABM Security Services</i>, 2 Cal. 5th 257 (2016), the California Supreme Court provided that because rest breaks are only 10-minutes, there are “practical limitations on an employee’s movement.” The Court continued, “Thus, one would expect that employee will ordinarily have to remain on site or nearby. This constraint, which is of course common to all rest periods, is not sufficient to establish employer control.” <i>Id.</i> at 832; <i>see also Hubbs v. Big Lots Stores</i> 2018 U.S. Dist. LEXIS 226096 (C.D. Cal., July 11, 2018) (rejecting the argument that a policy requiring employees to remain on the premises during the 10-minute rest break reflects the exercise of employer</p>	<p>The committee agrees that practical considerations may prevent an employee from leaving the work site during a 10-minute rest break, but an employer’s prohibition on an employee’s movement is different from a practical limitation. The committee believes the instruction (as refined) accurately states the law. The committee has added an entry to the Sources and Authority on the practical constraints of a 10-minute rest break.</p>

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			control that qualifies the time as on-duty work.); <i>Schmidtberger v. W. Ref. Retail</i> 2021 U.S. Dist. LEXIS 201935 (C.D. Cal., Sep. 28, 2021) (rejecting Plaintiff’s contention that a policy of requiring employees stay on the premises during rest breaks is invalid facially; <i>Ritenour v. Carrington Mortg. Servs.</i> 2018 U.S. Dist. LEXIS 226668 (C.D. Cal., Sept. 12, 2018); <i>Rodriguez v. Wal-Mart Assocs.</i> 2020 U.S. Dist. LEXIS 247004 (C.D. Cal., Oct. 8, 2020); <i>Bowen v. Target Corp.</i> 2020 U.S. Dist. LEXIS 118914 (C.D. Cal., Mar. 27, 2020).	
7.	2761. Rest Break Violations—Pay Owed (New) [Renumbered after public comment as 2762.]	California Employment Lawyers Association by Laura L. Horton, Chair	In the instruction, we recommend an addition to the end of the first paragraph: <b>“You must determine the amount of pay owed for rest break violations.”</b>	The committee agrees and has added a sentence like the one suggested. The corresponding verdict form already asked the jury to make this determination.
		California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	a. We would delete the first sentence of this instruction as unnecessary, verbose, and not helpful. The instruction on essential factual elements given prior to this instruction explains what is required to establish a rest break violation. We would begin this instruction with the second sentence, stating that the plaintiff is entitled to damages for each workday in which there was a rest break violation.	To improve clarity and to simplify the instruction, the committee has deleted the proposed first sentence.
			b. The language in the first sentence “did not authorize and permit at least one rest break to which [name of plaintiff] was entitled” could be misconstrued to mean	This comment is moot because the committee has deleted the sentence as suggested.

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			<p>that the employer must have failed to allow any rest breaks at all to be liable (i.e., allowing “at least one rest break” avoids a violation). We would find “did not authorize and permit a rest break to which plaintiff was entitled” clearer. In any event, we would delete this sentence, as stated.</p>	
			<p>c. We would delete the words “for the workday” in the second sentence of the instruction as repetitive and unnecessary in a sentence beginning “For each workday.”</p>	<p>The committee has deleted the phrase from the sentence.</p>
			<p>d. We would delete the second paragraph of the instruction, defining workday. This instruction will be given with CACI No. 2760, as stated in the Directions for Use. No. 2760 defines “workday,” so there is no need to define it here.</p>	<p>The committee has deleted the paragraph.</p>
			<p>e. The “regular rate of pay” that will be multiplied by the number of workdays must be expressed in dollars per hour (i.e., one additional hour of pay per workday). We would change “[insert applicable formula]” in the last paragraph to “[insert hourly pay rate]” to make plain what is needed here. We would add language to the Directions for Use noting that the instruction may be modified if there is a factual dispute regarding the hourly pay rate.</p>	<p>The committee disagrees. Depending on the facts of the case, there may be forms of compensation other than an hourly pay rate that will need to be factored in to determine the regular rate of pay.</p>

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			<p>f. We would delete the optional fourth paragraph of the instruction distinguishing rest breaks from meal breaks. The same optional language appears in No. 2760, so it is unnecessary here.</p> <p>g. We would revise this instruction as follows: <del><b>To recover pay for a rest break violation, [name of plaintiff] must prove the number of workdays during which [name of defendant] did not authorize and permit at least one rest break to which [name of plaintiff] was entitled. For each workday that [name of plaintiff] has proved one or more rest break violations, [name of defendant] must pay one additional hour of pay for the workday at [name of plaintiff]’s regular rate of pay.</b></del></p> <p><del><b>“Workday” means any consecutive 24-hour period beginning at the same time each calendar day.</b></del></p> <p><b>The “regular rate of pay” for [name of plaintiff] from [insert beginning date] to [insert ending date] was [insert applicable formula]. [Repeat as necessary for date ranges with different regular rates of pay.] Multiply the regular rate of pay by the number of workdays that [name of plaintiff] has proved one or more rest break violations.</b></p>	<p>The committee has deleted the paragraph.</p> <p>The committee thanks the commenter for preparing a mark-up of the instruction with revisions. See the committee’s responses to California Lawyers Association’s substantive comments above.</p>

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			<p><del>[Rest breaks, which are paid, and meal breaks, which are unpaid, have different requirements. You should consider claims for rest break violations separately from claims for meal break violations. A rest break cannot be combined with a meal break or with another 10-minute rest break. For example, providing an unpaid meal break does not satisfy the employer’s obligation to authorize and permit a paid 10-minute rest break.]</del></p>	
			<p>g. We would modify the third paragraph in the Directions for Use accordingly: The definitions of “<del>workday</del>” and “regular rate of pay” may be omitted if <u>they are</u> <del>it is</del> included in <u>another</u> instructions.</p>	<p>The committee has refined the Directions for Use to omit “workday.”</p>
		<p>Bruce Greenlee Attorney Richmond</p>	<p>The last paragraph is not needed. You won’t give 2761 unless you are also giving 2760.</p>	<p>The committee has deleted the paragraph.</p>
			<p>In the [Directions for Use] you note that the definition of “workday” may be omitted <i>if</i> it is included in other instructions. But there’s no “if” here. 2760 will be given and the definition of “workday” is in 2760. No need to define “workday” again in 2761.</p>	<p>The committee has refined the Direction for Use to omit “workday.”</p>
			<p>Change “non-discretionary” to “nondiscretionary.”</p>	<p>The committee has made the suggested change.</p>

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	Instruction	Commenter	Comment	Committee Response
		<p>Lewis, Brisbois, Bisgaard, &amp; Smith LLP’s California Wage and Hour Jury Instruction Committee by William C. Sung, Attorney</p>	<p>CACI 2761 (draft) current states: To recover pay for a rest break violation, [name of plaintiff] must prove the number of workdays during which [name of defendant] did not authorize and permit at least one rest break to which [name of plaintiff] was entitled. For each workday that [name of plaintiff] has proved one or more rest break violations, [name of defendant] must pay one additional hour of pay for the workday at [name of plaintiff]’s regular rate of pay.</p> <hr/> <p>In CACI 2761 (draft)’s “Direction for Use,” “regular rate of pay” is defined as the “employee’s base hourly rate of pay and all other forms of nondiscretionary compensation earned during the same pay period, including for example non-discretionary bonuses, commissions, and shift differentials.” But this is overbroad and fails to reflect governing law. For example, the “regular rate” does not include sums paid as gifts or on special occasions (such as Christmas) and rewards for service (where the amounts are not measured by or dependent on hours worked, production, or efficiency). 29 CFR § 778.212. These and other forms of payment that are excluded the “regular rate” should be reflected in the final version of CACI 2761 (draft) with the limiting language “unless statutorily excluded,” i.e., “regular rate of pay’</p>	<p>No response required. See the committee’s responses to the substantive comment, below.</p> <hr/> <p>The language used in the Directions for Use is taken from the Supreme Court’s decision in <i>Ferra</i>, which is addressing nondiscretionary compensation. The committee does not believe the commenter’s concerns about including gifts and other discretionary items in that calculation are well-founded. The committee, however, has added a short parenthetical description of the holding.</p>

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			means the employee’s base hourly rate of pay and all other forms of nondiscretionary compensation earned during the same pay period <i>unless statutorily excluded</i> , including for example non-discretionary bonuses, commissions, and shift differentials.”	
		Orange County Bar Association by Daniel S. Robinson, President	Agree	No response required.
8.	2765A. Meal Break Violations—Essential Factual Elements (New) [Separated into two instructions after public comment: (1) 2765. <i>Meal Break Violations—Introduction</i> , and (2) 2766A. <i>Meal Break Violations—Essential Factual Elements</i> .]	Association of Southern California Defense Counsel (ASCDC) by Eric C. Schwettmann Ballard Rosenberg Golper & Savitt, LLP	<p><b>Nos. 2765A, 2765B, 2766, 2770, 2771 and VF-2708 Re: Meal Break Violations</b></p> <p>First, it might be useful and further instructive to expand on the Directions for Use note about exceptions to the general meal period rules. Notably absent from the instruction is reference to IWC Wage Order 1. [Footnote omitted.] Wage Order 1 applies to manufacturing employers, providing an exception to recordkeeping requirements and does not require employers to record a meal break when all “operations cease” during the break.</p> <p>Second, the same considerations and concerns regarding a "scheduled" rest break noted above apply equally here in this meal break context. An employer is required to provide an uninterrupted 30-minute meal break for each period of work lasting longer more than 5 hours. It</p>	<p>The committee has added a sentence in the Directions for Use of 2766B about the exception.</p> <p>The committee agrees and has rephrased the instruction to avoid using “scheduled” and has added the language from <i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004 explaining that an employer is not required to police meal breaks.</p>

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			<p>can be taken earlier, or not at all, in the employee's discretion and/or with a proper waiver (discussed below). An employer satisfies its obligation if it (1) relieves employees of all duty; (2) relinquishes control over their activities; (3) permits them a reasonable opportunity to take an uninterrupted 30-minute break; and (4) does not impede or discourage them from doing so. The language from <i>Brinker</i> explaining that an employer is not required to police meal breaks should be added to the 4th paragraph starting with "The law, however, does not require...." to make clear what the employer is required to do in addition to what the employer is not required to do.</p>	
		<p>California Employment Lawyers Association by Laura L. Horton, Chair</p>	<p>We understand that 2765A and 2765B are intended as alternative instructions and comment accordingly.</p>	<p>No response required.</p>
			<p>For 2765A, for the most part, we agree with the instruction. However, the phrase "properly scheduled" incorrectly implies that proper scheduling by the employer is part of the test of compliance when it is not. A "proper schedule" is neither required nor sufficient for an employer to provide a meal break. We ask for deletion of "properly scheduled."</p>	<p>The committee agrees with the commenter's concern and has deleted "properly scheduled" from the introductory instruction.</p>
			<p>It is necessary to recognize the timeliness aspect of meal-break compliance. We recommend the addition of "on time" to</p>	<p>The committee agrees in part. Adding "on time" once adequately addresses the timeliness requirement for a</p>

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			<p>elements i, ii, and iii. Those elements should read:</p> <p><b>i. provides a reasonable opportunity to take uninterrupted 30-minute meal breaks <u>on time</u>;</b></p> <p><b>ii. does not impede the employee from taking 30-minute meal breaks <u>on time</u>;</b></p> <p><b>iii. does not discourage the employee from taking 30-minute meal breaks <u>on time</u>;</b></p>	<p>meal break. The committee believes it fits best in the first element.</p>
		<p>California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair</p>	<p>a. We believe jurors would better understand this instruction and No. 2765B if the employer’s meal break obligations were explained prior to listing the elements. We suggest a separate instruction on required meal breaks be given prior to an instruction on the essential factual elements or rebuttable presumption. Our proposed separate instruction is shown below.</p>	<p>The committee agrees and has separated the instruction into an introductory instruction (CACI No. 2765) that will be given with both CACI No. 2766A and CACI No. 2766B. CACI No. 2766A now contains the essential factual elements of a meal break violation.</p>
			<p>b. We would delete the language “as required by law” in the introductory paragraph. All instructions state the law. Referring to “the law” in some instructions but not others might suggest that some instructions are more important than others. Explaining the law before listing the elements, as we propose, would make clear what meal breaks the employee is entitled to and avoid for the need for “as required by law” or any similar reference.</p>	<p>The committee has deleted the phrase as suggested.</p>

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			<p>c. We would revise the explanation of the number and timing of meal breaks to which an employee is entitled for greater clarity as shown below.</p>	<p>The committee has not endorsed the suggestion. Given the complexities of meal break requirements, the committee believes it is preferable for the court and the parties to tailor the requirements included to the facts of the case. Otherwise, the instruction will provide a detailed explanation of all possible parameters for meal breaks, many of which may not be at issue in the case. To avoid confusion, the committee recommends a tailored explanation of the number and timing of meal breaks.</p>
			<p>d. We would delete “The law requires” in the same paragraph (which we would move to a separate instruction) for the same reasons stated above regarding “as required by law.”</p>	<p>The committee has deleted the phrase as suggested.</p>
			<p>e. We would refer to “one or more” meal breaks in explaining the employer’s meal breaks obligations, as in the rest breaks instruction.</p>	<p>The committee has referred to “one or more” meal breaks.</p>
			<p>f. We would delete “In this case” in the same paragraph as unnecessary.</p>	<p>The committee disagrees. As noted above, the committee believes meal break requirements are complex and that a tailored explanation of what is at issue in the case is preferable to giving the jury every possible detail.</p>
			<p>g. We would revise the language in the instruction beginning “A properly scheduled meal break” to eliminate references to “the law” and eliminate the numbered list of 5 items in favor of a more narrative paragraph.</p>	<p>The committee agrees in part and has deleted the reference to “properly scheduled” and “the law.” The committee disagrees with respect to using a narrative paragraph for the elements of a compliant meal break. The requirements are complex. The committee believes that “complies with the law” is the most accurate and useful phrasing for the requirements of a meal break without repeating them. The committee has intentionally retained that phrasing and used an enumerated list of the</p>

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			<p>h. We propose the following language as a separate instruction:</p> <p><b>CACI No. _____. Meal Break Violations—Employer’s Obligation</b></p> <p><i>[Name of plaintiff] claims that [name of defendant] owes [him/her/nonbinary pronoun] pay because [name of defendant] did not provide one or more meal breaks.</i></p> <p><b>Over the course of a workday, an employee who works more than 5 hours is entitled to an unpaid 30-minute meal break, and an employee who works more than 10 hours is entitled to a second unpaid 30-minute meal break.</b></p> <p><b>An employer must provide a reasonable opportunity for an employee to take [an] uninterrupted 30-minute meal break[s] and cannot impede or discourage the employee from taking [a] 30-minute meal break[s]. An employer must relieve an employee of all duties during a meal break and must relinquish control over an employee’s activities during a meal break, including allowing the employee to leave the premises.</b></p>	<p>components of a meal break that complies with the law because it is clearer than a narrative paragraph.</p> <p>The committee appreciates the commenter’s submission of an instruction with revisions.</p>

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			<p><b>An employer need not ensure that an employee takes a meal break or ensure that an employee does no work during a meal break.</b></p>	
			<p>i. We would delete “that complies with the law as described below” at the end of element 2 as unnecessary.</p>	<p>The committee has deleted the phrase.</p>
			<p>j. We would revise this instruction as follows assuming an introductory instruction as set forth above:</p> <p><del><i>[Name of plaintiff] claims that [name of defendant] owes [him/her/nonbinary pronoun] pay because [name of defendant] did not provide one or more meal breaks as required by law. To establish a meal break violation, [name of plaintiff] must prove both of the following:</i></del></p> <p><b>1. That [name of plaintiff] worked for [name of defendant] for one or more workdays for a period lasting longer than five hours; and</b></p> <p><b>2. That [name of defendant] did not provide [name of plaintiff] with the opportunity to take [a/an] [timely] uninterrupted meal break of at least 30</b></p>	<p>See the committee’s responses to the substantive comments above.</p>

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			<p><del>minutes [for each five-hour period worked] that complies with the law as described below.</del></p> <p><del>The law requires the employer to provide meal breaks at specified times during a workday. [Specify any scheduling requirement(s) of the meal breaks at issue if delay or interruption is at issue.] In this case, [name of plaintiff] was entitled to a 30-minute unpaid meal break for each period of work lasting longer than five hours. This means that over the course of a workday, [name of plaintiff] was due [specify which meal breaks are at issue, e.g., a first meal break that starts after no more than five hours of work and a second meal break to start after no more than ten hours of work.]</del></p> <p><del>A properly scheduled meal break complies with the law if the employer does all of the following:</del></p> <p><del>i. provides a reasonable opportunity to take uninterrupted 30-minute meal breaks;</del></p> <p><del>ii. does not impede the employee from taking 30-minute meal breaks;</del></p> <p><del>iii. does not discourage the employee from taking 30-minute meal breaks;</del></p>	

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			<p><del>iv. relieves the employee of all duties during 30-minute meal breaks; and</del></p> <p><del>v. relinquishes control over the employee’s activities during 30-minute meal breaks, including allowing the employee to leave the premises.</del></p> <p><del>The law, however, does not require an employer to ensure that an employee takes a meal break or to ensure that an employee does no work during a meal break.</del></p> <p>“Workday” means any consecutive 24-hour period beginning at the same time each calendar day.</p> <p>[Meal breaks, which are unpaid, and rest breaks, which are paid, have different requirements. You should consider claims for meal break violations separately from claims for rest break violations. For example, providing an unpaid meal break does not satisfy the employer’s obligation to provide an employee with a paid 10-minute rest break.]</p>	
		<p>Bruce Greenlee Attorney Richmond</p>	<p>Replace roman numerals with letters (a) for list of factors.</p>	<p>The list contains required elements of a compliant meal break, so letters are not appropriate. Letters are for use only with factors. The committee has renumbered them as 1–5 for improved clarity.</p>

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			<p>Same point with last paragraph. You will always be giving 2760 (both rest and meal breaks at issue), so you don't need to give the last paragraph twice.</p>	<p>The committee believes that the distinction is worthy of noting in both meal break and rest break contexts.</p>
			<p>Sources and Authority: <i>Naranjo</i> excerpt: margin error</p>	<p>The formatting of the bulleted entries will be standardized by the official publisher.</p>
		<p>Lewis, Brisbois, Bisgaard, &amp; Smith LLP's California Wage and Hour Jury Instruction Committee by William C. Sung</p>	<p>As drafted, CACI 2765A (draft) provides: To establish a meal break violation, [name of plaintiff] must prove both of the following:</p> <ul style="list-style-type: none"> <li>3. That [name of plaintiff] worked for [name of defendant] for one or more workdays for a period lasting longer than five hours; and</li> <li>4. That [name of defendant] did not provide [name of plaintiff] with the opportunity to take [a/an] [timely] uninterrupted meal break of at least 30 minutes [for each five-hour period worked] that complies with the law as described below.</li> </ul>	<p>No response required.</p>
			<p>Our comments here are similar to those provided above as to CACI 2760 (draft). As there, CACI 2765A (draft) must add to the <i>prima facie</i> elements whether the employer paid a meal period premium because liability would not attach unless the employer failed to pay the premium for any meal period not "provided." Likewise, CACI 2765A (draft) must contain the "knew or should have known"</p>	<p>The committee disagrees for the reasons stated in the committee's response for CACI No. 2760.</p>

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			<p>standard pursuant to <i>Brinker</i>. And further like our comments to CACI 2760 (draft), CACI 2765A (draft) should clarify that an employee who voluntarily waives a meal period does not trigger employer liability.</p>	
			<p>In addition, CACI 2765A (draft) provides liability by reference to “each five-hour period worked.” This is sharply inconsistent with governing law. Section 512 of the California Labor Code and related Wage Orders only authorize two meal periods when employees work more than 10 hours. There is no requirement to provide additional meal periods, and the concept of a “rolling five” hour requirement to provide meal periods (which is what this language is stating) was specifically disaffirmed in <i>Brinker</i>.</p>	<p>The committee disagrees. The instruction does not endorse a “rolling five” hour requirement.” The instruction recognizes that the number of meal breaks will depend on the facts of the case, and is written to apply to one or two meal breaks.</p>
			<p>Moreover, CACI 2765 (draft) use of “workday” is out of sync with governing Wage Orders, which uses the term “daily,” in lieu of “workday.”</p>	<p>The committee has chosen “workday” as the term for daily work because Labor Code section 226.7 uses “workday,” and section 512 uses “work period per day.” Moreover, the Wage Orders do not use the term “daily” with respect to meal periods.</p>
			<p>Further, CACI 2765A (draft) identifies one requirement of a “properly scheduled meal break” is one where the employer “relinquishes control over the employee’s activities during 30-minute meal breaks, including allowing the employee to leave the premises.” But the notion that employers must “allow[] the employee to leave the premises” should be harmonized</p>	<p>The committee agrees and has refined element 5 to note that employers may not require employees to stay on the premises.</p>

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			with the standard as to rest periods, that is, that employers must merely not require employees to remain on premises.	
			Finally, the derivative verdict form, VF-2707 (draft) requires updating to match the foregoing edits.	The committee has refined the corresponding verdict form in response to suggestions from other commenters. See the committee’s responses below.
		Orange County Bar Association by Daniel S. Robinson, President	Agree	No response required.
9.	2765B. Meal Break Violations—Rebuttable Presumption—Employer Records (New) [Renumbered as 2766B after public comment.]	California Employment Lawyers Association by Laura L. Horton, Chair	<p>For 2765B to stand on its own as an alternative to 2765A, more background on the rules is necessary. The first four paragraphs of 2765A should be added to 2765B.</p> <p>We also recommend a few additional changes to improve accuracy. Please see Attachment A, our redlined version of the complete 2765B.</p> <p><b><u>[Name of plaintiff] claims that [name of defendant] owes [him/her/nonbinary pronoun] pay because [name of defendant] did not provide one or more meal breaks as required by law. To establish a meal break violation, [name of plaintiff] must prove both of the following:</u></b></p> <p><b><u>1. That [name of plaintiff] worked for [name of defendant] for one or more</u></b></p>	The committee has proposed an introductory instruction to be given before CACI No. 2766A and CACI 2766B and has refined the instruction based on some of CELA’s suggestions.

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			<p><u>workdays for a period lasting longer than five hours; and</u>  <u>2. That [name of defendant] did not provide [name of plaintiff] with the opportunity to take [a/an] [timely] uninterrupted meal break of at least 30 minutes [for each five-hour period worked] that complies with the law as described below.</u></p> <p><u>The law requires the employer to provide meal breaks at specified times during a workday. [Specify any scheduling requirement(s) of the meal breaks at issue if delay or interruption is at issue.] In this case, [name of plaintiff] was entitled to a 30-minute unpaid meal break for each period of work lasting longer than five hours. This means that over the course of a workday, [name of plaintiff] was due [specify which meal breaks are at issue, e.g., a first meal break that starts after no more than five hours of work and a second meal break to start after no more than ten hours of work.]</u></p> <p><b>An employer must keep accurate records of the start and end times of each meal break. [Specify noncompliance in records that gives rise to rebuttable presumption of meal break violation, e.g., missing time records, <u>use of rounding or other inaccurate</u></b></p>	

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			<p><i>recordkeeping methods</i>, records showing missed meal breaks, meal breaks of less than 30 minutes, or meal breaks taken too late in a workday may prove a meal break violation.]</p> <p>If you decide that [name of plaintiff] has proved that [[name of defendant] did not keep accurate records of compliant meal breaks/[name of defendant]’s records show [missed/ [,or] shortened/ [,or] delayed] meal breaks], then <del>your decision on [name of plaintiff]’s meal break claim must be for [name of plaintiff] unless [name of defendant] proves [name of plaintiff] has proven those meal break violations, unless [name of defendant] disproves the violations by proving all of the following:</del></p> <ol style="list-style-type: none"> <li>1. That [name of defendant] provided [name of plaintiff] a reasonable opportunity to take uninterrupted 30-minute meal breaks <u>on time</u>;</li> <li>2. That [name of defendant] did not impede [name of plaintiff] from taking 30-minute meal breaks <u>on time</u>;</li> </ol>	

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			<p>3. That <i>[name of defendant]</i> <b>did not discourage <i>[name of plaintiff]</i> from taking 30-minute meal breaks <u>on time</u></b>;</p> <p>4. That <i>[name of defendant]</i> <b>relieved <i>[name of plaintiff]</i> of all duties during 30-minute meal breaks; and</b></p> <p>5. That <i>[name of defendant]</i> <b>relinquished control over <i>[name of plaintiff]</i>'s activities during 30-minute meal breaks[, including allowing <i>[him/her/nonbinary pronoun]</i> to leave the premises].</b></p> <p><b>If you decide that <i>[name of defendant]</i> has proved all of the above for each meal break <u>in each workday</u>, then there have been no meal break violations and your decision must be for <i>[name of defendant]</i>.</b></p> <p><b>However, if you decide that <i>[name of defendant]</i> has not proved all of the above for each meal break, then you must still decide how many workdays <i>[name of defendant]</i> did not prove all of the above, <u>and you must determine the amount of pay owed.</u></b></p>	

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			<p><b>[Name of defendant] must pay one additional hour of pay at [name of plaintiff]’s regular rate of pay for each workday that [name of defendant] did not prove all of the above. “Workday” means any consecutive 24-hour period beginning at the same time each calendar day.</b></p> <p><b>The “regular rate of pay” for [name of plaintiff] from [insert beginning date] to [insert ending date] was [insert applicable formula]. [Repeat as necessary for date ranges with different regular rates of pay.] Multiply the regular rate of pay by the number of workdays that [name of defendant] did not prove all of the above.]</b></p> <p><b>[Meal breaks, which are unpaid, and rest breaks, which are paid, have different requirements. You should consider claims for meal break violations separately from claims for rest break violations. For example, providing an unpaid meal break does not satisfy the employer’s obligation to provide an employee with a paid 10-minute rest break.]</b></p>	
		California Lawyers Association, Litigation	a. This instruction does not expressly describe the plaintiff’s claim. The first sentence in No. 2765A (“[Name of	The committee has adopted the suggestion for an introductory instruction for meal break violations.

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		<p>Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair</p>	<p><i>plaintiff</i>] claims that . . .”) is absent here. The reference to “compliant meal breaks” in the second paragraph of this instruction seems out of place without a prior explanation of the employer’s obligation regarding meal breaks. The reference to plaintiffs’ “meal break claim” in the second paragraph has no prior referent. An introductory instruction (set forth above) describing the plaintiff’s claim and explaining the employer’s meal break obligation would provide helpful context to this instruction.</p>	
			<p>b. This instruction requires the employer to rebut the presumption by proving that it allowed the employer to take compliant meal breaks. But an employer can also rebut the presumption by presenting evidence that the employee was compensated for noncompliant meal periods. (<i>Donohue</i>, 11 Cal.5th at p. 77.) We would revise the instruction to include this option.</p>	<p>The committee agrees in part. The committee has added to the Direction for Use a note about the potential need for modification if there is evidence that the employer has paid premium pay.</p>
			<p>c. The paragraph beginning “However” and the subsequent paragraph are about damages. We believe they belong in a separate instruction.</p>	<p>The committee disagrees. A separate instruction would needlessly lead to two instructions on pay owed in the meal break context. The committee believes that including pay owed in this instruction is preferable to another instruction on pay owed.</p>
			<p>d. We would revise this instruction as follows assuming there is an introductory instruction as set forth above:</p>	<p>The committee agrees with many of the suggested changes but does not believe that the shorthand of “provided compliant meal breaks/compensated plaintiff</p>

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			<p><b>An employer must keep accurate records of the start and end times of each meal break.</b> [<i>Specify noncompliance in records that gives rise to rebuttable presumption of meal break violation, e.g., missing time records, records showing missed meal breaks, meal breaks of less than 30 minutes, or meal breaks taken too late in a workday may prove a meal break violation.</i>]</p> <p><b>If you decide that [name of plaintiff] has proved that [[name of defendant] did not keep accurate records of compliant meal breaks/[name of defendant]’s records show [missed/ [,/or] shortened/ [,/or] delayed] meal breaks], then <del>your decision on [name of plaintiff]’s meal break claim must be for [name of plaintiff]</del> you must find that [name of defendant] committed a meal break violation unless [name of defendant] proves all of the following:</b></p> <p><b>1. That [name of defendant] provided [name of plaintiff] a reasonable opportunity to take uninterrupted 30-minute meal breaks;</b></p> <p><b>2. That [name of defendant] did not impede [name of plaintiff] from taking 30-minute meal breaks;</b></p>	<p>for all noncompliant meal breaks” adequately informs the jury of the defendant’s burden.</p>

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			<p><del>3. That [name of defendant] did not discourage [name of plaintiff] from taking 30-minute meal breaks;</del></p> <p><del>4. That [name of defendant] relieved [name of plaintiff] of all duties during 30-minute meal breaks; and</del></p> <p><del>5. That [name of defendant] relinquished control over [name of plaintiff]'s activities during 30-minute meal breaks[, including allowing [him/her/nonbinary pronoun] to leave the premises].</del></p> <p><del>If you decide that [name of defendant] has proved all of the above for each meal break, then there have been no meal break violations and your decision must be for [name of defendant]. <u>that [name of defendant] [provided compliant meal breaks for all meal breaks to which [name of plaintiff] was entitled/compensated [name of plaintiff] for all noncompliant meal breaks.</u></del></p> <p><del>However, if you decide that [name of defendant] has not proved all of the above for each meal break, then you must still decide how many workdays [name of defendant] did not prove all of the above.</del></p>	

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	Instruction	Commenter	Comment	Committee Response
			<p><del><b>[Name of defendant] must pay one additional hour of pay at [name of plaintiff]’s regular rate of pay for each workday that [name of defendant] did not prove all of the above.</b></del></p> <p><del><b>“Workday” means any consecutive 24-hour period beginning at the same time each calendar day.</b></del></p> <p><del><b>The “regular rate of pay” for [name of plaintiff] from [insert beginning date] to [insert ending date] was [insert applicable formula]. [Repeat as necessary for date ranges with different regular rates of pay.] Multiply the regular rate of pay by the number of workdays that [name of defendant] did not prove all of the above.]</b></del></p> <p><del><b>[Meal breaks, which are unpaid, and rest breaks, which are paid, have different requirements. You should consider claims for meal break violations separately from claims for rest break violations. For example, providing an unpaid meal break does not satisfy the employer’s obligation to provide an employee with a paid 10-minute rest break.]</b></del></p>	<p>The excerpt suggested is already included in the Sources and Authority.</p>
			<p>e. <i>Donohue v. AMN Services, LLC</i> (2021) 11 Cal.5th 58 held that the rebuttable presumption applies on summary</p>	

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	Instruction	Commenter	Comment	Committee Response
			<p>judgment. We believe this suggests the rebuttable presumption applies at trial as well, and language in <i>Donohue</i> seems to suggest this. We would add that language to the Sources and Authority: “[W]e hold that time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” (<i>Donohue</i>, at p. 61.)</p>	
		<p>Bruce Greenlee Attorney Richmond</p>	<p>Same point about last paragraph not being needed, since 2760 will be given.</p>	<p>The committee believes that the distinction between meal breaks and rest breaks is worthy of repetition in both instructions.</p>
		<p>Lewis, Brisbois, Bisgaard, &amp; Smith LLP’s California Wage and Hour Jury Instruction Committee by William C. Sung, Attorney</p>	<p>As drafted, CACI 2765B (draft) outlines the requirements on employers to keep accurate records of the start and end times of each meal periods and that non-compliance as to that obligation leads to a rebuttable presumption of meal period violations. But to clarify that the “rebuttable presumption” is not boundless, CACI 2765B (draft) should include the following clarifying language: “The law, however, does not require an employer to ensure that an employee takes a meal break or to ensure that an employee does no work during a meal break.” This standard should also be revised to encompass the exception in the IWC Wage Orders that meal periods need not be recorded if all work stops on the</p>	<p>The requested clarifying language is included in the proposed separate introductory instruction (CACI No. 2765) to be given in all meal break cases. To the extent the commenter seeks inclusion of an exception to record keeping for work stoppages, the committee has added a sentence to the Directions for Use noting that employers are not required to record meal breaks during which all operations cease. The committee, however, does not believe that this exception affects the employer’s general obligation to keep adequate time records or the rebuttable presumption addressed in the instruction.</p>

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	Instruction	Commenter	Comment	Committee Response
			<p>jobsite. See, e.g., IWC Wage Order 16-2001 § 6(A)(1).</p>	
		<p>Orange County Bar Association by Daniel S. Robinson, President</p>	<p>Agree</p>	<p>No response required.</p>
<p>10.</p>	<p>2766. Meal Break Violations—Pay Owed (New) [Renumbered as 2767 after public comment]</p>	<p>Association of Southern California Defense Counsel (ASCDC) by Eric C. Schwettmann Ballard Rosenberg Golper &amp; Savitt, LLP</p>	<p>Third, No. 2766 should include language for the jury to consider whether an employer has already paid the premium of one additional hour of pay already. This is commonplace for many California employers given the number of wage and hour and PAGA claims filed every year. Language to this effect would deter or prevent a situation where an employer is still found in a violation when it has already paid a premium, i.e. in essence a double pay violation.</p>	<p>The committee agrees in part. The committee has added information in the Directions for Use about the potential need for modification of the instruction depending on the facts of the case.</p>
		<p>California Employment Lawyers Association by Laura L. Horton, Chair</p>	<p>In the instruction, we recommend adding to the end of the first paragraph: “You must determine the amount of pay owed for rest break violations.”</p>	<p>The committee agrees and has added a sentence like the one suggested. The corresponding verdict form already asked the jury to make this determination.</p>
			<p>In Sources and Authority, the May 2022 <i>Naranjo</i> decision of the California Supreme Court should be referenced. As in 2760, we suggest:</p> <ul style="list-style-type: none"> <li>• “[M]issed-break premium pay constitutes wages for purposes of Labor Code section 203, and so waiting time</li> </ul>	<p>This comment is beyond the scope of the invitation to comment. The committee will consider this suggestion in a future release.</p>

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	Instruction	Commenter	Comment	Committee Response
			<p>penalties are available under that statute if the premium pay is not timely paid.”  <i>Naranjo v. Spectrum Security Services, Inc.</i> (2022) 13 Cal.5th 93, 117 [293 Cal.Rptr.3d 599, 615, 509 P.3d 956, 969]</p> <p>Given <i>Naranjo</i>, we suggest including a direction to use CACI No. 2704, Waiting-Time Penalty for Nonpayment of Wages in cases where there is a Labor Code § 203 claim that defendant failed to pay meal break premium wages upon separation from employment.</p>	
		<p>California Lawyers Association, Litigation Section, Jury Instructions Committee                      by Reuben A. Ginsburg, Chair</p>	<p>a. This instruction is designed for use with No. 2765A only. We would revise it for use with No. 2765B as well. We would delete the first sentence as duplicative of prior instructions and unnecessary. This instruction should briefly explain how to calculate damages based on those meal break violations established under other instructions without repeating or summarizing any prior instruction.</p>	<p>The committee disagrees. An employer may in certain cases successfully rebut the presumption of a meal break violation for some but not all meal break violations. The explanation necessary for a jury to understand the determinations they must make in those cases is already complicated. The committee prefers a more standard meal break pay owed instruction for use with CACI No. 2766A only.</p>
			<p>b. One of the reasons this instruction only works with No. 2765A is that it repeatedly refers to plaintiff’s burden of proof. Nos. 2765A and 2765B explain the burden of proof, so there is no need to say anything about the burden of proof in this instruction. In the second sentence, we would change “For each workday that [name of plaintiff] has proved one or more</p>	<p>The committee has streamlined the introductory language of CACI No. 2767.</p>

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	Instruction	Commenter	Comment	Committee Response
			meal break violations” to “For each workday in which you find one or more meal break violations.”	
			c. We would delete the words “for the workday” in the second sentence of the instruction as repetitive and unnecessary in a sentence beginning “For each workday.”	The committee has deleted the phrase “for the workday” from the sentence.
			d. Nos. 2765A and 2765B both define “workday,” so there is no need to define it in this instruction.	The committee has deleted the definition from the instruction.
			e. The “regular rate of pay” that will be multiplied by the number of workdays must be expressed in dollars per hour (i.e., one additional hour of pay per workday). We would change “[insert applicable formula]” in the last paragraph to “[insert hourly pay rate]” to clarify what is needed here. We would add language to the Directions for Use noting that the instruction may be modified if there is a factual dispute regarding the hourly pay rate.	The committee disagrees. An hourly rate must be determined, but it will depend on the facts of the case. There may be other forms of nondiscretionary compensation that must be factored in to determine the regular rate of pay beyond the hourly wage.
			f. In the final sentence, we would change “number of workdays that [name of plaintiff] has proved one or more meal break violations” to “number of workdays in which you find one or more meal break violations” for the same reasons stated above regarding burden of proof.	The committee does not find the suggested phrasing clearer.

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			<p>g. We would revise this instruction as follows: <del>To recover pay for a meal break violation, [name of plaintiff] must prove the number of workdays during which [name of defendant] did not provide the opportunity for one or more uninterrupted 30-minute meal breaks as required by law. For each workday that [name of plaintiff] has proved</del> <u>in which you find</u> one or more meal break violations, [name of defendant] must pay one additional hour of pay for the workday at [name of plaintiff]’s regular rate of pay.</p> <p><del>“Workday” means any consecutive 24-hour period beginning at the same time each calendar day.</del></p> <p>The “regular rate of pay” for [name of plaintiff] from [insert beginning date] to [insert ending date] was [insert applicable formula <u>hourly pay rate</u>]. [Repeat as necessary for date ranges with different regular rates of pay.] Multiply the regular rate of pay by the number of workdays that [name of plaintiff] has proved <u>in which you find</u> one or more meal break violations.</p> <p>h. The last sentence in the Directions for use should be revised to reflect the deletion of the “workday” definition: The definitions of <del>“workday”</del> and “regular rate</p>	<p>The committee thanks the commenter for preparing draft language and has refined the instruction as noted in the committee’s responses both above and below.</p> <p>The committee has deleted the definition from the instruction.</p>

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			of pay” may be omitted if <del>they are</del> <u>it is</u> included in <u>another</u> instructions.	
		Bruce Greenlee Attorney Richmond	Since 2765A will be given, you don’t need the definition of “workday.”	The committee has deleted the paragraph.
		Lewis, Brisbois, Bisgaard, & Smith LLP’s California Wage and Hour Jury Instruction Committee by William C. Sung, Attorney	CACI 2766 (draft) describes the meal period premium pay. But similar to the defects outlined earlier in CACI 2671 (draft), not all non-hourly forms of non-discretionary compensation. As a further example, payments for vacation or illnesses are not part of the “regular rate.” 29 CFR §§ 778.212–778.224. We believe CACI 2766 (draft) could be strengthened and better reflect governing law if it were to include the limiting language “unless statutorily excluded,” e.g., “regular rate of pay’ means the employee’s base hourly rate of pay and all other forms of nondiscretionary compensation earned during the same pay period <i>unless statutorily excluded</i> , including for example non-discretionary bonuses, commissions, and shift differentials.”	The committee has used the phrasing used by the Supreme Court in <i>Ferra v. Loews Hollywood Hotel, LLC</i> (2021) 11 Cal.5th 858, 878 [280 Cal.Rptr.3d 783, 489 P.3d 1166], and has added a short parenthetical description of the holding.
		Orange County Bar Association by Daniel S. Robinson, President	Agree	No response required.
11.	2770. Affirmative Defense—Meal	Association of Southern California Defense Counsel (ASCDC)	Fourth, the "Affirmative Defense – Meal Breaks – Waiver By Mutual Consent" instruction states: "That [name of	The committee disagrees. The committee is concerned that jurors may not understand the meaning of “mutual

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<p>Breaks—Waiver by Mutual Consent (New)</p>	<p>by Eric C. Schwettmann Ballard Rosenberg Golper &amp; Savitt, LLP</p>	<p>plaintiff] and [name of defendant] freely, knowingly, and mutually consented to waiving the meal break of that workday." This instruction is very vaguely worded insofar as "freely" and "knowingly" are concerned. Freely seems to be the same as mutually consented but is subject to different interpretations. "Knowingly" is not particularly neutral in nature as any employee could say, in almost every instance, that they "did not know" what they signed. Put slightly differently, an employee could say they did not know the legal effect in his or her lawsuit and readily defeat this defense. If the employee seeks to challenge whether or not a waiver is valid, i.e. a binding contract, he or she can do so accordingly.</p> <p>It is unclear to us where the words "freely" and knowingly" came from. The Wage Order says: "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee."</p> <p>Likewise, Labor Code section 512(a) provides: "512. (a) An employer shall not</p>	<p>consent" unless they are advised that the agreement must be free and knowing.</p> <p>The committee includes "freely and knowingly" because those terms are commonly used to explain waiver (see, e.g., CACI No. 336, <i>Affirmative Defense—Waiver</i>) and because Justice Werdegar referenced similar phrasing in her concurrence describing the employer's burden to prove waiver. (<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004, 1053, fn.1 [139 Cal.Rptr.3d 315, 273 P.3d 513], conc. opn. of Werdegar, J. ["knowingly and voluntarily decided not to take the meal period"], concurrence adopted in full with respect to the discussion of the rebuttable presumption in <i>Donohue v. AMN Services, LLC</i> (2021) 11 Cal.5th 58, 75 [275 Cal.Rptr.3d 422, 481 P.3d 661].)</p>

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	Instruction	Commenter	Comment	Committee Response
			<p>employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived." Thus, the mutual consent language tracks both the Wage Order and the Labor Code and the "freely" and "knowingly" are superfluous and seem to slant unfairly towards the plaintiff.</p>	
		<p>California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair</p>	<p>a. We would insert language in the instruction to make it clear that the effect of the defense is to negate a meal break violation. We believe use of the words “meal break violation” here as in other instructions would enhance continuity and understanding.</p> <p><b><u>[Name of defendant] claims that there was no meal break violation because</u></b></p>	<p>The committee agrees and has added the suggested phrase to both paragraphs.</p>

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	Instruction	Commenter	Comment	Committee Response
			<p><i>[name of plaintiff]</i> gave up <i>[his/her/nonbinary pronoun]</i> right to a <i>[first/second]</i> meal break on one or more workdays. This is called “waiver.” To succeed on this defense, <i>[name of defendant]</i> must prove all of the following:</p> <p>...</p> <p><i>[Name of defendant]</i> claims that <u>there was no meal break violation because <i>[name of plaintiff]</i> gave up <i>[his/her/nonbinary pronoun]</i> right to a second meal break on one or more workdays. This is called “waiver.” To succeed on this defense, <i>[name of defendant]</i> must prove all of the following:</u></p>	
		<p>Bruce Greenlee Attorney Richmond</p>	<p>Can this instruction be given with both 2765A and B? Need to address in [the Directions for Use].</p>	<p>The committee intends for the instruction to be used in the meal break context and given with CACI No. 2766A or 2766B. The committee, however, believes that it would be premature to offer guidance in the Directions for Use on how an affirmative defense of waiver might work with a rebuttable presumption based on an employer’s records. The committee will continue to monitor the law as it develops and reconsider the instruction as appropriate.</p>
			<p>Same point about not needing to define “workday” as it will be defined in a 2765 instruction.</p>	<p>The committee has deleted the paragraph.</p>
		<p>Lewis, Brisbois, Bisgaard, &amp; Smith LLP’s California Wage and Hour Jury Instruction Committee</p>	<p>We propose revising the language for the first meal period, element two and the second meal period, element three as follows:</p>	<p>The committee disagrees. The committee is concerned that jurors may not understand “mutual consent” unless they are advised that the agreement must be free and knowing.</p>

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	Instruction	Commenter	Comment	Committee Response
		by William C. Sung, Attorney	<p>2. That [name of plaintiff] and [name of defendant] <del>freely, knowingly, and</del> mutually consented to waiving the meal break of that workday.</p> <p>...</p> <p>3. That [name of plaintiff] and [name of defendant] <del>freely, knowingly, and</del> mutually consented to waiving the second meal break.</p>	
			Labor Code section 512 states that a “meal period may be waived by mutual consent of both the employer and employee.” (Cal. Lab. Code §512). Eliminating “freely” and “knowingly” from the instruction more accurately reflects the statutory language.	The committee disagrees for the reasons stated above.
			We propose adding the following to the Sources and Authorities section: If an employer authorizes and permits its employee to take a compliant meal break and the employee continues to work through the break without the employer’s knowledge, the employer will not be liable for premium pay. “If work does continue, the employer will not be liable for premium pay. At most, it will be liable for straight pay, and then only when the employer “knew or reasonably should have known that the worker was working through the authorized meal period.”	The committee does not believe the footnote content referenced relates to waiver of off-duty meal breaks, which is the subject of this instruction.

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			<p><i>(Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004, 1040, fn. 19). Similarly, the employee must show that the employer knew or should know that the employee worked more than six or twelve hours in violation of the terms of the meal period waiver.</p>	
			<p>Further, “workday” is in disharmony with governing Wage Orders, which uses the term “daily,” not “workday.”</p>	<p>The committee disagrees for the reasons stated above.</p>
			<p>In the directions for use, we would indicate that there are other lawful exceptions and meal period waivers. The instructions should be modified in accordance with those lawful exceptions. These exceptions include but are not limited to the following: Wage and hour claims are governed by two sources of authority: the provisions of the Labor Code and a series of 18 wage orders, adopted by the Industrial Welfare Commission. (See <i>Mendiola v. CPS Security Solutions, Inc.</i> (2015) 60 Cal.4th 833, 838.) Different meal period rules apply to certain employees of emergency ambulance providers; do not give this instruction in a case involving those employees. (See Lab. Code, §§ 880–890, added by initiative, Gen. Elec. (Nov. 6, 2018), commonly known as Prop. 11.) Other exceptions to the meal period rules exist, which may require modifying this</p>	<p>This information is already located in the Directions for Use of the introductory meal break violation instruction. The committee believes that is adequate because the jury will not be instructed on waiver without being instructed on meal break violations generally. The committee, however, has added a cross-reference to the waiver instructions in the Directions for Use of CACI No. 2765.</p>

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			<p>instruction. For example, persons employed in the motion picture and broadcasting industries are entitled to a meal break after six hours of work. (See Lab. Code, § 512(d); Wage Order No. 12-2001.) Other exceptions to the meal period rules include: most instances where the Industrial Welfare Commission authorized adoption of a working condition order permitting a meal period to commence after six hours of work; certain commercial drivers; certain workers in the wholesale baking industry; and workers covered by collective bargaining agreements that meet specified requirements. (Lab. Code, § 512(b)–(e).)</p>	
		<p>Orange County Bar Association by Daniel S. Robinson, President</p>	<p>Agree</p>	<p>No response required.</p>
<p>12.</p>	<p>2771. Affirmative Defense—Meal Breaks—Written Consent to On-Duty Meal Breaks (New)</p>	<p>Association of Southern California Defense Counsel (ASCDC) by Eric C. Schwetmann Ballard Rosenberg Golper &amp; Savitt, LLP</p>	<p>In the same vein, the "Affirmative Defense – Meal Breaks – Written Consent to On-Duty Meal Breaks" instruction states "That [name of plaintiff] and [name of defendant] freely, knowingly, and mutually consented in writing to on-duty meal breaks during which [he/she/nonbinary pronoun] would not be relieved of all duties; [and]..."</p> <p>In addition to and as noted above, the applicable Wage Order provides: "Unless</p>	<p>The committee disagrees for the reasons stated in the committee’s response to CACI No. 2770. To the extent the commenter is suggesting an additional element, that the written waiver included a right to revoke the waiver, the committee does not believe the element is necessary to establish consent to an on-duty meal break.</p>

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			<p>the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."</p> <p>Also, it is worth considering whether or not the fact that revocation of the written consent is appropriate. We would suggest adding a new paragraph 4 stating "That the written agreement given to [his/her/nonbinary pronoun] regarding [his/her/nonbinary pronoun's] right to be relieved of all job duties during meal breaks advised [name of plaintiff] that the agreement could be revoked at any time. Thus, existing paragraphs 4 and 5 would become 5 and 6.</p> <p>It is also worth considering whether this instruction should indicate that where a standing waiver is applicable, it is valid unless and until revoked.</p>	
		California Lawyers Association, Litigation Section, Jury Instructions Committee	a. We would insert language in the instruction to make it clear that the effect of the defense is to negate a meal break violation. We believe use of the words	The committee has added the suggested phrase to the sentence.

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	Instruction	Commenter	Comment	Committee Response
		by Reuben A. Ginsburg, Chair	“meal break violation” here as in other instructions would enhance continuity and understanding.	
		b. We would simplify and clarify the language stating that the employee agreed to be on duty.	The committee has made the suggested change.	
		c. We would revise this instruction as follows: <i>Name of defendant</i> <b>claims that there was no meal break violation because [name of plaintiff] agreed in writing to give up [his/her/nonbinary pronoun] right to be relieved of all job duties be on duty during meal breaks. To succeed on this defense, [name of defendant] must prove the following:</b>	The committee has made the suggested changes.	
		Bruce Greenlee Attorney Richmond	[Directions for Use] first paragraph: Unless CACI has been deLatinized, Use “See, e.g.,” instead of “See, for example.”	The committee has made the change suggested.
		Lewis, Brisbois, Bisgaard, & Smith LLP’s California Wage and Hour Jury Instruction Committee by William C. Sung, Attorney	We propose replacing the term “Regular Rate of Pay” with “Base Rate of Pay.” The Wage Order does not make any indication that the “Regular Rate of Pay” should be used. Rather, the “Base Rate of Pay” should be used when compensating an employee for an on-duty meal period.	The committee is not aware of any authority for using the term “base rate of pay” in this context.
		The California Supreme Court, in <i>Naranjo v. Spectrum Security Services, Inc.</i> , held that premiums are intended to provide compensation for both the missed meal period and the work the employee	The committee generally agrees with the commenter’s summary of the holding in <i>Naranjo</i> , but the committee is not aware of any authority for using the term “base rate of pay” in this context.	

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			<p>performed during the break. (<i>Naranjo v. Spectrum Security Services, Inc.</i> (2022) 13 Cal.5th 93, 107.) The premium is paid at the employee’s “Regular Rate of Pay.” On the other hand, the compensation the employer provides for lawful on-duty meal periods is only meant to compensate the employee for the work performed during the on-duty break. As such, “Base Rate of Pay” should be used instead of “Regular Rate of Pay” or “Regular Rate of Compensation.”</p> <p>The Regular Rate of Pay is used when an employee is denied a proper meal period or lacks a lawful waiver or on-duty meal period agreement. When a meal period is authorized and permitted and an employee consented to the on-duty meal period, the Base Rate of Pay the employee receives for the other hours worked during their shift should extend to the lawful on-duty meal period. Meal periods are unpaid if properly taken. Requiring the Regular Rate of Pay for lawful on-duty meal period agreements would not only complicate the employers wage statement obligations but it would likely result in confusion, unnecessary litigation, and penalize employers who are engaging in a mutually agreeable and lawful practice.</p>	<p>The committee appreciates the commenter’s concerns, but as noted above, the committee is not aware of any authority for using the term “base rate of pay” in this context. Further, the Labor Commissioner’s office has stated that on-duty meal breaks are paid at the regular rate of pay: <a href="https://www.dir.ca.gov/dlse/FAQ_MealPeriods.html">https://www.dir.ca.gov/dlse/FAQ_MealPeriods.html</a> [as of Oct. 11, 2022]. Absent authority to the contrary, the committee believes “regular rate of pay” is accurate in this context.</p>

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			Further, “workday” is in disharmony with governing Wage Orders, which uses the term “daily,” not “workday.”	The committee disagrees for the reasons stated above.
		Orange County Bar Association by Daniel S. Robinson, President	Agree	No response required
13.	2775. Nonpayment of Wages Under Rounding System— Essential Factual Elements (New)	Association of Southern California Defense Counsel (ASCDC) by Eric C. Schwetmann Ballard Rosenberg Golper & Savitt, LLP	<p><b>No. 2775 (Rounding Instruction)</b> has many issues. It does not tell the jury that just because there may be some under compensation does not mean the rounding policy is invalid. In fact, it says the opposite which is not consistent with the law.</p> <p>Specifically, the instruction "[That, over time, [name of defendant]’s method of rounding resulted in failure to pay its [employees/specify subset of employees to which plaintiff belonged] for all time actually worked]" does reflect the applicable legal standard.</p> <p>In the Directions for Use, it should be noted that a grace period is different than a rounding practice. See <i>See’s Candy Shops, Inc. v. Superior Court</i>, 210 Cal. App. 4th 889 (2012) [Employee whose schedule had been programmed into the timekeeping system could voluntarily punch in up to 10 minutes prior to his/her scheduled start time and 10 minutes after his/her scheduled end time; called a “grace period.” Employees were not</p>	<p>The committee believes the instruction accurately states the law. There are two options for element 1.</p> <p>The Sources and Authority include an excerpt from <i>See’s Candy Shops</i>. The committee is not persuaded that the court’s discussion of a grace period would be helpful in the Direction for Use, as the instruction does not address “grace periods.”</p>

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	Instruction	Commenter	Comment	Committee Response
			<p>permitted to work during that time, but could use it for personal activities. Since employees were not supposed to be working during the grace period, if an employee punched in during the grace period, the employee was paid based on scheduled start/stop time, rather than the punch time.] This is an important distinction that should be noted.</p>	
			<p>Also, in the Directions for Use, reference to the recent <i>Ferra v. Loews Hollywood Hotel</i> case should be added. In that case, the Court held that rounding can be “fair and neutral” even where most workers lose pay as a result. <i>Ferra v. Loews Hollywood Hotel</i>, 40 Cal. App. 5th 1239, 1253 (2019), rev’d on other grounds, 11 Cal. 5th 858 (2021). In <i>Ferra</i>, the plaintiff alleged that employees were underpaid because of a policy that rounded time punches up or down to the nearest quarter-hour.<sup>356</sup> The plaintiff had shown that the rounding policy resulted in her losing time in 55.1% of her shifts, and that a separate sample group of employees lost time in 54.6% of their shifts.<sup>357</sup> <i>Ferra</i> held that “[t]his is not sufficient to show that the rounding policy ‘systematically undercompensate[s] employees.’”</p>	<p>The committee does not believe the specific facts of the court of appeal’s decision in <i>Ferra v. Loews Hollywood Hotel</i> would be helpful to users in the Directions for Use.</p>
		<p>California Lawyers Association, Litigation</p>	<p>Agree</p>	<p>No response required.</p>

**Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (CACI)**

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	Instruction	Commenter	Comment	Committee Response
		Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair		
		Lewis, Brisbois, Bisgaard, & Smith LLP’s California Wage and Hour Jury Instruction Committee by William C. Sung, Attorney	We propose adding the following to the Sources and Authorities: “[T]he regulation does not require that every employee gain or break even over every pay period or set of pay periods analyzed.” ( <i>AHMC Healthcare, Inc. v. Superior Court</i> (2018) 24 Cal.App.5th 1014, 1027.) “[R]ounding contemplates the possibility that in any given time period some employees will have net overcompensation and some will have net undercompensation.” ( <i>Ibid.</i> ) A rounding system is invalid if it “systematically undercompensate[s] employees.” ( <i>Id.</i> at p. 1021.) “A ‘fair and neutral’ rounding policy does not require that employees be overcompensated, and a system can be fair or neutral even where a small majority loses compensation.” ( <i>Id.</i> at p. 1024.)	The committee has added an additional quote from <i>AHMC Healthcare, Inc. v. Superior Court</i> , as suggested. The second and third quotes suggested have not been added because they are parenthetical quotes from another case or language not found in <i>AHMC Healthcare, Inc.</i>
			“The overall loss of 0.26 percent in compensation over the relevant time period is statistically meaningless.” ( <i>David v. Queen of Valley Medical Center</i> (2020) 51 Cal.App.5th 653, 665, citing <i>Ferra v. Loews Hollywood Hotel, LLC</i> (2019) 40 Cal.App.5th 1239,1253–1254 [rounding system neutral even where the	No response required.

**Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (CACI)**

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	Instruction	Commenter	Comment	Committee Response
			<p>plaintiff lost time in 55.1 percent of shifts].)</p>	<p>No response required.</p> <p>The committee believes the instruction accurately states the law.</p> <p>The committee does not see improved clarity in the suggested change.</p>
			<p>“[A] slight majority (52.1 percent) lost an average of 2.33 minutes per employee shift. But where the system is neutral on its face and overcompensates employees overall by a significant amount to the detriment of the employer, the plaintiff must do more to establish systematic undercompensation than show that a bare majority of employees lost minor amounts of time over a particular period. (<i>AHMC Healthcare, Inc. v. Superior Court, supra</i>, at p. 1028 [rounding system neutral, even though some employees lost 2.33 minutes per shift].)</p>	
			<p>We would clarify this requirement in the language of the instruction by adding a new second paragraph:                      “A rounding policy is lawful if, on average and over time, the employees are paid for all the time they actually worked, even if some individual employees are undercompensated while others are overcompensated. A rounding policy is unlawful if it consistently results in failure to pay the employees for time actually worked.”</p>	
			<p>We would revise element 1 accordingly:                      1. That, over time, [name of defendant]’s method of rounding led to a reduction in [name of plaintiff]’s wages consistently</p>	

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	Instruction	Commenter	Comment	Committee Response
			<p>resulted in failure to pay the employees for all the time they actually worked; and</p>	
			<p>Further, “workday” is in disharmony with governing Wage Orders, which uses the term “daily,” not “workday.”</p>	<p>The committee has refined the first two sentences of the Directions for Use to eliminate the term “workday.”</p>
		<p>Orange County Bar Association by Daniel S. Robinson, President</p>	<p>Agree</p>	<p>No response required.</p>
<p>14.</p>	<p>VF-2706. Rest Break Violations (New)</p>	<p>California Employment Lawyers Association by Laura L. Horton, Chair</p>	<p>We recommend that questions 2 and 3 be modified to read:</p> <p><b>2. Did [name of plaintiff] prove at least one rest break violation?</b> _____ Yes _____ No</p> <p><b>3. On how many workdays did one or more rest break violations occur?</b> _____ workdays</p> <p>Because instruction 2760 already defined the rest break violation in detail, there is no need to reintroduce “authorize and permit” – a term of art – in the verdict form. Hence, questions 2 and 3 are unnecessarily complicated. Jurors can be directed back to the instruction to be reminded of what constitutes a violation.</p>	<p>The committee agrees and has refined the questions as suggested to simplify the verdict form.</p>
		<p>California Lawyers Association, Litigation</p>	<p>a. Question 2 could be misconstrued to ask if defendant authorized and permitted</p>	<p>The suggestion is moot because the committee has revised the question as suggested by CELA above.</p>

**Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (CACI)**

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	Instruction	Commenter	Comment	Committee Response
		Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	<p>at least one rest break, resulting in no liability if defendant authorized and permitted at least one rest break. We would revise question 2 to clarify the point: <b>2. Did [name of defendant] fail to authorize and permit [name of defendant] to take at least one a rest break to which [name of plaintiff] was entitled?</b></p> <p>b. Question 3 could be misunderstood to ask on how many workdays was plaintiff not authorized and permitted to take any rest breaks, when it should ask on how many workdays was plaintiff not authorized and permitted to take a rest break to which plaintiff was entitled. We suggest this revision: <b>3. On Hhow many workdays was [name of plaintiff] not authorized and permitted to take one or more a rest breaks to which [name of plaintiff] was entitled?</b></p>	<p>The suggestion is moot because the committee has revised the question as suggested by CELA above.</p>
		Bruce Greenlee Attorney Richmond	I have found the inclusion of the word “authorized” in the rest break instructions to be a bit problematic, but not enough to complain until now. But in question 3, including “authorized” makes a hash of the question. It sounds like the employee needs to be “authorized” when in fact it is the employer that is authorizing the employee to take the break.	The commenter’s concern is moot because the committee has revised the question as suggested by CELA above.
		Orange County Bar Association	Agree	No response required.

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	Instruction	Commenter	Comment	Committee Response
		by Daniel S. Robinson, President		
15.	VF-2707. Meal Break Violations (New)	California Employment Lawyers Association by Laura L. Horton, Chair	<p>This model form should carry an instruction indicating that it is designed for cases where there is no allegation of inaccurate meal break records.</p> <hr/> <p>We recommend that questions 2 and 3 be modified to read:</p> <p><b>2. Did [name of plaintiff] prove at least one meal break violation?</b>          _____ Yes _____ No</p> <p><b>3. On how many workdays did one or more meal break violations occur?</b>          _____ workdays</p> <p>Instruction 2765A already defined the meal break violation in detail. There is no need to reintroduce certain terms of art.</p> <hr/> <p>We would like to suggest an additional model verdict form. Our understanding is that the committee has only drafted a model form that works with CACI No. 2765A. To assist the committee further, we provide a proposal in Attachment B for a verdict form that works with CACI No. 2765B. For reference, we call it “VF-</p>	<p>The Directions for Use of CACI No. 2766A already contains the information requested. The Directions for Use of VF-2707A state that the verdict form is based on CACI No. 2766A, <i>Meal Break Violations—Essential Factual Elements</i>. The committee therefore does not see a need to add the information suggested to the model verdict form.</p> <hr/> <p>The committee agrees and has refined the questions as suggested to simplify the verdict form.</p> <hr/> <p>The committee appreciates the suggested new verdict form. Because it is beyond the scope of the invitation to comment, the committee will consider it in a future release cycle.</p>

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	Instruction	Commenter	Comment	Committee Response
			2708 Meal Break Violations Involving Inaccurate Employer Records.” (See Attachment B. <sup>1</sup> )	
		California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	a. Question 2 could be misunderstood to ask if defendant provided at least one 30-minute meal break, when the question should be whether defendant failed to provide a meal break to which plaintiff was entitled. We suggest this revision:	The committee disagrees but has revised the question, as suggested by CELA above, to ask whether plaintiff has proved “at least one meal break violation.”
			b. Question 2 refers to some requirements of a compliant meal break (uninterrupted and 30 minutes) but does not cover all requirements (omits unimpeded, not discouraged, relieved of all duties, and control relinquished). Rather than list all requirements or only some requirements, we believe question 2 should refer to a “compliant 30-minute meal break.”	The committee has refined the question as suggested by CELA above.
			c. We would revise question 2 as follows: <b>2. Did [name of defendant] fail to provide [name of plaintiff] with the opportunity to take <del>one or more</del> <del>[properly scheduled] uninterrupted a compliant 30-minute</del> meal breaks of at least 30 minutes to which [name of plaintiff] was entitled?</b>	The committee has refined the question as suggested by CELA above.
			b. Question 3 could be misunderstood to ask on how many workdays did defendant fail to provide any meal breaks, when the	Question 3 has been rephrased to ask, “ <u>On</u> how many workdays ...” The commenter’s other suggestions are

<sup>1</sup> The commenter’s attachment has been omitted from the comment chart.

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	Instruction	Commenter	Comment	Committee Response
			<p>question should be on how many workdays did defendant fail to provide a meal break to which plaintiff was entitled. We suggest this revision:</p> <p><b>3. On <u>H</u>how many workdays did [<i>name of defendant</i>] fail to provide <del>one or more</del> <u>a meal breaks to which [<i>name of plaintiff</i>] was entitled?</u></b></p>	<p>moot because the committee has refined question 3 as suggested by CELA above.</p>
		<p>Bruce Greenlee Attorney Richmond</p>	<p>Question 3: Add “For” to the beginning of the question.</p>	<p>The committee has endorsed the suggestion of CELA and added “On” to the beginning of question 3.</p>
		<p>Orange County Bar Association by Daniel S. Robinson, President</p>	<p>Agree</p>	<p>No response required.</p>
<p>16.</p>	<p>4603. Whistleblower Protection—Essential Factual Elements (Revise)</p>	<p>California Employment Lawyers Association by Laura L. Horton, Chair</p>	<p>CELA strongly supports the revisions to CACI Instruction 4603 to codify the recent California Supreme Court opinion in <i>Lawson v. PPG Architectural Finishes, Inc.</i> (2022) 12 Cal.5th 703.</p> <p>CELA suggests that the instruction also include the employee’s burden of proof in the instruction. The reason for this is so that jurors have clear instruction that the employee’s burden of proof as to the essential factual elements is by a preponderance of the evidence, whereas, as the Lawson Court held, “the employer shall have the burden of proof to demonstrate by clear and convincing</p>	<p>No response required.</p> <p>CELA’s comment is beyond the scope of the invitation to comment. The committee will consider the suggestions in a future release.</p>

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	Instruction	Commenter	Comment	Committee Response
			<p>evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by Section 1102.5.” Jurors in the trial courts have become confused regarding which burdens of proof apply to the various elements. Having the burdens clearly stated in the jury instructions will provide clear guidance to jurors, so that trial judges are not having to craft responses to juror questions regarding the various burdens of proof. CELA respectfully suggests that the instruction be modified to state as follows: “To establish this claim, [name of plaintiff] must prove all of the following <u>by a preponderance of the evidence:</u>”</p>	
			<p>CELA also respectfully suggests that the term “contributing factor” be defined either in this instruction itself or in a separate instruction that is dedicated to the definition of “contributing factor.” Until the <i>Lawson</i> decision, California courts were required to rely on federal statutes and case law for this definition. However, the <i>Lawson</i> decision provided a clear and unmistakable definition for the term “contributing factor” as applied to Labor Code § 1102.5, and this should be codified in the CACI instructions as</p>	<p>CELA’s comment is beyond the scope of the invitation to comment. The committee will consider the suggestions in a future release.</p>

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	Instruction	Commenter	Comment	Committee Response
			<p>follows: “A contributing factor a contributing factor includes “any factor, which alone or in connection with other factors, tends to affect in any way the outcome of the decision. This can be proven through a variety of factors, including temporal proximity between the protected activities and the adverse actions, as well as falsity of the employer’s stated reason. An employee may satisfy his burden even when other, legitimate factors also contributed to the adverse action.”</p>	
		<p>California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair</p>	<p>a. We believe only Labor Code section 1102.5 should be cited in the title and not section 1102.6 because this instruction is limited to the plaintiff’s burden under section 1102.5. The defendant’s burden under section 1102.6 is the subject of another instruction, No. 4604, not this one.</p>	<p>The committee agrees and recommends deleting the statute from both the title and from the Sources and Authority of this instruction (but including it in CACI No. 4604).</p>
			<p>b. Although it is beyond the scope of the invitation to comment, we would delete part of the quoted language from <i>Green v. Ralee Engineering Co.</i> (1998) 19 Cal.4th 66 in the Sources and Authority. The statement that section 1102.5, subdivision (b) does not protect employees who report suspicions directly to their employers does not reflect current law. We would retain the last two sentences of the quotation and delete the rest.</p>	<p>The committee will consider the suggestion in a future release.</p>

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	Instruction	Commenter	Comment	Committee Response
			<p>c. Although it is beyond the scope of the invitation to comment, we suggest noting <i>Scheer v. Regents of University of California</i> (2022) 76 Cal.App.5th 904 and <i>Lawson v. PPG Architectural Finishes, Inc.</i> (2022) 12 Cal.5th 703 in CACI Nos. 4601 and 4602.</p>	<p>The committee will consider the suggestion in a future release.</p>
		<p>Consumer Attorneys of California by Saveena Takhar, Senior Legislative Counsel</p>	<p>PAGE 41: The highlighted portions of elements 2 and 3 below. 1. That [name of defendant] was [name of plaintiff]’s employer; 2. [That [[name of plaintiff] disclosed/[name of defendant] believed that [name of plaintiff] [had disclosed/might disclose]] to a [government agency/law enforcement agency/person with authority over [name of plaintiff]/[or] an employee with authority to investigate, discover, or correct legal [violations/noncompliance]] that [specify information disclosed];]  [or]  [That [name of plaintiff] [provided information to/testified before] a public body that was conducting an investigation, hearing, or inquiry;]  [or]</p>	<p>This comment is beyond the scope of the invitation to comment. The committee will consider the suggestion for CACI No. 4603 and the corresponding verdict form in a future release.</p>

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	Instruction	Commenter	Comment	Committee Response
			<p>[That [name of plaintiff] refused to [specify activity in which plaintiff refused to participate];]</p> <p>3. [That [name of plaintiff] had reasonable cause to believe that the information disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation];]</p> <p>[or]</p> <p>[That [name of plaintiff] had reasonable cause to believe that the [information provided to/testimony before] the public body disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation];]</p> <p>[or]</p> <p>[That [name of plaintiff]'s participation in [specify activity] would result in [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation];]</p> <p><u>COMMENT:</u>                      Element 2 states that the plaintiff could have refused to engage in the activity. Element 3 could be more clearly worded to explain that although the plaintiff did not actually participate, had the plaintiff</p>	

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	Instruction	Commenter	Comment	Committee Response
			<p>participated in the activity, that participation would result in a violation of a statute, rule or regulation. The verdict form has this same flaw where it could be interpreted to require the plaintiff to engage in the conduct.</p>	
		<p>Orange County Bar Association by Daniel S. Robinson, President</p>	<p>Agree</p>	<p>No response required.</p>
<p>17.</p>	<p>4604. Affirmative Defense—Same Decision (Revise)</p>	<p>California Employment Lawyers Association by Laura L. Horton, Chair</p>	<p>CELA requests that an important clarification be made to CACI Instruction 4604. In its current form, this instruction states that “[name of defendant] <b>is not liable</b> if [he/she/nonbinary pronoun/it] proves by clear and convincing evidence that [he/she/nonbinary pronoun/it] would have [discharged/[other adverse employment action]] [name of plaintiff] anyway at that time for legitimate, independent reasons.” This is an incorrect statement of law which must be corrected.</p> <p>The text of section 1102.6 is silent on the issue of whether the same-decision defense completely relieves an employer of all liability. But the policy considerations that prompted the Legislature to enact the provisions in the first place support applying the same-decision defense the same way it is</p>	<p>This comment is beyond the scope of the invitation to comment. The committee will consider the suggestion in a future release.</p>

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	Instruction	Commenter	Comment	Committee Response
			<p>applied under the similarly employee-protective FEHA statute.</p> <p>The legislative history primarily speaks to the Legislature’s intent to impose a higher, “clear and convincing,” standard of proof on employers to prove the same-decision defense. 2-AA-154, 166, 168, 170, 176; see also <i>Lawson v. PPG Architectural Finishes</i> (2022) 12 Cal.5th 703, 712 [commenting that “much of the legislative history of section 1102.6 focuses on the employer’s same-decision defense—particularly the Legislature’s interest in prescribing a more demanding standard for establishing the defense”].</p> <p>In the absence of a clear textual command, the CACI instructions should not absolve an employer from liability in same-decision (i.e., mixed motive) cases. The CACI instructions should construe the whistleblower provisions consistent with their broad, remedial policy purpose and consistent with FEHA, another broad, remedial statute with the same goal of rooting out unlawful employment practices.</p> <p>First, there is no persuasive reason to take one approach with respect to the same-decision defense under FEHA and a different approach with respect to the</p>	

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	Instruction	Commenter	Comment	Committee Response
			<p>same-decision defense under the whistleblower provisions. If FEHA plaintiffs who establish that discrimination was a substantial motivating reason for adverse actions can obtain declaratory and/or injunctive relief, as well as fees and costs, then the same should be true for whistleblower plaintiffs who establish that protected activities contributed to the adverse actions they suffered. The same-decision defense comes into play only in mixed-motive cases whereby the employer’s adverse action was attributable to both lawful and unlawful reasons. The defense should not carry different consequences as between a FEHA mixed-motive case and a whistleblower mixed-motive case.</p> <p>Indeed, the purposes animating both statutes—FEHA and the whistleblower provisions—support interpreting them in a uniform manner. (See e.g., <i>Ziesmer v. Super. Ct.</i> (2003) 107 Cal.App.4th 360, 366 [“Our decision is consistent with that established rule of statutory construction that similar statutes should be construed in light of one another.”].) The <i>Harris</i> Court reasoned that completely relieving an employer of all liability would give short shrift to the fact that an impermissible discriminatory consideration had actually infected the</p>	

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	Instruction	Commenter	Comment	Committee Response
			<p>employer’s decision-making. (56 Cal.4th at p. 225.) While <i>Harris</i> held that damages would be an unfair windfall to a plaintiff who would have been subjected to the adverse action for legitimate reasons anyway, declaratory and injunctive relief, as well as the recovery of fees and costs, should remain available to vindicate FEHA’s purpose of preventing and deterring unlawful discrimination. (<i>Id</i> at pp. 232-235.) Permitting the plaintiff to obtain these forms of relief also serves to ensure that the finding of unlawful discrimination is not relegated to “an empty gesture.” (<i>Id.</i> at p. 234.)</p> <p>Just like FEHA, the whistleblower provisions are undergirded by a “broad public policy interest”—in this case to “encourage[e] workplace whistleblowers to report unlawful acts without fearing retaliation.” (<i>Green, supra</i>, 19 Cal.4th at p. 77.) In <i>Lawson, supra</i>, 12 Cal.5th at pp. 710-711, the Supreme Court recently noted that the Legislature amended the whistleblower provisions in 2003 in response to the spate of corporate frauds at major companies like Enron and WorldCom. The goal was to make the provisions more employee friendly to “encourage earlier and more frequent reporting of wrongdoing by employees</p>	

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	Instruction	Commenter	Comment	Committee Response
			<p>and corporate managers when they have knowledge of specified illegal acts.” (<i>Id.</i> at p. 711 [quoting Assem. Com. on Judiciary, Analysis of Sen. Bill No. 777 (2003-2004 Reg. Sess.) as amended May 29, 2003, p.1].) The broad, employee-protective purposes of both FEHA and the whistleblower provisions militate in favor of holding that an employer’s successful same-decision defense does not automatically absolve it of all liability under the whistleblower provisions any more than it does under FEHA. Otherwise, the purposes of both statutes will be frustrated. Plaintiffs will be less likely to bring meritorious claims, and findings that discriminatory/retaliatory factors influenced the employer’s decision-making will be nothing more than an “empty gesture.” (<i>Harris, supra</i>, 56 Cal.4th at p. 234.)</p> <p>Accordingly, CACI 4604 should be modified to state the following:</p> <p>“If [name of plaintiff] proves that [his/her/nonbinary pronoun/it] [disclosure of information of/refusal to participate in] an unlawful act was a contributing factor to [his/her/nonbinary pronoun/it] [discharge/[other adverse employment action]], [name of defendant] is not liable if [he/she/nonbinary pronoun/it] proves</p>	

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	Instruction	Commenter	Comment	Committee Response
			<p><u>the burden shifts to [name of defendant] to prove</u> by clear and convincing evidence that [he/she/nonbinary pronoun/it] would have [discharged/[other adverse employment action]] [name of plaintiff] anyway at that time for legitimate, independent reasons.</p>	
		<p>California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair</p>	<p>Agree</p>	<p>No response required.</p>
		<p>Orange County Bar Association by Daniel S. Robinson, President</p>	<p>Agree</p>	<p>No response required.</p>
<p>18.</p>	<p>VF-4601. Protected Disclosure by State Employee—California Whistleblower Protection Act—Affirmative Defense—Same Decision (Revise)</p>	<p>California Employment Lawyers Association by Laura L. Horton, Chair</p>	<p>CELA supports the changes to VF-4601, as they adopt the employer’s burden of proof into the verdict form itself, which will provide much clearer instruction to jurors.</p>	<p>No response required.</p>
		<p>California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair</p>	<p>Agree</p>	<p>No response required.</p>
		<p>Orange County Bar Association</p>	<p>Agree</p>	<p>No response required.</p>

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	Instruction	Commenter	Comment	Committee Response
		by Daniel S. Robinson, President		
19.	VF-4602. Whistleblower Protection— Affirmative Defense of Same Decision (Revise)	California Employment Lawyers Association by Laura L. Horton, Chair	CELA supports the changes to VF-4602, as they adopt the employer’s burden of proof into the verdict form itself, which will provide much clearer instruction to jurors.	No response required.
		California Lawyers Association, Litigation Section, Jury Instructions Committee by Reuben A. Ginsburg, Chair	We agree with the proposed revisions, except we would not delete “ <i>specify</i> ” in question 7. Instead, we would keep it as in VF-4601 question 7.	The committee believes the bracketed content that users are called to include is clear without retaining <i>specify</i> in question 7. The change is being made to conform to the content of questions 4, 5, and 7 of CACI No. VF-4602. The committee also recommends making conforming changes to the same bracketed content in CACI No. VF- 4601.
		Orange County Bar Association by Daniel S. Robinson, President	Agree	No response required.

**Advisory Committee on Civil Jury Instructions**  
**Annual Agenda<sup>1</sup>—2022–2023**  
**Approved by Rules Committee: [Date]**

**I. COMMITTEE INFORMATION**

<b>Chair:</b>	Hon. Adrienne M. Grover, Associate Justice of the Court of Appeal, Sixth Appellate District
<b>Lead Staff:</b>	Eric Long, Attorney, Legal Services
<b>Committee’s Charge/Membership:</b> <p><a href="#">Rule 10.58</a> of the California Rules of Court states the charge of the Advisory Committee on Civil Jury Instructions, which is to make recommendations to the Judicial Council for updating, amending, and adding topics to the <i>Judicial Council of California Civil Jury Instructions</i> (CACI).</p> <p><a href="#">Rule 10.58</a> sets forth the membership position of the committee. The Advisory Committee on Civil Jury Instructions currently has 22 members (a majority of which must be judges). Under <a href="#">rule 10.58</a>, the Committee must include at least 1 member from each of the following categories: (1) appellate court justice; (2) trial court judge; (3) lawyer whose primary area of practice is civil law; and (4) law professor whose primary area of expertise is civil law. The current committee <a href="#">roster</a> is available on the committee’s web page.</p>	
<b>Subcommittees/Working Groups<sup>2</sup>:</b> <p>The advisory committee has three subcommittees (referred to internally as working groups). Each working group is made up exclusively of committee members. Each working group reviews approximately one third of the proposed meeting agenda before the full committee meeting and makes recommendations to the committee regarding each proposal. The 3 working groups are (and are so numbered because the committee’s original 6 working groups were consolidated into 3):</p> <ol style="list-style-type: none"><li>1. Working Group 12</li><li>2. Working Group 34</li><li>3. Working Group 56</li></ol>	

<sup>1</sup> The annual agenda outlines the work a committee will focus on in the coming year and identifies areas of collaboration with other advisory bodies and the Judicial Council staff resources.

<sup>2</sup> California Rules of Court, rule 10.30 (c) allows an advisory body to form subgroups, composed entirely of current members of the advisory body, to carry out the body’s duties, subject to available resources, with the approval of its oversight committee.

**Meetings Planned for 2022–2023<sup>3</sup> (Advisory body and all subcommittees and working groups)**

Date/Time/Location or Teleconference:

Three working group meetings: on or about the week of December 5, 2022, 10:00 a.m.–2:00 p.m., Videoconference

Advisory committee meeting: on or about January 19, 2023, 10:00 a.m.–4:00 p.m., San Francisco (and/or videoconference)

Three working group meetings: on or about the week of June 5, 2023, 10:00 a.m.–2:00 p.m., Videoconference

Advisory committee meeting: on or about July 20, 2023, 10:00 a.m.–4:00 p.m., San Francisco (and/or videoconference)

Due to the nature of the advisory committee’s work and the detailed drafting that is required to write civil jury instructions that are legally accurate and understandable to the average juror, 2 in-person meetings, rather than only 1, have been authorized in prior years. If in-person meetings can be held safely in light of the evolving COVID-19 situation and if attendant health and safety precautions can be satisfied, the advisory committee will again seek an exception for 2 in-person meetings.

Check here if exception to policy is granted by Executive Office or rule of court.

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<sup>3</sup> Refer to [Operating Standards for Judicial Council Advisory Bodies](#) for governance on in-person meetings.

## II. COMMITTEE PROJECTS

#	New or One-Time Projects <sup>4</sup>
1.	None
	<div style="text-align: right;"><i>Priority n/a<sup>5</sup></i></div>
	<div style="text-align: right;"><i>Strategic Plan Goal n/a<sup>6</sup></i></div>
	<p><i>Project Summary<sup>7</sup>: n/a</i></p> <p><i>Status/Timeline: n/a</i></p> <p><i>Fiscal Impact/Resources: n/a</i></p> <p><input type="checkbox"/> <i>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.</i></p> <p><i>Internal/External Stakeholders: n/a</i></p> <p><i>AC Collaboration: n/a</i></p>

<sup>4</sup> All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or a *program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

<sup>5</sup> 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.

<sup>6</sup> Indicate which goal number of The Strategic Plan for California’s Judicial Branch the project most closely aligns.

<sup>7</sup> A key objective is a strategic aim, purpose, or “end of action” to be achieved for the coming year.

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
1.	<b>Maintenance—Case Law</b>	<b>Priority 1<sup>5</sup></b> <b>Strategic Plan Goal IV<sup>6</sup></b>
<p><b>Project Summary<sup>7</sup>:</b> Review new case law affecting jury instructions to determine whether changes to any civil jury instructions are required. Draft and present proposed changes for council approval.</p> <p><b>Status/Timeline:</b> Ongoing, with delivery of any changes requiring Judicial Council approval to the council at its May and November meetings; delivery of any changes requiring only Rules Committee approval to Rules Committee as needed.</p> <p><b>Fiscal Impact/Resources:</b> None.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> None.</p> <p><b>AC Collaboration:</b> Each Working Group reviews, considers, and makes recommendations to the AC regarding each proposal.</p>		
2.	<b>Maintenance—Legislation</b>	<b>Priority 1<sup>5</sup></b> <b>Strategic Plan Goal IV<sup>6</sup></b>
<p><b>Project Summary<sup>7</sup>:</b> Review new legislation affecting jury instructions to determine whether changes to any civil jury instructions are required. Draft and present proposed changes for council approval. Make any necessary citation revisions to statutes cited under Sources and Authority.</p> <p><b>Status/Timeline:</b> Ongoing, with delivery of any changes requiring Judicial Council approval to the council at its May and November meetings; delivery of any changes requiring only Rules Committee approval to Rules Committee as needed.</p> <p><b>Fiscal Impact/Resources:</b> Include JCC staff/fiscal resources (e.g., potential BCP), fiscal impact to JCC/trial court (e.g., IT contract), and other relevant resource needs.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> None.</p>		

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
	<i>AC Collaboration:</i> Each Working Group reviews, considers, and makes recommendations to the AC regarding each proposal.	
3.	<i>New Instructions and Expansion into New Subject Matter Areas</i>	<i>Priority 1<sup>5</sup></i> <i>Strategic Plan Goal IV<sup>6</sup></i>
	<p><i>Project Summary<sup>7</sup>:</i> Review new legislation, case law, and suggestions received from jury instruction users; draft and propose new civil jury instructions, including new series of instructions in an entirely new subject area, as appropriate, including new instructions on employee meal periods and employee rest periods.</p> <p><i>Status/Timeline:</i> Ongoing, with delivery of any changes requiring Judicial Council approval to the council at its May and November meetings.</p> <p><i>Fiscal Impact/Resources:</i> None.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><i>Internal/External Stakeholders:</i> None.</p> <p><i>AC Collaboration:</i> Each Working Group reviews, considers, and makes recommendations to the AC regarding each proposal.</p>	
4.	<i>Maintenance—Comments from Users</i>	<i>Priority 1<sup>5</sup></i> <i>Strategic Plan Goal IV<sup>6</sup></i>
	<p><i>Project Summary:</i> Review suggestions received from jury instruction users, including the bench and bar; draft and propose changes and refinements, as appropriate, based on user suggestions.</p> <p><i>Status/Timeline:</i> Ongoing, with delivery of any changes requiring Judicial Council approval to the council at its May and November meetings; delivery of any changes requiring only Rules Committee approval to Rules Committee as needed.</p> <p><i>Fiscal Impact/Resources:</i> None.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><i>Internal/External Stakeholders:</i> None.</p>	

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
	<i>AC Collaboration:</i> Each Working Group reviews, considers, and makes recommendations to the AC regarding each proposal.	
5.	<b>Maintenance—Sources and Authority</b>	<b>Priority 1<sup>5</sup></b> <b>Strategic Plan Goal IV<sup>6</sup></b>
	<p><b>Project Summary:</b> Add quotations excerpted from new cases to Sources and Authority as appropriate once source is final.</p> <p><b>Status/Timeline:</b> Ongoing, with delivery of any changes requiring Judicial Council approval to the council at its May and November meetings; delivery of any changes requiring only Rules Committee approval to the Rules Committee as needed.</p> <p><b>Fiscal Impact/Resources:</b> None.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> None.</p> <p><b>AC Collaboration:</b> Each Working Group reviews, considers, and makes recommendations to the AC regarding each proposal.</p>	
6.	<b>Maintenance—Secondary Sources</b>	<b>Priority 1<sup>5</sup></b> <b>Strategic Plan Goal IV<sup>6</sup></b>
	<p><b>Project Summary:</b> Update Secondary Source citations to ensure that the secondary sources included in CACI are up to date.</p> <p><b>Status/Timeline:</b> Ongoing, with delivery of any changes requiring Judicial Council approval to the council at its May and November meetings; delivery of any changes requiring only Rules Committee approval to Rules Committee as needed.</p> <p><b>Fiscal Impact/Resources:</b> None.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> None.</p> <p><b>AC Collaboration:</b> Each Working Group reviews, considers, and makes recommendations to the AC regarding each proposal.</p>	

#	Ongoing Projects and Activities <sup>4</sup>	
7.	<b>Technical Corrections</b>	<b>Priority 1<sup>5</sup></b> <b>Strategic Plan Goal IV<sup>6</sup></b>
<p><b>Project Summary<sup>7</sup>:</b> Make any necessary corrections or editing changes to the jury instructions.</p> <p><b>Status/Timeline:</b> Ongoing, with delivery of any changes requiring Judicial Council approval to the council at its May and November meetings; delivery of any changes requiring only Rules Committee approval to Rules Committee as needed.</p> <p><b>Fiscal Impact/Resources:</b> None.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> None.</p> <p><b>AC Collaboration:</b> Each Working Group reviews, considers, and makes recommendations to the AC regarding each proposal.</p>		

### III. LIST OF 2021–2022 PROJECT ACCOMPLISHMENTS

#	<b>Project Highlights and Achievements</b> <i>[Provide brief, broad outcome(s) and completed date.]</i>
1.	<b>Maintenance—Case Law, Legislation, and Comments from Users:</b> Reviewed case law, new legislation affecting jury instructions, and comments from users to determine whether changes to the civil jury instructions are required. Releases presented to Judicial Council for approval on May 11, 2022, and to be presented to the Judicial Council on or about December 2, 2022. Release 40 (approved by the council in November 2021) included revisions to 20 instructions to bring them up to date, and release 41 (approved by the council in May 2022) included revisions to 21 instructions and verdict forms to bring them up to date.
2.	<b>New Instructions and Expansion into New Subject Matter Areas:</b> Reviewed new legislation, case law, and suggestions received from jury instruction users and proposed new civil jury instructions as appropriate. Releases presented to Judicial Council for approval on May 11, 2022, and to be presented to the Judicial Council on or about December 2, 2022. Release 40 (approved by the council in November 2021) included 7 new instructions—four in the Labor Code series and one each in the civil rights, vicarious responsibility, and unlawful detainer series, and release 41 (approved by the council in May 2022) included 1 new verdict form in the insurance series.
3.	<b>Maintenance—Sources and Authority:</b> Reviewed case law and new legislation and proposed inclusion of excerpts and citations from new sources and authority. Updates to the Sources and Authority of 43 instructions presented to the Rules Committee for approval in October, 2021, April 2022, and August 2022.
4.	<b>Maintenance—Secondary Sources:</b> Updated citations in CACI’s Secondary Sources. Releases presented to Judicial Council for approval on May 11, 2021, the Rules Committee in October 2021, April 2022, and August 2022, and to be presented to Judicial Council on or about December 2, 2022.
5.	<b>Technical Corrections:</b> Made necessary corrections or editing changes to the jury instruction publication. Releases presented to Judicial Council for approval on May 11, 2022, the Rules Committee in in October 2021, April 2022 and August 2022, and to be presented to Judicial Council on or about December 2, 2022.

**Advisory Committee on Criminal Jury Instructions**  
**Annual Agenda—2023**  
**Approved by Rules Committee: November \_\_, 2022**

**I. COMMITTEE INFORMATION**

<b>Chair:</b>	Hon. Jeffrey Ross, San Francisco County Superior Court
<b>Lead Staff:</b>	Kara Portnow, Supervising Attorney, Criminal Justice Services
<p><b>Committee’s Charge/Membership:</b>  <a href="#">Rule 10.59</a> of the California Rules of Court states the charge of the Advisory Committee on Criminal Jury Instructions (CALCRIM), which is to regularly review case law and statutes affecting jury instructions and to make recommendations to the Judicial Council for updating, amending, and adding topics to the council’s criminal jury instructions.</p> <p><a href="#">Rule 10.59</a> also sets forth the membership position of the committee. The Advisory Committee on Criminal Jury Instructions currently has 12 members. The current committee <a href="#">roster</a> is available on the committee’s web page.</p>	
<p><b>Subcommittees/Working Groups:</b> The committee has one subcommittee, the CALCRIM Workgroup, currently consisting of five members (one vacancy) who meet to pre-vet all materials before they go to the full committee for review.</p>	
<p><b>Meetings Planned for 2022 (Advisory body and all subcommittees and working groups)</b>  Date/Time/Location or Teleconference: Two full committee meetings in June and in November. Two workgroup meetings in May and in October. Dates and location TBD.</p> <p><input checked="" type="checkbox"/> Check here if exception to policy is granted by Executive Office or rule of court.</p>	

# COMMITTEE PROJECTS

#	New or One-Time Projects	

#	Ongoing Projects and Activities		
1	<table border="1"> <tr> <td data-bbox="1606 175 1978 235"><i>Priority 1</i><sup>1</sup></td> </tr> <tr> <td data-bbox="1606 235 1978 295"><i>Strategic Plan Goal IV</i><sup>2</sup></td> </tr> </table> <p><b>Project Summary:</b> Review case law and new legislation affecting jury instructions to determine whether changes to the criminal jury instructions are required. Judicial Council Direction: Draft and maintain jury instructions that accurately and understandably state the law.</p> <p><b>Status/Timeline:</b> Ongoing, with delivery to Judicial Council at March and September meetings.</p> <p><b>Fiscal Impact/Resources:</b> No implementation costs are associated with this project.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Not applicable.</p> <p><b>AC Collaboration:</b> Not applicable.</p>	<i>Priority 1</i> <sup>1</sup>	<i>Strategic Plan Goal IV</i> <sup>2</sup>
<i>Priority 1</i> <sup>1</sup>			
<i>Strategic Plan Goal IV</i> <sup>2</sup>			
2	<table border="1"> <tr> <td data-bbox="1606 760 1978 820"><i>Priority 1</i></td> </tr> <tr> <td data-bbox="1606 820 1978 880"><i>Strategic Plan Goal IV</i></td> </tr> </table> <p><b>Project Summary:</b> Review comments received from jury instruction users and propose any necessary changes and improvements. Judicial Council Direction: Draft and maintain jury instructions that accurately and understandably state the law.</p> <p><b>Status/Timeline:</b> Ongoing, with delivery to Judicial Council at March and September meetings.</p> <p><b>Fiscal Impact/Resources:</b> No implementation costs are associated with this project.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Not applicable.</p>	<i>Priority 1</i>	<i>Strategic Plan Goal IV</i>
<i>Priority 1</i>			
<i>Strategic Plan Goal IV</i>			

<sup>1</sup> 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.

<sup>2</sup> Indicate which goal number of The Strategic Plan for California’s Judicial Branch the project most closely aligns.

#	<b>Ongoing Projects and Activities</b>	
	<i>AC Collaboration:</i> Not applicable.	
3	<b>Project Title: New Instructions and Expansion into New Areas.</b>	<b>Priority 1</b> <b>Strategic Plan Goal IV</b>
<p><b>Project Summary:</b> Review suggestions received from jury instruction users, new legislation, and case law and propose new criminal jury instructions as appropriate. Judicial Council Direction: Draft and maintain jury instructions that accurately and understandably state the law.</p> <p><b>Status/Timeline:</b> Ongoing, with delivery to Judicial Council at March and September meetings.</p> <p><b>Fiscal Impact/Resources:</b> No implementation costs are associated with this project.  <input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Not applicable.</p> <p><b>AC Collaboration:</b> Not applicable.</p>		
4	<b>Project Title: Technical Corrections.</b>	<b>Priority 1</b> <b>Strategic Plan Goal IV</b>
<p><b>Project Summary:</b> Make any necessary corrections or editing changes to the jury instructions. Judicial Council Direction: Draft and maintain jury instructions that accurately and understandably state the law.</p> <p><b>Status/Timeline:</b> Ongoing, with delivery to Judicial Council at March and September meetings.</p> <p><b>Fiscal Impact/Resources:</b> No implementation costs are associated with this project.  <input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Not applicable.</p> <p><b>AC Collaboration:</b> Not applicable.</p>		

## II. LIST OF 2022 PROJECT ACCOMPLISHMENTS

#	Project Highlights and Achievements
1.	<b>Maintenance—Case Law and Legislation:</b> Reviewed case law and new legislation affecting jury instructions to determine whether changes to the criminal jury instructions are required. Releases presented to Judicial Council for approval in March 2022 and September 2022.
2.	<b>Maintenance—Comments From Users:</b> Reviewed comments received from jury instruction users and propose any necessary changes and improvements. Releases presented to Judicial Council for approval in March 2022 and September 2022.
3.	<b>New Instructions and Expansion into New Areas:</b> Reviewed new legislation and case law and suggestions received from jury instruction users and proposed new criminal jury instructions as appropriate. Releases presented to Judicial Council for approval in March 2022 and September 2022.
4.	<b>Technical Corrections:</b> Made necessary corrections or editing changes to the jury instructions. Releases presented to Judicial Council for approval in March 2022 and September 2022.

**Appellate Advisory Committee**  
**Annual Agenda<sup>1</sup>—2022-2023**  
**Approved by Rules Committee: November 11, 2022**

**I. COMMITTEE INFORMATION**

<b>Chair:</b>	Hon. Louis R. Mauro, Associate Justice of the Court of Appeal, Third District
<b>Lead Staff:</b>	Christy Simons, Attorney, Legal Services
<b>Committee's Charge/Membership:</b> <p><a href="#">Rule 10.40</a> of the California Rules of Court states the charge of the Appellate Advisory Committee (AAC), which is to make recommendations to the Judicial Council for improving the administration of justice in appellate proceedings and to make proposals on training for justices and appellate support staff to the Center for Judicial Education and Research Advisory Committee. <a href="#">Rule 10.34</a> sets forth additional duties of the committee.</p> <p>Rule 10.40 sets forth the membership positions of the committee. The AAC currently has 21 members. The current committee <a href="#">roster</a> is available on the committee's web page.</p>	
<b>Subcommittees/Working Groups<sup>2</sup>:</b> <ol style="list-style-type: none"><li>1. Rules Subcommittee</li><li>2. Appellate Division Subcommittee</li><li>3. Legislative Subcommittee</li><li>4. Privacy Subcommittee</li><li>5. Remote Access Workgroup</li><li>6. Appellate Efficiency Ad Hoc Subcommittee [<i>Recommend this subcommittee remain inactive pending the report and recommendations from the Appellate Caseflow Workgroup</i>]</li><li>7. Joint Appellate Technology Subcommittee [<i>Recommend this subcommittee remain inactive in the coming year.</i>]</li></ol>	

<sup>1</sup> The annual agenda outlines the work a committee will focus on in the coming year and identifies areas of collaboration with other advisory bodies and the Judicial Council staff resources.

<sup>2</sup> California Rules of Court, rule 10.30(c) allows an advisory body to form subgroups, composed entirely of current members of the advisory body, to carry out the body's duties, subject to available resources, with the approval of its oversight committee.

**Meetings Planned for 2022-2023<sup>3</sup> (Advisory body and all subcommittees and working groups)**

Full committee meetings:

- November 2022 (videoconference to review winter cycle proposals and plan spring cycle proposals)
- February/March 2023 (in person if permitted; otherwise, videoconference to make final recommendations on winter cycle proposals and review spring cycle proposals)
- July 2023 (videoconference to make final recommendations on spring cycle proposals)
- September 2023 (videoconference to make recommendations on annual agenda)

Subcommittee meetings: one or more teleconference or videoconference meetings of each subcommittee before each full committee meeting, to work on rules and forms proposals.

Check here if exception to policy is granted by Executive Office or rule of court.

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<sup>3</sup> Refer to [Operating Standards for Judicial Council Advisory Bodies](#) for governance on in-person meetings.

## COMMITTEE PROJECTS

#	New or One-Time Projects <sup>4</sup>
1.	<p><i>Update rules regarding reporter’s transcripts</i></p> <p style="text-align: right;"><i>Priority 1(b), (d)<sup>5</sup></i></p>
	<p style="text-align: right;"><i>Strategic Plan Goal<sup>6</sup> III, IV</i></p>
	<p><b>Project Summary:</b> Consider amending 12 appellate rules to increase the transmission and use of electronic reporter’s transcripts. The proposed amendments are based on changes to Code of Civil Procedure section 271, which imposes a January 2023 deadline for all courts to be ready to accept electronic reporter’s transcripts. The goal of the project is to make it easier for court reporters to send, and for appellate courts to receive, electronic reporter’s transcripts. Increased use of electronic transcripts would improve efficiencies, expand the potential for remote access, result in cost savings, and assist courts and court reporters in continuing to transition from paper to electronic transcripts as required by section 271. Source: California Court Reporters Association</p> <p><b>Status/Timeline:</b> Priority 1 project to facilitate the use of electronic reporter’s transcripts; anticipate winter cycle invitation to comment and effective date of September 1, 2023</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate for public comment.</p> <p><b>AC Collaboration:</b> N/A</p>

<sup>4</sup> All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or a *program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

<sup>5</sup> 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.

<sup>6</sup> Indicate which goal number of The Strategic Plan for California’s Judicial Branch the project most closely aligns.

# New or One-Time Projects <sup>4</sup>	
2. <i>Costs on appeal</i>	<i>Priority 1(a)</i>
	<i>Strategic Plan Goal IV</i>
<p><b>Project Summary:</b> Rule 8.278 generally provides that the prevailing party in the Court of Appeal is entitled to costs. However, <i>Pollock v. Tri-Modal Distribution Services</i> (2021) 11 Cal.5th 918 recently held that an appellate court may not award costs or fees on appeal to a prevailing FEHA defendant without first making certain determinations. The project involves amending rule 8.278 to avoid conflict with the FEHA and other statutes requiring a particular analysis for awarding costs. Costs on appeal are an ongoing issue for appellate courts; clarifying the rule will increase efficiency and the accuracy of these determinations.</p> <p><b>Status/Timeline:</b> Priority 1 project to conform rule to applicable law; anticipate winter cycle invitation to comment and effective date of September 1, 2023</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate for public comment.</p> <p><b>AC Collaboration:</b> N/A</p>	
3. <i>Update rules regarding oral argument in the appellate divisions</i>	<i>Priority 1(b), 1(d)<sup>7</sup></i>
	<i>Strategic Plan Goals<sup>8</sup> III, IV</i>

<sup>7</sup> 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.

<sup>8</sup> Indicate which goal number of The Strategic Plan for California’s Judicial Branch the project most closely aligns.

#	<b>New or One-Time Projects<sup>4</sup></b>	
	<p><b>Project Summary:</b> Consider amending rules 8.885 and 8.929 to remove outdated provisions that are inconsistent with Code of Civil Procedure section 367.75 and to facilitate remote appearances. Updating these rules has been a priority for the committee for several years; the project was deferred while emergency rules regarding remote appearances were in place. It is the understanding of the committee that efforts to facilitate remote appearances remain a priority for the judicial branch. Origin: Superior Court of Riverside County and AAC member.</p> <p><b>Status/Timeline:</b> Priority 1 project to make rules consistent with statute and facilitate remote appearances; anticipate spring cycle invitation to comment and effective date of January 1, 2024</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate for public comment.</p> <p><b>AC Collaboration:</b> N/A</p>	
4.	<b>Form briefs on appeal</b>	<b>Priority 1(d), 1(e)</b>
	<p><b>Project Summary:</b> Consider the development of fillable form appellate briefs for use by self-represented litigants in the Court of Appeal and the appellate division. Form briefs that are formatted and organized appropriately and contain required content may assist litigants in filing briefs, and may assist the courts because they will receive briefs that are more helpful in evaluating the merits of an appeal. Fewer briefs will be rejected for not meeting filing requirements. Origin: California Lawyers Association, Litigation Section, Committee on Appellate Courts</p> <p><b>Status/Timeline:</b> Priority 1 project; anticipate invitation to comment in 2024 and effective date of January 1, 2025, to allow sufficient time to develop the forms</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate for public comment.</p>	

<b># New or One-Time Projects<sup>4</sup></b>	
	<i>AC Collaboration: N/A</i>
5.	<p><i>Remote access to electronic appellate court records</i></p> <p><b>Priority 1(e)</b> <b>DEFERRED</b></p> <p><b>Strategic Plan Goals I, III, IV</b></p>
<p><b>Project Summary:</b> Consider amending rules 8.80-8.83, which were adopted in 2016, to provide greater electronic access to appellate court records, as appropriate, based on the courts’ improving technical capabilities and increased knowledge gained from experience. The updates may include permitting remote public access to briefs, requiring that records accessible at the courthouse be properly redacted, providing for additional access for specified persons and entities, amending definitions and scope of the rules, and modifying the appellate rules based on trial court rules regarding remote access. This is a priority 1 project because it will increase access to the courts, improve efficiency, respond to the modern expectations of court users, and reduce costs by reducing the copying and printing of paper documents and the need to travel to a courthouse, while maintaining appropriate privacy. The project would save courts and the public time, money, and resources and enhance safety. This project had been deferred during the initial implementation phase of the new appellate court document management system. It will involve collaboration with appellate court clerk’s offices and JCIT. Origin: AAC chair and an assistant clerk/executive officer of a Court of Appeal</p> <p><b>Status/Timeline:</b> Priority 1 project for access, efficiency, and cost-reduction reasons; deferred pending further direction from P3 working group on remote access policies.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> JCIT and appellate court clerks’ offices</p> <p><i>AC Collaboration: N/A</i></p>	
6.	<p><i>Options for improving efficiency in the appellate process</i></p> <p><b>Priority 1(e)</b> <b>DEFERRED</b></p> <p><b>Strategic Plan Goal III</b></p>

#	<b>New or One-Time Projects<sup>4</sup></b>	
	<p><b>Project Summary:</b> Consider options for improving efficiency in the appellate process to better provide court users quality dispositions in a fair and timely manner. Possible rule amendments and form revisions will be considered. Work on this project began in 2022 but has been deferred pending the final report of the Chief Justice’s Appellate Caseflow Workgroup, which is expected at the end of 2022. The two-year project timeline will allow an ad hoc subcommittee to conduct research, consult with stakeholders, and develop recommendations. Origin: referral from the Administrative Presiding Justices Advisory Committee.</p> <p><b>Status/Timeline:</b> Deferred pending action by the Appellate Caseflow Workgroup.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate for public comment.</p> <p><b>AC Collaboration:</b> N/A</p>	
7.	<b>Pilot program to reduce indexing of unpublished Court of Appeal opinions</b>	<p><b>Priority 1(e)</b></p> <p><b>Strategic Plan Goal III, IV</b></p>
	<p><b>Project Summary:</b> Review data, evaluate results, and draft a report regarding the ongoing pilot project, and develop recommendations for the Administrative Presiding Justices Advisory Committee and/or the Judicial Council. This program to reduce indexing of unpublished appellate opinions to better protect personal privacy without affecting public access to the opinions on the California courts website was approved by the Rules Committee and has been on the AAC’s annual agenda since 2017. The project is part of the privacy subcommittee’s charge to consider whether to recommend amendments to the rules of court or other actions to better protect the privacy of victims, witnesses, and others who are described in or otherwise affected by unpublished Court of Appeal opinions.</p> <p><b>Status/Timeline:</b> Priority 1 project; completion date of January 1, 2024, for report and recommendations.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> Victims, witnesses, and others who are named in or identified in unpublished appellate opinions</p>	

#	<b>New or One-Time Projects<sup>4</sup></b>	
	<i>AC Collaboration:</i> N/A	
8.	<b><i>Publication and posting of appellate division opinions certified for publication</i></b>	<b><i>Priority 1(e)</i></b> <b><i>PENDING ACTION BY SUPREME COURT</i></b>  <b><i>Strategic Plan Goals I, III</i></b>
<p><b><i>Project Summary:</i></b> This item is on hold pending action by the Supreme Court to revise the California Style Manual and consider changes to publication rules and procedures for posting opinions on the website. Currently, appellate division opinions certified for publication are posted on the California courts website after the time for the Court of Appeal to order transfer and only if transfer is not ordered. The current procedures were developed in part based on provisions in the California Style Manual (CSM), which is now under review. This project involves considering amendments to the rules on transfer and providing subject matter expertise as requested to the Supreme Court and the Reporter of Decisions regarding publication rules, posting, and updates to the CSM. The goals are to clarify publication status upon transfer, close any gaps in the rules, improve transparency and access, and ensure that practices and procedures are coordinated, consistent, and accord appropriate status to these opinions. This is a priority 1 project because it will improve access to the development of the law in unlawful detainer, debt collection, and fee waiver cases, among others.</p> <p><b><i>Status/Timeline:</i></b> Previously a priority 2 project, upgraded to priority 1 for access reasons and timing of revisions to the CSM. Deferred pending action by the Supreme Court.</p> <p><b><i>Fiscal Impact/Resources:</i></b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> The Supreme Court, Reporter of Decisions, JC Information Technology; all draft rules proposals will circulate for public comment</p> <p><b><i>AC Collaboration:</i></b> N/A</p>		
9.	<b><i>Placeholder for projects assigned by the Ad-Hoc Workgroup on Post-Pandemic Initiatives (P3)</i></b>	<b><i>Priority 1</i></b> <b><i>PLACEHOLDER</i></b>  <b><i>Strategic Plan Goal TBD</i></b>

#	<b>New or One-Time Projects<sup>4</sup></b>	
	<p><b>Project Summary:</b> The Ad Hoc Workgroup on Post-Pandemic Initiatives (P3) is currently working to identify successful court practices that emerged during the COVID-19 pandemic. P3 recommendations may be referred to specific advisory bodies for development and/or implementation.</p> <p><b>Status/Timeline:</b> TBD</p> <p><b>Fiscal Impact/Resources:</b> TBD</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> TBD</p> <p><b>AC Collaboration:</b> TBD</p>	
10.	<b>Attachment of trial court order to a petition for review</b>	<p><b>Priority 2(b)</b></p> <p><b>Strategic Plan Goal III</b></p>
	<p><b>Project Summary:</b> Consider amending rule 8.504 to allow for attachment of the entire trial court order to a petition for review of a writ petition summarily denied by the Court of Appeal. Under the current rule, the trial court order being challenged may be attached only if it does not exceed 10 pages. Attaching the entire trial court order may assist the Supreme Court’s review of a summary denial of a writ petition below. Although the rule allows for attachment of the Court of Appeal order, that may be uninformative, and the review analysis may focus on the trial court order. Origin: AAC member</p> <p><b>Status/Timeline:</b> Second year of a priority 2 project (approved on 2021 annual agenda) to improve efficiency and save time for the Supreme Court; anticipate spring cycle invitation to comment and effective date of January 1, 2024</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate for public comment.</p> <p><b>AC Collaboration:</b> N/A</p>	

#	<b>New or One-Time Projects<sup>4</sup></b>	
11.	<b><i>Respondent’s designation of reporter’s transcript in appeals under Code of Civil Procedure section 1294.4</i></b>	<b><i>Priority 2(b)</i></b>
		<b><i>Strategic Plan Goal IV</i></b>
<p><b><i>Project Summary:</i></b> Appeals under Code of Civil Procedure section 1294.4 from an order dismissing or denying a petition to compel arbitration must be decided within 100 days. Under rule 8.713, appellant must file a record designation with the notice of appeal and any reporter’s transcript must be filed within 10 days. However, the rule does not provide for respondent to designate any additional reporter’s transcript. The project would consider amending the rule to provide for respondent’s designation and to establish the time for doing so. Origin: AAC member</p> <p><b><i>Status/Timeline:</i></b> Priority 2 project to close a gap in the rule that is reported to have been problematic; anticipated completion date of January 1, 2025</p> <p><b><i>Fiscal Impact/Resources:</i></b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> All draft proposals will circulate for public comment.</p> <p><b><i>AC Collaboration:</i></b> N/A</p>		
12.	<b><i>Update forms for requesting an extension of time</i></b>	<b><i>Priority 2(b)</i></b>
		<b><i>Strategic Plan Goal III, IV</i></b>
<p><b><i>Project Summary:</i></b> To assist the appellate projects in managing their workload and effectively representing their clients, and to provide information that may assist the courts in responding to these requests, consider revising forms APP-006, CR-126, JV-816, and JV-817 to include space for the applicant to describe work performed on the appeal to date, to increase the space for narrative justification for an extension, to update the forms to facilitate electronic service, and to revise form CR-126 to remove the requirement that a copy of a request for an extension of time (EOT) be served on the District Attorney and the defendant. The Courts of Appeal are not requiring service of a request for an EOT on the District Attorney and the defendant, and the rules of court do not require it. Consider other suggestions for revisions to the forms. Origin: AAC member, two appellate projects, and Appellate Practice Section of the San Diego County Bar Association</p>		

#	<b>New or One-Time Projects<sup>4</sup></b>	
	<p><b>Status/Timeline:</b> Second year of a priority 2 project (approved on 2021 annual agenda) to update forms to reflect current law and assist justice partners and the courts; anticipate spring cycle invitation to comment and effective date of January 1, 2024</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate for public comment.</p> <p><b>AC Collaboration:</b> N/A</p>	
13.	<p><b>Revise the notice of appeal form to allow for an omitted attorney and the date of the challenged order or judgment</b></p>	<p><b>Priority 2(b)</b></p> <p><b>Strategic Plan Goal IV</b></p>
	<p><b>Project Summary:</b> Consider revising notice of appeal form APP-002 to include space for an attorney who intends to join the appeal. In <i>K.J. v. LA Unified School District</i> (2020) 8 Cal.5th 875, the Supreme Court held that the reviewing court must construe a notice of appeal from a sanctions order to include an omitted attorney when it is reasonably clear that the attorney intended to join in the appeal, and the respondent was not misled or prejudiced by the omission. Also, self-represented litigants often fail to include the date of the order or judgment appealed from in item 1. Consider revising the form to make this item more visible. Origin: Supreme Court opinion, Family Violence Appellate Project</p> <p><b>Status/Timeline:</b> Second year of a priority 2 project (approved on 2021 annual agenda) to address Supreme Court case law and clarify need for the date of the challenged order or judgment; anticipate spring cycle invitation to comment and effective date of January 1, 2024</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate for public comment.</p> <p><b>AC Collaboration:</b> N/A</p>	
14.	<p><b>Time for respondent to elect an appendix</b></p>	<p><b>Priority 2(b)</b></p>

# New or One-Time Projects <sup>4</sup>	
<p><b>Project Summary:</b> Consider amending rule 8.124 and revising form APP-010. Currently, rule 8.124 requires the respondent to elect an appendix within 10 days of the filing of the notice of appeal, the same deadline for the appellant to file their notice designating the record. The respondent’s notice designating the record (form APP-010) is due 10 days after the appellant’s notice is filed. Consider changing the deadline for the respondent to elect an appendix to be the same as the deadline for the respondent’s notice designating the record. The current rule may not be well-known, and more time will likely result in more appendixes being elected, which may save litigants money and courts time. Origin: appellate attorney</p> <p><b>Status/Timeline:</b> Priority 2 project; anticipate completion date of January 1, 2025</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate for public comment.</p> <p><b>AC Collaboration:</b> N/A</p>	<p><i>Strategic Plan Goals I, IV</i></p>

<b># Ongoing Projects and Activities<sup>4</sup></b>	
1. <i>Improve Rules and Forms</i>	<p><i>Priority 1</i></p> <p><i>Strategic Plan Goals I, III, IV</i></p>
<p><b>Project Summary:</b> Working through the Rules Subcommittee and the Appellate Division Subcommittee, review case law changes that impact appellate courts and appellate procedure and suggestions from committee members, judicial officers, court staff, the bar, and the public concerning appellate rules and forms and appellate administration. Make recommendations to the Judicial Council for necessary changes to appellate rules, standards, and forms (rule 10.21).</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> Committee staff; potentially others depending on the project</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Depends on the project; all draft proposals circulate for public comment</p> <p><b>AC Collaboration:</b> As appropriate, depending on the project</p>	
2. <i>Review Pending Legislation</i>	<p><i>Priority 1</i></p> <p><i>Strategic Plan Goals III, IV</i></p>
<p><b>Project Summary:</b> Working through the Legislative Subcommittee, review pending legislation affecting appellate procedure and court administration and make recommendations to the Legislation Committee as to whether the Judicial Council should support or oppose the legislation (rule 10.34).</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> Committee staff, Governmental Affairs</p> <p><input type="checkbox"/> <i>The project includes allocations or distributions of funds to the courts, which have been reviewed and approved by Budget Service.</i></p> <p><b>Internal/External Stakeholders:</b> California Legislature</p> <p><b>AC Collaboration:</b> N/A</p>	

<b># Ongoing Projects and Activities<sup>4</sup></b>	
3. <i>Review Enacted Legislation</i>	<p><i>Priority 1</i></p> <p><i>Strategic Plan Goals III, IV</i></p>
<p><b>Project Summary:</b> Review all enacted legislation referred to the committee by the Judicial Council’s Governmental Affairs office that may have an impact on appellate procedure and court administration, and, where appropriate, propose to the Judicial Council rules and forms to implement the legislation or to bring rules and forms into conformity with it.</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> Committee staff, Governmental Affairs</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> N/A</p> <p><b>AC Collaboration:</b> As appropriate, depending on the legislation</p>	
4. <i>Provide Subject Matter Expertise</i>	<p><i>Priority 2(b)</i></p> <p><i>Strategic Plan Goal III</i></p>
<p><b>Project Summary:</b> Serve as subject matter resource for other advisory groups to avoid duplication of efforts and contribute to the development of recommendations for council action. Such efforts may include providing appellate procedural expertise and review to working groups, advisory committees, and subcommittees as needed.</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> N/A</p> <p><b>AC Collaboration:</b> As appropriate, depending on the project for which advice or consultation was requested</p>	

# Ongoing Projects and Activities <sup>4</sup>	
5.	<p><b><i>Rules and Forms: Miscellaneous Technical Changes</i></b></p>
	<p><b><i>Priority 2(a)</i></b></p> <p><b><i>Strategic Plan Goals III, IV</i></b></p>
<p><b><i>Project Summary:</i></b> Develop rule and form changes as necessary to correct technical errors meeting the criteria of rule 10.22(d)(2): “a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy . . . .”</p> <p><b><i>Status/Timeline:</i></b> Ongoing</p> <p><b><i>Fiscal Impact/Resources:</i></b> Committee staff</p> <p><input type="checkbox"/> <i>The project includes allocations or distributions of funds to the courts, which have been reviewed and approved by Budget Service.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> N/A</p> <p><b><i>AC Collaboration:</i></b> N/A</p>	

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## II. LIST OF 2020-2021 PROJECT ACCOMPLISHMENTS

#	Project Highlights and Achievements
1.	<b>Language referring to persons with disabilities in several rules and a form.</b> Amended language in several rules and a form to reflect guidelines for referring to persons with disabilities, preferences within the disability community, and terminology changes in California statutes. Approved by the Judicial Council on September 20, 2022; changes will take effect January 1, 2023.
2.	<b>Rules for streamlined CEQA review.</b> Joint project with Civil and Small Claims Advisory Committee to amend rules to implement legislation adding new projects for streamlined CEQA review and requiring the council to establish fees in the trial and appellate courts for certain projects. Approved by the Judicial Council on September 20, 2022; changes will take effect January 1, 2023.
3.	<b>Appellate review of transfer of juvenile to a court of criminal jurisdiction.</b> Joint project with the Family and Juvenile Law Advisory Committee to amend rules and revise forms to implement legislation making changes to transfer process and creating a new right of appeal. Approved by the Judicial Council on September 20, 2022; changes will take effect January 1, 2023.
4.	<b>Retention of the reporter's transcript in felony appeals.</b> Amended the rule regarding retention of Court of Appeal records to extend the time for keeping the reporter's transcript from 20 years to 75 years in cases affirming a felony conviction. Other amendments reflect the statutory presumption that an original reporter's transcript is in electronic form, not paper form. Approved by the Judicial Council on September 20, 2022; changes will take effect January 1, 2023.
5.	<b>Update rules regarding reporter's transcripts.</b> Amend several rules to facilitate the use of electronic reporters' transcripts. Proposal will circulate in the winter cycle; changes would take effect September 1, 2023.
6.	<b>Costs on appeal.</b> Amend the rule regarding costs on appeal to provide an exception to the general rule that the prevailing party is entitled to costs for statutes that require a different analysis before awarding costs. Proposal will circulate in the winter cycle; changes would take effect September 1, 2023.

## RULES COMMITTEE ACTION REQUEST FORM

**Rules Committee Meeting Date:** November 1, 2022

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

**Recommend JC approval (has circulated for comment)**

**Title of proposal:** Rules and Forms: Name- and Gender-Change Form Revisions to Implement Assembly Bill 218 and Assembly Bill 421

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

Adopt forms NC-311, NC-312, NC-325, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, and NC-520; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G

*Committee or other entity submitting the proposal:*

Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Kendall W. Hannon; (415) 865-7653; kendall.hannon@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 (as amended April 6, 2022)

Project description from annual agenda: Name and Gender Change Forms: conforming forms to 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

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 22-194*

For business meeting on: December 2, 2022

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**Title**

Rules and Forms: Name- and Gender-  
Change Form Revisions to Implement  
Assembly Bill 218 and Assembly Bill 421

**Rules, Forms, Standards, or Statutes Affected**

Adopt forms NC-311, NC-312, NC-325, and  
NC-530; approve form NC-300-INFO; revise  
forms NC-100, NC-100-INFO, NC-110,  
NC-120, NC-150, NC-300, NC-330,  
NC-500, NC-500-INFO, NC-510G, and  
NC-520; revoke forms NC-200, NC-225,  
NC-230, and NC-530G; and renumber form  
NC-125/NC-225 as form NC-125

**Recommended by**

Civil and Small Claims Advisory Committee  
Hon. Tamara Wood, Chair

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2023

**Date of Report**

October 25, 2022

**Contact**

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### Executive Summary

The Civil and Small Claims Advisory Committee recommends changes to 21 forms to implement statutory changes in Assembly Bill 218 (Stats. 2021, ch. 577) and Assembly Bill 421 (Stats. 2022, ch. 40). Together, these bills (1) authorize petitions for recognition of change of gender to be joined with requests to have various administrative records issued to reflect the petitioner's changed gender; (2) allow non-California residents to petition to have their names and gender changed on certain administrative records issued in California; (3) add a new category of petitioners who may bring name- or gender-change petitions on behalf of minors; and (4) change when a minor's grandparents must receive notice of a petition to recognize a change in the minor's gender. The proposed forms address these statutory changes.

## Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2023:

1. Adopt the following forms:

- *Birth Certificate for Child of Petitioner—Attachment* (form NC-311)
- *Marriage License and Certificate—Attachment* (form NC-312)
- *Order to Show Cause—Issuance of New Marriage License and Certificate* (form NC-325)
- *Order Recognizing Minor’s Change of Gender and Sex Identifier and for Issuance of New Birth Certificate* (form NC-530)

2. Approve the following forms:

- *Instructions for Filing Petition for Recognition of Change of Gender and Sex Identifier, Name Change, and Issuance of New Certificates* (form NC-300-INFO)

3. Revise the following forms:

- *Petition for Change of Name* (form NC-100)
- *Instructions for Filing a Petition for Change of Name* (form NC-100-INFO)
- *Name and Information about the Person Whose Name Is to Be Changed* (form NC-110)
- *Order to Show Cause—Change of Name* (form NC-120)
- *Notice of Hearing on Petition* (form NC-150)
- *Petition for Recognition of Change of Gender and Sex Identifier, Name Change, and Issuance of New Certificates* (form NC-300)
- *Order Recognizing Change of Gender and Sex Identifier, for Name Change, and for Issuance of New Certificates* (form NC-330)
- *Petition for Recognition of Minor’s Change of Gender and Sex Identifier and for Issuance of New Birth Certificate and Change of Name* (form NC-500)
- *Instructions for Filing Petition for Recognition of Minor’s Change of Gender and Sex Identifier* (form NC-500-INFO)
- *Declaration of Guardian or Juvenile Attorney* (form NC-510G)
- *Order to Show Cause—Recognition of Minor’s Change of Gender and Issuance of New Birth Certificate* (form NC-520)

4. Revoke the following forms:

- *Petition for Change of Name, Recognition of Change of Gender, and Issuance of New Birth Certificate* (form NC-200)
- *Order to Show Cause for Change of Name to Conform to Gender Identity* (form NC-225)
- *Decree Changing Name and Order Recognizing Change of Gender and for Issuance of New Birth Certificate* (form NC-230)

- *Order Recognizing Minor’s Change of Gender and for Issuance of New Birth Certificate* (form NC-530G)

5. Renumber the following form:

- *Order to Show Cause—Change of Name to Conform to Gender Identity* (renumber from form NC-125/NC-225 to form NC-125)

The proposed new and revised forms are attached at pages 17-47.

### **Relevant Previous Council Action**

The council first adopted name change forms effective January 2001 to standardize procedures used for name change proceedings throughout the state. These forms have received minor modifications since then. Along with revisions to the existing set, new forms were adopted to implement the confidential name changes as part of the confidential address program, “Safe at Home,” run by the Secretary of State. Revisions were approved to reflect statutory changes over the years, including: (1) in 2014, to reflect amendments eliminating the publication requirement for petitioners seeking to change their names to conform to their gender identity; (2) in 2018, to reflect new statutory procedures for name changes to conform to gender identity; and (3) in November 2018, to add a new category of petitioners who may seek confidential name changes.

In 2003, the Judicial Council adopted a set of forms for persons to petition for recognition of a gender change and issuance of a new birth certificate reflecting that change. In 2006, the council adopted an additional set of forms to petition for a change of gender and issuance of a new birth certificate, without a name change. Changes were made to those forms over the years to implement statutory changes to reflect a change in venue requirements, changes in the evidence required to support such requests and the procedures that apply to them (including adoption of a separate set of forms for minors), and the creation of an administrative process that may be used as an alternative to court proceedings.

### **Analysis/Rationale**

#### **Assembly Bill 218 (2021) and Assembly Bill 421 (2022)**

The Legislature enacted AB 218 (see Link A) in October 2021. In June 2022, the Legislature enacted AB 421 (see Link B), which modified a number of AB 218’s provisions. Together, these two enactments make the following changes to the procedures governing petitions for name change and petitions for recognition of change of gender and sex identifier,<sup>1</sup> either already in effect or effective January 1, 2023.

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<sup>1</sup> The new laws expand what may be recognized by the court to “change of gender and sex identifier,” as is reflected in the titles of the proposed forms. (New Health & Saf. Code, § 103425(a).) All references herein to “change of gender” or “gender change” should be read to encompass both gender and sex identifier. “New,” as used in citations hereafter, refers to provisions enacted in AB 218 or AB 421, all of which are effective now, but some of which will

First, both court-appointed guardians ad litem of minors and nonminors in the juvenile dependency system (appointed under Welfare and Institutions Code section 326.5) *and* counsel for minors in the juvenile justice system (under Welfare and Institutions Code sections 601 and 602) may petition for name changes or recognition of gender changes for minors.<sup>2</sup> Petitions filed for a minor or nonminor dependent who is under the jurisdiction of the juvenile court are exempt from the requirement that an order to show cause be published.<sup>3</sup>

Second, individuals who live *outside* California may now petition a California court for a name change or recognition of change of gender if they want to change their name or gender on certain administrative records issued in California (i.e., their birth certificate, child’s birth certificate, or marriage license or certificate).<sup>4</sup>

Third, a petition for recognition of change of gender may now include the following requests: (1) to change the petitioner’s birth certificate to reflect their new name and gender (as was allowed in prior law); (2) to change petitioner’s child’s birth certificate to reflect petitioner’s new name and gender (if the child was born in California); and (3) to change petitioner’s marriage license or certificate issued in California to reflect petitioner’s new name and to change their designation as bride, groom, or neither.<sup>5</sup> Changes to an adult child’s birth certificate requires the consent of the child;<sup>6</sup> changes to a marriage license and certificate requires that the spouse sharing the license and certificate either sign the petition or be given notice and an opportunity to object.<sup>7</sup>

Fourth, a minor’s grandparents must be given notice of a petition to recognize the minor’s change of gender if the petition is signed by a guardian, guardian ad litem, or juvenile attorney and *all* of the minor’s parents are deceased or cannot be located.<sup>8</sup>

Fifth, individuals may obtain, without a court order, new birth certificates (for them or their children) or a marriage license and certificate reflecting the individual’s change of gender and sex identifier directly from the State Registrar (or, for a new confidential marriage license and

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not become operative until January 1, 2023. “Prior,” as used in citations hereafter, refers to the law as it existed before AB 218 and AB 421.

<sup>2</sup> New Code Civ. Proc. § 1276(e) and new Health & Saf. Code, § 103430(c)

<sup>3</sup> New Code Civ. Proc., § 1277(c).

<sup>4</sup> *Id.*, § 1276(g); new Health & Saf. Code, § 103425(e).

<sup>5</sup> New Health & Saf. Code, § 103425(b), (c), & (d).

<sup>6</sup> *Id.*, § 103430(b)(3).

<sup>7</sup> *Id.*, § 103430(b)(2).

<sup>8</sup> *Id.*, § 103430(e)(2). (Prior law mandated notice if *either* parent was deceased or could not be located.)

certificate, directly from the county clerk of the county where the marriage occurred) by submitting specific supporting documentation.<sup>9</sup>

Finally, when an order to show cause (OSC) is required to be issued issue in response to a petition to recognize a minor's change of gender, any objections filed in response to the OSC must be filed within four weeks of the order's date.<sup>10</sup>

The recommended form revisions to reflect these changes are described generally below.<sup>11</sup>

### **NC-100 Series Forms**

- *Petition for Change of Name* (form NC-100). Item 1 has been revised to reflect that non-California residents may now petition to change their name on birth or marriage certificates issued in California. Item 5 has a new option for petitioners who are guardians ad litem or attorneys appointed for juvenile defendants.
- *Instructions for Filing a Petition for Change of Name* (form NC-100-INFO). Paragraph 1 has been revised to reflect the new basis for jurisdiction over petitions brought by non-California residents. Paragraph 4 has been revised to include an advisement regarding potential required local forms. Paragraph 7 has been revised (and reorganized) to include the exemption from publication which applies when a name change is sought for a minor or nonminor dependent under the jurisdiction of a juvenile court. Paragraph 11 has been added to describe the process by which a petitioner can request an accommodation for a disability. Finally, a heading has been added to paragraph 12.
- *Name and Information About the Person Whose Name Is to Be Changed* (form NC-110). A cross-reference to form NC-300 (the petition for recognition of an adult's change of gender) has been added because form NC-110 may be attached to form NC-300 under the proposed reorganization of the gender-change forms. (Statute mandates that a name-change petition may be combined with a petition requesting recognition of gender change.)<sup>12</sup> A category for guardians ad litem and attorneys appointed by a juvenile court has been added to item 7d.
- *Order to Show Cause—Change of Name* (form NC-120). This form provides notice of the hearing date and of the opportunity to make objections to a name change petition. Most petitioners must publish the OSC in a local newspaper of general circulation and the order form indicates the specific paper to be used. Because some petitions will now be brought by individuals who reside outside California, an alternative order is now

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<sup>9</sup> *Id.*, § 103426.

<sup>10</sup> *Id.*, § 103430(f).

<sup>11</sup> The proposed revisions to existing forms are highlighted in yellow on the attached forms. However, the proposed revisions to forms NC-300, NC-330, NC-500, NC-500-INFO, and NC-520 have not been highlighted as they are so extensive that almost the entire form would have to be highlighted.

<sup>12</sup> *Id.*, § 103435.

provided in item 3, which describes but does not specify the paper in which the OSC is to be published for an out-of-state petitioner. The title was also revised to clarify that the order is not to show cause “for” a change of name. Finally, a parenthetical about about remote appearances has been added to the form.

- *Order to Show Cause—Change of Name to Conform to Gender Identity* (form NC-125). This form, currently numbered jointly as NC-125/NC-225, has been revised to remove NC-225 because the committee recommends eliminating the NC-200 series for the reasons stated below. As with form NC-120, the title has been revised to clarify that the order was not to show cause “for” a change of name.
- *Notice of Hearing on Petition* (form NC-150). Courts may use this form to set the hearing required when an individual files a timely objection to a petition for change of name to conform to gender identity or to a petition for recognition of change of gender. The form has been revised to allow it to be used when objections are filed to a petitioner’s request to have their gender designation changed on their marriage license and certificate or their child’s birth certificate or both. Because a hearing may be set only if objections are received, this form will be filled out and served by courts, and not petitioners. Accordingly, the phrase previously part way down the form, “(To be completed by clerk)”, which implied that part of the form would be filled out by petitioners, has been removed.

### **NC-200 Series Forms**

Before the passage of AB 218, adults could either petition the court for recognition of gender change (which did not require that an OSC be issued) or, in a single petition, combine that request with a request for a name change (for which an OSC must be issued, and must sometimes be served).<sup>13</sup> For this reason, the council adopted two sets of forms for petitions by adults: one set for petitions seeking only recognition of gender change (the NC-300 series) and another for those seeking both recognition of gender change and name change at the same time (the NC-200 series). Under AB 218, however, combined petitions may now include requests to have various administrative records reflect the petitioner’s changed name and gender, each with different requirements. For this reason, the committee has concluded it no longer makes sense to have a discrete set of forms for each type, or combination of types, of requests. Instead, the committee believes that a single petition that includes all possible requests should be used and is recommending revisions to the NC-300 series to reflect that conclusion.

Accordingly, the committee recommends revoking or renumbering the forms in the NC-200 series:

- *Petition for Change of Name, Recognition of Change of Gender, and Issuance of New Birth Certificate* (form NC-200) (revoke);

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<sup>13</sup> Prior Health & Saf. Code, § 103435.

- *Order to Show Cause for Change of Name to Conform to Gender Identity* (form NC-125/NC-225) (renumber as form NC-125);<sup>14</sup> and
- *Decree Changing Name and Order Recognizing Change of Gender and for Issuance of New Birth Certificate* (form NC-230) (revoke).

### **NC-300 Series Forms**

- *Petition for Recognition of Change of Gender and Sex Identifier, Name Change, and Issuance of New Certificates* (form NC-300) (formerly *Petition for Recognition of Change of Gender and for Issuance of New Birth Certificate*). Currently, form NC-300 allows a petitioner to seek recognition of a change in gender and issuance of a new birth certificate that conforms to that gender. The proposed revisions add additional options by which a petitioner may include requests for a change of name; a new birth certificate for petitioner's child with petitioner's gender changed; and a new marriage license and certificate with petitioner's designation as bride, groom, or neither changed. Instructions are included as to what additional forms need to be completed and attached to support such requests. Petitioners may also request that any of these certificates reflect their changed name. Items reflecting the new statutory jurisdictional and venue requirements have been added. An item for the petitioner to request that a previously obtained name change be reflected on a California issued certificate has been added. The instructions at the top of the form have been updated to advise would-be petitioners that new birth certificates or marriage licenses and certificates reflecting a change of gender can be obtained without the need to file a petition or obtain a court order.
- *Instructions for Filing Petition for Recognition of Change of Gender and Sex Identifier, Name Change, and Issuance of New Certificates* (form NC-300-INFO). The instructions have been removed from page two of current form NC-300 and relocated to this new stand-alone instructions form. The information has been expanded to cover how to petition the court with potentially multiple requests. The instructions begin by advising that new birth certificates and marriage licenses and certificates reflecting a change of gender can be obtained without filing a petition or obtaining a court order. The new venue and jurisdiction requirements have been added. A list of required forms for each of the potential requests is included (along with an advisement that local courts may require additional local forms). Information about when an OSC may need to be served regarding a new marriage license and certificate (when the spouse sharing the certificate has not signed the petition) or when the petition may need to be served on governmental agencies (when the petitioner is under the jurisdiction of the Department of Corrections and Rehabilitation) is included. Information about requesting an accommodation for a disability has been added. Finally, a link to the gender recognition section of the on-line Self-Help Guide to the California Courts has been added.

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<sup>14</sup> This form has the same content as form NC-125, which would not be revoked but remain in effect. The form will be renumbered to include only a single number in place of the current double-numbered NC-125/NC-225.

- *Birth Certificate for Child of Petitioner—Attachment* (form NC-311). This new attachment form provides the necessary information for a request to change the petitioner’s gender (and, if requested, name) on their child’s California birth certificate. If the birth certificate is for an adult child, and the child is alive and not incapacitated, that child must agree to the change. The form provides spaces for an adult child’s signature or for an explanation for the lack of one.
- *Marriage License and Certificate—Attachment* (form NC-312). This new attachment form provides the necessary information for a request to change the petitioner’s designation (and, if requested, name) on a marriage license and certificate that was issued in California and is maintained either by the county where the marriage occurred (for a confidential marriage license) or by the State Registrar (for a not-confidential marriage license). Petitioner’s new designation can be bride, groom, or neither. The form provides spaces for the spouse who shares the license and certificate to sign the petition or an explanation for why the spouse is incapable of signing. The form provides an option by which the petitioner can request the court to issue an OSC directing the nonsigning spouse to show cause why the requested changes should not be made. Finally, a reference to the definition of “confidential marriage” contained in form NC-300-INFO is provided.
- *Order to Show Cause—Issuance of New Marriage License and Certificate* (form NC-325). This new order form is to be issued and served if a petitioner’s living and capable spouse does not sign form NC-312.
- *Order Recognizing Change of Gender and Sex Identifier, for Name Change, and for Issuance of New Certificates* (form NC-330). The current form is an order addressing only change of gender and issuance of a new birth certificate. This revised form—which has been substantially reorganized—addresses the other orders that an adult petitioner can request under Health and Safety Code section 103430. It includes items for the court to make the statutory jurisdictional finding; the findings required for a name change, for changing the birth certificate of an adult child of petitioner, and for changing a marriage license and certificate; and an “other findings” box should a court make findings to deny any part of the petition. Finally, the form includes items by which the court can issue an order granting each request and an “other orders” item in which any or all requests may be denied.

#### **NC-500 Series Forms**

- *Petition for Recognition of Minor’s Change of Gender and Sex Identifier and for Issuance of New Birth Certificate and Change of Name* (form NC-500) (formerly *Petition for Recognition of Minor’s Change of Gender and Issuance of New Birth Certificate and Change of Name*). The proposed form has been reorganized for clarity, with subheadings dividing the form into sections for “Information about Petitioner,” “Request for Recognition of Change of Gender and Sex Identifier,” and “Request for Change of Name.” Substantively, new item 2 has been included and notes that the petitioner is either a California resident or seeking a change to a California birth certificate. In response to

comments received, to accommodate the possibility that a minor may have more than two parents, items 1a and 1d have been reworded and an option has been added to item 3d to allow for petitioner to include information about more than two parents.<sup>15</sup> To implement the notice and OSC requirements, the section relating to recognition of change of gender and sex identifier has been reorganized, and includes requests that the court issue appropriate orders to show cause if any living parent of the minor has not signed the petition (item 6), or all parents are deceased and the petition is being filed by a guardian or guardian ad litem (item 7), and the name change section includes a request for an OSC as to that request as well (item 9c).

- *Instructions for Filing Petition for Recognition of Minor’s Change of Gender and Sex Identifier* (form NC-500-INFO) (formerly *Instructions for Filing Petition for Recognition of Minor’s Change of Gender and Issuance of New Birth Certificate and Change of Name*). The information sheet has been substantially revised for clarity and to reflect the change in form NC-500’s organization as well as the proposed revisions to the OSC (form NC-520). Paragraph 3 has been revised to advise petitioners to check with local courts to see if they require use of additional local forms. Paragraph 6 discusses the notice and OSC requirements. Paragraph 8 has been added to provide information about requesting accommodations for a disability. Finally, paragraph 10 has been added to include a link to the gender recognition section of the online Self-Help Guide to the California Courts.
- *Declaration of Guardian or Juvenile Attorney* (form NC-510G) (formerly *Declaration of Guardian or Dependency Attorney*). This form was revised to add that attorneys acting for juveniles in the juvenile justice system (under Welfare and Institutions Code section 601 or 602) are now among those who may petition for minors. Further, item 4 has been revised for clarity, to use nongendered terms for grandparents, and to specify that the information about minor’s grandparents is required only if *all* parents are deceased or cannot be located.
- *Order to Show Cause—Recognition of Minor’s Change of Gender and Issuance of New Birth Certificate* (form NC-520). This form has been substantially revised, with almost entirely new content. It implements the requirements of new Health & Safety Code section 103430(e)(1), which continues the requirement that the court issue an OSC directed to parents when a petition is filed that does not include the signatures of all living parents, and new subdivision (e)(2), which requires the same order, directed to grandparents, when all parents are deceased and the petition is filed by a guardian or guardian ad litem. The proposed form also includes the OSC required by Code of Civil Procedure section 1277.5 when the petitioner seeks a decree of name change to conform to gender identity. With these revisions, courts will be able to issue a single OSC form to

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<sup>15</sup> Fam. Code, § 7612(c) (“In an appropriate action, a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child.”).

address all situations in which an OSC is required on a minor’s gender- and name-change petition.<sup>16</sup> The notice of hearing has been removed from the revised form because, under the new law, a hearing is to be set only if and when objections are received in response to the OSC.<sup>17</sup> Finally, the title has been revised to clarify that the order was not to show cause “for” recognition of minor’s change of gender.

- *Order Recognizing Minor’s Change of Gender and Sex Identifier and for Issuance of New Birth Certificate* (form NC-530). This proposed new form is a stand-alone order form for all gender-change petitions for minors. Currently, for an order recognizing only a change of gender for a minor, the order form for such petitions by adults (form NC-330) is used; for an order for both change of gender and change of name for a minor, form NC-230 is used; but when either is brought by a guardian, form NC-530G is used. This proposed form would take the place of all three. The form includes the findings needed for making orders on both the gender-change and name-change portions of the petitions (whether unopposed or after objections). It also includes the findings needed for a petition made by a guardian (that the minor will not likely be returning to a parent’s custody) or by a friend or relative (that the parents are deceased and no guardian has been appointed).
- *Order Recognizing Minor’s Change of Gender and for Issuance of New Birth Certificate* (form NC-530G). The committee recommends that this form be revoked in light of proposed form NC-530, which would take its place.

### **Policy implications**

Although the new legislation has numerous policy implications—such as permitting out-of-state residents to request a change of name or recognition of gender change if the request is seeking a change to a certificate issued in California; allowing petitioners to seek new birth or marriage certificates reflecting the petitioners’ new name and gender; and requiring a minor’s parents (or, in certain circumstances, grandparents) either to consent to, or be given notice of, a minor’s petition to recognize a change of gender—these implications are inherent in the statute and unrelated to the proposed forms. The recommendations here simply implement the legislative changes.

### **Comments**

The proposal was initially circulated for comment from April 4 to May 13, 2022. After the Legislature enacted AB 421, additional revisions to the NC-500 series forms were needed to reflect the changes in that statute. That form series, reflecting these new proposed revisions and

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<sup>16</sup> In light of this ability, the committee is no longer recommending adoption of *Order to Show Cause—Petition by Guardian or Guardian ad Litem* (form NC-520G), which was circulated for comment as part of the spring invitation-to-comment cycle.

<sup>17</sup> See Code Civ. Proc., § 1277.5(c); New Health & Saf. Code, § 103430(h).

incorporating some of the comments from the spring comment period, were circulated for additional comment from August 22 to September 19, 2022.

Comments on the first circulation were received from the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee (JRS); three courts (the Superior Courts of Orange (two divisions), San Bernardino, and San Diego Counties); the Orange County Bar Association; and the TransLatin@ Coalition.

Comments on the second circulation of just the further revisions to the NC-500 series were received from three courts (the Superior Courts of Orange, Riverside, and San Diego Counties); several public interest groups (the Alliance for Children’s Rights as well as Disability Rights California, jointly with the Transgender Law Center and Name and Gender-Marker Change Clinic); and a family law practitioner.

All comments are generally favorable, with most requesting minor modifications to the forms. Charts with the full text of the comments received in both circulations and the committee’s response are attached beginning at page 48. The committee accepted many of the suggestions, modifying the forms in light of them. The principal comments are discussed below.

***Suggested revisions to the Orders to Show Cause<sup>18</sup>***

The Joint Rules Subcommittee suggested revisions to the OSCs (forms NC-125, NC-325, and NC-520) and their issuance. First, it recommended that forms NC-125 and NC-325 include a “notice of hearing” section, which would provide a date to trigger the court to act if no objections to a petition for change of name or recognition of gender change were received. The committee declines to make this change. Under the statute, courts may not set a hearing on a petition for name change to conform to gender identity or petition for recognition of gender change before the court receives an objection showing good cause why the petition should be denied.<sup>19</sup>

Second, JRS noted that if a petitioner who has to serve an OSC waited the full 30 days to serve the OSC, a would-be objector would be left with only 2 weeks to file an objection. The comment did not expressly indicate a problem with this timeframe or recommend changes. Regardless, the committee notes that the deadline by which a petitioner must serve an OSC and the deadline by which written objections must be filed are both mandated by statute.<sup>20</sup>

Third, JRS recommended that a blank *Declaration* (form MC-030), which the recipient would be able to use to file an objection, be served with an OSC. JRS stated that use of the form would make it easier for the court to identify the document as an objection and to connect the document

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<sup>18</sup> The initial invitation to comment sought specific comments on whether, in light of a statutory ambiguity in AB 218 (in Health and Safety Code section 103430) regarding when an order to show cause should be issued, the council should adopt form OSCs. Subsequently, AB 421 resolved this statutory ambiguity, mooted the request for specific comment. The comments received are included in the attached comment charts but are not discussed below.

<sup>19</sup> Code Civ. Proc., § 1277.5(c); New Health & Saf. Code, §103430(h).

<sup>20</sup> New Health & Saf. Code, § 103430(e) & (f).

to the correct case. The committee declines to adopt this suggestion. The committee does not believe that a blank declaration form, without instructions, is an appropriate vehicle for objections to petitions for name change or recognition of gender change. More generally, requiring a form for objections to be served along with an OSC (and the substance of that form) is outside the scope of this proposal, and potentially outside the purview of the council, in light of the Legislature having occupied this area of law.

The Superior Court of Orange County also commented on the OSC. It suggested that form NC-520 be revised to move items 1b and 2b (the items by which the court orders the OSC recipient to show cause) to their own section and to place check boxes before each for the judicial officer to expressly mark them as “ordered.” The committee declines to make these suggested revisions. The committee believes that keeping the name- and gender-change portions of the form separate (including the respective court order items) will make the forms easier to understand for the recipients of the OSC. Additionally, the committee declines to add checkboxes to items 1b and 2b to stay consistent with other OSCs and because courts will indicate which order or orders are applicable by checking the appropriate check boxes already provided on the form.

***Suggested revisions for situations where a minor has more or fewer than two parents***

A practicing attorney suggested revising form NC-500 and form NC-530 to address situations where a minor has more than two parents, or only one parent. The committee recognizes that there are situations when a minor may have more than two parents under the law.<sup>21</sup> As circulated, form NC-500 had two items that suggested a minor could have, at maximum, two parents. First, item 1a and 1b indicated that the petition was being brought by “two parents” or “one parent” of the minor, respectively. Second, item 3d included spaces for the petitioner to list the information of two nonsigning parents.

To account for the possibility of more than two parents, item 1a has been revised to read “parent or parents (*names*):” without suggesting a maximum number. Item 3d has been revised to include an option for the petitioner to include an attachment providing more information about additional nonsigning parents. Additional conforming changes were made to form NC-500-INFO and form NC-530. On form NC-500-INFO, two references to “both” parents were changed in paragraph 1. On form NC-530, item 3 was revised and items 3d(1) and 3d(2) were changed to read “all of minor’s parents (*names*):” and “fewer than all of minor’s parents (*names*):,” respectively.

For situations where a minor has only one parent, the committee believes the forms are sufficiently clear as drafted and declines to make any further changes to the forms.

***Instructions for requesting an accommodation for disability***

The Civil Rights Practice Group of Disability Rights California, the Transgender Law Center, and Name & Gender-Marker Change Clinic suggested that form NC-500-INFO be revised to

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<sup>21</sup> Fam. Code, § 7612(c).

instruct petitioners about requesting accommodations for disability. The committee agrees but is using different language than that proposed by the commenters, to conform with other Judicial Council forms. Form NC-500-INFO has been revised to add paragraph 8, entitled “Requesting Accommodations for Disability.” This new item instructs that *Disability Accommodation Request* (form MC-410) can be used to request an accommodation. It also directs the reader to *How to Request a Disability Accommodation for Court* (form MC-410-INFO) and the court’s ADA Coordinator for further information. Identical additions have been made to form NC-100-INFO (new paragraph 11) and form NC-300-INFO (new paragraph 8).

***Suggested revisions to attachment form regarding marriage licenses***

TransLatin@ Coalition submitted a comment that suggested several revisions to *Marriage License and Certificate—Attachment* (form NC-312), the form used to support a request that a new marriage license and certificate be issued reflecting the petitioner’s change in gender. First, it suggested that in seeking information about the “marriage license and certificate to be reissued” the form was confusing as to whether it was referring to the “old” marriage license and certificate or the “new” ones being sought. The committee agrees and has revised the “license and certificate to be reissued” language to read “original marriage license and certificate” throughout the form. (See form NC-312, items 2 and 3.)

Second, it stated that the form could more clearly state that if the petitioner’s spouse did not sign the petition, the petitioner would be required to have the OSC served on the nonsigning spouse and a proof of service filed. The committee notes that the form does include a request that the court issue the OSC should the form not be signed by the spouse, and form NC-300-INFO, at item 5, instructs the petitioner as to the service requirements in more detail than could be placed on this form. As a result, the committee does not believe that form NC-312 needs to be revised on this point.

Finally, it suggested that a definition of “confidential marriage” and “nonconfidential marriage” would be useful, either on form NC-312 or on form NC-300-INFO. The committee agrees. A definition of confidential marriage has been added to form NC-300-INFO at item 10 and this definition has been cross-referenced in form NC-312’s instructions. In addition, references to “nonconfidential” have been changed to “not confidential” for clarity and to be consistent with the language used in the statute.<sup>22</sup>

***Suggested revisions to order on petition for minor***

A practicing attorney commenter suggested substantive revisions to *Order Recognizing Minor’s Change of Gender and Sex Identifier and for Issuance of New Birth Certificate* (form NC-530). First, the commenter recommended reorganizing the court order section of the form by moving the new birth certificate requests to the end of the form. The committee agreed and revised this portion of the form for clarity. As revised, the orders recognizing petitioner’s gender change

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<sup>22</sup> New Health & Saf. Code, § 103431(b)(1)(B).

(item 4) and any change of name (item 5) have been separated, and the orders relating to birth certificates have been combined (item 6) and placed just above “Other orders” (item 7).

The commenter also suggested revised wording for the court order portion of the form. First, the commenter suggested, in relevant part, that the court order a new birth certificate that reflects the minor’s “new gender” as opposed to the minor’s “change of gender.” (See item 6.) The committee declines to make this revision because the phrase “reflecting the change of gender” is more consistent with the statutory language and more clearly conveys that the court order is not itself changing the minor’s gender.<sup>23</sup> Although the commenter expressed concern that a clerk could read the phrase as requiring the new birth certificate to reflect that the minor’s gender had in fact changed (as opposed to simply listing the new gender on the birth certificate), the committee notes that the statute prohibits such a reading.<sup>24</sup>

Second, the commenter suggested that the court order directing issuance of a new birth certificate include language requiring that the new birth certificate list the minor’s “current legal name.” The committee agrees that the order for issuance of a new birth certificate should include any name change sought by the petitioner, and item 6 has been revised accordingly. The committee, however, declines to revise the item to use the phrase “current legal name,” as recommended by the commenter. The committee believes “current legal name” could be potentially confusing for petitioners and that the phrase “change of name” accurately describes what is being sought by the petitioner and ordered by the court.<sup>25</sup>

### ***Suggestions relating to service of process and filing proof of service***

Comments were received addressing service of process of OSCs or the requirement that a proof of service be filed with the court. TransLatin@ Coalition suggested that item 3 of *Marriage License and Certificate—Attachment* (form NC-312) more clearly describe the petitioner’s obligation to service the OSC on a nonsigning spouse and have a proof of service filed with the court. The committee notes that paragraph 5 of form NC-300-INFO includes instructions regarding service of process and the requirement that a proof of service be filed. The committee believes that further instruction on form NC-312 is unnecessary. The commenter also recommended that form NC-300-INFO include a link to a reader-friendly “Service of Process in California” guide. The committee is unaware of such a guide. However, to aid petitioners, a link

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<sup>23</sup> Consistent with this latter point, the committee has further revised item 4 to read that the minor’s gender and sex identifier “has been changed to” rather than “is changed to.”

<sup>24</sup> New Health & Saf. Code, § 103431(a)(1), (a)(2), & (c)(2).

<sup>25</sup> In responding to this comment, the committee discovered that *Order Recognizing Change of Gender and Sex Identifier, for Name Change, and for Issuance of New Certificates* (form NC-330) and *Order Recognizing Minor’s Change of Gender and Sex Identifier and for Issuance of New Birth Certificate* (form NC-530), as circulated, did not include options addressing when a petitioner or minor, rather than seeking a decree of name change in the instant petition, has instead *previously* obtained a decree of name change and now seeks to have their birth certificate reflect this new name. To address this scenario, items 3b and 10b were added to form NC-330 and item 5b was added to form NC-530.

to the gender recognition section of the Self-Help Guide to the California Courts has been added to form NC-300-INFO at paragraph 11.<sup>26</sup>

Disability Rights California commented that paragraph 3 of form NC-500-INFO could more clearly indicate that *Proof of Service of Order to Show Cause* (form NC-121) can be used for proof of service even if a name change is not sought. The committee believes that it is sufficiently clear in context that form NC-121 may be used as proof of service of an OSC, even when a name change is not sought. The committee notes that paragraph 3 discusses service of process in general, and form NC-121 does not contain any provisions that would limit its use to the name-change context.

The Alliance for Children’s Rights suggested that *Petition for Recognition of Minor’s Change of Gender and Sex Identifier and for Issuance of New Birth Certificate and Change of Name* (form NC-500) and *Declaration of Guardian or Juvenile Attorney* (form NC-510G) include options for a petitioner to indicate that petitioner is unable to serve the OSC because the whereabouts of the parents or grandparents are unknown. The committee declines to make the suggested revision. The statute requires the OSC to be personally served or served by mail if the recipient is outside California. If such service cannot “reasonably be accomplished,” the court may order an alternative service method “reasonably calculated to give actual notice to the person who did not sign the petition.”<sup>27</sup> The committee believes that if a petitioner does not know the whereabouts of the parent or grandparent entitled to notice, the petitioner must separately move the court to permit alternative service.

***Option for petitioners who do not know if there are any living nonsigning parents***

Multiple commenters stated, in response to a request for specific comment, that it would be helpful to courts if form NC-500 included an option for petitioners to state that petitioner and minor did not know if any nonsigning parents were living. The committee agrees and has added item 3c to form NC-500 to provide an option where the petitioner can indicate that “[n]either the minor nor the adult petitioner has any information about whether any nonsigning parent is living.” The committee believes that petitioner, who signs the petition under penalty of perjury, should be able to accurately reflect a potential lack of knowledge regarding the minor’s parents, rather than to be forced to guess whether the minor’s parents are living. The committee envisions that this option will flag for the court the need for further inquiry.

**Alternatives considered**

As discussed above and described on the attached comments charts, the advisory committee considered all the alternatives raised by commenters.

The advisory committee did not consider the possibility of not revising the forms, because the current forms are not in compliance with the new legislation.

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<sup>26</sup> This link has also been added to form NC-500-INFO at paragraph 10.

<sup>27</sup> New Health & Saf. Code, § 103430(f).

## **Fiscal and Operational Impacts**

The new law, as reflected in these recommended form revisions, will have an impact on court case management systems: new case categories and filing and minute codes may need to be created. Mechanisms will need to be developed to track the time frames for filing objections on the proceedings in which the statutes do not allow hearing dates to be set at time of filing, in order for the judicial officers to be able to determine whether to schedule matters for hearing. There will need to be training for clerks, judicial officers, and court legal services and self-help offices on the new statutory requirements and how these new forms reflect those changes. New training materials and internal procedures will need to be developed.

Because the new procedures and requirements are mandated by statute, these operational impacts cannot be avoided.

## **Attachments and Links**

1. Forms NC-100, NC-100-INFO, NC-110, NC-120, NC-125/NC-225, NC-150, NC-200, NC-230, NC-300, NC-300-INFO, NC-311, NC-312, NC-325, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, NC-530, and NC-530G, at pages 17–47
2. Chart of comments on proposal SPR22-04, at pages 48–68
3. Chart of comments on proposal SP22-08, at pages 69–91
4. Link A: Assem. Bill 218,  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB218](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB218)
5. Link B: Assem. Bill 421,  
[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB421](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB421)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:  NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<p><b>FOR COURT USE ONLY</b></p> <h1 style="margin: 0;">DRAFT</h1> <h2 style="margin: 10px 0 0 0;">10.24.2022</h2> <h1 style="margin: 20px 0 0 0;">Not approved by Judicial Council</h1>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (name of each petitioner):	
<b>PETITION FOR CHANGE OF NAME</b>	CASE NUMBER:

**Before you complete this petition, read the *Instructions for Filing a Petition for Change of Name* (form NC-100-INFO). (To change your name as part of a petition to recognize a change of gender, and obtain a new California birth certificate for yourself or your child, or a marriage certificate reflecting those changes, use form NC-300.)**

1. Petitioner (present name): (check a or b)
  - a.  resides in this county.
  - b.  does not live in California and (check 1 or 2)
    - (1.)  wants a name change on a marriage license, and was married in this county.
    - (2.)  wants a name change on their or their child's birth certificate, which was issued in this county.
  
2. Petitioner requests that the court decree the following name changes (list every name that you are seeking to change):
 

<u>Present name</u>	<u>Proposed name</u>
a. _____	changed to _____
b. _____	changed to _____
c. _____	changed to _____

Continued (If you are seeking to change additional names, you must prepare a list and attach it to this petition as Attachment 2.)
  
3. Petitioner requests that the court issue an order directing all interested persons to appear or file objections to show cause why this petition for change of name of the persons identified in item 2 should not be granted.
4. The number of persons under 18 years of age whose names are to be changed is (specify): \_\_\_\_\_
5. If this petition requests the change of name of any person or persons under 18 years, this request is being made by
  - a.  two parents.
  - b.  one parent.
  - c.  near relative (name and relationship): \_\_\_\_\_
  - d.  guardian (name): \_\_\_\_\_
  - e.  attorney for an individual under the jurisdiction of the juvenile court (name): \_\_\_\_\_
  - f.  other (specify): \_\_\_\_\_
6.  This petition seeks to change the name of (check one)  petitioner  (name): \_\_\_\_\_ to conform to that person's gender identity.
7. For each person whose name is to be changed, petitioner provides the following information (you must attach Name and Information About the Person Whose Name Is to Be Changed (form NC-110) for each person identified in item 2):
  - a. Number of pages attached (specify number): \_\_\_\_\_
  - b.-f. (These items are on the attached page or pages of form NC-110.)

# INSTRUCTIONS FOR FILING A PETITION FOR CHANGE OF NAME

NC-100-INFO

**DRAFT: 10/23/2022 Not approved by  
the Judicial Council**

## 1. Where to File

- a. **California residents:** The petition for change of name must be filed in the superior court of the county where the person whose name is to be changed is a resident.
- b. **Non-California residents:** If the person whose name is to be changed is also requesting an order for the issuance of a new California marriage license and certificate, a new California birth certificate for the person whose name is to be changed, or a new California birth certificate for a minor or adult child of the person whose name is to be changed, the petition for change of name must be filed in the superior court of the county where the marriage took place, or where the birth certificate was issued.

## 2. Whose Name May Be Changed

The petition may be used to change your own name and, under certain circumstances, the names of others (e.g., children under 18 years of age).

## 3. Confidentiality of Certain Names

If you are a participant in the Secretary of State's address confidentiality program (Safe at Home), your current and proposed names may be kept confidential. (Code Civ. Proc., § 1277(b).) See *Information Sheet for Name Change Proceedings Under Address Confidentiality Program (Safe at Home)* (form NC-400-INFO) for additional instructions.

## 4. What Forms Are Required

Prepare an original and two copies of each of the following documents:

- a. *Petition for Change of Name* (form NC-100)
- b. *Name and Information About the Person Whose Name Is to Be Changed* (form NC-110) (attach as many copies as necessary)
- c. *Order to Show Cause—Change of Name* (form NC-120) or, if applicable, *Order to Show Cause—Change of Name to Conform to Gender Identity* (form NC-125)
- d. *Decree Changing Name* (form NC-130 or, for guardians, form NC-130G)
- e. *Civil Case Cover Sheet* (form CM-010)

In addition, a guardian must prepare and attach a *Supplemental Attachment to Petition for Change of Name (Declaration of Guardian)* (form NC-110G) for each child whose name is to be changed.

Local courts may require additional local forms. Check with the court to determine if additional forms are required.

## 5. Filing and Filing Fee

Prepare an original *Civil Case Cover Sheet* (form CM-010). File the original petition and *Civil Case Cover Sheet* with the clerk of the court and obtain two filed-endorsed copies of the petition. A filing fee will be charged unless you qualify for a fee waiver. (If you want to apply for a fee waiver, see *Request to Waive Court Fees* (form FW-001) and *Information Sheet on Waiver of Court Fees and Costs* (form FW-001-INFO). There is no filing fee for minors in the State's address confidentiality program (Safe at Home).

## 6. Requesting a Court Hearing Date and Obtaining the Order to Show Cause

You should request a date for the hearing on the *Order to Show Cause—Change of Name* (form NC-120) at least six weeks in the future. Take the completed form to the clerk's office. The clerk will provide the hearing date and location, obtain the judicial officer's signature, file the original, and give you a copy.

If you are changing your name to conform to gender identity, you need not request a hearing date. Instead, complete the *Order to Show Cause—Change of Name to Conform to Gender Identity* (form NC-125) and take the completed form to the clerk's office.

The clerk will obtain the judicial officer's signature, file the original, and give you a copy.

## 7. Publishing the Order to Show Cause

In most cases, a copy of the *Order to Show Cause* must be published in a local newspaper of general circulation once a week for **at least four consecutive weeks** before the date of the hearing. You must select the newspaper from among those newspapers legally qualified to publish orders and notices. The newspaper used must file a Proof of Publication with the superior court before the hearing. If no newspaper of general circulation is published in the county, the court may order the *Order to Show Cause* to be posted by the clerk.

But you **do not have to publish** the order if the following applies:

- You are seeking to change a name to conform to your gender identity;
- You are a participant in the State Witness Program;
- You are a participant in the address confidentiality program, and the petition alleges that you are petitioning to avoid (a) domestic violence, (b) stalking, (c) sexual assault, or (d) human trafficking; or
- The name change is for a minor or nonminor dependent under the jurisdiction of the juvenile court.

Page 1 of 2

**8. Name Change for Children**

- a. If you are a petitioning parent requesting the name change for a child under 18 years of age, and one of the parents, if living, does not join in consenting to the name change, the petitioning parent must have a copy of the *Order to Show Cause* or notice of the time and place of the hearing served on the nonconsenting parent. Service must be made **at least 30 days prior to the hearing**, under Code of Civil Procedure section 413.10, 414.10, 415.10, or 415.40.
- b. If you are a petitioning parent or any other adult requesting the name change for a child **to conform to that child's gender identity** and a living parent does not join in the petition for the name change, you must have a copy of the petition and the *Order to Show Cause* served on the nonconsenting parent. Service must be made **within 30 days of the date the order is made by the court**, under Code of Civil Procedure section 413.10, 414.10, 415.10, or 415.40.
- c. If the nonconsenting parent resides in California, the order or notice must be personally served on the nonconsenting parent. You cannot personally serve this document.
- d. If the nonconsenting parent resides outside California, that parent may be served by sending a copy of the order or notice by first-class mail, postage prepaid, return receipt requested.
- e. If you are the guardian of a minor and filing a petition to change the name of that minor, you must (1) provide notice of the hearing to any living parent of the child by personal service at least 30 days before the hearing (or as in b above), or (2) if either or both parents are deceased or cannot be located, serve notice of the hearing on the child's grandparents, if living, not less than 30 days before the hearing, under Code of Civil Procedure section 413.10, 414.10, 415.10, or 415.40. *(If the minor's name is being changed to conform to gender identity, these notices and orders for grandparents need not be completed or served.)*

If you have served a parent or grandparent, file a copy of the completed *Proof of Service of Order to Show Cause* (form NC-121) with the court before the hearing.

**9. Name Change for Person in Jail or Prison or on Parole**

If you are a person in county jail, or under the jurisdiction of the Department of Corrections and Rehabilitation (in state prison, or on parole) you may file a petition to change your name, but must serve the petition on a government agency.

- If in county jail, you must provide a copy of the petition to the county sheriff's department. Check with the department as to how that should be done.
- If in state prison, you must provide a copy of the petition to the warden. Check with the warden's office as to how that should be done.
- If on parole, you must provide a copy of the petition to the regional parole administrator. Check with the administrator's office as to how that should be done.

After you have provided a copy to the sheriff, warden, or regional parole administrator, file a copy of the completed *Proof of Service By Mail* (form POS-030) with the court.

Note that the declaration on form NC-110 as to whether the petitioner is in jail or under jurisdiction of the California Department of Corrections and Rehabilitation is only for purposes of determining if service of the petition is required.

**10. Court Hearing**

If no written objection is filed at least two court days before the scheduled hearing, the court may grant the petition and sign the decree without a hearing. Check with the court to find out if a hearing will be held. If there is a hearing, bring copies of all documents to the hearing. If the judge grants the petition, the judge will sign the original decree.

If you filed a petition for name change to conform to gender identity, and timely objections were filed, the court may set a hearing date after receiving the objections. If it does, you will be sent a notice of the hearing date. Check with the court after the deadline for filing objections to see if a hearing date has been set. If there are no objections, the court will grant the petition and sign the decree without a hearing.

**11. Requesting Accommodations for Disability**

If you have a disability and need an accommodation to help you access your court hearing, you can use *Disability Accommodation Request* (form MC-410) to make your request. You can also ask the court's ADA Coordinator in your court for help. For more information, see *How to Request a Disability Accommodation for Court* (form MC-410-INFO).

**12. Issuance of New Birth Certificate**

If you were born in California and want to amend a birth certificate to show the name change, you should contact the following office:

California Department of Public Health  
Vital Records - MS 5103  
P.O. Box 997410  
Sacramento, CA 95899-7410

Phone: 916-445-2684  
website: [www.cdph.ca.gov](http://www.cdph.ca.gov)

Local courts may supplement these instructions. Check with the court to determine whether supplemental information is available. For instance, the court may provide you with additional written information identifying the department that handles name change petitions, the times when petitions are heard, and the newspapers that may be used to publish the *Order to Show Cause*.

PETITION OF <i>(name of petitioner or petitioners):</i>	CASE NUMBER:
FOR CHANGE OF NAME	

**NAME AND INFORMATION ABOUT THE PERSON  
WHOSE NAME IS TO BE CHANGED**

Attachment of

Attachment to *Petition* (form NC-100, form NC-300, or form NC-500)

*(You must use a separate attachment for each person whose name is to be changed. If petitioner is a guardian of a minor, a declaration of guardian (form NC-110G) must also be completed and attached for each minor whose name is to be changed.)*

**DRAFT  
10/23/22**

**Not approved  
by Judicial  
Council**

7. (Continued) Petitioner applies for a decree to change the name of the following person:

- b.  Self  Other
  - (1) Present name *(specify):*
  - (2) Proposed name *(specify):*
  - (3) Born on *(date of birth):*  
and presently  under 18 years of age  18 years of age or older
  - (4) Born at *(place of birth):*
  - (5) Sex *(as stated on original birth certificate):*  Male  Female
  - (6) Current residence address *(street, city, county, state, and zip code):*

c. Reason for name change *(explain):*

- d. Relationship of the petitioner to the person whose name will be changed:
  - (1)  Self
  - (2)  Parent
  - (3)  Guardian
  - (4)  Guardian ad litem **or attorney for minor appointed by juvenile court**
  - (5)  Near relative *(indicate relationship):*
  - (6)  Other *(specify):*

e. If the person whose name will be changed is under 18 years of age, provide the names and addresses, if known, of the following persons:

- (1) Parent *(name):* \_\_\_\_\_ *(address):* \_\_\_\_\_
- (2) Parent *(name):* \_\_\_\_\_ *(address):* \_\_\_\_\_
- (3) *(Only if neither parent is living)* Near relatives *(names, relationships, and addresses):*

f. If the person whose name will be changed is 18 years of age or older, that person must sign the following declaration:

DECLARATION	
I declare under penalty of perjury under the laws of the State of California that <i>(check one)</i> <input type="checkbox"/> I am not <input type="checkbox"/> I am under the jurisdiction of the California Department of Corrections and Rehabilitation (in state prison or on parole) or in county jail <b>and</b> <i>(check one)</i> <input type="checkbox"/> I am not <input type="checkbox"/> I am required to register as a sex offender under Penal Code section 290.	
Date: _____	_____ <small>(SIGNATURE OF PERSON WHOSE NAME IS TO BE CHANGED)</small>
_____ <small>(TYPE OR PRINT NAME OF PERSON WHOSE NAME IS TO BE CHANGED)</small>	

***(If petitioner is represented by an attorney, the attorney's signature follows):***

Date: _____	_____ <small>(SIGNATURE OF ATTORNEY)</small>
_____ <small>(TYPE OR PRINT NAME)</small>	

***(Each petitioner must sign this petition in the space provided below or, if additional pages are attached, at the end of the last attachment.)*** I declare under penalty of perjury under the laws of the State of California that the information in the foregoing petition is true and correct.

Date: _____	_____ <small>(SIGNATURE OF PETITIONER)</small>
_____ <small>(TYPE OR PRINT NAME)</small>	

Date: _____	_____ <small>(SIGNATURE OF PETITIONER)</small>
_____ <small>(TYPE OR PRINT NAME)</small>	

ADD ADDITIONAL SIGNATURE LINES FOR ADDITIONAL PETITIONERS       SIGNATURE OF PETITIONERS FOLLOWS LAST ATTACHMENT      **Page 1 of 1**

PETITIONER OR ATTORNEY (name, State Bar number, and address):   TELEPHONE NO.: _____ FAX NO. (optional): _____ E-MAIL ADDRESS (optional): _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY  <h1 style="margin: 0;">DRAFT</h1>  <h2 style="margin: 0;">10.24.2022</h2>  <h3 style="margin: 0;">Not approved by Judicial Council</h3>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (name of each petitioner):   <p style="text-align: right;">FOR CHANGE OF NAME</p>	
<b>ORDER TO SHOW CAUSE—CHANGE OF NAME</b>	CASE NUMBER: _____

TO ALL INTERESTED PERSONS:

1. Petitioner (name): \_\_\_\_\_ filed a petition with this court  
 for a decree changing names as follows:
- | <u>Present name</u> | to | <u>Proposed name</u> |
|---------------------|----|----------------------|
| a. _____            | to | _____                |
| b. _____            | to | _____                |
| c. _____            | to | _____                |
| d. _____            | to | _____                |
| e. _____            | to | _____                |

Continued on Attachment 1.

2. THE COURT ORDERS that all persons interested in this matter appear before this court at the hearing indicated below to show cause, if any, why the petition for change of name should not be granted. Any person objecting to the name changes described above must file a written objection that includes the reasons for the objection at least two court days before the matter is scheduled to be heard and must appear at the hearing to show cause why the petition should not be granted. If no written objection is timely filed, the court may grant the petition without a hearing.

**NOTICE OF HEARING**

a. Date: \_\_\_\_\_ Time: \_\_\_\_\_  Dept.: \_\_\_\_\_  Room: \_\_\_\_\_

b. The address of the court is  same as noted above  other (specify): \_\_\_\_\_

(To appear remotely, check in advance of the hearing for information about how to do so on the court's website. To find your court's website, go to [www.courts.ca.gov/find-my-court.htm](http://www.courts.ca.gov/find-my-court.htm).)

3. a.  A copy of this *Order to Show Cause* must be published at least once each week for four successive weeks before the date set for hearing on the petition in a newspaper of general circulation:
- (for resident of this county) printed in this county (specify paper): \_\_\_\_\_
  - (for other petitioners) printed in the county in which petitioner resides or, if no county, in the local subdivision or territory where petitioner resides.
- b.  Other (specify): \_\_\_\_\_

Date: \_\_\_\_\_ JUDGE OF THE SUPERIOR COURT

(If petitioner is requesting change of name of a minor, see Note Regarding Petitions for Minors on page 2.)

**NOTE REGARDING PETITIONS FOR MINORS**

When a *Petition for Change of Name* has been filed for a child by one parent and the other parent, if living, does not join in consenting to the name change, the petitioner must have a notice of the time and place of the hearing or a copy of the *Order to Show Cause* served on the other parent not less than 30 days prior to the hearing under Code of Civil Procedure section 413.10, 414.10, 415.10, or 415.40.

If a petition to change the name of a child has been filed by a guardian, the guardian must (1) provide notice of the hearing to any living parent of the child by personal service at least 30 days before the hearing, or (2) if either or both parents are deceased or cannot be located, serve notice of the hearing on the child's grandparents, if living, not less than 30 days before the hearing under Code of Civil Procedure section 413.10, 414.10, 415.10, or 415.40.

*(This Note is included for the information of the petitioner and is not to be included in the Order to Show Cause published in the newspaper.)*

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<p style="text-align: center;"><b>FOR COURT USE ONLY</b></p> <p style="text-align: center;"><b>DRAFT</b></p> <p style="text-align: center;"><b>10.25.2022</b></p> <p style="text-align: center;"><b>Not approved by Judicial Council</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (name of each petitioner):  <p style="text-align: right;">FOR CHANGE OF NAME</p>	
<b>ORDER TO SHOW CAUSE—CHANGE OF NAME TO CONFORM TO GENDER IDENTITY</b>	CASE NUMBER:

TO ALL INTERESTED PERSONS:

1. Petitioner (name): \_\_\_\_\_ filed a petition with this court  
 for a decree changing name as follows:

	<u>Present name</u>		<u>Proposed name</u>	
a.		to		
b.		to		
c.		to		
d.		to		

2. THE COURT ORDERS that any person objecting to the name changes described above must file a written objection that includes the reasons for the objection **within six weeks of the date this order is issued**. If no written objection is timely filed, the court will grant the petition without a hearing.

3. A hearing date may be set only if an objection is timely filed and shows good cause for opposing the name change. Objections based solely on concerns that the proposed change is not the person's actual gender identity or gender assigned at birth do not constitute good cause. (See Code Civ. Proc., § 1277.5(c).)

**NOTE: When a petition has been filed to change the name of a minor to conform to gender identity and the petition does not include the signatures of both living parents, the petition and this order to show cause must be served on the parent who did not sign the petition, under Code of Civil Procedure section 413.10, 414.10, or 415.40, within 30 days from the date on which the order is made by the court.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<i>FOR COURT USE ONLY</i>  <b>DRAFT</b>  <b>10.24.2022</b>  <b>Not approved by Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (name):	
<b>NOTICE OF HEARING ON PETITION</b>	CASE NUMBER:

1. Objections have been filed to petitioner's request for (check all that apply)

- a.  a decree changing name to conform to gender.
- b.  an order for the issuance of a new birth certificate reflecting the change of petitioner's gender.
- c.  an order for the issuance of a new marriage license and certificate reflecting the change in designation of the petitioner to bride, groom, or neither bride nor groom.
- d.  an order for the issuance of a new birth certificate for petitioner's child reflecting the change of petitioner's gender.

2. A hearing will take place at the time and place below, at which time the court may consider the objections that have been filed.

a.	Date:	Time:	Dept.:	Room:
----	-------	-------	--------	-------

b. The address of the court is

- same as noted above.
- other

(specify):

(To appear remotely, check in advance of the hearing for information about how to do so on the court's website. To find your court's website, go to [www.courts.ca.gov/find-my-court.htm](http://www.courts.ca.gov/find-my-court.htm).)

Date: Clerk, by \_\_\_\_\_, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<p style="font-size: 24pt; font-weight: bold;">DRAFT</p> <p style="font-size: 18pt; font-weight: bold;">03/22/22</p> <p style="font-size: 14pt; font-weight: bold;">Not approved by the Judicial Council</p>	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PETITION OF (name):		
<b>PETITION FOR CHANGE OF NAME, RECOGNITION OF CHANGE OF GENDER, AND ISSUANCE OF NEW BIRTH CERTIFICATE</b>		CASE NUMBER:

**Before you complete this petition, you should read the *Instructions for Filing* on the next page. You must answer all questions and check all boxes that apply to you on this petition. You must file this petition in the superior court of the county where the person whose name is to be changed resides.**

1. Petitioner (*present name*): \_\_\_\_\_ is 18 years old or older and a resident of this county.
2. Petitioner requests that the court decree that petitioner's name is changed, in order to conform to petitioner's gender identity, to (*proposed name*): \_\_\_\_\_
3. Petitioner requests a decree recognizing that the petitioner's gender is changed to:
  - a.  female.
  - b.  male.
  - c.  nonbinary.
4. Petitioner requests that the court order that a new birth certificate be issued reflecting the gender and name changes sought by this petition.
5. Petitioner requests that the court issue an order directing any interested persons to file written objections to show cause why the petition for change of name should not be granted.
6. Petitioner provides the following information in support of this petition:
  - a. The declaration below.
  - b.-f. The information contained in the attachment (*attach a completed copy of the Name and Information About the Person Whose Name Is to Be Changed (form NC-110)*).

DECLARATION

I (*present name*): \_\_\_\_\_ declare under penalty of perjury under the laws of the State of California that the request for a change in gender to (*check one*)  female  male  nonbinary is to conform my legal gender to my gender identity and is not for any fraudulent purpose.

Date: \_\_\_\_\_

(TYPE OR PRINT NAME OF PETITIONER)

(SIGNATURE OF PETITIONER)

(Instructions on next page)

## INSTRUCTIONS FOR FILING A PETITION FOR CHANGE OF NAME AND GENDER

### 1. Where to File

The petition for change of name and gender must be filed in the superior court in the county where the petitioner is a resident.

### 2. Whose Name May Be Changed

The petition may be used to change your name and to obtain a court order recognizing a change of gender and for issuance of a new birth certificate, if you are 18 or older. (Minors must use form NC-500.) If you were born in California, you may file the order with the State Registrar and obtain a new birth certificate.

### 3. What Forms Are Required

You need an original and two copies of each of the following documents:

- a. *Petition for Change of Name, Recognition of Change of Gender, and Issuance of New Birth Certificate* (form NC-200)
- b. *Name and Information About the Person Whose Name Is to Be Changed (Attachment to Petition for Name Change)* (form NC-110)
- c. *Order to Show Cause—Change of Name to Conform to Gender Identity* (form NC-125)
- d. *Decree Changing Name and Order Recognizing Change of Gender Identity and for Issuance of New Birth Certificate* (form NC-230)
- e. *Civil Case Cover Sheet* (form CM-010)

### 4. Filing and Filing Fee

Prepare an original *Civil Case Cover Sheet* (form CM-010). File the original petition and *Civil Case Cover Sheet* with the clerk of the court and obtain two filed-endorsed copies of the petition. A filing fee will be charged unless you qualify for a fee waiver. (If you want to apply for a fee waiver, see *Request to Waive Court Fees* (form FW-001) and *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001—INFO).)

### 5. Filing the Order to Show Cause

Ask the court clerk to obtain a judge's signature on the *Order to Show Cause*, then file the original order in the clerk's office and obtain filed-endorsed copies of the order.

### 6. Domestic Violence Confidentiality Program

In cases where the petitioner is a participant in the state address confidentiality program (Safe at Home), the petition, the order to show cause, and the decree should, instead of giving the proposed name, indicate that the name is confidential and on file with the Secretary of State. See *Information Sheet for Name Change Proceedings Under Address Confidentiality Program (Safe at Home)* (form NC-400-INFO).

### 7. Court Hearing

If no objections are filed, the court will grant the petition without a hearing. A hearing date will be set if timely objections have been filed. If there is a hearing, you will be sent a notice by the court. You may also check with the court after the deadline to see if a hearing date has been set. Bring copies of all documents to the hearing. If the judge grants the name and gender change petition, the judge will sign the original decree.

### 8. Birth Certificate

If you were born in California, to obtain a new birth certificate reflecting the change of gender, file a certified copy of the order within 30 days with the Secretary of State and the State Registrar and pay the applicable fees. You may write or contact the State Registrar at:

**California Department of Public Health**  
**Vital Records – MS 5103**  
**P.O. Box 997410**  
**Sacramento, CA 95899-7410**  
**Phone: 916-445-2684**  
**Website: [www.cdph.ca.gov](http://www.cdph.ca.gov)**

Local courts may supplement these instructions. Check with the court to determine whether supplemental information is available. For instance, the court may provide you with additional written information identifying the department that handles name and gender change petitions, and the times when petitions are heard.

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:  <b>FOR COURT USE ONLY</b>  <b>DRAFT</b>  <b>03/22/22</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (name of petitioner):  FOR CHANGE OF NAME AND GENDER	
<b>DECREE CHANGING NAME AND ORDER RECOGNIZING CHANGE OF GENDER AND FOR ISSUANCE OF NEW BIRTH CERTIFICATE</b>	CASE NUMBER:

1. The petition was duly considered:
- a.  at the hearing on (date): \_\_\_\_\_ in Courtroom: \_\_\_\_\_ of the above-entitled court.
  - b.  without hearing.

**THE COURT FINDS**

2. a. All notices required by law have been given.
- b. Each person whose name is to be changed identified in item 3 below  
 is not  is required to register as a sex offender under section 290 of the Penal Code.  
 This determination was made  by using CLETS/CJIS  based on information provided to the clerk of the court  
 by a local law enforcement agency.
- c.  No objections to the proposed change of name were made.
- d.  Objections to the proposed change of name were made by (name): \_\_\_\_\_
- e. It appears to the satisfaction of the court that all the allegations in the petition are true and sufficient and that the petition should be granted.
- f.  Other findings (if any): \_\_\_\_\_

**THE COURT ORDERS**

3. The name of (present name): \_\_\_\_\_  
 is changed to (new name): \_\_\_\_\_

**THE COURT FURTHER ORDERS**

4. The gender of (new name): \_\_\_\_\_  
 is changed to:
- a.  female.
  - b.  male.
  - c.  nonbinary.

**THE COURT FURTHER ORDERS**

5. A new birth certificate shall be issued reflecting the changes in name and gender.
6. If petitioner was born in California, a certified copy of this order shall be filed by petitioner within 30 days with the State Registrar. When the State Registrar receives a certified copy of this order and payment of the applicable fees, the State Registrar must establish for the petitioner a new birth certificate reflecting the new name and the gender of the petitioner as it has been altered.

Date: \_\_\_\_\_

\_\_\_\_\_ JUDGE OF THE SUPERIOR COURT  
 SIGNATURE OF JUDGE FOLLOWS LAST ATTACHMENT

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR ( <i>name</i> ):	FOR COURT USE ONLY  <h1 style="margin: 0;">DRAFT</h1>  <h2 style="margin: 0;">10.24.2022</h2>  <h3 style="margin: 0;">Not approved by Judicial Council</h3>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF ( <i>name</i> ):	
<b>PETITION FOR RECOGNITION OF CHANGE OF GENDER AND SEX IDENTIFIER</b> <input type="checkbox"/> <b>AND CHANGE OF NAME</b> <input type="checkbox"/> <b>AND ISSUANCE OF NEW CERTIFICATES</b>	CASE NUMBER:

Before you complete this petition, read *Instructions for Filing Petition for Recognition of Change of Gender and Sex Identifier, Name Change, and Issuance of New Certificates* (form NC-300-INFO).  
**Note:** You do not need to file this petition or obtain a court order in order to obtain a new California birth certificate for you or your child reflecting a change of your gender or a new California marriage license and certificate reflecting a change of gender. You may use an administrative process instead; see Health and Safety Code section 103426.

1. Petitioner (*present name*): \_\_\_\_\_ is 18 years old or older and requests an order recognizing the change of petitioner's gender and sex identifier to
  - a.  female.
  - b.  male.
  - c.  nonbinary.
  
2. Petitioner is a California resident or seeks a change to a California birth certificate or marriage license and certificate.
  
3.  Petitioner has already obtained a decree of name change that petitioner wants reflected on the certificates checked in item 5. Petitioner attaches a certified copy of the decree of name change to this petition.  
*(If this item is checked, skip item 4 and indicate the request in item 5.)*
  
4.  Petitioner requests that the court decree that petitioner's name be changed, in order to conform to petitioner's gender identity, to (*proposed name*):
  - a. This is the right court for the petition to change name, because petitioner (*check (1) or (2).*)
    - (1)  resides in this county.
    - (2)  does not reside in California and (*check one*):
      - (i)  wants a name change on their or their child's birth certificate, which was issued in this county.
      - (ii)  wants a name change on a marriage license, and was married in this county.
  - b.  Petitioner requests that the court issue an order directing any interested persons to file written objections to show cause why the petition for change of name should not be granted.
  - c.  *Name and Information About the Person Whose Name Is to Be Changed* (form NC-110) is attached to this form.

SHORT TITLE:	CASE NUMBER:
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5.  Issuance of New California Certificate

- a.  Petitioner requests an order for the issuance of a new birth certificate for petitioner reflecting the change of gender  and change of name.
- b.  Petitioner requests an order for the issuance of a new birth certificate for petitioner's child reflecting petitioner's change of gender  and change of name.

(Attach *Birth Certificate for Child of Petitioner—Attachment* (form NC-311).)

- c.  Petitioner requests an order for the issuance of a new marriage license and certificate with a change of designation of the person as bride, groom, or having neither box checked  and change of name.

(Attach *Marriage License and Certificate—Attachment* (form NC-312).)

I declare under penalty of perjury under the laws of the State of California that the request for a change in gender and sex identifier to (*check one*)  female  male  nonbinary is to conform my legal gender and sex identifier to my gender identity and is not for any fraudulent purpose.

Date: \_\_\_\_\_

\_\_\_\_\_ (TYPE OR PRINT NAME OF PETITIONER)       \_\_\_\_\_ (SIGNATURE OF PETITIONER)

Date: \_\_\_\_\_

\_\_\_\_\_ (TYPE OR PRINT NAME OF ATTORNEY)       \_\_\_\_\_ (SIGNATURE OF ATTORNEY)

## INSTRUCTIONS FOR FILING PETITION FOR RECOGNITION OF CHANGE OF GENDER AND SEX IDENTIFIER, NAME CHANGE, AND ISSUANCE OF NEW CERTIFICATES

**Note you do not need to file this petition or obtain a court order in order to obtain a new California birth certificate for you or your child reflecting a change of gender or a new California marriage license and certificate reflecting a change of gender.** See Health and Safety Code section 103426. You may make the request directly to the State Registrar at the California Department of Public Health or, for a confidential marriage license and certificate, the county clerk of the county that issued the confidential marriage license. (See contact information on page 2.)

### 1. How to Make Request

A petition for recognition of change of gender and sex identifier, either on its own or combined with a request for a name change, a new birth certificate for petitioner, a new birth certificate for petitioner's child or children, and a new marriage license and certificate must be filed on form NC-300. This form may only be used by individuals 18 years old or older. (Minors must use form NC-500.)

### 2. Where to File

The petition to recognize a change of gender and sex identifier may be filed in the superior court of any county in California, but if the petition **includes a request to change petitioner's name**, it must be filed:

- a. If petitioner is a California resident, in the superior court where petitioner presently resides, or
- b. If petitioner is not a California resident, in the superior court in the county where petitioner's birth certificate, marriage certificate, or child's birth certificate was issued.

### 3. What Forms Are Required

You will need to have an original and a copy of each of the following documents:

- a. *Petition for Recognition of Change of Gender and Sex Identifier, Name Change, and Issuance of New Certificates* (form NC-300)
- b. *Order Recognizing Change of Gender and Sex Identifier, for Name Change, and for Issuance of New Certificates* (form NC-330)
- c. If requesting name change:  
*Name and Information About the Person Whose Name Is to Be Changed* (form NC-110), and  
*Order to Show Cause—Change of Name to Conform to Gender Identity* (form NC-125)  
(Note: If you already have a decree of change of name, attach a certified copy of the decree to the petition instead of completing form NC-110 and form NC-125.)
- d. If requesting order for new birth certificate for child:  
*Birth Certificate for Child of Petitioner—Attachment* (form NC-311)
- e. If requesting order for new marriage license and certificate:  
*Marriage License and Certificate—Attachment* (form NC-312) and, if form NC-312 is not signed by the other spouse, *Order to Show Cause—Issuance of New Marriage License and Certificate* (form NC-325)
- f. *Civil Case Cover Sheet* (form CM-010)

Local courts may require additional local forms. Check with the court to determine if additional forms are required.

### 4. Filing with Court

Prepare an original *Civil Case Cover Sheet* (form CM-010). Take the completed petition, with any required attachments and the proposed orders with the *Civil Case Cover Sheet*, along with a copy of each document, to the clerk of the court. Obtain a filed-endorsed copy (stamped by the clerk) of the petition and ask that any required orders to show cause be issued.

A filing fee will be charged unless you qualify for a fee waiver. (If you want to apply for a fee waiver, see *Request to Waive Court Fees* (form FW-001) and *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO).)

### 5. Service on Spouse

If seeking a change to your marriage license and certificate, and the spouse sharing that marriage license has not signed the form (and is alive and capable of signing it), you must serve the *Order to Show Cause—Issuance of New Marriage License and Certificate* (form NC-325) that has been issued by the court, along with a copy of the petition, on that spouse within 30 days from the date on which the order is made by the court. It must be served in person or, if out of state, by mail, in the manner described in Code of Civil Procedure sections 413.10, 414.10, or 415.40. Service must be made by someone other than you, and you must have the server complete a proof of service and file it with the court.

## 6. Service on Government Agency—Name Change for Person in Jail or Prison or on Parole

If you are in county jail or under the jurisdiction of the California Department of Corrections and Rehabilitation (in state prison, or on parole), a petition to change your name—including one on form NC-300—must be served on a government agency.

- If in county jail, you must provide a copy of the petition to the county sheriff's department.
- If in state prison, you must provide a copy of the petition to the warden.
- If on parole, you must provide a copy of the petition to the regional parole administrator.

Check with each office as to how to serve it. After you have provided a copy to the sheriff, warden, or regional parole administrator, file a copy of the completed *Proof of Service By First-Class Mail—Civil* (form POS-030) with the court.

Note that the declaration on form NC-300 as to whether the petitioner is in jail or under jurisdiction of the California Department of Corrections and Rehabilitation is only for purposes of determining if service of the petition is required.

## 7. Court Hearings

A hearing date will be set only if timely objections have been filed. If there is a hearing, you will be sent a notice by the court. Bring copies of all documents to the hearing. If the judge grants the petition, the judge will sign *Order Recognizing Change of Gender and Sex Identifier, for Name Change, and for Issuance of New Certificates* (form NC-330).

If no timely objections are filed, the court will grant the petition and sign the order without a hearing.

## 8. Requesting Accommodations for Disability

If you have a disability and need an accommodation to help you access your court hearing, you can use *Disability Accommodation Request* (form MC-410) to make your request. You can also ask the court's ADA Coordinator in your court for help. For more information, see *How to Request a Disability Accommodation for Court* (form MC-410-INFO).

## 9. Issuance of New Birth Certificate

If you were born in California, or if your children were, to obtain a new birth certificate for you or them reflecting your change of gender, file a certified copy of the order within 30 days with the State Registrar and pay the applicable fees. You may write or contact the State Registrar at:

**California Department of Public Health**  
**Vital Records – MS 5103**  
**P.O. Box 997410**  
**Sacramento, CA 95899-7410**

**Phone: 916-445-2684**  
**Website: [www.cdph.ca.gov](http://www.cdph.ca.gov)**

## 10. Issuance of New Marriage License and Certificate

If you were married in California, to obtain a new marriage license and certificate reflecting your change of gender with a change in your designation to bride, groom, or neither, file a certified copy of the order within 30 days, and pay the applicable fees, as follows:

- If the original marriage license and certificate was **confidential**, then file with the county clerk in the county where the confidential marriage license and certificate was issued. (A confidential marriage is a marriage that is available to two unmarried adults who have been living together as spouses. Confidential marriages do not require witnesses to attend a ceremony or sign the marriage license.)
- If the original marriage license and certificate was **not** confidential, then file with the State Registrar, whose contact information is given in item 9 above.

## 11. Self-Help Guide

For more information, please visit the California Courts Self-Help Guide on gender recognition, available at <http://selfhelp.courts.ca.gov/gender-recognition-order-index>.

Local courts may supplement these instructions. Check with the court to determine whether supplemental information is available. For instance, the court may provide you with additional written information identifying the department that handles these petitions, the times when petitions are heard if hearings are required, and whether remote appearances by video or telephone are available.

PETITION OF <i>(name of petitioner)</i> : <b>DRAFT 10.24.22</b> <b>Not approved by Judicial Council</b>	CASE NUMBER:
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**BIRTH CERTIFICATE FOR CHILD OF PETITIONER—ATTACHMENT**  
**Attachment to *Petition for Recognition of Change of Gender and Sex Identifier, Name Change,***  
***and Issuance of New Certificates (form NC-300)***

Petitioner must complete and attach this form to form NC-300 if asking the court to order issuance of a new birth certificate of a minor or adult child that reflects petitioner's change in gender, or change in both gender and name. A separate form is required for each child.

1. This is an attachment to a request for an order for the issuance of a new birth certificate for a minor or adult child to reflect petitioner's *(check all that apply)*
  - a.  change of gender and sex identifier.
  - b.  change of name.
    - (1)  Petitioner is seeking a decree changing their name as part of this petition, and form NC-110 is also attached.
    - (2)  Petitioner has already obtained a decree for change of name; a certified copy of the decree is attached to the petition for recognition of change of gender and sex identifier.

2. Information about petitioner's minor or adult child

- a. Name of child:
- b. Date of birth:
- c. City and county of birth:
- d. Petitioner's child is  a minor (under 18 years of age)  an adult (18 years of age or older)

3.  Child whose birth certificate will be changed is an adult.

If petitioner's child is 18 years of age or older, this request must be signed by the adult child whose birth certificate would be changed by granting this petition, unless the adult child is deceased or incapable of providing a signature. *(Check applicable item below.)*

- a.  Petitioner's adult child agrees to the issuance of a new birth certificate and provides a signature below.

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME)



\_\_\_\_\_  
 (SIGNATURE OF PETITIONER'S ADULT CHILD)

- b.  Petitioner's adult child is deceased. Date of death:
- c.  Petitioner's adult child is incapable of providing a signature for the following reason:

Explain:

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME)



\_\_\_\_\_  
 (SIGNATURE OF PETITIONER)

PETITION OF <i>(name of petitioner)</i> : <b>DRAFT 10.24.22</b> <b>Not approved by Judicial Council</b>	CASE NUMBER:
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**MARRIAGE LICENSE AND CERTIFICATE—ATTACHMENT**  
**Attachment to *Petition for Recognition of Change of Gender and Sex Identifier, Name Change, and Issuance of New Certificates (form NC-300)***

Petitioner must complete and attach this form to form NC-300 if asking the court to order issuance of a new marriage license and certificate or a new confidential marriage license and certificate that reflect petitioner's change in gender, or change in both gender and name. For a definition of confidential marriage, see item 10 on *Instructions for Filing Petition for Recognition of Change of Gender and Sex Identifier, Name Change, and Issuance of New Certificates (form NC-300-INFO)*.

**1. Request to issue a new marriage license and certificate**

This is an attachment to a request for an order for the issuance of a new marriage license and certificate or new confidential marriage license and certificate to reflect *(check all that apply)*

- a.  recognition of petitioner's change of gender and sex identifier by changing petitioner's designation to:  
 bride     groom     neither bride nor groom.
- b.  change of name.
  - (1)  Petitioner is seeking a decree changing their name as part of this petition, and form NC-110 is also attached.
  - (2)  Petitioner has already obtained a decree for change of name; a certified copy of the decree to the petition for recognition of change of gender and sex identifier is attached.

**2. Information about original marriage license and certificate**

- a. Original date of issuance:
- b. County of issuance:
- c. Petitioner name on original marriage license and certificate:
- d. Petitioner date of birth:
- e. Spouse name on original marriage license and certificate:
- f. Spouse date of birth:
- g. The original marriage license and certificate are:     not confidential     confidential.

**3. Spouse who shares petitioner's marriage license and certificate**

To be granted without further notice required, this request must be signed by the spouse sharing the original marriage license and certificate, unless that person is deceased or incapable of providing a signature. *(One item below must be checked.)*

- a.  The spouse who shares petitioner's original marriage license and certificate agrees to the issuance of a new marriage license and certificate with petitioner's new designation. *(Sign below.)*

Date:

\_\_\_\_\_ (TYPE OR PRINT NAME)



\_\_\_\_\_ (SIGNATURE OF SPOUSE LISTED ON THE ORIGINAL MARRIAGE LICENSE AND CERTIFICATE)

- b.  The spouse is deceased.                      Date of death:
- c.  The spouse is incapable of providing a signature for the following reason *(explain)*:

- d.  *(Check this item if spouse is living and capable of signing but has not.)* Petitioner requests that the court issue an order directing the spouse who shares petitioner's original marriage license and certificate to file written objections to show cause why the requested changes should not be made.

Date:

\_\_\_\_\_ (TYPE OR PRINT NAME)



\_\_\_\_\_ (SIGNATURE OF PETITIONER)

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR ( <i>name</i> ):	STATE BAR NUMBER:  STATE:                      ZIP CODE: FAX NO.:	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>DRAFT</b></p> <p style="text-align: center;"><b>10.24.2022</b></p> <p style="text-align: center;"><b>Not approved by Judicial Council</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PETITION OF ( <i>name of each petitioner</i> ):  <p style="text-align: right;">FOR CHANGE OF NAME</p>		
<b>ORDER TO SHOW CAUSE—ISSUANCE OF NEW MARRIAGE LICENSE AND CERTIFICATE</b>		CASE NUMBER:

**TO ALL INTERESTED PERSONS:**

1. Petitioner (*name*): \_\_\_\_\_ filed a petition with this court for an order that a new  marriage license and certificate  confidential marriage license and certificate be prepared
  - a. changing petitioner's designation on the license and certificate to (*check one*)
    - bride
    - groom
    - neither bride nor groom
  - b.  and changing name to (*proposed name*): \_\_\_\_\_
  
2. THE COURT ORDERS that any person objecting to issuance of a new marriage license and certificate with the changes described above must file a written objection that includes any reasons why the requested changes would be fraudulent, **within six weeks of the date this order is issued**. If no written objection showing good cause to oppose the changes to the marriage license and certificate is timely filed, the court will enter the order that the gender and sex identifier recognition is granted without a hearing.
  
3. A hearing date may be set only if an objection is timely filed and shows good cause for opposing the petition. Objections based solely on concerns that the proposed change is not the person's actual gender identity or gender assigned at birth do not constitute good cause. (See Code Civ. Proc., § 1277.5(c) and Health & Saf. Code, § 103430(h).)

Date:

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:  <b>FOR COURT USE ONLY</b>  <b>DRAFT</b>  <b>10/23/2022</b>  <b>Not approved by the Judicial Council</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (name):	
<b>ORDER RECOGNIZING CHANGE OF GENDER AND SEX IDENTIFIER</b> <input type="checkbox"/> <b>AND FOR NAME CHANGE</b> <input type="checkbox"/> <b>AND FOR ISSUANCE OF NEW CERTIFICATES</b>	CASE NUMBER:

1. The petition was duly considered
- a.  at the hearing on (date): \_\_\_\_\_ in Department: \_\_\_\_\_ of the above-entitled court.
- b.  without hearing.

**THE COURT FINDS**

2. a.  Petitioner is a California resident or seeks a change to a California birth certificate or marriage license and certificate.  
 b.  All notices required by law have been given.  
 c.  No objections to the petition were made.  
 d.  Objections to the petition were made by (name): \_\_\_\_\_
3.  The petition included a **request for change of name** for the person described in item 10.
- a. The person whose name is to be changed  
 is not  is required to register as a sex offender under Penal Code section 290.  
 This determination was made  by using CLETS/CJIS  based on information provided to the clerk of the court by a local law enforcement agency.
- b.  A certified copy of a court decree changing petitioner's name was attached to the petition.
4.  The petition included a **request to order a new birth certificate for one or more minor children of petitioner.**
5.  The petition included a **request to order a new birth certificate for one or more adult children of petitioner**, and (check one)
- a.  each request for a new birth certificate for an adult child on form NC-311 contains the signature of the adult child agreeing to the reissuance of their birth certificate.
- b.  the court was satisfied that the following adult child or children who did not sign form NC-311 are either deceased or incapable of providing a signature:
- Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
 Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_
6.  The petition included a **request for an order for the issuance of a new marriage certificate**, for a marriage on (date): \_\_\_\_\_, with a change of designation of the petitioner as bride, groom, or having neither box checked and (check one)
- a.  the spouse who shares the marriage certificate with the petitioner has agreed to the issuance of a new marriage license and certificate OR the court is satisfied that the spouse is deceased or incapable of providing a signature.
- b.  the petition did not include the agreement of the spouse who shares the marriage license and certificate with the petitioner. An order directing the spouse to make known any objection to the changes requested on the marriage license and certificate or confidential marriage license and certificate by filing a written objection, which includes any reasons why the requested changes would be fraudulent, was issued and served.

PETITION OF ( <i>name</i> ):	CASE NUMBER:
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7.  The court is satisfied that all the allegations in the petition are true and sufficient and that the petition should be granted.
8.  Other findings (*if any*):

**THE COURT ORDERS**

9. The gender and sex identifier of petitioner has been changed to  female  male  nonbinary.

**THE COURT FURTHER ORDERS**

10.  The name of (*present name*):
- a.  is changed to (*new name*):
- b.  was previously changed by court decree to (*name*):

11.  A new birth certificate must be issued reflecting the change of gender and sex identifier described in item 9  and change of name described in item 10.

If petitioner was born in California, a certified copy of this order shall be filed by the petitioner within 30 days with the State Registrar. When the State Registrar receives a certified copy of this order and payment of the applicable fees, the State Registrar shall establish for the petitioner a new birth certificate reflecting the gender of the petitioner as it has been altered and any change of name specified in this order.

12.  A new birth certificate for the following child or children of the petitioner must be issued reflecting petitioner's change of gender and sex identifier described in item 9  and change of name described in item 10.

Full Name: _____	Date of Birth: _____
Full Name: _____	Date of Birth: _____
Full Name: _____	Date of Birth: _____
Full Name: _____	Date of Birth: _____

If petitioner's child or children were born in California, a certified copy of this order shall be filed by the petitioner within 30 days with the State Registrar. When the State Registrar receives a certified copy of this order and payment of the applicable fees, the State Registrar shall establish for each child a new birth certificate reflecting the gender of the petitioner as it has been altered and any change of name specified in this order.

13.  The marriage license and certificate for petitioner and (*name of spouse*): \_\_\_\_\_ issued on (*date*): \_\_\_\_\_ in (*county*): \_\_\_\_\_ must be reissued with a change of designation of the petitioner to  bride  groom  neither bride nor groom  and change of name as described in item 10.

If the original marriage license and certificate were **confidential** and issued within this state, a certified copy of this order shall be filed by the petitioner within 30 days with the county clerk in the county where the confidential marriage license and certificate were issued. When the county clerk receives a certified copy of this order with an application and payment of applicable fees, the county clerk shall issue a confidential marriage license and certificate for the petitioner.

If the original marriage license and certificate were **not** confidential and issued within this state, a certified copy of this order shall be filed by the petitioner within 30 days with the State Registrar. When the State Registrar receives a certified copy of this order with an application and payment of applicable fees, the State Registrar shall issue a marriage license and certificate for the petitioner.

14.  Other orders:

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY  <b>DRAFT</b>  <b>10.25.2022</b>  <b>Not approved by Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (name of each petitioner):	
<b>PETITION FOR RECOGNITION OF MINOR'S CHANGE OF GENDER AND SEX IDENTIFIER AND FOR ISSUANCE OF NEW BIRTH CERTIFICATE</b> <input type="checkbox"/> <b>AND CHANGE OF NAME</b>	CASE NUMBER:

Use this form only for a petition relating to a minor. (Petitioners 18 years or older must use form NC-300.) Before completing this petition, read the *Instructions for Filing Petition for Recognition of Minor's Change of Gender and Sex Identifier* (form NC-500-INFO).

- If you are seeking a name change in addition to recognition of gender change, complete items 8 or 9. If you are only seeking recognition of gender change, skip these items.
- If the petition is being brought by a guardian, an attorney appointed as guardian ad litem for a dependent minor (Welf. & Inst. Code, § 326.5), or an attorney for a minor under the jurisdiction of the juvenile court (Welf. & Inst. Code, § 601 or 602), you must also complete *Declaration of Guardian or Juvenile Attorney* (form NC-510G).

**INFORMATION ABOUT PETITIONER**

1. This request is being made by (minor's present name): \_\_\_\_\_ and (check one of the following)
  - a.  parent or parents (names): \_\_\_\_\_
  - b.  guardian (name): \_\_\_\_\_
  - c.  attorney for minor under jurisdiction of juvenile court (name): \_\_\_\_\_
  - d.  near relative or friend (check only if all parents of minor are deceased and no guardian has been appointed)  
 Name and relationship to minor: \_\_\_\_\_
2. Petitioning minor either is a California resident or seeks a change to a California birth certificate.
3. Parents of minor (check one item below)
  - a.  The minor has no living parent.
  - b.  The minor has no living parent other than the parent or parents who have signed this petition.
  - c.  Neither the minor nor the adult petitioner has any information about whether any non-signing parent is living.
  - d.  The minor has one or more living parents who have not signed the petition (specify names and addresses):  
 Parent's Name: \_\_\_\_\_ Address: \_\_\_\_\_  
  
 Parent's Name: \_\_\_\_\_ Address: \_\_\_\_\_
- Continued (Check this box if you need additional space. Attach a sheet of paper and write "Attachment 3d" for a title.)
4.  (Check if petition is filed by a guardian or attorney appointed for minor under jurisdiction of juvenile court.)  
 This petition is supported by the information contained in attached *Declaration of Guardian or Juvenile Attorney* (form NC-510G).

**REQUEST FOR RECOGNITION OF CHANGE OF GENDER AND SEX IDENTIFIER**

5. Petitioners request a decree recognizing that minor's gender and sex identifier is changed to:
  - a.  female.
  - b.  male.
  - c.  nonbinary.

PETITION OF <i>(name of each petitioner)</i> :	CASE NUMBER:
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- 6.  *(Check if petition does not include the signature of all living parents.)* Petitioners request that the court issue an order on form NC-520 directing any living parent who did not sign this petition to file written objections to show cause why this petition for recognition of minor's change of gender and sex identifier should not be granted. (Form NC-520 is filed along with this document.)
- 7.  *(Check if petition is filed by a guardian or guardian ad litem for minor, and all parents are deceased or cannot be located.)* Petitioners request that the court issue an order on form NC-520 directing that any living grandparent file written objections to show cause why this petition for recognition of minor's change of gender and sex identifier should not be granted. (Form NC-520 is filed along with this document.)

**REQUEST FOR CHANGE OF NAME**

- 8.  A decree of change of name for the minor has already been obtained, and a certified copy of the decree is attached.
- 9.  Petitioners request that the court decree that, to conform to minor's gender identity, the minor's name is changed to *(proposed name)*:
  - a. Petitioners provide the additional required information in support of this request for name change on the attached *Name and Information About the Person Whose Name Is to Be Changed* (form NC-110).
  - b. This is the right court for the petition to change name because minor *(check (1) or (2))*
    - (1)  is a resident of this county.
    - (2)  does not reside in California and wants to change their birth certificate that was issued in this county.
  - c. Petitioners request that the court issue an order on form NC-520 directing all interested persons to file written objections to show cause why the petition for change of name should not be granted. (Form NC-520 is filed along with this document.)
- 10.  Petitioners request the court to order that a new birth certificate be issued reflecting the recognition of gender change and any name change sought by this petition.
- 11. Number of pages attached *(specify number)*:

**DECLARATION**

I *(minor's present name)*: \_\_\_\_\_ declare under penalty of perjury under the laws of the State of California that the request for a change in gender to *(check one)*  **female**  **male**  **nonbinary** is to conform my legal gender to my gender identity and is not for any fraudulent purpose.

Date:

\_\_\_\_\_ ▶ \_\_\_\_\_  
 (TYPE OR PRINT NAME OF MINOR) (SIGNATURE OF MINOR)

Date:

\_\_\_\_\_ ▶ \_\_\_\_\_  
 (TYPE OR PRINT NAME OF PETITIONING ADULT and RELATIONSHIP TO MINOR) (SIGNATURE OF PETITIONING ADULT)

Date:

\_\_\_\_\_ ▶ \_\_\_\_\_  
 (TYPE OR PRINT NAME OF PETITIONING ADULT and RELATIONSHIP TO MINOR) (SIGNATURE OF PETITIONING ADULT)

Date:

\_\_\_\_\_ ▶ \_\_\_\_\_  
 (TYPE OR PRINT NAME OF PETITIONING ADULT and RELATIONSHIP TO MINOR) (SIGNATURE OF PETITIONING ADULT)

Date:

\_\_\_\_\_ ▶ \_\_\_\_\_  
 (TYPE OR PRINT NAME OF PETITIONER'S ATTORNEY) (SIGNATURE OF PETITIONER'S ATTORNEY)

## INSTRUCTIONS FOR FILING PETITION FOR RECOGNITION OF MINOR'S CHANGE OF GENDER AND SEX IDENTIFIER

### 1. Who Can File

Anyone who lives in California or was born here (or got married or had children here) can ask a court for an order recognizing a change of gender and sex identifier and for issuance of a new birth certificate reflecting that change. If the person asking for the order is under 18, the petition must be made on form NC-500 and signed by an adult. (If the person is 18 or older, use form NC-300.) The petition for a minor must be signed by at least one of the following (it can be signed by more than one):

- One or more of the minor's parents
- The minor's guardian
- An attorney appointed to act as guardian ad litem for a dependent minor (under Welfare and Institutions Code section 326.5)
- An attorney representing a minor in the juvenile justice system (under Welfare and Institutions Code section 601 or 602)
- If all of minor's parents are deceased and no guardian has been appointed, a near relative or friend

### 2. Where to File

The *Petition for Recognition of Minor's Change of Gender and Sex Identifier and for Issuance of New Birth Certificate and Change of Name* (form NC-500) may be filed in the superior court of any county in California, but if the petition **includes a request to change the minor's name**, it must be filed:

- If the minor is a California resident, in the superior court where the minor presently resides, or
- If the minor is not a California resident, in the superior court in the county where the minor's birth certificate was issued.

If the petition is filed by an attorney appointed as guardian ad litem for a dependent minor, or one representing a minor alleged or adjudged to be a person described in Welfare and Institutions Code section 601 or 602, the petition must be filed in the court having jurisdiction over the minor.

### 3. What Forms Are Required

All petitioners need an original and two copies of each of the following forms:

- *Petition for Recognition of Minor's Change of Gender and Sex Identifier and for Issuance of New Birth Certificate and Change of Name* (form NC-500)
- *Order Recognizing Minor's Change of Gender and Sex Identifier and for Issuance of New Birth Certificate* (form NC-530)
- *Civil Case Cover Sheet* (form CM-010)

Some petitioners will also need an original and two copies of each of the following forms:

- *Order to Show Cause—Recognition of Minor's Change of Gender and Issuance of New Birth Certificate* (form NC-520). This form is needed if
  - (1) the petition is not signed by all living parents of the minor;
  - (2) the petition is filed by a guardian, guardian ad litem, or attorney acting for a minor under Welfare and Institutions Code section 601 or 602, **and** all of minor's parents are deceased or cannot be located; or
  - (3) the petition seeks a decree changing the minor's name.
- *Name and Information About the Person Whose Name Is to Be Changed* (form NC-110). This form is needed if the petition seeks a decree changing the minor's name.
- *Declaration of Guardian or Juvenile Attorney* (form NC-510G). This form is needed if the petition is filed by a guardian, by an attorney guardian ad litem, or an attorney acting for a minor under Welfare and Institutions Code section 601 or 602.

Local courts may require additional local forms. Check with your court to determine if additional forms are required.

### 4. Completing the Petition

Use form NC-500 only for a person under 18. (Adults seeking an order recognizing change of gender must use form NC-300.)

*Section of form titled Information About Petitioner:*

- In item 1, provide the name of the minor and the name and relationship of the adult who is signing the petition. One of the persons listed in that item must sign. (See paragraph 1 above as to which adults can sign.)
- Item 2 asserts that the petitioning minor is a California resident or is seeking a change to a California birth certificate.

- Item 3 asks whether the minor has any living parents. If the minor has any living parents who did **not** sign the petition, provide the name and address of any non-signing parent in item 3d.
- In item 4, check the box if the petition is signed by a guardian or dependency attorney appointed as a guardian ad litem, or an attorney acting for a minor under Welfare and Institutions Code section 601 or 602, **and** attach *Declaration of Guardian or Juvenile Attorney* (form NC-510G) to the petition.

*Section of form titled Request for Recognition of Change of Gender and Sex Identifier:*

- In item 5, check the box to indicate what gender and sex identifier the minor wants the court to recognize as the minor's new gender and sex identifier.
- Check item 6 **ONLY** if the petition is not signed by all living parents of the minor. This item asks the court to issue an order that will provide notice to any non-signing parent that any objections to the petition must be filed with the court within a certain time frame.
- Check item 7 **ONLY** if the petition is (1) filed by a guardian, a guardian ad litem, or an attorney acting for a minor under Welfare and Institutions Code section 601 or 602 **and** (2) all of minor's parents are deceased or cannot be located. This item asks the court to issue an order that will give notice to the minor's living grandparents that any objections to the petition must be filed with the court within a certain time frame.

*Section of form titled Request for Change of Name:*

**Note:** If the petition is not asking the court to change the name of the minor or to have minor's birth certificate reflect a prior name change, do not complete items 8 and 9 on the form. If the minor wants their name changed on their birth certificate, follow the instructions below.

- If requesting a change of name, check the box "and change of name" at the top part of form NC-500.
- Check item 8 if the minor has previously obtained a decree of name change and wants to have their birth certificate reissued to reflect this name change. If checked, a certified copy of the name change decree must be attached. (If item 8 is checked, you do not need to complete item 9.)
- In item 9, write the proposed new name the minor wants the court to order.
- Item 9a notes that *Name and Information About the Person Whose Name Is to Be Changed* (form NC-110) must be attached. Attach that form if seeking a name change in this petition.
- In item 9b, check the box showing why the name change petition may be filed in a particular court. (See paragraph 2 above.)
- Item 9c is required and asks the court to issue an order that will give notice to all interested persons that any objections to the name change petition must be filed with the court within a certain time frame.

*Remaining items on form*

- In item 10, check the box to request that the court order that a new birth certificate be issued that will reflect the gender change to be recognized by the court as well as any name change being sought by the petition.
- In item 11, list the number of pages attached to the petition.
- *Declaration:* The minor may complete (by filling out the minor's name and checking the box identifying the new gender) and sign the Declaration on the second page of the petition. Note that it is signed under penalty of perjury. The adult named in item 1 must also sign the form, and any living parent may also sign.

## 5. Filing and Filing Fee

Prepare an original *Civil Case Cover Sheet* (form CM-010). File with the clerk of the court the original petition and any attachments or orders to show cause required on page 1 of this information sheet with the *Civil Case Cover Sheet* and obtain two filed-endorsed copies of the petition and any order to show cause. A filing fee will be charged unless you qualify for a fee waiver. If you want to apply for a fee waiver, see *Request to Waive Court Fees* (form FW-001) and *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO).

## 6. Orders to Show Cause and Hearing Date

*When an Order to Show Cause is required*

An order to show cause may be required with certain petitions if

- the petition includes a request to change a minor's name;
- the petition is not signed by all living parents of the minor; or
- the petition is filed by a guardian, a guardian ad litem, or an attorney acting for a minor under Welfare and Institutions Code section 601 or 602 **and** all of minor's parents are deceased or cannot be located.

If any of these conditions apply, complete the top part of an original and two copies of the *Order to Show Cause—Recognition of Minor's Change of Gender and Issuance of New Birth Certificate* (form NC-520) (complete the portion of the form above the title, and check the box if a name change is requested). Submit that form with the petition. The clerk will obtain the judicial signature and give you back copies.

#### *What to do with the Order to Show Cause*

The order to show cause must be served on certain individuals, as described below, within a set time frame:

- If the petition did not include the signature of all living parents of the minor, a copy of the order and the petition must be served on the nonsigning parent within **four weeks** of issuance of the order.
- If a petition seeks a change of name, even though an order to show cause must be issued to all interested persons, it needs to be served only if all living parents have not signed the petition.
- If the petition was filed by a guardian, a guardian ad litem, or an attorney acting for a minor under Welfare and Institutions Code section 601 or 602 **and** all of minor's parents are deceased or cannot be located, a copy of the order and the petition must be served on the minor's living grandparents within **four weeks** of issuance of the order.

If the person to be served lives in California, the form and petition must be served in person. If they live outside California, the form may be served either in person or by first-class mail requiring return receipt. If such service is not possible, or if the person lives outside the United States, then the court may order that service be done in another way. Service must be made by someone other than the petitioner, but the petitioner must have the server complete a proof of service and file it with the court. (Form NC-121 may be used.)

#### *What happens next*

If objections are filed within six weeks of the issuance of the order to show cause, the court will set a hearing date and send you and the objectors notice of the date, time, and place. If no objections are filed, the court will make the decision based on the petition.

### 7. Court Hearing

Check with the court after the deadline for objections to find out if a hearing will be held. If a hearing is held, bring copies of all documents to the hearing. If the judge grants the petition, the judge will sign the original order, form NC-530.

### 8. Requesting Accommodations for Disability

If you have a disability and need an accommodation while you are at court, you can use *Disability Accommodation Request* (form MC-410) to make your request. You can also ask the court's ADA Coordinator in your court for help. For more information, see *How to Request a Disability Accommodation for Court* (form MC-410-INFO).

### 9. Birth Certificate

If you were born in California, to obtain a new birth certificate reflecting the change of gender or name, file a certified copy of the order within 30 days with the Secretary of State and the State Registrar and pay the applicable fees. You may write or contact the State Registrar at:

**California Department of Public Health**

**Vital Records – MS 5103**

**P.O. Box 997410**

**Sacramento, CA 95899-7410**

**Phone: 916-445-2684**

**Website: [www.cdph.ca.gov](http://www.cdph.ca.gov)**

### 10. Self-Help Guide

For more information, please visit the California Courts Self-Help Guide on gender recognition, available at <https://selfhelp.courts.ca.gov/gender-recognition-order-index>.

Local courts may supplement these instructions. Check with the court to determine whether supplemental information is available. For instance, the court may provide you with additional written information identifying the department that handles name- and gender-change petitions, and the times when petitions are heard.

PETITION OF <i>(name of petitioner or petitioners):</i> <div style="text-align: center; font-weight: bold; font-size: 1.2em;">DRAFT 10.23.2022 not approved by Judicial Council</div> <div style="text-align: center; font-size: 0.8em;">FOR CHANGE OF GENDER</div>	CASE NUMBER:
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**DECLARATION OF GUARDIAN OR JUVENILE ATTORNEY (Attachment to Form NC-500)**

*Court-appointed guardians must fill out all items on this page.*

*An attorney appointed as guardian ad litem for a dependent minor (Welf. & Inst. Code, § 326.5) must complete items 1–4.*

*An attorney for a minor under the jurisdiction of the juvenile court (Welf. & Inst. Code, § 601 or 602) must complete items 1–4.*

1. a. Petitioner *(name)*:  
     b. Address *(street, city, county, and zip code)*:
  
2. a. Minor seeking recognition of gender change *(present name of minor)*:  
     b. Address *(street, city, county, and zip code)*:
  
3. Petitioner was appointed guardian for minor or is attorney for minor who is under the jurisdiction of the juvenile court as follows:
  - a. Superior Court of California, County of *(name)*:
  - b. Department *(check one)*:    Juvenile    Probate
  - c. Case number *(specify)*:
  - d. Date of appointment *(if applicable)*:
  
4. If all parents are deceased or cannot be located, provide the following information for the minor's living grandparents (if known):
 

a. Grandparent's Name:	Address:
b. Grandparent's Name:	Address:
c. Grandparent's Name:	Address:
d. Grandparent's Name:	Address:

Neither the minor nor the petitioner has any information about whether any of minor's grandparents are living.

5. The minor identified in item 2 is likely to remain under the guardian's care until the minor reaches the age of majority because *(explain)*:

Continued *(For additional space, check the box, and attach a sheet of paper titled "Attachment 5" to this declaration.)*

6. The minor identified in item 2 is not likely to be returned to the custody of the parents because *(explain)*:

Continued *(For additional space, check the box, and attach a sheet of paper titled "Attachment 6" to this declaration.)*

7. Other relevant information about the guardianship and why the proposed change is in the best interest of the minor *(specify)*:

Continued *(For additional space, check the box, and attach a sheet of paper titled "Attachment 7" to this declaration.)*

I declare under penalty of perjury under the laws of the State of California that the information in the foregoing declaration is true and correct.

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)

\_\_\_\_\_

(SIGNATURE OF PETITIONER)

Guardian of *(name of minor)*:

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>DRAFT</b></p> <p style="text-align: center;"><b>10.24.2022</b></p> <p style="text-align: center;"><b>Not approved by Judicial Council</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (name of each petitioner):  <p style="text-align: center;">FOR CHANGE OF GENDER (Minor)</p>	
<b>ORDER TO SHOW CAUSE—RECOGNITION OF MINOR'S CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE</b> <input type="checkbox"/> and CHANGE OF NAME	CASE NUMBER:

**1. NAME CHANGE**

**TO ALL INTERESTED PERSONS**  
(Check only if the petition (form NC-500) includes a request for change of name. If not checked, go to item 2.)

- a. A petition has been filed seeking change of name from (minor's current name):  
to (proposed name):
- b. **THE COURT ORDERS** that any person objecting to the name change described above must file a written objection that includes the reasons for the objection **within six weeks of the date this order is issued**. If no written objection is timely filed, the court will grant the petition without a hearing.

**2. GENDER AND SEX IDENTIFIER CHANGE**

**TO ANY LIVING PARENT OF MINOR WHO DID NOT SIGN PETITION**  
(Check only if the petition (form NC-500) was not signed by all living parents of minor.)

**TO ALL LIVING GRANDPARENTS OF MINOR**  
(Check only if the petition (form NC-500) was brought by a guardian, a dependency attorney appointed as guardian ad litem, or an attorney acting for a minor under Welfare and Institutions Code section 601 or 602, and all parents are deceased or cannot be located.)

- a. Petitioner (name of petitioning adult): \_\_\_\_\_ filed a petition on behalf of (name of minor): \_\_\_\_\_ requesting a decree recognizing that minor's gender and sex identifier is changed to
  - (1)  female
  - (2)  male
  - (3)  nonbinary
 and an order for issuance of a new birth certificate reflecting minor's changed gender and sex identifier.

- b. **THE COURT ORDERS** that any living parent or, if all parents are deceased or cannot be located, all living grandparents show cause, if any, why the petition should not be granted by filing a written objection that includes any reasons for the objection **within six weeks of the date this order is issued**. If no written objection is timely filed, the court will grant the petition without a hearing.

Date: \_\_\_\_\_ JUDGE OF THE SUPERIOR COURT

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY  <b>DRAFT</b>  <b>10.24.2022</b>  <b>Not approved by Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (name of each petitioner):  (FOR CHANGE OF GENDER (Minor))	
<b>ORDER RECOGNIZING MINOR'S CHANGE OF GENDER AND SEX IDENTIFIER AND FOR ISSUANCE OF NEW BIRTH CERTIFICATE</b>  <input type="checkbox"/> and <b>DECREE CHANGING NAME</b>	CASE NUMBER:

1. The petition was duly considered
- a.  at the hearing on (date): \_\_\_\_\_ in courtroom: \_\_\_\_\_ of the above-entitled court.
- b.  without a hearing.

**THE COURT FINDS**

2.  Petitioner is a California resident or seeks a change to a California birth certificate.
3. a. All notices required by law have been given.
- b. The following person seeking recognition of a change of gender and sex identifier is a minor (specify present name):
- c.  The petition includes a request regarding a change of name.
- (1)  Petitioner requests that minor's name be changed to (specify new name):
- (a)  The minor is a resident in this county.
- (b)  The minor's birth certificate was issued in this county.
- (2)  A certified copy of a court decree changing minor's name was attached to the petition.
- d. The petition was signed on behalf of the minor by
- (1)  all of minor's parents (names):
- (2)  fewer than all of minor's parents (names):
- (3)  a guardian (name):
- (a) The minor is likely to remain in the guardian's care until the age of majority.
- (b) The minor is not likely to be returned to the custody of the parents.
- (4)  an attorney guardian ad litem appointed by the juvenile court (name):
- (5)  an attorney representing minor who is asserted to be a person described in Welfare and Institutions Code section 601 or 602 (name):
- (6)  a near relative or friend (name and relationship to minor):
- (a) All of minor's parents are deceased.
- (b) No guardian has been appointed for minor.
- e.  (For name change) Minor  is not  is required to register as a sex offender under Penal Code section 290. This determination was made (check one)  by using CLETS/CJIS  based on information provided to the clerk of the court by a local law enforcement agency.

PETITION OF <i>(name of each petitioner)</i> :	CASE NUMBER:
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3. f.  No timely objections to the proposed changes were made.
- g.  Objections to the proposed changes were made by *(name and relationship to minor)*:
- h.  *(If objections by parent)* After considering objections by minor's parent, the court is satisfied that the proposed recognition of change of gender and sex identifier  
 is in the best interest of the minor, and the petition should be granted.  
 is not in the best interest of the minor, and the petition should be denied.
- i.  The court is satisfied that all the allegations in the petition are true and sufficient, that the proposed recognition of change of gender and sex identifier (and name, if requested) are not fraudulent, and that the petition should be granted.
- j.  Other findings *(if any)*:

**THE COURT ORDERS**

4.  The gender and sex identifier of the minor *(name)*:  
 has been changed to
- a.  female.
- b.  male.
- c.  nonbinary.

**THE COURT FURTHER ORDERS**

5.  The name of *(present name)*:
- a.  is changed to *(new name)*:
- b.  was previously changed by court decree to *(name)*:
6.  A new birth certificate must be issued reflecting the change of gender described in item 4  
 and change of name described in item 5.

If minor was born in California, a certified copy of this order shall be filed by the petitioner within 30 days with the State Registrar. When the State Registrar receives a certified copy of this order and payment of the applicable fees, the State Registrar shall establish for the petitioner a new birth certificate reflecting the gender of the minor as it has been altered and any change of name specified in this order.

7.  Other orders:

Date:

\_\_\_\_\_  
 JUDGE OF THE SUPERIOR COURT

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:  NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR ( <i>name</i> ):	<b>DRAFT</b>  <b>03/22/22</b>  <b>Not approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF ( <i>name of each petitioner</i> ):  (BY GUARDIAN or DEPENDENCY ATTORNEY)	
<b>ORDER RECOGNIZING MINOR'S CHANGE OF GENDER AND FOR ISSUANCE OF NEW BIRTH CERTIFICATE</b>  <input type="checkbox"/> and <b>DECREE CHANGING NAME</b>	CASE NUMBER:

1. The petition was duly considered
- a.  at the hearing on (*date*): \_\_\_\_\_ in Courtroom: \_\_\_\_\_ of the above-entitled court.
  - b.  without a hearing.

**THE COURT FINDS**

2. a. All notices required by law have been given.
- b. The person seeking recognition of a change of gender (*specify present name*): \_\_\_\_\_ is a minor.
  - c.  The petition was filed on behalf of the minor by a dependency attorney appointed as guardian ad litem pursuant to rules adopted under section 326.5 of Welfare and Institutions Code (*attorney name*): \_\_\_\_\_
  - d.  The petition was filed on behalf of the minor by the minor's guardian (*name*): \_\_\_\_\_
    - (1) The minor is likely to remain in the guardian's care until the age of majority.
    - (2) The minor whose name is to be changed is not likely to be returned to the custody of his or her parents.
  - e. The minor  is not  is required to register as a sex offender under section 290 of the Penal Code.  
 This determination was made (*check one*)  by using CLETS/CJIS  based on information provided to the clerk of the court by a local law enforcement agency.
  - f.  No objections to the proposed recognition of gender change were made.
  - g.  Objections to the proposed recognition of gender change of name were made by (*name*): \_\_\_\_\_
  - h. It appears to the satisfaction of the court that all the allegations in the petition are true and sufficient, that the proposed recognition of gender change is in the best interest of the minor, and that the petition should be granted.
  - i.  Other findings (*if any*): \_\_\_\_\_

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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**THE COURT ORDERS**

- 3. The gender of the minor (*name*):  
is changed to:
  - a.  female.
  - b.  male.
  - c.  nonbinary.
  
- 4.  A new birth certificate reflecting the change of gender described in item 3 shall be issued.
  
- 5. If minor was born in California, a certified copy of this order shall be filed by the petitioner within 30 days with the State Registrar. When the State Registrar receives a certified copy of this order and payment of the applicable fees, the State Registrar shall establish for the petitioner a new birth certificate reflecting the gender of the minor as it has been altered.

**THE COURT FURTHER ORDERS**

- 6.  The name of (*present name*):  
is changed to (*new name*):

Date:

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JUDGE OF THE SUPERIOR COURT

SIGNATURE OF JUDGE FOLLOWS LAST ATTACHMENT

PROPOSE TO REVOCKE

**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Orange County Bar Association by Daniel S. Robinson President	A	The proposal appropriately addresses the stated purpose.	The committee appreciates the response
2.	Superior Court of Orange County Juvenile Division	NI	<b>Comments</b> No comments.	No response necessary
			<b>Request for Specific Comments</b>  <b>In addition to comments on the proposal as a whole, and on any of the individual proposed forms, the advisory committee is interested in comments on the following:</b>	
			<ul style="list-style-type: none"> <li>▪ <i>Does the proposal appropriately address the stated purpose?</i> <ul style="list-style-type: none"> <li>○ Yes, the proposal appropriately addresses the stated purpose.</li> </ul> </li> </ul>	The committee appreciates the response.
			<ul style="list-style-type: none"> <li>▪ <i>Should the council adopt a form for an OSC under Health and Safety Code section 103430(e)(1) (proposed form NC-520; and see item 4 on form NC-500 requesting the order) given that subdivision (e)(1) requires that the order be issued only when a petition is filed that does not include a signature</i></li> </ul>	After circulation of the invitation to comment, Health and Safety Code section 103430(e)(1) was amended by Assembly Bill 421 to require an order to show cause only when the petition is not signed by all living parents of the minor. Proposed forms NC-500 and NC-520 have been revised to reflect this change.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p><i>that subdivision (b)(1) mandates be on the petition to begin with?</i></p> <ul style="list-style-type: none"> <li>○ Yes, this would assist parties and the court.</li> </ul>	
			<ul style="list-style-type: none"> <li>▪ <i>If yes, should form NC-520 require the petitioner to identify for the court to whom the order under section 103430 be directed, as proposed here? Is there any other information or content that should be included on the form?</i></li> </ul> <ul style="list-style-type: none"> <li>○ Yes, this would assist parties and the court.</li> </ul>	<p>After circulation of the invitation to comment, Health and Safety Code section 103430 was amended by Assembly Bill 421 to clarify on whom the order to show cause (form NC-520) should be served. Proposed forms NC-500 and NC-520 have been revised to reflect this change.</p>
			<ul style="list-style-type: none"> <li>▪ <i>Should the council adopt a form for an OSC under Health and Safety Code section 103430(e)(2) (such as proposed form NC-325; and see item 3d on form NC-312 requesting the order) subdivision(e)(2), requiring that the order be issued only when a petition is filed that does not include a signature (of a spouse sharing a marriage license and certificate) that subdivision (b)(2) mandates be on the petition to begin with?</i></li> </ul> <ul style="list-style-type: none"> <li>○ Yes, having specific OSC for specified petitions makes it</li> </ul>	<p>After circulation of the invitation to comment, Health and Safety Code section 103430(e)(2) was amended by Assembly Bill 421 to clarify that issuance and service of an OSC was an alternative to the provision that a spouse sharing a marriage license and certificate sign the petition. The proposed form will remain in the recommendation to the council.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p>easier for self-represented litigants and less confusing for the court.</p>	
			<ul style="list-style-type: none"> <li>▪ <i>In form NC-500, at item 7a, relating to name-change requests, the committee is proposing, as an alternative to stating whether any non-signing parents are living, an option to state that minor and petitioner do not know. The committee seeks comments on the content of this item and whether it may be helpful to courts.</i> <ul style="list-style-type: none"> <li>○ No comment.</li> </ul> </li> </ul>	<p>No response necessary.</p>
			<p><b>The advisory committee also seeks comments from courts on the following cost and implementation matters:</b></p> <ul style="list-style-type: none"> <li>▪ <i>Would the proposal provide cost savings? If so, please quantify.</i> <ul style="list-style-type: none"> <li>○ The proposal does not appear to provide any cost savings.</li> </ul> </li> <li>▪ <i>What would the implementation requirements be for courts—for example, training staff (please identify</i></li> </ul>	<p>The committee appreciates the information.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p><i>position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></p> <ul style="list-style-type: none"> <li>○ Revising case management system as to new entry codes.</li> <li>○ Training on new forms, how to process new forms, and if there are any new time standards.</li> <li>○ Training for case processing clerks (approximately 2-3 hours) and judicial officers (1 hour).</li> <li>○ Revise procedures.</li> </ul>	
			<ul style="list-style-type: none"> <li>▪ <i>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> <ul style="list-style-type: none"> <li>○ No, six months will be needed to revise procedures, change case management system, schedule, and conduct training.</li> </ul> </li> </ul>	<p>Assembly Bill 218 and Assembly Bill 421 become operative January 1, 2023. Because of the need to have revised forms the conform to the changes in the law, the committee has concluded that it is impractical to provide a six-month window between approval of the proposal to its effective date.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

## SPR22-04

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
3.	Superior Court of Orange County Family Law Division	NI	<p><b>Comments</b></p> <p><input type="checkbox"/> No comments.</p>	No response necessary
			<p><b>Request for Specific Comments</b></p> <p><input type="checkbox"/> Does the proposal appropriately address the stated purpose?</p> <p>o Yes, the proposal addresses the stated purpose.</p>	The committee appreciates the response.
			<p><input type="checkbox"/> Should the council adopt a form for an OSC under Health and Safety Code section 103430(e)(1) (proposed form NC-520; and see item 4 on form NC-500 requesting the order) given that subdivision (e)(1) requires that the order be issued only when a petition is filed that does not include a signature that subdivision (b)(1) mandates be on the petition to begin with?</p> <p>o Yes, this would assist parties and the court.</p>	After circulation of the invitation to comment, Health and Safety Code section 103430(e)(1) was amended by Assembly Bill 421 to require an order to show cause only when the petition is not signed by all living parents of the minor. Proposed forms NC-500 and NC-520 have been revised to reflect this change.
			<p><input type="checkbox"/> If yes, should form NC-520 require the petitioner to identify for the court to whom the order under section 103430 be directed, as proposed here? Is there any other information or content that should be included on the form?</p>	After circulation of the invitation to comment, Health and Safety Code section 103430 was amended by Assembly Bill 421 to clarify on whom the order to show cause (form NC-520) should be served. Proposed forms NC-500 and NC-520 have been revised to reflect this change.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p>o Yes, the party should inform the court of the other parties to notice.</p> <p><input type="checkbox"/> <i>Should the council adopt a form for an OSC under Health and Safety Code section 103430(e)(2) (such as proposed form NC-325; and see item 3d on form NC-312 requesting the order) subdivision(e)(2), requiring that the order be issued only when a petition is filed that does not include a signature (of a spouse sharing a marriage license and certificate) that subdivision (b)(2) mandates be on the petition to begin with?</i></p> <p>o Yes, having specific OSC for specified petitions makes it easier for self-represented litigants to file, and less confusing for the court.</p> <p>o Also, the party sharing the marriage certificate should have the right and ability to oppose the change.</p>	<p>The committee agrees and form NC-321 will be recommended to the council.</p> <p>Assembly Bill 421 has removed the requirement that the spouse sharing the marriage certificate agree to the petition but requires that the spouse get notice of the petition as an alternative to the agreement.</p>
			<p><input type="checkbox"/> <i>In form NC-500, at item 7a, relating to name-change requests, the committee is proposing, as an alternative to stating whether any non-signing parents are living, an option to state that minor and petitioner do not know. The</i></p>	<p>No response necessary.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p><i>committee seeks comments on the content of this item and whether it may be helpful to courts.</i></p> <ul style="list-style-type: none"> <li>o No comments.</li> </ul>	
			<ul style="list-style-type: none"> <li><input type="checkbox"/> <i>Would the proposal provide cost savings? If so, please quantify.</i></li> <li>o The proposal does not appear to provide any cost savings.</li> <li><input type="checkbox"/> <i>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?</i></li> <li>o Revising case management system as to new entry codes.</li> <li>o Training on new forms, how to process new forms, and if there are any new time standards for case processing staff and courtroom clerks (approximately 2-3 hours), judicial officers (approximately 1 hour).</li> <li>o Revising procedures.</li> </ul>	<p>The committee appreciates the information.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

## SPR22-04

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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

	Commenter	Position	Comment	Committee Response
			<p><i>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <ul style="list-style-type: none"> <li>o No, six months will be needed to revise procedures, revise case management system, schedule, and conduct training.</li> </ul>	<p>Assembly Bill 218 and Assembly Bill 421 become operative January 1, 2023. Because of the need to have revised forms that conform to the changes in the law, the committee has concluded that it is impractical to provide a six-month window between approval of the proposal to its effective date.</p>
			<p><input type="checkbox"/> <i>How well would this proposal work in courts of different sizes?</i></p> <ul style="list-style-type: none"> <li>o This proposal would work for Orange County.</li> </ul>	<p>The court appreciates the response.</p>
4.	Superior Court of San Bernardino County	NI	<p><b>Request for Specific Comments in addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:</b></p> <ul style="list-style-type: none"> <li>· Does the proposal appropriately address the stated purpose? Yes</li> </ul>	<p>The court appreciates the response.</p>
			<ul style="list-style-type: none"> <li>· Should the council adopt a form for an OSC under Health and Safety Code section 103430(e)(1) (proposed form NC-520; and see item 4 on form NC-500 requesting the order) given that subdivision (e)(1) requires that the order be issued only when a petition is filed that does not include a signature that subdivision (b)(1) mandates be on</li> </ul>	<p>After circulation of the invitation to comment, Health and Safety Code section 103430(e)(1) was amended by Assembly Bill 421 to require an order to show cause only when the petition is not signed by all living parents of the minor. Proposed forms NC-500 and NC-520 have been revised to reflect this change.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	Commenter	Position	Comment	Committee Response
			the petition to begin with? Yes. I am a little confused as to who would be petitioning or signing if not one other people listed in 1. Who else would be filing this for the minor?	
			o If yes, should form NC-520 require the petitioner to identify for the court to whom the order under section 103430 be directed, as proposed here? Is there any other information or content that should be included on the form? Yes	After circulation of the invitation to comment, Health and Safety Code section 103430 was amended by Assembly Bill 421 to clarify on whom the order to show cause (form NC-520) should be served. Proposed forms NC-500 and NC-520 have been revised to reflect this change.
			· Should the council adopt a form for an OSC under Health and Safety Code section 103430(e)(2) (such as proposed form NC-325; and see item 3d on form NC-312 requesting the order) subdivision(e)(2), requiring that the order be issued only when a petition is filed that does not include a signature (of a spouse sharing a marriage license and certificate) that subdivision (b)(2) mandates be on the petition to begin with? Yes	After circulation of the invitation to comment, Health and Safety Code section 103430(e)(2) was amended by Assembly Bill 421 to clarify that issuance and service of an OSC was an alternative to the provision that a spouse sharing a marriage license and certificate sign the petition. The proposed form will remain in the recommendation to the council.
			· In form NC-500, at item 7a, relating to name-change requests, the committee is proposing, as	The committee agrees that this item would be helpful to the courts and parties. The committee

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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

	Commenter	Position	Comment	Committee Response
			<p>an alternative to stating whether any non-signing parents are living, an option to state that minor and petitioner do not know. The committee seeks comments on the content of this item and whether it may be helpful to courts. Yes</p>	<p>believes that petitioner, who signs the petition under penalty of perjury, should be able to accurately reflect a potential lack of knowledge regarding the minor’s parents, rather than to be forced to guess whether the minor’s parents are living. The committee envisions that this option will flag for the court the need for further inquiry.</p>
			<p><b>The advisory committee also seeks comments from courts on the following cost and implementation matters:</b></p> <ul style="list-style-type: none"> <li>· Would the proposal provide cost savings? If so, please quantify. No</li> <li>· What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Training. Updated procedures.</li> <li>· Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes</li> </ul>	<p>The court appreciates the information.</p>
5.	Superior Court of San Diego County by Mike Roddy	AM	Does the proposal appropriately address the stated?	The court appreciates the response.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	Commenter	Position	Comment	Committee Response
	Executive Officer		<p><b>Yes.</b></p>	
<p>Should the council adopt a form for an OSC under Health and Safety Code section 103430(e)(1) (proposed form NC-520; and see item 4 on form NC-500 requesting the order) given that subdivision (e)(1) requires that the order be issued only when a petition is filed that does not include a signature that subdivision (b)(1) mandates be on the petition to begin with?</p> <p><b>Yes.</b></p>			<p>After circulation of the invitation to comment, Health and Safety Code section 103430(e)(1) was amended by Assembly Bill 421 to require an order to show cause only when the petition is not signed by all living parents of the minor. Proposed forms NC-500 and NC-520 have been revised to reflect this change.</p>	
<p>If yes, should form NC-520 require the petitioner to identify for the court to whom the order under section 103430 be directed, as proposed here? Is there any other information or content that should be included on the form?</p> <p><b>Yes. The petitioner should indicate to whom the OSC should be directed in item 4 of the NC-500 and on the NC-520.</b></p>			<p>After circulation of the invitation to comment, Health and Safety Code section 103430 was amended by Assembly Bill 421 to clarify on whom the order to show cause (form NC-520) should be served. Proposed forms NC-500 and NC-520 have been revised to reflect this change.</p>	
<p>Should the council adopt a form for an OSC under Health and Safety Code section 103430(e)(2) (such as proposed form NC-325; and see item 3d on form NC-312 requesting the</p>	<p>After circulation of the invitation to comment, Health and Safety Code section 103430(e)(2) was amended by Assembly Bill 421 to clarify that issuance and service of an OSC was an alternative</p>			

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p>order) subdivision(e)(2), requiring that the order be issued only when a petition is filed that does not include a signature (of a spouse sharing a marriage license and certificate) that subdivision (b)(2) mandates be on the petition to begin with? <b>Yes.</b></p>	<p>to the provision that a spouse sharing a marriage license and certificate sign the petition. The proposed form will remain in the recommendation to the council.</p>
			<p>In form NC-500, at item 7a, relating to name-change requests, the committee is proposing, as an alternative to stating whether any non-signing parents are living, an option to state that minor and petitioner do not know. The committee seeks comments on the content of this item and whether it may be helpful to courts.</p>	
			<p><b>Yes. The inclusion of 7(a)(3), which provides that neither the minor nor petitioner has any information about whether any non-signing parent is living, will be helpful to the court.</b></p>	<p>The committee agrees that this item would be helpful to the courts and parties. The committee believes that petitioner, who signs the petition under penalty of perjury, should be able to accurately reflect a potential lack of knowledge regarding the minor’s parents, rather than to be forced to guess whether the minor’s parents are</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p>living. The committee envisions that this option will flag for the court the need for further inquiry.</p> <p>Would the proposal provide cost savings? If so, please quantify. <b>No.</b></p>	<p>The court appreciates the information.</p>
			<p>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? <b>Significant revisions to internal procedures, local packets, and training for staff. New, revoked, and revised forms will also require updates to the court’s case management system.</b></p>	<p>The court appreciates the information.</p>
			<p>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <b>Yes, if the final versions of the forms are provided to the court by that time. This will ensure that the court is able to provide training to staff, update its case management</b></p>	<p>The court appreciates the information.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p><b>system, modify local packets and obtain printed stock.</b></p> <p><b>OTHER COMMENTS</b>  <b>NC-300-INFO:</b></p> <ul style="list-style-type: none"> <li>• Item 4 Filing with Court: It appears that the second sentence should read, “Take the completed petition...”</li> <li>• Item 5 Service on Spouse: Propose replacing dashes with em dash in reference to NC-325 form.</li> </ul> <p><b>NC-530:</b></p> <ul style="list-style-type: none"> <li>• Item 2c(1): Propose replacing “resident in this county” to “resident <b>of</b> this county” to be consistent with NC-120(3a) and NC-500(8a).</li> <li>• Item 2d(5): Propose inserting “to” as follows, “attorney representing minor who is asserted <b>to</b> be a person...”</li> </ul>	<p>NC-300-INFO has been modified to reflect the corrections.</p> <p>NC-530 has been modified to reflect the corrections.</p>
6.	The TransLatin@ Coalition by Kimberly Carver Coordinator of Legal Services	NI	Thank you for giving The TransLatin@ Coalition the opportunity to comment on the proposed revisions to the name change forms. Hundreds of our clients have used the Judicial Council forms to legally change their name and	No response necessary.

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**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p>gender, and we're grateful that the Judicial Council and the Legislature recognize the unique needs of the trans, gender-nonconforming and intersex (TGI) community. We have conducted a review of the proposed new forms.</p>	
			<p>The NC-300 series presents new options that will benefit TGI people with families, namely the right to amend applicants' marriage licenses and the birth certificates of their children to reflect the applicant's new name and gender. I have a few questions and observations:</p>	<p>The court appreciates the response.</p>
			<p>-- On Form NC-300, is Question 4 necessary (sworn declaration that the change in gender/sex identifier is not for a fraudulent purpose)? It covers similar ground to NC-110, Question 7(c) ("Reason for name change"). Since NC-110 already requires a reason for the name change, it seems excessive to make TGI applicants also swear they're not changing their gender marker for a fraudulent purpose. I'm not aware of any instances of fraud in this regard. The same comment applies to the Declaration in NC-500.</p>	<p>The statute mandates that a petitioner seeking recognition of change of gender and sex identifier declare under penalty of perjury that the change is not being made for a fraudulent purpose. (Health &amp; Saf. Code, § 103430(a).) The statement is included in the petition for that reason.</p>

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**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p>-- Form NC-312 has some elements that may cause confusion. In Question 2, "Information about marriage license and certificate to be reissued," I was uncertain whether the license referenced in 2(a), 2(b), and 2(c) is the old license or the new license. In addition, Question 3 might make it clearer that if the petitioner's spouse doesn't cooperate, petitioner must actually have the order served on the spouse and then provide a proof of service. There will likely be users who can navigate the forms but will find service of process a challenge. Could NC-300-INFO include a link to a reader-friendly "Service of Process in California" guide?</p>	<p>The committee appreciates the comment. The committee has changed Item 2 to make clear that the information is being sought about the "original marriage license and certificate."</p> <p>Form NC-300-Info, Item 5 already instructs the petitioner as to the necessity of serving an order to show cause on the non-signing spouse and filing a proof of service with the court. The committee is not aware of a reader-friendly guide such as the one suggested, but has included a link to the on-line California Courts Self-Help Guide on gender recognition to both NC-300-INFO and NC-500-INFO.</p>
			<p>-- Finally, it might be helpful if the terms confidential marriage and nonconfidential marriage were defined, either on NC-312 or on NC-300-INFO.</p>	<p>In light of this comment, the committee has added the statutory definition of confidential marriage to the information sheet and referenced this fact in form NC-312's instructions. References to "nonconfidential" have also been changed to "not confidential."</p>
7.		AM		

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**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) Joint Rules Subcommittee		<p>The JRS notes that the proposal is required to conform to a change of law.</p> <p>The JRS also notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Significant fiscal impact.               <ul style="list-style-type: none"> <li>○ Depending on the number of cases filed, there could be significant impact on time spent at front counter windows with litigants that don't understand the process and whose papers are not in order. Creation and mailing of notices of hearing and orders if no hearing takes place would have a fiscal impact.</li> </ul> </li> <li>• Impact on existing automated systems.</li> <li>• Results in additional training, which requires the commitment of staff time and court resources.               <ul style="list-style-type: none"> <li>○ Significant amount of training for court staff will be required to become familiar with the changes.</li> </ul> </li> <li>• Increases court staff workload.</li> </ul>	<p>No response needed</p> <p>The committee appreciates the information.</p>

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**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	Commenter	Position	Comment	Committee Response
			Monitoring receipt of objections for cases that have no pending court date could be problematic as well as recognizing written objections if they are not submitted on a Judicial Council form. Suggesting litigants contact the court to see if objections have been filed will take staff time	
			<p><b>Suggested modifications:</b></p> <p>Form NC-300-INFO in Section 5 indicates an Order to Show Cause is to be served within 30 days from the date on which the order is made by the court. Form NC 325 states in Section 2 that objections are to be filed within 6 weeks of the date of the order. If the Petitioner takes the full 30 days to serve NC-325, a person filing an objection would have only 2 weeks to do so.</p>	The committee agrees with the analysis, and notes that the deadline by which a petitioner must serve an order to show cause and the deadline by which written objections must be filed are both mandated by statute. (See Health and Saf. Code, § 103430(e) & (f).)
			Form NC 325 also has no date to trigger the court to take action when the deadline for objections passes. The court would have to somehow monitor these cases separately to ensure that an order is made in a timely fashion when no objections are received. Consider adding a hearing date on form NC-325 (similar to NC-520G) instead of requiring a separate process where the clerk needs to complete and	The committee declines to make the suggested modification, notwithstanding the identified burdens. Under the new statute, courts may not set a hearing on a petition for recognition of gender change before and unless the court receives an objection showing good cause why the petition should be denied. (See Health and Saf. Code, § 103430(h).)

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**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p>mail a notice of hearing as described in NC-300-INFO, Section 7 when an objection is received. That same section creates mailing costs when a notice of hearing must be sent, or if no objections are filed, Form NC-330 would need to be mailed to the Petitioner. The Petitioner may also need a certified copy of Form NC-330, which would require that a certification fee be charged before the form is provided to the litigant.</p>	
			<p>Form NC-125 also does not provide a hearing date requiring the court to track for the expiration of filing objections and then send notice of hearing if objections are filed.</p>	<p>The committee acknowledges the point and declines to make the suggested modification. Courts may not set hearings on a petition for change of name to conform to gender identity before and unless the court receives an objection showing good cause why the petition should be denied. (See Code Civ. Proc., § 1277.5(b).)</p>
			<p>The instructions on NC-100-INFO instruct the litigant to check with the court to see if a hearing date has been set, which may be difficult for the litigant to reach staff and creates unnecessary workload for the court.</p>	<p>The committee notes that item 10 does not instruct litigants to contact the court to see if a hearing date has been set, but rather to contact the court to find out if a scheduled hearing on a name change petition will be held. The hearing is not to be held if there are not objections filed (Code Civ. Proc.,</p>

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**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	Commenter	Position	Comment	Committee Response
				§ 1278), and a party can only confirm whether it will proceed by contacting the court.
			Suggest a blank Declaration, form MC-030 be served with the Order to Show Cause for the individual to use if objections are filed in order to make it easier for the court to identify the objections and connect the document to the correct case rather than a person using a blank piece of paper that might be difficult to route to the correct processing unit within Clerk’s Offices.	The committee believes that form MC-030 is not a proper vehicle for objections to name or gender change petitions. In addition, requiring a form for objections be served along with a name and gender change order to show cause is outside the scope of the instant proposal, and potentially outside the purview of the council because the Legislature has set out detailed procedures in the area.
			Suggest that Section 2 of form NC-325 language “within six weeks of the date this order is issued” should be bolded similar to form NC 520.	NC-325 has been modified to reflect this change.
			Form NC-500-INFO contains the same situation as above where Section 6 requires the OSC be served within 30 days of the issuance of the order, and Form NC-520 requires objections be filed within six weeks of the same date. Similar to above, suggest that a blank Declaration MC-030 be provided to make it easier for the court	See above responses.

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**SPR22-04**

**Rules and Forms: Name and Gender Change Forms to Implement Assembly Bill 218** (Adopt forms NC-311, NC-312, NC-325, NC-520G, and NC-530; approve form NC-300-INFO; revise forms NC-100, NC-100-INFO, NC-110, NC-120, NC-150, NC-300, NC-330, NC-500, NC-500-INFO, NC-510G, NC-520, and NC-530; renumber form NC-125/NC-225 as form NC-125; and revoke forms NC-200, NC-225, NC-230, and NC-530G)

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			to identify the case the objections pertain to when the document is received.	
			NC-100-INFO has a typo in Section 7, second bullet, "You are an participant..."	NC-100-INFO has been modified to reflect this correction.

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SP22-08

**Rules and Forms: Name and Gender Change Forms for Minors to Implement Assembly Bill 218 and Assembly Bill 421** (Adopt form NC-530; revise forms NC-500, NC-500-INFO, NC-510G, NC-520; revoke form NC-530G)

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Alliance for Children’s Rights by Juan Guzman, Director of Children’s Court Advocacy	AM	Thank you for offering the opportunity to comment on the proposed amendments to the name and gender change forms for minors, pursuant to AB 218 and AB 421 (Proposal: SP22-08).	No response necessary.
			Alliance for Children’s Rights protects the rights of impoverished, abused and neglected children and youth. By providing free legal services, advocacy, and programs that create pathways to jobs and education, the Alliance levels the playing field and ensures that children who have experienced foster care are able to fulfill their potential.	
			Current law requires the Order to Show Cause Form (NC-520) to be served on the parent who has not signed the petition, or if both parents are deceased or cannot be located, on the grandparents.  There will be instances where one parent has signed the petition, but the other parent has not signed because their whereabouts are unknown. Similarly, when a guardian/minor’s attorney signs the petition, there will be instances where the minor’s living grandparents’ whereabouts are unknown. This will leave many petitioners unable	The committee declines to make the suggested revision.  Health & Safety Code section 103430(f) requires either personal service or, if the recipient is out of state, service by mail. It further provides that if service cannot “reasonably be accomplished” by these methods, the “court may order that service be accomplished in a manner that the court determines is reasonably calculated to give actual notice to the person who did not sign the petition.”

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**Rules and Forms: Name and Gender Change Forms for Minors to Implement Assembly Bill 218 and Assembly Bill 421 (Adopt form NC-530; revise forms NC-500, NC-500-INFO, NC-510G, NC-520; revoke form NC-530G)**

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>to serve either the non-signing parent or the grandparents with the OSC because they do not know their whereabouts.</p> <p>To facilitate the process and prevent unnecessary delays, we propose adding an item box on “Form NC-500” and “Form NC-510G” to indicate the petitioner is unable to serve the OSC Form NC-520 on parents and/or grandparents because their whereabouts unknown</p>	<p>In the event that a petitioner does not know the whereabouts of the minor’s parents or grandparents, the petitioner must move the court to permit alternative service after showing that personal service (or, if applicable, service by mail) could not be reasonably accomplished.</p>
			<p>Thank you for your consideration.</p>	<p>No response necessary.</p>
2.	<p>Disability Rights California, Civil Rights Practice Group by Kendra J. Muller, Post Bar Law Clerk;</p> <p>Lili Graham, Litigation Counsel; and</p> <p>Nicole Mendoza Senior Attorney</p> <p>Jointly with: Transgender Law Center by Ian Anderson Legal Services Project Manager</p>	AM	<p>Thank you for the opportunity to comment on the Name and Gender Change Forms for Minors. We are writing on behalf of the Transgender Law Center and Disability Rights California. The Transgender Law Center is the largest national trans-led organization advocating for a world in which all people are free to define themselves and their futures. Transgender Law Center responds to hundreds of inquiries each year from transgender people seeking guidance about the name change process through its Legal Information Helpdesk and Prison Mail Response Program, and hosts multiple name-change clinics each year for transgender Californians. Disability Rights California is a state-wide nonprofit</p>	<p>No response necessary.</p>

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**Rules and Forms: Name and Gender Change Forms for Minors to Implement Assembly Bill 218 and Assembly Bill 421** (Adopt form NC-530; revise forms NC-500, NC-500-INFO, NC-510G, NC-520; revoke form NC-530G)

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	Commenter	Position	Comment	Committee Response
	<p>Name &amp; Gender-Marker Change Clinic by Ashley N. Fasano Supervising Attorney</p>		<p>dedicated to protecting an advocating for disabled Californians. The Civil Rights Practice Group specializes in discrimination law, including the Americans with Disabilities Act and Fair Housing Amendments Act, and litigates complex discrimination cases statewide. The practice group works to create resources and advocacy for historically marginalized and underserved communities, including immigrants, LGBTQIA2S+ individuals, seniors, veterans, unhoused persons, Native American groups, people of color, monolingual language speakers, and low-income communities. The practice group seeks to provide intersectional legal analysis to challenge civil rights violations.</p>	
			<p>After our review of the new proposed court documents, we would like to bring to the agency's attention to points, edits, and questions we have identified as relevant for the decision-making process regarding the proposed documentation.</p>	
			<p>Point 1 Overall, the new NC-500 series seem better equipped to handle pro per cases with some additional directions through this proposal, including the helpful inclusion of residency for the right court, although there still may be challenges.</p>	<p>The committee declines to adopt this suggestion as it concludes that the form instructions are sufficiently clear as drafted.</p>

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**Rules and Forms: Name and Gender Change Forms for Minors to Implement Assembly Bill 218 and Assembly Bill 421** (Adopt form NC-530; revise forms NC-500, NC-500-INFO, NC-510G, NC-520; revoke form NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p>On form NC-500, to provide for better pro per assistance, we advise that a slight revision of instructions that allow plain language is used. Plain language improves credibility and efficiency, which will increase accuracy of filing from pro per petitioners and thus lessen unproductive errors the court must handle. This will lessen labor for the court. A potential revision is included below showing reduction in sentence length, navigation tips, bold headers, and bullet points. Citations can be further expounded upon in NC-500-INFO, and already are listed in a helpful and explanatory manner. An example is shown below:</p> <ul style="list-style-type: none"> <li>○ Instructions: read form NC-500-INFO for further information before starting</li> <li>○ Only For Minors: This form is only for minors. Adult petitioners (18 years or older) must use a different form, NC-300.</li> <li>○ Name and Gender Change: If you are seeking a name and gender change, complete items 8 or 9.</li> <li>○ Gender change: If you are only seeking a gender change, skip items 8 or 9</li> <li>○ Guardian Instructions:</li> </ul>	

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**Rules and Forms: Name and Gender Change Forms for Minors to Implement Assembly Bill 218 and Assembly Bill 421** (Adopt form NC-530; revise forms NC-500, NC-500-INFO, NC-510G, NC-520; revoke form NC-530G)

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	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"> <li>• An attorney will be appointed for the minor</li> <li>• Form NC-510G must be filled in addition to these forms.</li> </ul>	
			<p>Point 2 On form NC-500, item 6 the form reads "Petitioners requests." This may be a grammatical error and better listed as "petitioner requests" or "petitioners request."</p>	<p>Form NC-500 has been revised to reflect the correction.</p>
			<p>Point 3 On form NC-500-INFO, page 2 states "Declaration: The minor may complete (check the box identifying the new gender) and sign the Declaration" (emphasis added). The word "may" suggests this step is optional. This should be clarified to ensure petitioners understand whether or not to complete.</p>	<p>The committee declines to adopt this suggestion as it feels that the form instructions are sufficiently clear as drafted. Health &amp; Safety Code section 103430(b)(1) provides that the minor "may" sign the affidavit. The committee believes NC-500-INFO as currently drafted accurately reflects that the minor may, but does not have to, fill out the declaration.</p>
			<p>Point 4 On form NC-500-INFO, page 3, it states "Form NC-121 may be used." This is unclear on whether NC-121 can be used even if a name change is not sought. If so, this might be helpful to specify.</p>	<p>The committee appreciates the response. In context, the committee believes it is clear that form NC-121 may be used as proof of service even if a name change is not sought. The section that includes the reference to NC-121 discusses service of process in general and NC-121 does not</p>

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**Rules and Forms: Name and Gender Change Forms for Minors to Implement Assembly Bill 218 and Assembly Bill 421** (Adopt form NC-530; revise forms NC-500, NC-500-INFO, NC-510G, NC-520; revoke form NC-530G)

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	Commenter	Position	Comment	Committee Response
				contain any provisions limiting its use to name change petitions.
			<p>Point 5 Form NC-400-INFO currently states "As with all name change petitions, the petition filed under the confidential address program must be filed in the superior court of the county where the person whose name is to be changed presently lives." Given that, under the terms of AB218, the court is expanding the range of people able to petition in a given county's superior court (to those who were born in, married in, or had a child in that county, and not just those who presently live there), this language should be updated.</p>	This suggestion is outside the scope of the instant proposal. The committee may consider this issue in the future as time and resources allow.
			<p>Point 6 In regards to non-affirming parents, eliminating additional steps unless an objection is filed will greatly streamline the name/gender change process. Our experience in community outreach and clinics displays that when one parent is non-affirming, the process can be very bothersome to the petitioner and court. This is especially pertinent when there are estranged parents of minors. Parents with legal custody may be affirming parents, however, they are restricted from a simple filing process if there is another</p>	The committee acknowledges that the statute has notice requirements for non-affirming parents, which the committee cannot change.

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**Rules and Forms: Name and Gender Change Forms for Minors to Implement Assembly Bill 218 and Assembly Bill 421** (Adopt form NC-530; revise forms NC-500, NC-500-INFO, NC-510G, NC-520; revoke form NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p>living parent, even if that parent has not seen the child in 10 years, left when the child was born, or is violent or abusive. From our understanding of the interplay between AB 218 and AB 421, the OSC used instead of a notice of hearing will help shift the burden to non-affirming parents to file the written objection. We encourage a shifting of the burden to ensure that affirming parents and minors needs are held as paramount.</p>	
			<p>Point 7                      We advise the MC-410 Reasonable Accommodation form should be referenced, explained, and detailed within NC-500-INFO, as it fulfills the required procedures in Cal. Rules of Court, rule 1.100(g). At this time, the NC-500-INFO does not indicate or explain the process for filing a reasonable accommodation with the court. The MC-410 form is a vital document to access the court system and must be more widely referenced so petitioners know there is equal opportunity within the petition process. The MC-410 should be indicated as an additional section after number six “Orders to Show Cause and Hearing Date” in the NC-500-INFO. An example is shown here:</p> <p>7. Requesting a Reasonable Accommodation</p>	<p>The committee agrees with the suggested revision to the extent it recommends language be added relating to requesting accommodations for disabilities. The committee has modified the form in light of this comment. Form NC-500-INFO has been further revised to add paragraph 8, which discusses requesting an accommodation for a disability and which refers the reader to form MC-410, the instructions at form MC-410-INFO, and the court’s ADA Coordinator. The committee has added identical language to forms NC-100-INFO (new paragraph 8) and NC-300-INFO (new paragraph 11).</p>

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**Rules and Forms: Name and Gender Change Forms for Minors to Implement Assembly Bill 218 and Assembly Bill 421** (Adopt form NC-530; revise forms NC-500, NC-500-INFO, NC-510G, NC-520; revoke form NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p>If you have a disability and need help accessing your court hearing, you can submit a reasonable accommodation request with the court. The process for submitting a reasonable accommodation is listed below:</p> <ul style="list-style-type: none"> <li>• Instructions for filing a request is noted on MC-410-INFO, How to Request a Disability Accommodation for Court</li> <li>• Fill out MC-410, Disability Accommodation Request</li> <li>• Mail or hand your completed request to your court’s ADA coordinator                             <ul style="list-style-type: none"> <li>o To find your ADA coordinator: go to <a href="https://www.courts.ca.gov/find-my-court.htm?query=92120">https://www.courts.ca.gov/find-my-court.htm?query=92120</a>. Input your zip code and find your court. Your court will have an ADA coordinator on its website with an email and phone to contact.</li> </ul> </li> <li>• You must make the request at least 5 days before your court appearance</li> <li>• You may appeal if your request is denied by submitting a written request for review to the presiding judge or designated judicial officer.</li> </ul> <p>In summary, we appreciate the Judicial Council’s circulation of these proposed forms and believe the changes will largely benefit petitioners and the courts. We hope these suggestions will prove</p>	<p>No response necessary.</p>

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**Rules and Forms: Name and Gender Change Forms for Minors to Implement Assembly Bill 218 and Assembly Bill 421** (Adopt form NC-530; revise forms NC-500, NC-500-INFO, NC-510G, NC-520; revoke form NC-530G)

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	Commenter	Position	Comment	Committee Response
			helpful in clarifying a few points of uncertainty and ensuring the process of implementing AB 218 and AB 421 is as seamless as possible.	
3.	Amira Hasenbush Founder All Family Legal	NI	<p>First of all, thank you so much for all of your work in getting forms together to implement these new changes in the law. I know this stuff gets tricky, and I really appreciate your eye for detail! I am trying to go through the forms pretty carefully from a practitioner’s standpoint to give you my thoughts/suggestions for changes. (Lucky you – I was on a plane when I wrote this, so I had some time. 😊) I’m sure once I actually start using the forms with clients, other things will come up, but I will do my very best to try to help us get it right from the start. Here’s what I’m seeing:</p> <p>1) Parents – it was my understanding that the forms are trying to make the effort to accommodate the possibility of more than two parents. NC-500 1(a) and 1(b) presume exactly two parents. I have seen this become an issue for a client who was a single parent. Even though the form had a box that stated that there were no other parents, and the birth certificate showed my client as the only parent, the judge still did not understand and called us in for a hearing to ask why the other parent had not been given notice.</p>	<p>No response necessary.</p> <p>The committee has modified forms NC-500, NC-500-INFO, and NC-530 in light of these comments to allow for more than two parents.</p> <p>Item 1a of form NC-500 has been revised to read “parent or parents (<i>names</i>):” while item 3d has been revised to add an option by which petitioner can more that the names and addresses of two parents. Item 1 of form NC-500-INFO has been revised to replace references to “both” parents</p>

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**Rules and Forms: Name and Gender Change Forms for Minors to Implement Assembly Bill 218 and Assembly Bill 421** (Adopt form NC-530; revise forms NC-500, NC-500-INFO, NC-510G, NC-520; revoke form NC-530G)

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

	Commenter	Position	Comment	Committee Response
			<p>The simplest fix to accommodate more than or fewer than two parents may simply be to change the wording to:</p> <p>a. All of the minor child’s living parent(s) (name(s)):</p> <p>b. Fewer than all of the minor child’s living parents (name(s)):</p> <p>However, that wording may be confusing to parents in two-parent households (which may be the majority of petitioners). While a more complicated fix, one that may provide greater clarity could be by starting with the question, “How many living parents does the child have?”</p> <p>The boxes that are accessible to complete below could flow differently depending on the answer to that question. Of course, that may be too complicated and require too much of an overhaul.</p>	<p>with references to “all” parents. Finally, NC-530 item 3d has been revised similarly.</p> <p>The committee believes the forms as drafted are sufficiently clear regarding situations where a petitioning minor only has one parent, and declines to make any modifications on that point.</p>
			<p>The same issue occurs in NC-530 items 3(d)(1) and 3(d)(2).</p>	<p>See above response.</p>
			<p>2) NC-500 item number 2: “Petitioning minor is a California resident or seeks a change to a California birth certificate.” I misread this the first time as an AND statement instead of an OR statement. I would suggest either capitalizing the word “or” or splitting it into an (a)/(b) sentence just to make it clear that either is sufficient.</p>	<p>In light of this comment, item 2 in form NC-500 has been revised to read that “[p]etitioning minor <i>either</i> is a California resident or seeks a change to a California birth certificate.” [emphasis added to show change].</p>

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**Rules and Forms: Name and Gender Change Forms for Minors to Implement Assembly Bill 218 and Assembly Bill 421 (Adopt form NC-530; revise forms NC-500, NC-500-INFO, NC-510G, NC-520; revoke form NC-530G)**

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	Commenter	Position	Comment	Committee Response
			<p>3) NC-500 Item 3(d): again, not sure it's frequent enough to be worth adjusting, but there is the rare possibility of more than two parents not signing the petition.</p>	<p>See above response regarding multiple parents.</p>
			<p>4) NC-500 Item 8 – I'm not sure why a prior name change order needs to be acknowledged. If the point is to have a link between all prior names, it may be simpler to say the minor has previously changed their legal name. All prior legal names are listed below: _____. Asking people to attach certified copies of court orders is an added expense in an already expensive process, so if there is a need to attach a copy of a prior name change order for whatever reason, I would not require it to be certified. For what it's worth, most judges require a copy of a minor's birth certificate to be attached to the petition, so it may be simpler to add that onto the form, since I've regularly had my clients' petitions rejected for not including the minor's birth certificate. (Granted, that then puts the minor's birth certificate into the public record, but that is the standard practice in most courts at this time.) Maybe it makes more sense to have an optional notice of lodgment form to attach a birth certificate to, so that that court can review it, but it doesn't become part of the public record.</p>	<p>The committee declines to make the suggested revision because the point is not to link to prior names, but to allow the petitioner to have a name change made to California-issued certificates without requiring the petitioner to undergo the name change process if the petitioner has already obtained a name change decree.</p> <p>The committee believes that NC-500 and NC-500-INFO sufficiently explain this alternative. However, form NC-530 has been modified to reflect this alternative more clearly in item 3c and the court order section of the form.</p>

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**Rules and Forms: Name and Gender Change Forms for Minors to Implement Assembly Bill 218 and Assembly Bill 421** (Adopt form NC-530; revise forms NC-500, NC-500-INFO, NC-510G, NC-520; revoke form NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p>Okay – now after reading the instructions, I see that the idea is that they should be able to have their birth certificate updated with the new gender AND prior name changes if they haven’t updated their birth certificate already. You all may have more expertise on this than I do, but I think if they’ve already changed their name, they should be filing under the new name with an FKA for the old name, just so that there is a link in the document to make it clear to vital records. Then, they could file with vital records a certified copy of the name change and a certified copy of the gender order and get a new birth certificate issued with the new name and gender. What may be better is to put something about the FKA, or as mentioned above, a listing of all former legal names, that could also be in the court order. (I often come across people – although usually adults – who have had IDs and documents issued to 3 or 4 variations on a name, so if the court order could link them together and basically say – this person’s new name is X, and A, B and C are all of the former names of X, and they are all the same person – that could make their life much easier to then have all of the names linked.)</p>	
			<p>5) NC-500 Item 8 – this is super nuanced, but it is possible that the minor may be changing their</p>	<p>The committee declines to make the proposed revision. Form NC-500 may only be used for</p>

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**Rules and Forms: Name and Gender Change Forms for Minors to Implement Assembly Bill 218 and Assembly Bill 421** (Adopt form NC-530; revise forms NC-500, NC-500-INFO, NC-510G, NC-520; revoke form NC-530G)

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	Commenter	Position	Comment	Committee Response
			<p>name not specifically to conform with gender identity. For example, they may have a gender neutral name and just like some other gender neutral name better. They may have previously changed their name, and now they've decided they like something else better. Presumably all of the new names would also conform to their gender identity, but I would keep it simpler and say "Petitioners request that the court decree that the minor's name is changed to (proposed name):"</p>	<p>name changes if the petitioning minor is seeking to change their name to conform to gender identity. Name change requests to conform to gender identity are exempt from the publication requirements of Code of Civil Procedure 1277. <i>See Code of Civ. Proc., § 1277.5.</i> A minor seeking a change of name for reasons other than to conform to gender identity must use the NC-100 series forms.</p>
			<p>6) NC-500 Item 9(b): again, this possibility is so rare that it might not be worth updating the forms, but technically, it's possible that older minors may have children or a marriage of their own, and therefore could be filing where their children's birth certificate was issued or where their marriage certificate was issued. (This would also need to be updated in item #2, in the where to file instruction #2, and NC-530, Item 3(c).)</p>	<p>The committee declines to make the suggested revision.</p> <p>The committee acknowledges that there may be rare situations where a minor has had a child or gets married and subsequently decides to change their gender before reaching age 18. But the alternative venue provisions of Code of Civil Procedure section 1276(g) will only be implicated by a petitioning minor who (1) had a child or got married in California, as a minor, while identifying as a certain gender; (2) does not live in California (either they moved or never lived in state); (3) while still a minor, seeks to change the California-issued wedding certificate or child's birth certificate, issued a short time earlier, to reflect a change of gender.</p>

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SP22-08

**Rules and Forms: Name and Gender Change Forms for Minors to Implement Assembly Bill 218 and Assembly Bill 421** (Adopt form NC-530; revise forms NC-500, NC-500-INFO, NC-510G, NC-520; revoke form NC-530G)

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	Commenter	Position	Comment	Committee Response
				<p>Because the committee believes this to be an exceedingly rare scenario, which would make the forms more complicated to account for it, it declines to modify the forms to account for it at this time.</p>
			<p>7) Instruction #3 what forms are required. Could we add an advisement that your local court may require additional local forms, and you should check on the court’s website or by asking a clerk or self-help office? (For example, in LA County, there is an additional local cover sheet as well as a required background check form for name changes that’s usually required for anyone over the age of 12.)</p>	<p>The forms have been modified in light of this comment. Paragraph 3 of form NC-500-INFO has been further revised to advise petitioners to check with local courts to determine if additional local forms are required. Similar modifications were made to form NC-100-INFO and form NC-300-INFO.</p>
			<p>8) Order to show cause instructions – should we include an instruction that they need to file a proof of service? Wouldn’t want people to get called into a hearing that could otherwise be avoided just because they didn’t realize they need to file that.</p>	<p>The committee notes that NC-500-INFO already provides, in item 6 at the section titled: “What to do with the Order to Show Cause,” that “the petitioner must have the server complete a proof of service and file it with the court. (Form NC-121 may be used.)” The committee believes further instruction is unnecessary.</p>
			<p>9) NC-510G item 4: I think the wording is a bit confusing and could be simplified as follows: If all parents are deceased or cannot be located,</p>	<p>NC-510G has been modified to reflect this change.</p>

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	Commenter	Position	Comment	Committee Response
			<p>provide the following information for the minor’s living grandparents (if known):</p> <p>10) This is super nitpicky, but could you please put a line _____ next to all places where people are supposed to date? I cannot tell you how often my clients forget to date documents, and those that have the line get missed a lot less.</p> <p>11) NC-530, item 3(h): I’m not sure if this is a statutory issue, but why limit objections to only those by parents? What about grandparents? Or somehow someone else files a written objection? Could just say “If objections were filed” or something like that.</p>	<p>The committee declines to make the suggested revision as it is inconsistent with Judicial Council forms style. The Judicial Council Forms Manual provides that the date field is not followed by a line.</p> <p>The court declines to change item 3(h). Under Health and Safety Code section 103430(h)(1), when anyone other than a parent files an objection, “[a]t the conclusion of the hearing, the court shall grant the petition if the court determines that the petition is not made for any fraudulent purpose.” The finding related to this provision is in the form at item 3(i).</p> <p>If a parent files an objection, however, a different finding must be made by the court. Under Health and Safety Code section 103430(h)(2), if an objection is “timely filed by a parent who objects to changes to their minor child’s birth certificate, after holding a hearing on the matter, the court may deny the petition if the court finds that the change of gender and sex identifier is not in the best interest of the minor.” Item 3(h) on form NC-</p>

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	Commenter	Position	Comment	Committee Response
			<p>12) NC-530, item 5 says gender in item 3, but I believe it should say gender in item 4. Also, I would move this entire court order to the end before other orders and say: “A new birth certificate reflecting the new gender described in item 4 and the minor child’s current legal name shall be issued.” First - new gender instead of change of gender, so that no vital records office then decides that they need to show that someone went from A to B, instead of just showing B. Also, with this language about current legal name, if the name change is happening in the same order, it reflects that, and if there was a prior name change, they will be able to show that the name on this court order is the current legal name by showing the old name change order, and if there has been no name change, that language works as well.</p>	<p>530 is the item by which the court can make the specific statutory finding required by Health and Safety Code section 103430(h)(2).</p> <p>Item 5 of form NC-530 has been revised to make the suggested correction.</p> <p>The committee agrees with the recommended revision to the extent that it recommends the court order regarding issuance of new birth certificate include reference to a petitioner’s change of name request. However, the committee declines the suggestion to change “change of gender” to “new gender.” The phrase “change of gender” tracks the applicable statutory language. <i>See</i> Health &amp; Saf. Code, § 103430. For the expressed concern, the committee notes that Health &amp; Safety Code section 103431(a)(1) provides that for a new birth certificate, “[n]o reference shall be made in the new birth certificate, nor shall its form in any way indicate, that it is not the original birth certificate of the petitioner.” <i>See also</i> Health &amp; Saf. Code, § 103431(a)(2) &amp; (c)(2) (providing the same regarding new marriage certificates and new birth certificates for petitioner’s children, respectively).</p>

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			<p>13) NC-530 item 6 – I would move this down to be the last thing either right before or right after other orders and amend as follows: “If minor was born in California, a certified copy of this order shall be filed by the petitioner within 30 days with the State Registrar. When the State Registrar receives a certified copy of this order and payment of the applicable fees, the State Registrar shall establish for the petitioner a new birth certificate reflecting the gender of the minor as it has been altered as well <u>as the minor’s current legal name.</u>” (underlining the addition just to make it easy to read.) Again – this language is flexible enough to accommodate a current name change, an old name change or no name change at all.</p>	<p>The committee declines the suggestion to incorporate the phrase “current legal name” into the forms. The committee believes “current legal name” may cause confusion to petitioners and further believes that “change of name” clearly articulates to the petitioner and the court what is being sought.</p> <p>The court order section of form NC-530 has been revised and reorganized to separate the change of gender and change of name orders and to present the change of name options more clearly. As suggested, the order requiring the petitioner to file the order with the State Registrar (item 7 in revised form NC-530) has been moved to the end of the form, above “Other orders.”</p> <p>The committee declines the suggestion to reword this item because it believes the item as currently drafted is sufficiently clear.</p>
4.	Superior Court of Orange County Family Law and Juvenile Division	NI	<p><b>Form NC-500</b></p> <ul style="list-style-type: none"> <li>In the <b>Declaration</b> section of the form, remove the line next to the date section for the</li> </ul>	<p>Form NC-500 has been modified to reflect the correction.</p>

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**Rules and Forms: Name and Gender Change Forms for Minors to Implement Assembly Bill 218 and Assembly Bill 421** (Adopt form NC-530; revise forms NC-500, NC-500-INFO, NC-510G, NC-520; revoke form NC-530G)

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	Commenter	Position	Comment	Committee Response
			petitioner’s attorney so that it’s uniform with all other signature sections.	
			<b>Form NC-500-INFO</b> • Page 3, 2nd bullet point has an extra space between “it only”	Form NC-500-INFO has been modified to reflect the correction.
			• It may be beneficial for the form title to include the complete name of the NC-500 petition.	The committee declines to make the suggested revision to NC-500-INFO’s title. The committee believes that the shorter title currently on the form helps save space and makes it easier to locate the form, while still making clear the form’s purpose.
			• Form references form NC-500 petition but does include full name.	Paragraph 2 of form NC-500-INFO has been modified to include the full name of form NC-500 when the form is referenced.
			• Spacing in footer needs to be adjusted.	Form NC-500-INFO has been modified to reflect the correction.
			<b>Form NC-510G</b> • Spacing in footer needs to be adjusted.	Form NC-510G has been modified to reflect the correction.
			<b>Form NC-520</b> • It may be beneficial for the form title to include the full name of petition: ORDER TO SHOW CAUSE PETITION FOR RECOGNITION OF MINOR'S CHANGE OF	The title of form NC-520 has been modified to be consistent with the other orders to show cause used in the name and gender change context, specifically, NC-120 and NC-325. Specifically,

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	Commenter	Position	Comment	Committee Response
			<p>GENDER AND SEX IDENTIFIER AND FOR ISSUANCE OF NEW BIRTH CERTIFICATE</p>	<p>“for” has been replaced with an em-dash to clarify that the order to show cause is not “for” recognition of a minor’s change of gender and sex identifier. The committee declines the suggestion to add the terms “Petition for” to the title.</p>
			<ul style="list-style-type: none"> <li>• Items 1b and 2b where it reflects “<b>The Court Orders</b>” should be its own section for Orders with a breaker. The “<b>The Court Orders</b>” sections should also contain a box for the judicial officer to mark as ordered.</li> </ul>	<p>The committee declines to make the suggested revisions. The committee believes that keeping the name change and gender change portions of the form (including the respective court order items) separate will make the forms clearer for recipients of the orders to show cause.</p> <p>Additionally, the committee believes adding checkboxes next to the items where the court orders the recipient to show cause would be inconsistent with other form OSCs. Further, as the form is currently drafted, the court would indicate which order or orders are applicable by checking the appropriate box next to “TO ALL INTEREST PERSONS,” “TO ANY LIVING PARENT OF MINOR WHO DID NOT SIGN PETITION,” and/or “TO ANY LIVING GRANDPARENTS OF MINOR.”</p>
			<ul style="list-style-type: none"> <li>• Given that the form no longer includes a hearing date section, should form <i>Notice of Hearing on Petition</i> (NC-125) be used to</li> </ul>	<p>Courts may use <i>Notice of Hearing on Petition</i> (form NC-150) to schedule a hearing after objections are received, but the committee</p>

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			<p>schedule the hearing? If so, this information should be listed on form NC-500-INFO so that the public is aware.</p>	<p>declines to make the suggested revision to form NC-500-INFO.</p> <p>A hearing on a petition to recognize a change of gender (or change of name to conform to gender identity) can only be scheduled if the court receives objections showing good cause why the petition should be denied. Code of Civ. Proc., §1277.5(c); Health &amp; Saf. Code, § 103430(h). Form NC-500-INFO provides information for petitioners, who will not know whether a hearing will be required at the time they file the petition, and will not be the individuals who complete the notice form. Only a court will be in a position to know whether objections have been received and a hearing required. Accordingly, form NC-150 will be filled out and sent, if necessary, by the court, not the parties. The committee therefore does not believe it is necessary to instruct petitioners about form NC-150 in form NC-500-INFO.</p> <p>To reflect that petitioners will not fill out NC-150, the committee has revised the form to remove “<i>(To be completed by clerk.)</i>” from the form, as this line implied that everything above the line would be filled out by the petitioner.</p>
			<p><b>Request for Specific Comments</b></p>	

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			<ul style="list-style-type: none"> <li>▪ <i>Would the proposal provide cost savings? If so, please quantify.</i> <ul style="list-style-type: none"> <li>○ This proposal does not appear to provide any cost savings.</li> </ul> </li> </ul>	<p>The committee appreciates the information.</p>
			<ul style="list-style-type: none"> <li>▪ <i>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?</i> <ul style="list-style-type: none"> <li>○ Revising case management system as to new entry codes.</li> <li>○ Training on new/revised forms, how to process new/revised form.</li> <li>○ Case processing/courtroom – approximately 2-3 hours of training</li> <li>○ Revising procedures</li> </ul> </li> </ul>	<p>The committee appreciates the information.</p>
			<ul style="list-style-type: none"> <li>▪ <i>Would six weeks from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? (Note, the new laws are operative as of January 1, 2023.)</i> <ul style="list-style-type: none"> <li>○ No, six weeks does not provide sufficient time for implementation.</li> </ul> </li> </ul>	<p>Assembly Bill 218 and Assembly Bill 421 become operative January 1, 2023. Because of the need to have revised forms that conform to the changes in the law, the committee has concluded that it is impractical to provide more time between approval of the proposal to its effective date.</p>

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	Commenter	Position	Comment	Committee Response
5.	Superior Court of Riverside County by Susan Ryan Chief Deputy of Legal Services	A	Suggested edit: on NC 530 form, Item #3 - add a period after "d".	Form NC-530 has been modified to reflect the correction.
6.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	Would the proposal provide cost savings? If so, please quantify. <b>No.</b>	The committee appreciates the information.
			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? <b>Training business office and courtroom staff, updating existing internal procedures for name/gender change petitions, and updating local forms packets. New, revoked, and revised forms will also require updates to the court’s case management system.</b>	The committee appreciates the information.
			Would six weeks from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? (Note, the new laws are operative as of January 1, 2023.)	The committee appreciates the information.

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	Commenter	Position	Comment	Committee Response
			<b>Yes, provided the final versions of the forms are provided to the court at that time. This will ensure the court is able to train staff, update its case management system, modify local packets, and obtain printed stock.</b>	
			No additional Comments.	No response necessary.

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**Civil and Small Claims Advisory Committee**  
**Annual Agenda<sup>1</sup>—2022-2023**  
**Approved by Rules Committee:**

**I. COMMITTEE INFORMATION**

<b>Chair:</b>	Hon. Tamara Wood, Superior Court of Shasta County
<b>Lead Staff:</b>	James Barolo, Attorney, Legal Services
<b>Committee's Charge/Membership:</b> <a href="#">Rule 10.41</a> of the California Rules of Court states the charge of the Civil and Small Claims Advisory Committee (C&SCAC), which is to make recommendations to the Judicial Council for improving the administration of justice in civil and small claims proceedings.  Rule 10.41 also sets forth the membership categories for the committee, which currently has 25 voting members and 1 advisory member. The current committee <a href="#">roster</a> is available on the committee's web page.	
<b>Subcommittees/Working Groups<sup>2</sup>:</b> <i>List the names of each subcommittee or working group, including groups made up exclusively of committee/task force members and joint groups with other advisory committees/task forces. To request approval for the creation of a new subgroup, include "new" after the name of the proposed subgroup and describe its purpose.</i> <ol style="list-style-type: none"><li>1. Alternative Dispute Resolution Subcommittee</li><li>2. Protective Orders Subcommittee</li><li>3. Unlawful Detainer Subcommittee (<i>previously the COVID-19–Rental Debt Subcommittee</i>)</li><li>4. Rules and Forms Subcommittee</li><li>5. Legislative Subcommittee</li></ol>	

<sup>1</sup> The annual agenda outlines the work a committee will focus on in the coming year and identifies areas of collaboration with other advisory bodies and the Judicial Council staff resources.

<sup>2</sup> California Rules of Court, rule 10.30 (c) allows an advisory body to form subgroups, composed entirely of current members of the advisory body, to carry out the body's duties, subject to available resources, with the approval of its oversight committee.

### Meetings Planned for 2022-2023<sup>3</sup>

Full committee meetings:

- October 2022 (videoconference for proposals on special cycles)
- November 2022 (videoconference to review winter cycle proposals)
- February/March 2023 (in person if permitted, otherwise videoconference, to make final recommendations on winter cycle proposals and review spring cycle proposals)
- June/July 2023 (videoconference to make final recommendations on spring cycle proposals)

Subcommittee Meetings:

- Legislative Subcommittee. Videoconference meetings several times a month as needed from February through July to review proposed legislation.
- Other subcommittees. Multiple telephonic or videoconference meetings of each before each of the full committee meetings.

Other meetings as needed to address proposals implementing new legislation and other urgent matters.

Check here if exception to policy is granted by Executive Office or rule of court.

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<sup>3</sup> Refer to [Operating Standards for Judicial Council Advisory Bodies](#) for governance on in-person meetings.

## II. COMMITTEE PROJECTS

#	New or One-Time Projects <sup>4</sup>	
1.	<b>Gun Violence Restraining Order Forms: Implementation of legislation</b>	<b>Priority 1(a) and (b)</b> <sup>5</sup>
<p data-bbox="176 435 1940 613"><b>Project Summary</b><sup>7</sup>: Develop form recommendations as appropriate. AB 2870, which goes into effect January 1, 2023, amends the Penal Code to allow additional categories of people to petition for gun violence restraining orders. Specifically, people who have a dating relationship with the subject of the petition and people who have a child in common with the subject of the petition may now request such an order. The legislation also seeks to clarify that a roommate can bring such a petition. The current forms should be revised to reflect the additional potential petitioners. The forms may also need to be revised to reflect other recent legislation.</p> <p data-bbox="176 654 1667 686"><b>Status/Timeline</b>: Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2024.</p> <p data-bbox="176 727 968 760"><b>Fiscal Impact/Resources</b>: Committee staff, potentially CFCC</p> <p data-bbox="176 768 1902 841"><input type="checkbox"/> 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.</p> <p data-bbox="176 881 1887 954"><b>Internal/External Stakeholders</b>: All draft proposals will circulate to seek comments from legal service groups, bar organizations, and court executives and presiding judges throughout the state.</p> <p data-bbox="176 995 1682 1027"><b>AC Collaboration</b>: Potentially Joint Protective Order Working Group, Family and Juvenile Law Advisory Committee</p>		
2.	<b>Protective Orders: Forms to Request Service by the Sheriff, Implementation of AB 2791</b>	<b>Priority 1(a) (b) and (c)</b>

<sup>4</sup> All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or a *program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

<sup>5</sup> 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.

<sup>6</sup> Indicate which goal number of The Strategic Plan for California’s Judicial Branch the project most closely aligns.

<sup>7</sup> A key objective is a strategic aim, purpose, or “end of action” to be achieved for the coming year.

#	New or One-Time Projects <sup>4</sup>	
		<i>Strategic Plan Goals I and III</i>
	<p><b>Project Summary:</b> Work with Protective Order Working Group (<i>under lead of Family and Juvenile Law Advisory Committee</i>) to develop form recommendations as appropriate. AB 2791 requires the Judicial Council to create forms for use by civil litigants to request service of process and other court papers by a marshal or sheriff. The legislation mandates certain items be included on the forms.</p> <p><b>Status/Timeline:</b> Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2024.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff, CFCC</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Sheriff and marshal offices. All draft proposals will circulate to seek comments from legal service groups, bar organizations, and court executives and presiding judges throughout the state.</p> <p><b>AC Collaboration:</b> Joint Protective Order Working Group, Family and Juvenile Law Advisory Committee</p>	
3.	<b>Protective Orders: Service Requirements After Remote Attendance</b>	<i>Priority 1(e)</i>
		<i>Strategic Plan Goals I and III</i>
	<p><b>Project Summary:</b> Work with Protective Order Working Group (<i>under lead of Family and Juvenile Law Advisory Committee</i>) to develop rule and form recommendations as appropriate. Service requirements for protective orders differ depending on whether the restrained party attended the hearing on the order. The Legislature has enacted laws on remote appearances for such hearings and amended certain aspects of the protective order process but has not clarified whether remote attendance at a protective order hearing amounts to a “personal appearance” for the purposes of service. A rule or revised forms may provide clarity for courts and litigants on the issue.</p> <p><b>Status/Timeline:</b> Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2024.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff, CFCC</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate to seek comments from legal service groups, bar organizations, and court executives and presiding judges throughout the state.</p>	

#	<b>New or One-Time Projects<sup>4</sup></b>	
	<i>AC Collaboration:</i> Joint Protective Order Working Group, Family and Juvenile Law Advisory Committee	
4.	<b>Protective Orders: Revise Form CLETS-001</b>	<b>Priority 1(e)</b> <b>Strategic Plan Goals I and III</b>
	<p><b>Project Summary:</b> Work with Protective Order Working Group (<i>under lead of Family and Juvenile Law Advisory Committee</i>) to develop rule and form recommendations as appropriate. The current version of CLETS-001 must be filled out by those requesting gun violence restraining orders under rule 1.51 but cannot be accurately completed by those petitioners because the form requires identification of the “person to be protected” by the order, which is not applicable to gun violence restraining orders. Additionally, order forms for protective order are being revised (separately) to note that certain items are required (rather than just helpful), and the committee will consider whether it would be beneficial to users if the CLETS form is similarly revised.</p> <p><b>Status/Timeline:</b> Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2024.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff, CFCC</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> California Department of Justice. All draft proposals will circulate to seek comments from legal service groups, bar organizations, and court executives and presiding judges throughout the state.</p> <p><i>AC Collaboration:</i> Joint Protective Order Working Group, Family and Juvenile Law Advisory Committee</p>	
5.	<b>Unlawful Detainer Forms: Implementation of SB 1017</b>	<b>Priority 1(a) and (b)</b> <b>Strategic Plan Goals I and III</b>
	<p><b>Project Summary:</b> Develop form recommendations as appropriate to implement SB 1017. The law prohibits termination of a tenancy based on abuse or violence against a tenant. Under the new legislation, if the abuser is in the same household, that affirmative defense is raised, and a court determines that documentation of the abuse or violence exists, then the court must make certain orders, including a partial eviction removing the perpetrator of the violence and that the landlord change the locks for the remaining occupants. The legislation requires the council to adopt forms to implement this bill.</p> <p><b>Status/Timeline:</b> Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2024.</p>	

#	<b>New or One-Time Projects<sup>4</sup></b>	
	<p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate to seek comments from legal service groups, bar organizations, and court executives and presiding judges throughout the state.</p> <p><b>AC Collaboration:</b> N/A</p>	
6.	<p><b>Unlawful Detainer: Update Mandatory Cover Sheet and Answer</b></p>	<p><b>Priority 1(e)</b></p> <p><b>Strategic Plan Goals I and III</b></p>
	<p><b>Project Summary:</b> Develop form recommendations as appropriate. The council’s current mandatory cover sheet and answer form for unlawful detainer actions contain numerous items related to rent that came due in 2020 and 2021, to reflect COVID-19-related protections applicable to such rent. Because the statute of limitations on recovering such rents is passed, the forms should be revised to avoid confusion as to what protections remain available. Additionally, the forms may benefit from reformatting.</p> <p><b>Status/Timeline:</b> Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2024.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate to seek comments from legal service groups, bar organizations, and court executives and presiding judges throughout the state.</p> <p><b>AC Collaboration:</b> N/A</p>	
7.	<p><b>Unlawful Detainer Forms: Implementation of AB 1726</b></p>	<p><b>Priority 1(a) and (b)</b></p> <p><b>Strategic Plan Goals I and III</b></p>

#	<b>New or One-Time Projects<sup>4</sup></b>	
	<p><b>Project Summary:</b> Consider whether form revisions are appropriate to implement AB 1726. The law provides that defendants in actions to obtain possession of real property have an additional five court days to file a response if service is completed by mail or in person through the Secretary of State’s address confidentiality program.</p> <p><b>Status/Timeline:</b> Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2024, if the committee determines it should recommend form revisions.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate to seek comments from legal service groups, bar organizations, and court executives and presiding judges throughout the state.</p> <p><b>AC Collaboration:</b> N/A</p>	
8.	<b>Rules and Forms: Implementation of SB 1200</b>	<p><b>Priority 1(a) and (b)</b></p> <p><b>Strategic Plan Goals I and III</b></p>
	<p><b>Project Summary:</b> Develop form recommendations as appropriate to implement SB 1200. The law provides that for certain money judgements the rate of interest will be 5% instead 10% and that such money judgements may only be renewed once. The law also provides additional time for judgment debtors to request that a judgment renewal be vacated.</p> <p><b>Status/Timeline:</b> Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2024.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate to seek comments from legal service groups, bar organizations, and court executives and presiding judges throughout the state.</p> <p><b>AC Collaboration:</b> N/A</p>	

#	New or One-Time Projects <sup>4</sup>	
9.	<b>Rules and Forms: Implementation of SB 1279</b>	<p><i>Priority 1(a) and (b)</i></p> <hr/> <p><i>Strategic Plan Goals I and III</i></p>
<p><b>Project Summary:</b> Develop form recommendations as appropriate to implement SB 1279. The law updates the terms used in appointing guardians ad litem in civil actions, requires notice of the application for appointment to any existing guardian or conservator, and establishes other court procedures concerning such appointment.</p> <p><b>Status/Timeline:</b> Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2024.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate to seek comments from legal service groups, bar organizations, and court executives and presiding judges throughout the state.</p> <p><b>AC Collaboration:</b> Probate and Mental Health Advisory Committee</p>		
10.	<b>Rules and Forms: Confidential Safe at Home Program Name Change Forms</b>	<p><i>Priority 1(e)</i></p> <hr/> <p><i>Strategic Plan Goals I and III</i></p>
<p><b>Project Summary:</b> Develop form recommendations as appropriate. The Secretary of State, which administers the Safe at Home program (anonymous address program for victims of domestic violence), has asked that the forms more accurately reflect the law and make it clearer to petitioners that they must have the proposed name on file with the Safe at Home program before filing a petition for the intended name change. Petitioners who wish to seek a name change receive, after submitting a Notice of Intent of Name Change form with Safe at Home program, a letter confirming that they are an active participant in the program and that their intended change of name is on file with the program. The Safe at Home program has asked that this letter be required to be filed with the court.</p> <p><b>Status/Timeline:</b> Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2024.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> 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.</p>		

#	<b>New or One-Time Projects<sup>4</sup></b>	
	<p><b>Internal/External Stakeholders:</b> California Secretary of State, Safe at Home program. All draft proposals will circulate to seek comments from legal service groups, bar organizations, and court executives and presiding judges throughout the state.</p> <p><b>AC Collaboration:</b> N/A</p>	
11.	<b>ADR: Increased Use of Settlement Conferences in Unlawful Detainer Cases</b>	<p><b>Priority 1(e)</b></p> <p><b>Strategic Plan Goals I and III</b></p>
<p><b>Project Summary:</b> 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. The committee may also propose a new Judicial Council form to facilitate and document settlement among the parties.</p> <p><b>Status/Timeline:</b> Invitation to comment planned for Winter Cycle, with anticipated effective date of September 1, 2023.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate to seek comments from legal service groups, bar organizations, and court executives and presiding judges throughout the state.</p> <p><b>AC Collaboration:</b> N/A</p>		
12.	<b>Protective Orders: Continuance of Hearings on Requests to Renew</b>	<p><b>Priority 2(b)</b></p> <p><b>Strategic Plan Goals III and IV</b></p>
<p><b>Project Summary:</b> Work with Protective Order Working Group (<i>under lead of Family and Juvenile Law Advisory Committee</i>) to revise the forms used in domestic violence and civil cases to request and order continuances of hearings in proceedings to renew or terminate protective orders (the CH-700 form series and the parallel forms in the DV, EA, GV, SV, and WV form series).</p>		

#	<b>New or One-Time Projects<sup>4</sup></b>	
	<p><b>Status/Timeline:</b> This project is included because parallel revisions to continuance forms for domestic violence restraining orders are anticipated this year. Invitation to comment planned for Spring Cycle, with anticipated effective date of January 1, 2024.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff, CFCC</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> California Department of Justice. All draft proposals will circulate to seek comments from legal service groups, bar organizations, and court executives and presiding judges throughout the state.</p> <p><b>AC Collaboration:</b> Joint Protective Order Working Group, Family and Juvenile Law Advisory Committee</p>	
13.	<b>Civil Practice and Procedure: Revise Civil Summons Form</b>	<p><b>Priority 2(b)</b></p> <p><b>Strategic Plan Goals I and III</b></p>
	<p><b>Project Summary:</b> Develop form recommendations as appropriate. The civil <i>Summons</i> (form SUM-100) contains numerous checkboxes for the filer to designate the type of organization the summons has been issued on behalf of. These checkboxes may not best reflect the most common organization types used. Additionally, minor formatting changes may also improve the form’s useability for litigants and courts.</p> <p><b>Status/Timeline:</b> This project is included as it has been requested repeatedly by process service organizations over the past several years. The committee will address it if time and resources permit. Anticipated January 1, 2025 effective date, unless resources permit earlier recommendation.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate to seek comments from legal service groups, bar organizations, and court executives and presiding judges throughout the state.</p> <p><b>AC Collaboration:</b> N/A</p>	

# Ongoing Projects and Activities <sup>4</sup>	
1.	<b>Review Suggestions for Rules and Forms</b>
	<i>Priority 1</i>
<i>Strategic Plan Goals III and IV</i>	
<p><b>Project Summary:</b> As mandated by rule 10.21(c), review suggestions from members of the judicial branch and the public for improving civil practice and procedure, court-connected ADR, and case management and recommend actions by the council or one of its committees.</p> <p><b>Status/Timeline:</b> Ongoing; will only take further action upon approval of Rules Committee.</p> <p><b>Fiscal Impact/Resources:</b> N/A</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> N/A</p> <p><b>AC Collaboration:</b> As appropriate based on proposal received.</p>	
2.	<b>Review Enacted Legislation</b>
	<i>Priority 1</i>
<i>Strategic Plan Goals II and III</i>	
<p><b>Project Summary:</b> Review all enacted legislation referred to the committee by the Judicial Council’s Governmental Affairs office that may have an impact on issues within the advisory committee’s purview and, where appropriate, propose to the council rules and forms to implement the legislation or to bring rules and forms into conformity with it.</p> <p><b>Status/Timeline:</b> Ongoing; will only take further action upon approval of Rules Committee.</p> <p><b>Fiscal Impact/Resources:</b> N/A</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> N/A</p> <p><b>AC Collaboration:</b> As appropriate based on the specific legislation.</p>	
3.	<b>Review Pending Legislation</b>
<i>Priority 1</i>	

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
		<i>Strategic Plan Goals III and IV</i>
	<p><b>Project Summary:</b> Working through the Legislative Subcommittee, review pending legislation affecting civil procedure and court administration, and make recommendations to the Legislation Committee as to whether the Judicial Council should support or oppose the legislation.</p> <p><b>Status/Timeline:</b> Ongoing.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff, Governmental Affairs</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> California Legislature</p> <p><b>AC Collaboration:</b> N/A</p>	
4.	<b>Rules and Forms: Miscellaneous Technical Changes</b>	<i>Priority 1</i>
	<i>Strategic Plan Goal III</i>	
	<p><b>Project Summary:</b> Develop rule and form changes as necessary to make corrections and adjustments meeting the criteria of rule 10.22(d)(2): “a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy....” These include revisions to forms that contain dollar figures based on statutory criteria that the Judicial Council is mandated to adjust on a regular basis.</p> <p><b>Status/Timeline:</b> Ongoing.</p> <p><b>Fiscal Impact/Resources:</b> N/A</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> N/A</p> <p><b>AC Collaboration:</b> N/A</p>	

#	Ongoing Projects and Activities <sup>4</sup>	
5.	Pilot Project for Streamlined Discovery	<p><i>Priority 1 DEFERRED</i></p> <p><i>Strategic Plan Goal III</i></p>
<p><b>Project Summary:</b> Consider pilot project to assess the feasibility of rules to streamline civil discovery in unlimited civil cases.</p> <p><b>Status/Timeline:</b> <i>Deferred due to impacts on the judicial branch relating to the COVID-19 pandemic.</i></p> <p>Project history:</p> <ul style="list-style-type: none"> <li>Initially this project—rules and statutes to streamline civil litigation—which was born out of recommendations in the Report of the Commission on Future of California’s Court System, included legislative proposals to: increase the maximum jurisdiction dollar amounts for limited civil cases to \$50,000 and to develop an intermediate civil case tier; include unlawful detainer proceedings within the procedures for limited civil cases, including mandatory expedited jury trials; revise discovery statutes to make discovery proportional to amount at issue (based on civil case tiers), require mandatory early disclosures, and limit number of expert witnesses; and allow partial summary judgments in unlimited cases. The project also included amended case management rules and amended forms to implement that legislation and aimed to increase ADR in all case levels, including, potentially, online ADR for small claims cases.</li> <li>During the 2017-2018 committee year, the committee developed two legislative proposals, one concerning limited civil case jurisdiction and unlawful detainers (which was circulated for public comment in Spring 2018) and one concerning changes to civil discovery based on new civil tiers (which was circulated in fall 2018).</li> <li>During the 2018-2019 year, following review of the comments received on the proposals, the committee, in light of the strong opposition from bar and legal service organizations, decided not to continue with those proposals at that time. The committee began working on alternative ways to further the recommendations, and focused on the concept of a pilot project, based on voluntary participation of the parties.</li> <li>In 2019-2020, the committee, having identified two courts interested in participating in the pilot project circulated proposed rules and form for public comment in spring 2020. However, both courts had to delay participation in light of issues at their courts relating to the COVID-19 pandemic.</li> <li>This project was deferred in the 2020-2022 committee years year due to impacts on the judicial branch relating to the COVID-19 pandemic. Because the project will entail significant hands-on case management and early trial dates as incentives for participation, the committee is continuing to defer the project at this time.</li> </ul> <p><b>Fiscal Impact/Resources:</b> N/A</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> N/A</p>		

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
	<i>AC Collaboration:</i> N/A	
6.	<b>Provide Subject Matter Expertise</b>	<b>Priority 2</b>
	<p data-bbox="174 394 1978 548"><b>Project Summary:</b> Serve as subject matter resource for other advisory groups to avoid duplication of efforts and contribute to the development of recommendations for council action. Such efforts may include providing civil and small claims procedural expertise and review to working groups, advisory committees, and subcommittees as requested, on projects that have been approved on their annual agendas.</p> <p data-bbox="174 586 527 621"><b>Status/Timeline:</b> Ongoing.</p> <p data-bbox="174 659 579 695"><b>Fiscal Impact/Resources:</b> N/A</p> <p data-bbox="174 703 1906 776"><input type="checkbox"/> <i>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.</i></p> <p data-bbox="174 813 663 849"><b>Internal/External Stakeholders:</b> N/A</p> <p data-bbox="174 886 1314 922"><b>AC Collaboration:</b> As appropriate for project on which advice or consultation requested.</p>	
7.	<b>Update Deskbook on the Management of Complex Civil Litigation</b>	<b>Priority 2</b>
	<p data-bbox="174 1092 1978 1206"><b>Project Summary:</b> Implementation project that the Civil and Small Claims Advisory Committee will work on as time permits; charge for work was made for CSCAC by the council at the October 22, 1999 meeting in which the council received the report of the Complex Civil Litigation Task Force and voted to adopt the Task Force’s recommendations.</p> <p data-bbox="174 1243 527 1279"><b>Status/Timeline:</b> Ongoing.</p> <p data-bbox="174 1317 579 1352"><b>Fiscal Impact/Resources:</b> N/A</p> <p data-bbox="174 1360 1906 1433"><input type="checkbox"/> <i>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.</i></p> <p data-bbox="174 1471 663 1507"><b>Internal/External Stakeholders:</b> N/A</p>	

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
	<i>AC Collaboration:</i> N/A	
8.	<b>Revision of Judicial Council Forms with a Gender Identity Question or Term</b>	<i>Priority 2(b)</i>
	<p data-bbox="176 435 1980 508"><i>Project Summary:</i> The forms within this committee’s purview that include a gendered term or gender identity question are being revised to eliminate or revise those terms where possible.</p> <p data-bbox="176 553 1980 659"><i>Status/Timeline:</i> Due to impacts on the judicial branch relating to the COVID-19 pandemic, this is limited to when a form with a gendered term in it is being revised for legislatively mandated reasons or other reasons approved by the Rules Committee, in which case the revision of gendered terms will occur at the same time.</p> <p data-bbox="176 699 579 732"><i>Fiscal Impact/Resources:</i> N/A</p> <p data-bbox="176 740 1980 813"><input type="checkbox"/> <i>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.</i></p> <p data-bbox="176 854 1980 927"><i>Internal/External Stakeholders:</i> All draft proposal will circulate to seek comments from legal services groups, bar organizations, and court executives and presiding judges throughout the state.</p> <p data-bbox="176 967 1314 1000"><i>AC Collaboration:</i> As appropriate for project on which advice or consultation requested.</p>	

### III. LIST OF 2022 PROJECT ACCOMPLISHMENTS

#	Project Highlights and Achievements
1.	<i>Unlawful Detainer forms.</i> The committee revised Unlawful Detainer forms on an expedited basis to reflect changing legislation. The unlawful detainer summons form was also revised to be used in forcible detainer cases. The forms were adopted by the council in April 2022, July 2022, and September 2022.
2.	<i>Name and Gender Change forms.</i> The committee revised Name and Gender Change forms to implement new legislation. The forms will be considered by the council in December 2022.
3.	<i>CEQA rules.</i> In conjunction with the Appellate Advisory Committee, the committee amended rules of court for expedited California Environmental Quality Act court review for certain development projects. The amended rules were approved by the council in September 2022.
4.	<i>Protective Order forms.</i> The committee revised civil harassment, elder or dependent adult, gun violence, private postsecondary school violence, and workplace violence protective order forms to reflect recently enacted legislation. The revisions include a new elder or dependent adult abuse cause of action, new service requirements for civil harassment protective orders, additional language regarding firearm parts, and other updates. The new and revised forms were adopted and approved by the council in May 2022 and September 2022, and will be considered by the council in December 2022.
5.	<i>Requests to Enter Default.</i> In conjunction with the Family and Juvenile Law Advisory Committee, the committee revised default forms to allow the plaintiff to file an affidavit stating whether the defendant is in military service or not and include necessary facts to support the affidavit. The revised forms were adopted by the council in September 2022.
6.	<i>Enforcement of Judgment form.</i> The committee revised Enforcement of Judgment forms to reflect statutory adjustments to the dollar amounts of exemption from judgment and also revised the notice of examination forms to require new statutory notices. The council adopted the forms in May 2022 and July 2022.
7.	<i>Review of Pending Legislation.</i> The committee reviewed and made recommendations regarding council position on over three dozen bills with potential impact on the civil courts.

**Criminal Law Advisory Committee**  
**Annual Agenda<sup>1</sup>—2023**  
**Approved by Rules Committee: [Date]**

**I. COMMITTEE INFORMATION**

<b>Chair:</b>	Hon. Brian M. Hoffstadt, Chair, Associate Justice of the Court of Appeal, Second Appellate District Hon. Lisa Rodriguez, Vice Chair, Judge, Superior Court of San Diego County
<b>Lead Staff:</b>	Sarah Fleischer-Ihn, Attorney, Criminal Justice Services Office
<b>Committee's Charge/Membership:</b> <a href="#">Rule 10.42(a)</a> of the California Rules of Court states the charge of the Criminal Law Advisory Committee, which is to make recommendations to the Judicial Council for improving the administration of justice in criminal proceedings.  <a href="#">Rule 10.42(b)</a> sets forth the membership categories of the committee. The Criminal Law Advisory Committee currently has 21 voting members. The current committee <a href="#">roster</a> is available on the committee's webpage.	
<b>Subcommittees/Working Groups<sup>2</sup>:</b> <ol style="list-style-type: none"><li>1. Protective Orders Working Group (POWG)</li><li>2. New - Criminal remote proceedings working group. This working group of committee members and an ITAC liaison will develop any necessary rules and standards of judicial administration regarding criminal remote proceedings.</li><li>3. New - Joint subcommittee to review mental health legislation with the Collaborative Justice Courts Advisory Committee. This joint subcommittee will promote efficiencies due to joint review of legislation that is under the purview of both committees, and allow for alignment in committee decisionmaking early in the legislative review process.</li></ol>	

<sup>1</sup> The annual agenda outlines the work a committee will focus on in the coming year and identifies areas of collaboration with other advisory bodies and the Judicial Council staff resources.

<sup>2</sup> California Rules of Court, rule 10.30 (c) allows an advisory body to form subgroups, composed entirely of current members of the advisory body, to carry out the body's duties, subject to available resources, with the approval of its oversight committee.

### **Meetings Planned for 2023<sup>3</sup> (Advisory body and all subcommittees and working groups)**

Date/Time/Location or Videoconference:

- January 2023 (in-person meeting to discuss and review spring cycle proposals)
- February/March 2023 (videoconference to discuss and review spring cycle proposals and discuss pending legislation)
- April 2023 (videoconference to discuss pending legislation)
- May 2023 (videoconference to discuss pending legislation)
- June 2023 (videoconference to discuss pending legislation)
- July 2023 (videoconference to make final recommendations on spring cycle proposals and discuss pending legislation)
- August 2023 (videoconference to discuss pending legislation)
- September 2023 (videoconference to discuss pending legislation)
- November 2023 (videoconference to discuss spring cycle proposals)
- Other videoconference meetings as needed to address urgent items

Check here if exception to policy is granted by Executive Office or rule of court.

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<sup>3</sup> Refer to [Operating Standards for Judicial Council Advisory Bodies](#) for governance on in-person meetings.

## II. COMMITTEE PROJECTS

#	New or One-Time Projects <sup>4</sup>	
1.	<b>Placeholder for projects assigned by the Ad-Hoc Workgroup on Post-Pandemic Initiatives (P3)</b>	<b>Priority 1<sup>5</sup></b> <b>Strategic Plan Goal III, IV<sup>6</sup></b>
<p><b>Project Summary<sup>7</sup>:</b> The Ad Hoc Workgroup on Post-Pandemic Initiatives (P3) is working to identify successful court practices that emerged during the COVID-19 pandemic. P3 recommendations may be referred to specific advisory bodies for development and/or implementation.</p> <p><b>Status/Timeline:</b> TBD</p> <p><b>Fiscal Impact/Resources:</b> TBD</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> TBD</p> <p><b>AC Collaboration:</b> TBD</p>		

<sup>4</sup> All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or a *program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

<sup>5</sup> 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.

<sup>6</sup> Indicate which goal number of The Strategic Plan for California’s Judicial Branch the project most closely aligns.

<sup>7</sup> A key objective is a strategic aim, purpose, or “end of action” to be achieved for the coming year.

# New or One-Time Projects <sup>4</sup>					
2.	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;"><b><i>Revise Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense</i></b></td> <td style="width: 20%; text-align: center;"><b><i>Priority 1(a)</i></b></td> </tr> <tr> <td colspan="2" style="text-align: right;"><b><i>Strategic Plan Goal IV</i></b></td> </tr> </table> <p><b><i>Project Summary:</i></b> Develop a proposal to revise <i>Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense</i> (form CR-105) to reflect the repeal of Penal Code section 987.8 by AB 1869 (Stats. 2020, ch. 92).</p> <p><b><i>Status/Timeline:</i></b> Anticipate circulating for comment in winter cycle, and effective September 1, 2023</p> <p><b><i>Fiscal Impact/Resources:</i></b> Committee staff  <input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> Trial courts, justice system partners</p> <p><b><i>AC Collaboration:</i></b> None</p>	<b><i>Revise Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense</i></b>	<b><i>Priority 1(a)</i></b>	<b><i>Strategic Plan Goal IV</i></b>	
<b><i>Revise Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense</i></b>	<b><i>Priority 1(a)</i></b>				
<b><i>Strategic Plan Goal IV</i></b>					
3.	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;"><b><i>Amend Cal. Rules of Court, rule 4.117, qualifications for appointed counsel in capital cases</i></b></td> <td style="width: 20%; text-align: center;"><b><i>Priority 1(a)</i></b></td> </tr> <tr> <td colspan="2" style="text-align: right;"><b><i>Strategic Plan Goal IV</i></b></td> </tr> </table> <p><b><i>Project Summary:</i></b> Develop a proposal to amend the rule to clarify that qualified counsel must be appointed when special circumstances are charged.</p> <p><b><i>Status/Timeline:</i></b> Anticipate circulating for comment in spring cycle, and effective January 1, 2024</p> <p><b><i>Fiscal Impact/Resources:</i></b> Committee staff  <input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> Justice system partners</p> <p><b><i>AC Collaboration:</i></b> None</p>	<b><i>Amend Cal. Rules of Court, rule 4.117, qualifications for appointed counsel in capital cases</i></b>	<b><i>Priority 1(a)</i></b>	<b><i>Strategic Plan Goal IV</i></b>	
<b><i>Amend Cal. Rules of Court, rule 4.117, qualifications for appointed counsel in capital cases</i></b>	<b><i>Priority 1(a)</i></b>				
<b><i>Strategic Plan Goal IV</i></b>					

#	<b>New or One-Time Projects<sup>4</sup></b>	
4.	<b><i>Rules and forms to implement court reporting requirements on a person’s competency to vote</i></b>	<b><i>Priority 1(a), 1(b)</i></b>
<p><b><i>Project Summary:</i></b> Develop rules and forms to implement AB 2841, which requires the Judicial Council to adopt rules and forms for courts to use to notify the Secretary of State of findings regarding a person’s competency to vote.</p> <p><b><i>Status/Timeline:</i></b> Anticipate circulating for comment in spring cycle, and effective January 1, 2024</p> <p><b><i>Fiscal Impact/Resources:</i></b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> California Secretary of State, trial courts</p> <p><b><i>AC Collaboration:</i></b> This would be a joint project with the Probate and Mental Health Advisory Committee</p>		

#	<b>New or One-Time Projects<sup>4</sup></b>	
5.	<b><i>Amend Cal. Rules of Court, rule 4.130, mental competency proceedings</i></b>	<b><i>Priority 1(a), 1(b)</i></b> <b><i>Strategic Plan Goal I</i></b>
<p><b><i>Project Summary:</i></b> Develop a proposal to amend rule to 4.130 to reflect changes to Penal Code section 1369 et seq., by (1) SB 184 (Stats. 2021, ch. 47), regarding the court’s finding on whether antipsychotic medication is appropriate for the defendant; and (2) SB 1223 regarding mental health diversion eligibility; and (3) changes to Penal Code section 1370.01 by SB 1338, allowing misdemeanor defendants found incompetent to stand trial to be referred to the Community Assistance, Recovery and Empowerment (CARE) Court program.</p> <p><b><i>Status/Timeline:</i></b> Anticipate circulating for comment in spring cycle, and effective September 1, 2023</p> <p><b><i>Fiscal Impact/Resources:</i></b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> Justice system partners</p> <p><b><i>AC Collaboration:</i></b> None</p>		
6.	<b><i>Revise Petition for Resentencing Based on Health Conditions Due to Military Service</i></b>	<b><i>Priority 1(a), 1(b)</i></b> <b><i>Strategic Plan Goal I, IV</i></b>
<p><b><i>Project Summary:</i></b> Develop a proposal to revise <i>Petition for Resentencing Based on Health Conditions Due to Military Service</i> (form CR-412) to implement SB 1209 (Stats. 2022, ch. 721). SB 1209 amends Penal Code section 1170.91 to allow a defendant to petition for recall and resentencing without regard to whether the defendant was sentenced prior to January 1, 2015.</p> <p><b><i>Status/Timeline:</i></b> Anticipate circulating for comment in winter cycle, and effective September 1, 2023</p> <p><b><i>Fiscal Impact/Resources:</i></b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> None</p> <p><b><i>AC Collaboration:</i></b> Collaborative Justice Courts Advisory Committee</p>		

#	<b>New or One-Time Projects<sup>4</sup></b>	
7.	<b><i>Petitions and applications for relief under Penal Code section 653.29</i></b>	<b><i>Priority 1(a), 1(b)</i></b> <b><i>Strategic Plan Goal I, IV</i></b>
<p><b><i>Project Summary:</i></b> Develop a proposal for new forms to implement Penal Code section 653.29, which allows record cleaning relief for persons with convictions for repealed Penal Code section 653.22, loitering with intent to commit prostitution. Penal Code section 653.29(f) requires the Judicial Council to “promulgate and make available all necessary forms to enable the filing of petitions and applications provided in this section.”</p> <p><b><i>Status/Timeline:</i></b> Circulating for comment in fall 2022, and anticipate effective March 1, 2023</p> <p><b><i>Fiscal Impact/Resources:</i></b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> Justice system partners</p> <p><b><i>AC Collaboration:</i></b> None</p>		
8.	<b><i>Revising definition of firearm in multiple forms</i></b>	<b><i>Priority 1(a), 1(b)</i></b> <b><i>Strategic Plan Goal I</i></b>
<p><b><i>Project Summary:</i></b> Develop a proposal to revise two mandatory protective forms, two firearm relinquishment forms, and two optional plea forms to reflect statutory changes to the definition of <i>firearm</i> in Penal Code section 16520(b), as amended by AB 1621.</p> <p><b><i>Status/Timeline:</i></b> Circulating for comment in fall 2022, and anticipate effective March 1, 2023</p> <p><b><i>Fiscal Impact/Resources:</i></b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> Justice system partners</p> <p><b><i>AC Collaboration:</i></b> None</p>		

#	<b>New or One-Time Projects<sup>4</sup></b>	
9.	<b>Revise record cleaning forms to reflect various statutory changes</b>	<b>Priority 1(a), 1(b)</b> <b>Strategic Plan Goal I, IV</b>
<p><b>Project Summary:</b> Develop a proposal to revise various record cleaning forms to incorporate statutory changes made by AB 1281 (Stats. 2021, ch. 209), which specifies that a dismissal under Pen. Code, §§ 1203.4, 1203.4a, 1203.4b, or 1203.425 does not invalidate an unexpired criminal protective order; incorporate statutory changes made by AB 1793 (Stats. 2018, ch. 993), which automates record relief for specified marijuana-related convictions; and recommend a standard signature line for use by either counsel or a self-represented petitioner. AB 1803 (ability to pay reimbursement fees for dismissal petitions), SB 1106 (court prohibited from denying relief based on unpaid restitution or restitution fine), SB 731 (automated record relief under Penal Code section 1203.425), and AB 160 (extending relief under Penal Code section 1203.4b to individuals who participated in institutional firehouse programs) will also be implemented in this proposal.</p> <p><b>Status/Timeline:</b> Anticipate circulating for comment in spring cycle, and effective January 1, 2024</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> Reentry advocates, justice system partners</p> <p><b>AC Collaboration:</b> None</p>		
10.	<b>Develop rules and standards of judicial administration for remote criminal proceedings with working group</b>	<b>Priority 1(b)</b> <b>Strategic Plan Goal I, III, IV, VI</b>
<p><b>Project Summary:</b> Develop rules of court and standards of judicial administration for remote criminal proceedings as required by Penal Code section 977(i), which was added by AB 199.</p> <p><b>Status/Timeline:</b> Anticipate circulating for comment in winter cycle, and effective July 1, 2023</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> 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.</p>		

#	<b>New or One-Time Projects<sup>4</sup></b>	
	<p><b>Internal/External Stakeholders:</b> Justice system partners</p> <p><b>AC Collaboration:</b> Information Technology Advisory Committee, P3</p>	
11.	<b>Amend Cal. Rules of Court, rule 4.421, circumstances in aggravation</b>	<b>Priority 1(b), 2(b)</b>
		<b>Strategic Plan Goal I</b>
<p><b>Project Summary:</b> The committee will consider amending rule 4.421, circumstances in aggravation, for use by a jury when considering aggravating circumstances under Penal Code sections 1170(b)(2) and 1170.1(d)(2). These sections were amended by SB 567 (Stats. 2021, ch. 731), which requires charged aggravating factors to be proved to a jury.</p> <p><b>Status/Timeline:</b> If going forward, anticipate circulating for comment in spring cycle, and effective January 1, 2024</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> Justice system partners</p> <p><b>AC Collaboration:</b> Criminal Jury Instructions Advisory Committee</p>		
12.	<b>Revise firearm relinquishment form</b>	<b>Priority 1(f), 2(b)</b>
		<b>Strategic Plan Goal I</b>
<p><b>Project Summary:</b> The committee will consider revising <i>Prohibited Persons Relinquishment Form Findings</i> (CR-210) based on feedback from the CA Department of Justice, Bureau of Firearms that additional information on the form would be helpful for tracking relinquishment compliance.</p> <p><b>Status/Timeline:</b> If going forward, anticipate circulating for comment in spring cycle, and effective January 1, 2024</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> 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.</p>		

#	<b>New or One-Time Projects<sup>4</sup></b>	
	<i>Internal/External Stakeholders:</i> CA Department of Justice, Bureau of Firearms	
	<i>AC Collaboration:</i> None	

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
1.	<i>Review recently enacted legislation</i>	<i>Priority 1</i>
		<i>Strategic Plan Goal III</i>
	<p><b>Project Summary:</b> Review enacted legislation that may have an impact on criminal court administration and propose rules and forms as may be appropriate for implementation of the legislation.</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Governmental Affairs</p> <p><b>AC Collaboration:</b> None</p>	
2.	<i>Review pending legislation</i>	<i>Priority 1</i>
		<i>Strategic Plan Goal III</i>
	<p><b>Project Summary:</b> Review pending criminal law legislation and make recommendations as to whether the Judicial Council should support or oppose the legislation. Provide subject matter expertise on pending criminal law legislation.</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Governmental Affairs</p>	

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
	<i>AC Collaboration:</i> None	
3.	<b><i>Criminal justice and mental health</i></b>	<b><i>Priority 1</i></b> <b><i>Strategic Plan Goal III, IV</i></b>
<p><b><i>Project Summary:</i></b> Review pending legislation related to criminal justice and mental health, make recommendations as to whether the Judicial Council should support or oppose the legislation, and provide subject matter expertise on pending criminal justice and mental health legislation and related issues.</p> <p><b><i>Status/Timeline:</i></b> Ongoing</p> <p><b><i>Fiscal Impact/Resources:</i></b> Committee staff  <input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> Governmental Affairs</p> <p><b><i>AC Collaboration:</i></b> Collaborative Justice Courts Advisory Committee, <b>Legislation Committee</b></p>		
4.	<b><i>Provide subject matter expertise for other advisory committees</i></b>	<b><i>Priority I</i></b> <b><i>Strategic Plan Goal III</i></b>
<p><b><i>Project Summary:</i></b> Provide subject matter expertise for other advisory committees and working groups developing proposals involving or relevant to criminal law and procedure.</p> <p><b><i>Status/Timeline:</i></b> Ongoing</p> <p><b><i>Fiscal Impact/Resources:</i></b> Committee staff  <input type="checkbox"/> <i>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.</i></p>		

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
	<p><b>Internal/External Stakeholders:</b> Governmental Affairs</p> <p><b>AC Collaboration:</b> Judicial Council advisory committees and working groups</p>	
5.	<p><b>Participate in the Protective Orders Working Group</b></p>	<p><b>Priority 1</b></p> <p><b>Strategic Plan Goal III, IV</b></p>
<p><b>Project Summary:</b> Continue participation in the Protective Orders Working Group, which assists in ensuring consistency and uniformity in the different protective orders used in family, juvenile, civil, criminal, and probate proceedings, and helps to develop and update protective order forms and rules of court.</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> Committee staff</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> None</p> <p><b>AC Collaboration:</b> Family and Juvenile Law Advisory Committee, Civil and Small Claims Advisory Committee, Probate and Mental Health Advisory Committee</p>		

### III. LIST OF 2022 PROJECT ACCOMPLISHMENTS

#	Project Highlights and Achievements
1.	<i>Amend mental competency proceeding rule.</i> In a May 2022 circulating order, the Judicial Council approved amendments to Cal. Rules of Court, rule 4.130, mental competency proceedings, to reflect statutory changes to various incompetent to stand trial code sections.
2.	<i>Revise motion and order to vacate conviction or sentence forms.</i> At its September 2022 meeting, the Judicial Council approved revisions to forms CR-187 and CR-188, motion and order to vacate conviction or sentence, to reflect statutory changes to Penal Code section 1473.7(a)(1) and case law interpreting that section.
3.	<i>Adopt conviction relief forms.</i> It is anticipated that at its November 2022 meeting, the Judicial Council will adopt new forms implementing Penal Code section 653.29, which allows petitions for relief from convictions for loitering with intent to commit prostitution.
4.	<i>Amend felony sentencing rules.</i> At its March 2022 meeting, the Judicial Council approved amendments to multiple felony sentencing rules to implement changes to Penal Code sections 654, 1170, and 1385 made by ABs 124 and 518 and SBs 81 and 567.
5.	<i>Revise mandatory forms - Criminal Protective Order – Domestic Violence (form CR-160), Criminal Protective Order – Other Than Domestic Violence (form CR-161), and Order to Surrender Firearms in Domestic Violence Case (form CR-162).</i> It is anticipated that at its November 2022 meeting, the Judicial Council will approve revisions to three mandatory forms to implement statutory changes and increase accessibility of the forms.
6.	<i>Review pending legislation.</i> CLAC provided subject matter expertise or a recommended position on over 75 criminal law bills, including <b>AB 256</b> , Criminal procedure: discrimination; <b>AB 931</b> , Sentencing: dismissal of enhancements; <b>AB 960</b> , Medical parole; <b>AB 1223</b> , Mental Health Diversion; <b>AB 1209</b> , Veterans - Trauma – Resentencing; <b>AB 1613</b> , Theft: jurisdiction; <b>AB 1630</b> , Competence to stand trial: statewide application; <b>AB 1641</b> , sexually violent predators; <b>AB 1706</b> , Cannabis crimes: resentencing; <b>AB 1744</b> , Probation and mandatory supervision: flash incarceration; <b>AB 1750</b> , Controlled substances: treatment; <b>AB 1803</b> , Probation: ability to pay; <b>AB 1816</b> , Reentry Housing; <b>AB 1847</b> , Criminal procedure: victims’ rights; <b>AB 1924</b> , Criminal law: certificate of rehabilitation; <b>AB 2017</b> , Evidence: hearsay: exceptions; <b>AB 2023</b> , Jails: discharge plans; <b>AB 2027</b> , Enhancements; <b>AB 2083</b> , Criminal procedure; <b>AB 2167</b> , Alternatives to Incarceration, <b>AB 2169</b> , Criminal Procedure; <b>AB 2435</b> , Jury instructions: lesser-related offenses; <b>AB 2799</b> , Jury instruction: creative expression; <b>SB 262</b> , Bail; <b>SB 357</b> , Crimes: loitering for the purpose of engaging in a prostitution offense; <b>SB 731</b> , Criminal records: relief; <b>SB 841</b> , Sexually violent predators; <b>SB 1034</b> , Sexually violent predators; <b>SB 1106</b> , Criminal Resentencing: Restitution; <b>SB 1129</b> , Felony murder: resentencing: peace officer victims; <b>SB 1171</b> , Hearsay evidence: exceptions: medical diagnosis or treatment; <b>SB 1178</b> , Criminal procedure: sentencing; and <b>SB 1262</b> , Courts: indexes.
7.	<i>Provide subject matter expertise for other advisory committees.</i> The committee provided subject matter expertise to the Information Technology Advisory Committee on a proposal regarding remote access to criminal electronic records.

**Family and Juvenile Law Advisory Committee**  
**Annual Agenda<sup>1</sup>—2023**  
**Approved by Rules Committee:**

**I. COMMITTEE INFORMATION**

<b>Chair:</b>	Hon. Stephanie E. Hulseley and Hon. Amy M. Pellman, Co-Chairs
<b>Lead Staff:</b>	Ms. Tracy Kenny and Mr. John Henzl, Co-lead Staff; Ms. Amanda Morris, Administrative Coordinator, Center for Families, Children & the Courts
<p><b>Committee’s Charge/Membership:</b>  <a href="#">Rule 10.43. Family and Juvenile Law Advisory Committee</a> of the California Rules of Court states the charge of the Family and Juvenile Law Advisory Committee, which is to make recommendations to the Judicial Council for improving the administration of justice in all cases involving marriage, family, or children. <a href="#">Rule 10.43. Family and Juvenile Law Advisory Committee</a> sets forth additional duties of the committee.</p> <p>The Family and Juvenile Law Advisory Committee currently has 34 voting members and one advisory member. The <a href="#">Family and Juvenile Law Advisory Committee website</a> provides the composition of the committee.</p>	
<p><b>Subcommittees/Working Groups<sup>2</sup>:</b></p> <ol style="list-style-type: none"> <li>1. Protective Order Working Group (POWG)</li> <li>2. Violence Against Women Education Program (VAWEP)</li> <li>3. Secure Youth Treatment Facility (SYTF) Offense Classification Matrix Working Group</li> </ol>	
<p><b>Meetings Planned for 2022 (Advisory body and all subcommittees and working groups)</b>  Date/Time/Location or Teleconference:  The committee meets by teleconference or videoconference each Monday of the month from 4:30 to 5:30 unless a meeting is not required and has one in person meeting per year. VAWEP meets twice a year, typically once in person and once by teleconference. POWG meets as needed</p>	

<sup>1</sup> The annual agenda outlines the work a committee will focus on in the coming year and identifies areas of collaboration with other advisory bodies and the Judicial Council staff resources.

<sup>2</sup> California Rules of Court, rule 10.30 (c) allows an advisory body to form subgroups, composed entirely of current members of the advisory body, to carry out the body's duties, subject to available resources, with the approval of its oversight committee.

to work on rules and forms revisions. The SYTF Offense Classification Matrix Working Group may need to meet once or twice in 2023 to finalize the matrix post-comment although most of their work is expected to be completed in 2022.

Check here if exception to policy is granted by Executive Office or rule of court.

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## COMMITTEE PROJECTS

#	New or One-Time Projects <sup>3</sup>	
1.	<i>Legislative Changes from the 2022 Legislative Session</i>	<i>Priority 1b<sup>4</sup></i>
<p><b>Project Summary<sup>6</sup>:</b> 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.</p> <p><u>Domestic Violence:</u></p> <ul style="list-style-type: none"> <li>a. <a href="#">AB 1726 (Valladares) (Aguilar-Curry) Address confidentiality program (Ch. 686, Stats. of 2022)</a> Makes a number of changes to existing laws related to the Safe at Home (SAH) address confidentiality program to, among other things, recognize the challenge of providing legal notices to SAH program participants in compliance with timelines set forth in existing law; limit the circumstances under which a participant can be terminated from the program; and limit discovery of a participant's location.</li> <li>b. <a href="#">AB 2369 (Salas) Domestic Violence Prevention Act: attorney’s fees and costs (Ch. 591, Stats. of 2022)</a> Modifies the fee-shifting statute under the Domestic Violence Prevention Act (DVPA) to require a court to award attorney fees and costs to a prevailing protected party and permit a court to award attorney fees and costs to a prevailing party who was sought to be restrained if the court finds the petition was brought in bad faith.</li> <li>c. <a href="#">AB 2791 (Bloom) Sheriffs: service of process and notices (Ch. 417, Stats. of 2022)</a></li> </ul>		<i>Strategic Plan Goal IV<sup>5</sup></i>

<sup>3</sup> All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or a *program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

<sup>4</sup> 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.

<sup>5</sup> Indicate which goal number of The Strategic Plan for California’s Judicial Branch the project most closely aligns.

<sup>6</sup> A key objective is a strategic aim, purpose, or “end of action” to be achieved for the coming year.

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requires a marshal or sheriff to accept an electronically signed notice or other process issued by a superior court in a civil action, including service of orders and other court documents for the purpose of notice. Requires Judicial Council, on or before January 1, 2024, to create a statewide form or forms to be used by litigants in civil actions or proceedings to request service of process or notice by a marshal or sheriff, including their department or office.

- d. [AB 2872 \(Akilah Weber\) Domestic violence: victims: address confidentiality \(Ch. 975, Stats. of 2022\)](#)  
makes a series of modifications to the Secretary of State's (SOS) Safe at Home address confidentiality program, including changes to applications, notice requirements, and bases for termination.
- e. [AB 2960 \(Committee on Judiciary\) Judiciary omnibus \(Ch. 420, Stats. of 2022\)](#)  
Clarifies requirements around electronic submission of protective order filings and use of remote proceedings in these cases, and makes the provisions effective July 1, 2023. Authorizes Judicial Council to adopt or amend rules or forms to implement these provisions.
- f. [SB 935 \(Min\) Domestic violence: protective orders \(Ch. 88, Stats. of 2022\)](#)  
Clarifies that the court may renew a DVPA protection order for an additional term of five years or more than five years, or permanently, at the discretion of the court, and that renewed and subsequently renewed protection orders are subject to the same procedures for the termination, medication, or subsequent renewal as original orders.

Family:

- g. [AB 207 \(Committee on Budget\) Human services omnibus \(Ch. 573, Stats. of 2022\)](#)  
Requires the court, when determining earning capacity of a parent in lieu of the parent's income, to consider the specific circumstances of the parent, including the parent's assets, educational attainment, health, and other factors. Also prohibits the court from considering incarceration or involuntary institutionalization as voluntary unemployment in establishing and modifying support orders.
- h. [AB 2495 \(Patterson\) The parent and child relationship \(Ch. 159, Stats. of 2022\)](#)  
Makes multiple changes to adoption and family law in California, including changing rules for determining whether an embryo donor is an intended parent, clarifying rules regarding not concealing a prospective adoptive child from the adoption agency, clarifying who can file for an adoption and when, and expanding venue options for step-parent adoptions and readoptions of children adopted in other countries.
- i. [AB 2960 \(Committee on Judiciary\) Judiciary omnibus \(Ch., Stats. of 2022\)](#)

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Requires local child support agencies to provide notice to both parents and to the court when they are no longer providing child support-related services. Clarifies that a single applicant is eligible for a \$100 filing fee for recognition of a tribal court order that establishes a right to child support, spousal support payments, or marital property rights in addition to joint applicants.

j. [SB 107 \(Wiener\) Gender-affirming health care \(Ch. 810, Stats. of 2022\)](#)

Provides that the presence of a child in this state for the purpose of obtaining gender-affirming health care or gender-affirming mental health care is sufficient to grant a court in this state the jurisdiction to make an initial child custody determination for the child. Provides that a court of this state has temporary emergency jurisdiction over a child if the child is present in the state because the child has been unable to obtain gender-affirming health care or gender-affirming mental health care. Provides that a law of another state that authorizes a state agency to remove a child from their parent or guardian based on the parent or guardian allowing their child to receive gender-affirming health care or gender-affirming mental health care is against the public policy of this state and shall not be enforced or applied in a case pending in a court in this state.

k. [SB 1182 \(Eggman\) Family law \(Ch. 385, Stats. of 2022\)](#)

Requires, effective January 1, 2024, a family court to provide referrals to resources for self-identified veterans appearing before the court, including how to contact the local Department of Veterans Affairs (CalVet); requires, when a self-identified veteran files their status on the Judicial Council's military service form, that the court transmit a copy of the form to the CalVet, and for CalVet to contact the veteran within a reasonable time; and requires, when a family court that finds the effects of a parent's, legal guardian's, or relative's mental illness are a factor in determining the best interest of the child for purposes of custody or visitation, to put its reasons for the finding on the record and provide the affected parent, legal guardian, or relative with a list of local resources for mental health treatment.

Juvenile Dependency:

l. [AB 1735 \(Bryan\) Foster care: rights \(Ch. 405, Stats. of 2022\)](#)

Requires, for foster children and youth, the child's case plan, transitional independent living plan (TILP), and court report be provided to the child in their primary language.

m. [AB 2159 \(Bryan\) Reunification services \(Ch. 691, Stats. of 2022\)](#)

Prohibits a dependency court from denying family reunification services to a parent or guardian who is in custody before conviction and requires the court, in determining the appropriate reunification services for the parent or guardian in custody, to consider the particular barriers to an incarcerated, institutionalized, detained, or deported parent's or guardian's access to those court mandated services and ability to maintain contact with the child and document that information in the child's care plan.

n. [AB 2309 \(Friedman\) Guardianships \(Ch. 780, Stats. of 2022\)](#)

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Provides that, if a parent has advised the court that they are not interested in family reunification services and designated a specific person to be the child's guardian, the child does not object to the appointment, and the proposed guardian agrees to appointment, the court must appoint the proposed guardian after hearing evidence at the dispositional hearing unless the court finds by a preponderance of the evidence that the appointment would be contrary to the best interests of the child.

- o. [AB 2317 \(Ramos\) Children's psychiatric residential treatment facilities \(Ch., Stats. of 2022\)](#)  
Requires the Department of Health Care Services (DHCS) to license psychiatric residential treatment facilities (PRTFs) serving those under the age of 21 for the provision of the psychiatric mental health services benefit under the Medicaid program. Provides that youth under the jurisdiction of a juvenile court must have court oversight and review of a placement in a PRTF.
- p. [AB 2711 \(Calderon\) Juvenile records access \(Ch. 589, Stats. of 2022\)](#)  
Clarifies that the California Department of Social Services can view a juvenile court record without a court order when representing a child in an action to vacate an order of adoption.
- q. [AB 2866 \(Cunningham\) Dependent children \(Ch. 165, Stats. of 2022\)](#)  
Modifies the standard of proof for establishing at a review hearing that a parent or guardian whose child has been removed from their physical custody was offered reasonable reunification services, by raising the standard to the clear and convincing evidence standard, in order to make the standard of proof consistent with the clear and convincing evidence standard already in place for permanent placement hearings.
- r. [AB 2960 \(Committee on Judiciary\) Judiciary omnibus \(Ch. 420, Stats. of 2022\)](#)  
Authorizes courts, in child welfare proceedings involving an Indian child in which the federal Indian Child Welfare Act of 1978 applies, the flexibility to provide for remote appearance by tribes via any method of appearance that is both consistent with court capacity and contractual obligations, and takes into account the capacity of the tribe, so long as the method chosen is sufficient to allow a tribe to fully exercise its rights.
- s. [SB 116 \(Committee on Budget and Fiscal Review\) Human services \(Ch. 5, Stats. of 2022\)](#)  
Authorizes a social worker to place a child in the home of a relative when the juvenile court has authorized placement, regardless of the status of any criminal record exemption or resource family approval, if the court has found that the placement does not pose a risk to the child.
- t. [SB 384 \(Cortese\) Juveniles: relative placement: family finding \(Ch. 811, Stats. of 2022\)](#)  
Requires the social worker and probation officer to include, as part of their due diligence, any parent and alleged parent when investigating the names and locations of the relatives upon removal of a child from their home, and obtaining information regarding their location. Defines "family finding" to mean conducting an investigation, including, but not limited to, through a computer-based search engine, to identify relatives and kin and to connect a child or youth, who may be disconnected from their parents, with those

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relatives and kin in an effort to provide family support and possible placement. If it is known or there is reason to know that the child is an Indian child, as defined, "family finding" also includes contacting the Indian child's tribe to identify relatives and kin.

- u. [SB 528 \(Jones\) Juveniles: medication documentation \(Ch. 812, Stats. of 2022\)](#)  
Clarifies that upon approval by the juvenile court of a request for authorization for the administration of psychotropic medication, the copy of the order provided to the foster youth's care giver is required to include the last two pages of the form JV-220(A) or the last two pages of form JV-220(B) and all medication information sheets that were attached to either of those forms, as referenced in Rule 5.640 of the California Rules of Court. Additionally, this bill further clarifies that if the child changes placement, their social worker or probation officer is required to provide the new caregiver with these same documents.
- v. [SB 1071 \(Umberg\) Public social services: administrative hearings: juvenile records access \(Ch. 613, Stats. of 2022\)](#)  
Permits attorneys participating in administrative hearings to review and receive copies of juvenile case files, while also requiring the confidential information accessed to remain confidential and to be sealed at the conclusion of the hearing.
- w. [SB 1085 \(Kamlager\) Juveniles: dependency: jurisdiction of the juvenile court \(Ch. 832, Stats. of 2022\)](#)  
Prohibits a child from being found to be a dependent of the juvenile court solely due to homelessness, or indigence or other conditions of financial difficulty, including, but not limited to, poverty or the inability to provide or obtain clothing, home or property repair, or childcare.

### Juvenile Justice:

- x. [AB 200 \(Committee on Budget\) Public safety omnibus \(Ch. 58, Stats. of 2022\)](#)  
Includes technical clarifying amendments regarding youth commitments to secure youth treatment facilities and clarifies baseline terms for youth who spend time in a secure youth treatment facility and a less restrictive placement.
- y. [AB 2361 \(Bonta\) Juveniles: transfer to court of criminal jurisdiction \(Ch. 330, Stats. of 2022\)](#)  
Requires the juvenile court to find by clear and convincing evidence that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court in order to transfer the minor to a court of criminal jurisdiction.
- z. [AB 2629 \(Santiago\) Juveniles: dismissals \(Ch. 970, Stats. of 2022\)](#)  
Requires a juvenile court, upon termination of jurisdiction, to consider and afford great weight to the presence of one or more specified mitigating circumstances, when deciding to dismiss a petition.
- aa. [AB 2658 \(Bauer-Kahn\) Juveniles: electronic monitoring \(Ch. 796, Stats. of 2022\)](#)

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Awards custody credits off a ward's maximum time of confinement for time spent on electronic monitoring, and requires periodic reviews by the court to ensure that electronic monitoring is still appropriate.

**Status/Timeline:** Any rules and forms proposals required to implement legislation enacted in 2022 will be prepared for the Winter or Spring public comment cycles in 2023 as appropriate with anticipated effective dates of either September 1, 2023 or January 1, 2024.

**Fiscal Impact/Resources:** CFCC staff, in consultation with staff from the Legal Services will prepare revised rules and forms as needed. Joint Rules Subcommittee of Trial Court Presiding Judges and Court Executive Advisory Committees (TCPJAC/CEAC JRS) will review proposals for court operations impacts as necessary.

*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 for public comment to a list of family and juvenile law related stakeholders as well as all court executives and presiding judges

**AC Collaboration:** For proposals that impact family and civil courts, the committee will collaborate with the Civil and Small Claims Advisory Committee. For proposals impacting tribal courts, the committee will collaborate with the Tribal Court–State Court Forum. For proposals impacting the Courts of Appeal, the committee will collaborate with the Appellate Advisory Committee.

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2.	<b><i>Secure Youth Treatment Facility (SYTF) Offense Classification Matrix</i></b>	<b><i>Priority 1c</i></b>
		<b><i>Strategic Plan Goal II</i></b>
	<p><b><i>Project Summary<sup>6</sup></i></b>: Division of Juvenile Justice (DJJ) Realignment Trailer Bill (SB 92) requires the Judicial Council by July 1, 2023 to develop and adopt an offense classification matrix to be used by juvenile court judges when committing wards to secure youth treatment facilities. The statute requires that the council be advised by “a working group of stakeholders, which shall include representatives from prosecution, defense, probation, behavioral health, youth service providers, youth formerly incarcerated in the Division of Juvenile Justice, and youth advocacy and other stakeholders and organizations having relevant expertise or information on dispositions and sentencing of youth in the juvenile justice system.” This working group would be charged with developing the matrix, circulating it for public comment, and then bringing its final product to the committee before it is submitted to the council for final approval.</p> <p><b><i>Status/Timeline</i></b>: In order to meet the statutory deadline for the council to adopt a final matrix by July 1, 2023, a draft proposal will circulate in a special cycle in the fall of 2022 so that a final proposal can be brought to the council in March of 2023.</p> <p><b><i>Fiscal Impact/Resources</i></b>: CFCC staff in consultation with other staff to the council will provide staff support, include research and technical assistance, to the working group to allow the required work to be completed in a timely manner.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders</i></b>: The working group has specified external stakeholders who must be included by statute. The committee worked with Leadership Support Services to add members to the working group. Its draft work product will be circulated for public comment to ensure that all key juvenile justice stakeholders have an opportunity to provide input on the final matrix.</p> <p><b><i>AC Collaboration</i></b>: As noted, the bulk of the committee’s work on this agenda item will be undertaken by the working group that is statutorily required to be convened for this purpose.</p>	
3.	<b><i>DJJ Realignment Implementation</i></b>	<b><i>Priority 1a</i></b>
		<b><i>Strategic Plan Goal IV</i></b>
	<p><b><i>Project Summary<sup>6</sup></i></b>: Legislation enacted in 2020 (SB 823) and follow up trailer bill legislation (SB 92) enacted in 2021 establish the framework for juvenile courts and counties to take over all responsibility for juvenile justice dispositions and require them to implement new procedures to commit serious offenders to an SYTF in anticipation of the complete closure of DJJ on June 30, 2023. The committee will update rules and forms to remove DJJ references and adapt them to incorporate SYTF requirements.</p>	

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	<p><b>Status/Timeline:</b> Rules and forms changes would be circulated for comment in the Winter 2022 cycle with an implementation date of July 1, 2023, to coincide with the closure of DJJ.</p> <p><b>Fiscal Impact/Resources:</b> CFCC staff, in consultation with staff from the Legal Services will prepare revised rules and forms as needed. Joint Rules Subcommittee of Trial Court Presiding Judges and Court Executive Advisory Committees (TCPJAC/CEAC JRS) will review proposals for court operations impacts as necessary.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate for public comment to a list of family and juvenile law related stakeholders as well as all court executives and presiding judges.</p> <p><b>AC Collaboration:</b> N/A</p>	
4.	<p><b>Implementation of SB 384 (Stats. 2017, ch. 541), Sex offenders: registration: criminal offender record information systems</b></p>	<p><b>Priority 1e</b></p> <p><b>Strategic Plan Goal IV</b></p>
	<p><b>Project Summary<sup>6</sup>:</b> Develop juvenile forms to implement SB 384, which, in relevant part, establishes three tiers of sex offender registration based on specified criteria and a petition process to request termination from the registry upon completion of a mandated minimum registration period under specified conditions. Forms were adopted in 2021 for criminal court use, but juvenile courts have requested that forms be made available for the relatively smaller number of juveniles who have been required to register as sex offenders.</p> <p><b>Status/Timeline:</b> Rules and forms changes would be circulated for comment in the Spring 2023 cycle with an implementation date of January 1, 2024.</p> <p><b>Fiscal Impact/Resources:</b> CFCC staff, in consultation with staff from the Legal Services will prepare revised rules and forms as needed. Joint Rules Subcommittee of Trial Court Presiding Judges and Court Executive Advisory Committees (TCPJAC/CEAC JRS) will review proposals for court operations impacts as necessary. Staff will consult with Criminal Justice Services staff who prepared the criminal forms to ensure consistency.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> All draft proposals will circulate for public comment to a list of family and juvenile law related stakeholders as well as all court executives and presiding judges.</p>	

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	<i>AC Collaboration:</i> The committee will coordinate with the Criminal Law Advisory Committee to ensure that the juvenile forms are consistent with the criminal forms.	
5.	<b><i>Improving firearm relinquishment in protective order matters</i></b>	<b><i>Priority 1c</i></b> <b><i>Strategic Plan Goal IV</i></b>
	<p><b><i>Project Summary:</i></b>  The <a href="#">2022-23 Budget Act (AB 178, Ch. 45; Stats. Of 2022)</a> allocates \$40 million to the judicial branch to improve firearm relinquishment in protective order matters. Of this amount, \$36 million is for grants to the courts, and \$4 million is for oversight, data collection and a required evaluation. The committee will take the lead role in developing recommendations to the Judicial Council to award \$36 million in funds to trial courts over a two and a half year period to support the effective implementation of firearm relinquishment orders in protective order matters. It will also make recommendations to the council concerning legislatively mandated reporting requirements and evaluation of program efforts.</p> <p><b><i>Status/Timeline:</i></b>  Funds to be awarded before the end of FY 22-23, and first annual report to the Joint Legislative Budget Committee is required by October 1, 2023 and ending in 2025. A report to the Legislature conducted by the University of California Firearm Violence Research Center at the University of California, Davis, or an equivalent entity retained by the Judicial Council is due by March 1, 2025. Program is to be completed by the end of FY 24-25.</p> <p><b><i>Fiscal Impact/Resources:</i></b> CFCC staff will work with Budget Services entering into agreements with the courts to expend the funds over the three fiscal years.</p> <p><input checked="" type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b>  Law enforcement agencies; evaluator (budget language specifies University of California Firearm Violence Research Center at the University of California, Davis or equivalent entity).</p> <p><b><i>AC Collaboration:</i></b> Civil and Small Claims Advisory Committee; Trial Court Budget Advisory Committee</p>	
6.	<b><i>Implementation of Additional Legislative Changes Required to Bring California into Compliance with Federal Final Rule</i></b>	<b><i>Priority 1c</i></b> <b><i>Strategic Plan Goal IV</i></b>

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	<p><b>Project Summary:</b> Revise various governmental and non-governmental child support forms to comply with legislative changes required to bring California into compliance with the federal final rule. This will be based on state legislation expected to be implemented as urgency legislation in spring 2023, to comply with federal regulations in accordance with 45 CFR § 302.56.</p> <p><b>Status/Timeline:</b> Rules and forms changes would be circulated for comment in a special cycle after the 2023 legislation is enacted, with an implementation date of September 1, 2023.</p> <p><b>Fiscal Impact/Resources:</b> CFCC staff, in consultation with staff from the Legal Services will prepare revised rules and forms as needed. Joint Rules Subcommittee of Trial Court Presiding Judges and Court Executive Advisory Committees (TCPJAC/CEAC JRS) will review proposals for court operations impacts as necessary.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> 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.</p> <p><b>AC Collaboration:</b> N/A.</p>	
7.	<b>Information Form on Use of Virtual Visitation in Family and Juvenile Law Matters</b>	<b>Priority 1e</b>
	<p><b>Project Summary:</b> 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:</p> <p style="padding-left: 40px;">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.</p> <p>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.</p> <p><b>Status/Timeline:</b> Proposed new and/or revised forms to be circulated for public comment in the Winter Rules Cycle with an effective date of September 1, 2023.</p> <p><b>Fiscal Impact/Resources:</b> CFCC staff, in consultation with staff from Legal Services will prepare the proposed form.</p> <p><input type="checkbox"/> <i>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.</i></p>	

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	<p><b>Internal/External Stakeholders:</b> 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.</p> <p><b>AC Collaboration:</b> 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.</p>	
8.	<b>Protective Orders: Service Requirements After Remote Attendance</b>	<b>Priority 1e</b>
<b>Strategic Plan Goal I, III</b>		
<p><b>Project Summary:</b> Work with Protective Order Working Group to develop rule and form recommendations as appropriate. Service requirements for protective orders differ depending on whether the restrained party attended the hearing on the order. The Legislature has enacted laws on remote appearances for such hearings and amended certain aspects of the protective order process but has not clarified whether remote attendance at a protective order hearing amounts to a “personal appearance” for the purposes of service. A rule or revised forms may provide clarity for courts and litigants on the issue.</p> <p><b>Status/Timeline:</b> Proposed rules and new and/or revised forms to be circulated for public comment in the Spring Rules Cycle, with anticipated effective date of January 1, 2024.</p> <p><b>Fiscal Impact/Resources:</b> CFCC staff, in consultation with staff from Legal Services will prepare the proposed rules and forms</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> 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.</p> <p><b>AC Collaboration:</b> Civil and Small Claims Advisory Committee</p>		
9.	<b>Family Law: Simplified Procedure for Correcting Clerical Errors on Birth Records</b>	<b>Priority 1e</b>
<b>Strategic Plan Goal I, IV</b>		
<p><b>Project Summary:</b> In collaboration with the Office of Governmental Affairs, continue exploring solutions to jurisdictional issues between the California Department of Public Health and the Superior Courts with respect to amendments to correct erroneous information relative to a parent on a child’s birth certificate. Solutions may include the possible development of rules, forms or proposed legislative language to clarify the responsibilities of the courts.</p> <p><b>Status/Timeline:</b> If legislation is required, expect to circulate for comment in 2023, if rules and forms are adequate, anticipated effective date of January 1, 2024.</p>		

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	<p><b>Fiscal Impact/Resources:</b> CFCC staff, in consultation with staff from the Office of Governmental Affairs and Legal Services, may prepare new or revised rules and forms.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> The California Department of Public Health. Additionally, any draft proposal to create or revise rules and forms will circulate for public comment to a list of family and juvenile law related stakeholders as well as all court executives and presiding judges.</p> <p><b>AC Collaboration:</b> Civil and Small Claims Advisory Committee.</p>	
10.	<b>Juvenile Dependency Law: Counsel Collections Program Guidelines</b>	<b>Priority 1e</b>
	<p><b>Project Summary:</b> The Family and Juvenile Law Advisory Committee proposes changing the threshold income level for a presumptive inability to pay for counsel under the Juvenile Dependency Counsel Collections Program to match the civil fee waiver income threshold for automatic eligibility, which was recently updated. In 2012, the committee chose to use the amount for automatic income eligibility for a civil fee waiver in Government Code section 68632 (income of 125 percent of the federal poverty line) to establish the presumption of a parent’s inability to pay for attorney’s fees. With a recent amendment to section 68632 raising the figure to 200 percent of the federal poverty guideline, the committee proposes that the presumption of inability to pay also be adjusted for court-appointed dependency counsel in Appendix F to the California Rules of Court to that same amount.</p> <p><b>Status/Timeline:</b> The proposal is expected to circulate in the Spring cycle, with an anticipated effective date in 2024.</p> <p><b>Fiscal Impact/Resources:</b> The proposal will have a minor but uncertain financial impact on courts due to a decrease in counsel collections. CFCC Staff in consultation with Legal Services and other staff to the council will provide staff support, including data collection, research, and technical assistance, to the committee to allow the required work to be completed in a timely manner.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee</p> <p><b>AC Collaboration:</b> None.</p>	

11. <b>Rules and forms to standardize parentage determinations for surrogacy cases</b>	<b>Priority 2b</b> <b>Strategic Plan Goal IV</b>
<p><b>Project Summary:</b> California has become a hub for surrogacy arrangements because of its abundance of fertility clinics, favorable court rulings, and clear-cut legislation for establishing parentage for the intended parents. Each court in California has had the burden of figuring out how to handle surrogacy parentage cases with little to no guidance or precedent, resulting in inconsistent approaches to the documents filed by the parties’ attorneys and the documents required by court. This lack of uniform procedure has resulted in significant variations in processing time and created burdens on court staff and judges when reviewing the applications for a parentage judgment. A uniform statewide procedure in a rule of court and implementing forms could ease these burdens and prevent forum shopping.</p> <p><b>Status/Timeline:</b> Anticipated effective date for rules and forms of January 1, 2024 or 2025.</p> <p><b>Fiscal Impact/Resources:</b> CFCC staff, in consultation with staff from the Legal Services will prepare revised rules and forms.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> 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.</p> <p><b>AC Collaboration:</b> None</p>	
12. <b>Explore Options for Recognition and Enforcement of Tribal Court Child Custody Orders</b>	<b>Priority 2b</b> <b>Strategic Plan Goal IV</b>
<p><b>Project Summary<sup>6</sup>:</b> Tribal court orders that involve the custody of a child are entitled to full faith and credit under 1911(d) of the <i>Indian Child Welfare Act</i> and recognition and enforcement under the Uniform Child Custody Jurisdiction and Enforcement Act as specifically set out in Family Code sections 3402(p) and 3404. Currently, however, there is no mechanism to have tribal court child custody orders recognized and enforced within the state court system. This is causing confusion and resulting in difficulties having tribal court custody orders recognized and enforced.</p> <p><b>Status/Timeline:</b> Investigation and planning to take place during 2023 with a view to proposing a legislative or rules and forms solution during the Spring 2023 or 2024 invitation to comment cycle.</p> <p><b>Fiscal Impact/Resources:</b> To be accomplished with existing CFCC staff resources.</p> <p><input type="checkbox"/> <i>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.</i></p>	

	<p><b>Internal/External Stakeholders:</b> Tribal courts.</p> <p><b>AC Collaboration:</b> Tribal Court State Court Forum.</p>	
13.	<p><b>Explore Options to Create Uniform Standards for Discretionary Tribal Participation in Cases not Governed by ICWA</b></p>	<p><b>Priority 2b</b></p> <p><b>Strategic Plan Goal IV</b></p>
<p><b>Project Summary<sup>6</sup>:</b> The <i>Indian Child Welfare Act</i> (ICWA) and corresponding state law do not apply in every juvenile case involving a tribal child. ICWA has limited application in delinquency cases. Not every child affiliated with a tribe comes within the definition of “Indian child” found in federal and state law. Section 306.6 of the Welfare and Institutions Code recognizes the discretion of the court to allow tribes that do not have federal recognition to participate in cases involving children affiliated with the tribe. Section 16001.9 of the Welfare and Institutions Code recognizes certain rights of all Indian children in foster care and all children who identify as Native American to maintain their cultural ties and traditions. The committee is aware that tribal entities have important resources to bring to the table to assist children in juvenile matters, and engaging tribes in these cases can improve the ability of the court to meet its statutory mandate.</p> <p><b>Status/Timeline:</b> During 2023 the committee will explore various options with a view to potential legislation or rules and forms during the Spring 2023 or 2024 cycle.</p> <p><b>Fiscal Impact/Resources:</b> To be accomplished with existing CFCC staff resources.</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> TBD.</p> <p><b>AC Collaboration:</b> Tribal Court State Court Forum</p>		
14.	<p><b>Explore Options for Supporting Development of Joint-Jurisdictional Courts and Remove Barriers to Establishment of such Courts</b></p>	<p><b>Priority 2b</b></p> <p><b>Strategic Plan Goal IV</b></p>
<p><b>Project Summary:</b> The Judicial Council has supported the development of tribal/state joint jurisdiction courts between the Superior Court of El Dorado County and the Shingle Springs Band of Miwok Indians Tribal Court and the Superior Court of Humboldt County and the Yurok Tribal Court. Both these courts began with juvenile dependency cases. Due to the success of both of these courts, the tribes want to expand this model with courts in other counties, and both the tribal and state courts want to expand the model to other case types including juvenile delinquency and some adult criminal case types. Tribal and state court judicial officers report that the fact that joint-jurisdictional courts are not specifically authorized by statute has been a barrier to expansion of these courts both to other counties and to other case types. In collaboration with other advisory committees in addition to the Forum (Criminal; Collaborative Courts) the committee would like</p>		

to explore statutory revisions to address this issue as these courts are often a more effective and efficient way of ensuring the success of both courts in reuniting families, finding permanency, or rehabilitating the child than either court can be on its own. For state courts having access to tribal court partnerships opens up services and supports that might otherwise be lacking.

**Status/Timeline:** Investigation and planning to take place during 2022-23 with a view to proposing a legislative or rules and forms solution during the Spring 2023 invitation to comment cycle.

**Fiscal Impact/Resources:** To be accomplished with existing CFCC staff resources and Government Affairs 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:** Tribal Court State Court Forum, Criminal; Collaborative Courts

**AC Collaboration:**

**# Ongoing Projects and Activities**

1.	<b><i>Family First Prevention Services Act Implementation</i></b>	<b><i>Priority 1</i></b>
		<b><i>Strategic Plan Goal II</i></b>

**Project Summary:** Monitor implementation of the Family First Prevention Services Act (FFPSA), which reforms federal child welfare financing streams, Title IV-E and Title IV-B of the Social Security Act, to provide services to families who are at risk of entering the child welfare system. Budget trailer bill legislation enacted in 2021, with an effective date of October 1, 2021 enacted key changes to court processes for approving placements in Short Term Residential Therapeutic Programs that required rule and form changes to implement. Those changes were approved by the Judicial Council at its October 1, 2021 meeting, and will circulate for public comment in the 2022 Winter rules and forms cycle for future revisions as well as to implement additional legislative clarifications.

**Status/Timeline:** Ongoing

**Fiscal Impact/Resources:** Legal Services and Government Affairs; TCPJAC/CEAC JRS will review proposals for court operations impacts as necessary.

*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 Department of Social Services, Chief Probation Officers of California, Child Welfare Directors Association

#	<b>Ongoing Projects and Activities</b>	
	<i>AC Collaboration:</i> None	
2.	<b><i>Indian Child Welfare Act Legal Updates</i></b>	<b><i>Priority 1</i></b> <b><i>Strategic Plan Goal I</i></b>
<p><b><i>Project Summary:</i></b> Maintain rule and form compliance with the Indian Child Welfare Act and its requirements as needed.</p> <p><b><i>Status/Timeline:</i></b> Anticipated effective date of January 1, 2024 for any required rules and forms. TCPJAC/CEAC JRS will review proposals for court operations impacts as necessary.</p> <p><b><i>Fiscal Impact/Resources:</i></b> Legal Services</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> None</p> <p><b><i>AC Collaboration:</i></b> Tribal Court–State Court Forum</p>		
3.	<b><i>Assembly Bill 1058 Child Support Program Funding</i></b>	<b><i>Priority 1</i></b> <b><i>Strategic Plan Goal VII</i></b>
<p><b><i>Project Summary:</i></b> As directed by the council, review the implementation of the workload-based funding methodology for the AB 1058 Child Support Commissioner program, including its impact on the performance of the program as federally mandated, and make recommendations to the Trial Court Budget Advisory Committee for sufficient funding that provides a minimum service level for smaller courts prior to FY 2023–24.<sup>7</sup></p> <p><b><i>Status/Timeline:</i></b> Ongoing</p> <p><b><i>Fiscal Impact/Resources:</i></b> CFCC staff will work with Budget Services staff to coordinate work with TCBC.</p>		

<sup>7</sup> See Judicial Council report, May 14, 2021, *Child Support: Updating Workload Data for the AB 1058 Child Support Commissioner Funding Methodology, Adopting a Family Law Facilitator Program Funding Methodology, and Adopting 2021–22 AB 1058 Program Funding Allocations*, <https://jcc.legistar.com/View.ashx?M=F&ID=9508521&GUID=BC737E96-AFD8-4E22-A046-AE9E16A5C422>.

#	<b>Ongoing Projects and Activities</b>	
	<p><input checked="" type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> None</p> <p><b>AC Collaboration:</b> Trial Court Budget Advisory Committee and Court Executives Advisory Committee</p>	
4.	<p><b>Court Appointed Special Advocates (CASA) grants program Funding Augmentation and Program Oversight</b> (<a href="#">Welf. &amp; Inst. Code, § 100 et seq.</a>)</p>	<p><b>Priority 1</b></p> <p><b>Strategic Plan Goal IV</b></p>
	<p><b>Project Summary:</b> (1) Evaluate impact of \$500,000 augmentation received beginning fiscal year 18-19 and develop recommendation to the Judicial Council for an ongoing methodology for these funds and any other needed changes to support CASA programs. (2) Oversee recommendations to the Judicial Council to award a total of \$60 million in General Fund to the California Court Appointed Special Advocate Association over a 3-year period for support of local CASA programs, including \$20 million in FY 2022–23, \$20 million in FY 2023–24, and \$20 million in FY 2024–25. Oversee Judicial Council legislative reporting requirements.</p> <p><b>Status/Timeline:</b> Ongoing. The Budget Act of 2022 specifies that \$20 million to be appropriated to the California Court Appointed Special Advocate Association for FY 22-23.<sup>8</sup> A report to the Legislature by the Judicial Council is due by July 1, 2023. Program is to be completed by the end of FY 24-25.</p> <p><b>Fiscal Impact/Resources:</b> Budget Services</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> California Court Appointed Special Advocate Association.</p> <p><b>AC Collaboration:</b> None</p>	
5.	<p><b>Domestic Violence</b></p>	<p><b>Priority 1</b></p>

<sup>8</sup> See Judicial Council report, August 15, 2022, *Juvenile Law: Fiscal Year 2022–23 Funding Allocation for California Court Appointed Special Advocate Association*, <https://jcc.legistar.com/View.ashx?M=F&ID=11136677&GUID=B5863A67-806D-4408-A2FB-DBB09C83CC3D>.

#	<b>Ongoing Projects and Activities</b>	
	<p><b>Project Summary:</b> Provide recommendations to the council on statewide judicial branch domestic violence issues in the area of family and juvenile law, including projects referred from the work of the Domestic Violence Practice and Procedure Task Force and the Violence Against Women Education Program (VAWEP). Serve as lead committee for Protective Orders Working Group (POWG).</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> Criminal Justice Services, Legal Services</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> None</p> <p><b>AC Collaboration:</b> Civil Small Claims Advisory Committee, Criminal Law Advisory Committee</p>	<p><b>Strategic Plan Goal IV</b></p>
6.	<p><b>Legislation</b></p> <p><b>Project Summary:</b> As requested by the Judicial Council Policy Coordination and Liaison Committee review and recommend positions on legislation related to family and juvenile law matters.</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> Governmental Affairs</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> None</p> <p><b>AC Collaboration:</b> None</p>	<p><b>Priority 1</b></p> <p><b>Strategic Plan Goal II</b></p>
7.	<p><b>Education</b></p>	<p><b>Priority 1</b></p> <p><b>Strategic Plan Goal V</b></p>

#	<b>Ongoing Projects and Activities</b>	
	<p><b>Project Summary:</b> Contribute to planning efforts in support of family and juvenile law judicial branch education.</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> CJER</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> None</p> <p><b>AC Collaboration:</b> CJER Governing Committee</p>	
8.	<b>Review approval of training providers under 5.210, 5.225, 5.230, and 5.518.</b>	<b>Priority 1</b>
	<p><b>Project Summary:</b> Training providers/courses are reviewed for compliance with these rules by Judicial Council staff, in consultation with the Family and Juvenile Law Advisory Committee. As directed by the <a href="#">Judicial Council, result of review of delegations</a>.</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> Support Services, Legal Services</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> None</p> <p><b>AC Collaboration:</b> None</p>	<b>Strategic Plan Goal V</b>
9.	<b>Advise on Distribution of Federal Title IV-E Reimbursement for Dependency Counsel</b>	<b>Priority 1a</b>
	<p><b>Project Summary:</b> A change in the federal <i>Child Welfare Policy Manual</i> permits attorneys who provide dependency representation to claim reimbursement for specified legal activities. The Budget Act of 2019 supports this federal reimbursement with an increase of \$34</p>	

#	<b>Ongoing Projects and Activities</b>	
	<p>million, and ongoing funds in future years, for court appointed dependency counsel. The Council recently authorized distribution of these funds to court appointed dependency counsel statewide.</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> Legal Services; BAPS</p> <p><input checked="" type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> CEAC Subcommittee, California Department of Social Services, Child Welfare Directors Association, Court Appointed Counsel in Dependency Providers</p> <p><b>AC Collaboration:</b> TCPJAC/CEAC</p>	
10.	<p><b>Serve as subject matter resource for other advisory groups to avoid duplication of efforts and contribute to development of recommendations for council action.</b></p>	<p><b>Priority 1d</b></p> <p><b>Strategic Plan Goal IV</b></p>
	<p><b>Project Summary:</b> Such efforts may include providing family and juvenile law expertise and review to working groups, advisory committees, and subcommittees as needed.</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> None</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> None</p> <p><b>AC Collaboration:</b> Respective advisory bodies</p>	
11.	<p><b>Judicial Council forms within the committee’s purview that have a gender identity question or term</b></p>	<p><b>Priority 1</b></p> <p><b>Strategic Plan Goal I</b></p>

#	<b>Ongoing Projects and Activities</b>	
	<p><b>Project Summary:</b> Revise all gendered terms or gender identity questions to conform to legislative changes providing for nonbinary gender identity if those forms are being revised for other reasons. All other changes will be deferred to a subsequent cycle due to the pandemic.</p> <p><b>Status/Timeline:</b> Ongoing with each RUPRO cycle</p> <p><b>Fiscal Impact/Resources:</b> Legal Services</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> None</p> <p><b>AC Collaboration:</b> None</p>	
12.	<b>FL-800 Joint Petition for Summary Dissolution</b>	<b>Priority 1b</b>
	<p><b>Project Summary:</b> Update to reflect change in cost of living per <a href="#">Family Code section 2400(b)</a> as a technical change.</p> <p><b>Status/Timeline:</b> Ongoing requirement to adjust every other year, next adjustment to be effective September 1, 2023 (last adjustment <a href="#">approved by the Judicial Council 3/19/19 as a technical change that did not need to circulate for comment</a>).</p> <p><b>Fiscal Impact/Resources:</b> Legal Services</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> None</p> <p><b>AC Collaboration:</b> None</p>	
13.	<b>Rules and Forms: Miscellaneous Technical Changes</b>	<b>Priority 1a and b</b>
	<b>Strategic Plan Goal IV</b>	

#	<b>Ongoing Projects and Activities</b>	
	<p><b>Project Summary:</b> Develop rule and form changes as necessary to correct technical errors meeting the criteria of rule 10.22(d)(2); “a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy....” if those forms are being revised for other reasons.</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> Legal Services</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> None</p> <p><b>AC Collaboration:</b> None</p>	
14.	<b>Juvenile Law: Intercounty Transfers</b>	<b>Priority 2</b>
	<b>Strategic Plan Goal II</b>	
	<p><b>Project Summary:</b> Review requests under rule 5.610(h) to approve local collaborative agreements for alternative juvenile court transfer forms in lieu of JV-550. This project originated from the <a href="#">Judicial Council Delegations to the Administrative Director of the Courts</a> (October 25, 2013, Item 99) and must be taken on if such requests come forward during the upcoming year to comply with the delegation.</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> None</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> None</p> <p><b>AC Collaboration:</b> None</p>	
15.	<b>Protective Order Forms: Continuance form for Renewal of Protective Order</b>	<b>Priority 2b</b>
	<b>Strategic Plan Goal III, IV</b>	

#	<b>Ongoing Projects and Activities</b>	
	<p><b>Project Summary:</b> As lead committee for Protective Orders Working Group (POWG), work with Civil Small Claims Advisory Committee to revise the forms used in domestic violence cases to request and order continuances of hearings in proceedings to renew or terminate protective orders. Continuances are frequently requested in these matters, and courts have indicated that a form for this process would assist them in managing this workload.</p> <p><b>Status/Timeline:</b> Anticipated circulation of invitation to comment in Spring Cycle and January 1, 2024 effective date.</p> <p><b>Fiscal Impact/Resources:</b> CFCC staff, in consultation with staff from the Legal Services will prepare revised forms.</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> California Department of Justice; 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.</p> <p><b>AC Collaboration:</b> Civil and Small Claims Advisory Committee</p>	
16.	<b>Protective Order Forms: Self-Represented Litigants</b>	<b>Priority 1e</b>
	<p><b>Project Summary:</b> As lead committee for Protective Orders Working Group (POWG), work with Civil Small Claims Advisory Committee to revise the protective order forms used in domestic violence and civil to ensure they are written in language that is comprehensible to non-attorneys, while maintaining legal accuracy. In 2023 the Committee will focus on the CLETS-001 which needs revisions to be accurate in gun violence restraining order matters and would benefit from additional changes based on user testing.</p> <p><b>Status/Timeline:</b> Anticipated circulation of invitation to comment in Spring Cycle and January 1, 2024 effective date.</p> <p><b>Fiscal Impact/Resources:</b> CFCC staff, in consultation with staff from the Legal Services will prepare revised forms.</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> California Department of Justice; 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.</p> <p><b>AC Collaboration:</b> Civil and Small Claims Advisory Committee</p>	

# Ongoing Projects and Activities		
17.	<b><i>Blue Ribbon Commission on Children in Foster Care (BRC) Recommendations</i></b>	<b><i>Priority 1 Deferred</i></b>
		<b><i>Strategic Plan Goal IV</i></b>
<p><b><i>Project Summary:</i></b> Continue to provide Judicial Council members input on council accepted recommendations concerning child welfare made by the BRC.</p> <p><b><i>Status/Timeline:</i></b> Deferred due to impacts on the judicial branch relating to the COVID-19 pandemic.</p> <p><b><i>Fiscal Impact/Resources:</i></b> None  <input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> None</p> <p><b><i>AC Collaboration:</i></b> None</p>		
18.	<b><i>Family Law: Elkins Family Law Task Force recommendations</i></b>	<b><i>Priority 2 Deferred</i></b>
		<b><i>Strategic Plan Goal IV</i></b>
<p><b><i>Project Summary:</i></b> Continue to provide Judicial Council members input on council accepted recommendations for family law issues addressed by the Elkins Family Law Task Force.</p> <p><b><i>Status/Timeline:</i></b> Deferred due to impacts on the judicial branch relating to the COVID-19 pandemic.</p> <p><b><i>Fiscal Impact/Resources:</i></b> None  <input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> None</p> <p><b><i>AC Collaboration:</i></b> None</p>		

#	Ongoing Projects and Activities	
19.	<p><b>Consider Mental Health Issues Implementation Task Force Referrals</b></p> <p><b>Project Summary:</b> Coordinate with Judicial Council staff and other advisory committees on developing and implementing recommendations to improve access and procedures in mental health proceedings, including review and consideration of implementation of select recommendations referred by the Judicial Council following the task force’s final report to the council. Recommend appropriate action within the committee’s purview. <a href="#">As referred by the council.</a></p> <p><b>Status/Timeline:</b> Deferred due to impacts on the judicial branch relating to the COVID-19 pandemic.</p> <p><b>Fiscal Impact/Resources:</b> Legal Services, Criminal Justice Services</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> None</p> <p><b>AC Collaboration:</b> Collaborative Justice Courts Advisory Committee, Criminal Law Advisory Committee, Family and Juvenile Law Advisory Committee</p>	<p><b>Priority 2</b> <b>Deferred</b></p> <hr/> <p><b>Strategic Plan Goal IV</b></p>
20.	<p><b>Court Coordination and Efficiencies</b></p> <p><b>Project Summary:</b> Review promising practices that enhance coordination and increase efficient use of resources across case types involving families and children including review of unified court implementation possibilities, court coordination protocols, and methods for addressing legal mandates for domestic violence coordination to provide recommendations for education content and related policy efforts.</p> <p><b>Status/Timeline:</b> Deferred due to impacts on the judicial branch relating to the COVID-19 pandemic.</p> <p><b>Fiscal Impact/Resources:</b> None</p> <p><input type="checkbox"/> 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.</p>	<p><b>Priority 2</b> <b>Deferred</b></p> <hr/> <p><b>Strategic Plan Goal IV</b></p>

#	<b>Ongoing Projects and Activities</b>	
	<p><i>Internal/External Stakeholders:</i> None</p> <p><i>AC Collaboration:</i> None</p>	
21.	<p><b><i>Court coordination and allegations of child abuse and neglect</i></b></p>	<p><b><i>Priority 2</i></b> <b><i>Deferred</i></b></p> <hr/> <p><b><i>Strategic Plan Goal IV</i></b></p>
<p><b><i>Project Summary:</i></b> A proposal to work collaboratively with Probate and Mental Health as well as the Advisory Committee on Providing Access and Fairness on issues related to court coordination and allegations of child abuse and neglect in guardianship cases.</p> <p><b><i>Status/Timeline:</i></b> Deferred due to impacts on the judicial branch relating to the COVID-19 pandemic.</p> <p><b><i>Fiscal Impact/Resources:</i></b> None</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> None</p> <p><b><i>AC Collaboration:</i></b> Probate and Mental Health Advisory Committee</p>		
22.	<p><b><i>Protective Orders: Access to the California Courts Protective Order Registry</i></b></p>	<p><b><i>Priority 1b</i></b> <b><i>Deferred</i></b></p> <hr/> <p><b><i>Strategic Plan Goal VI</i></b></p>
<p><b><i>Project Summary:</i></b> As lead committee for Protective Orders Working Group (POWG), work with Civil Small Claims Advisory Committee to examine the need for statewide guidance and policies on access to the California Courts Protective Order Registry (CCPOR).</p> <p><b><i>Status/Timeline:</i></b> Deferred due to impacts on the judicial branch relating to the COVID-19 pandemic.</p> <p><b><i>Fiscal Impact/Resources:</i></b> Legal Services</p> <p><input type="checkbox"/> <i>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.</i></p>		

#	Ongoing Projects and Activities
	<p><i>Internal/External Stakeholders:</i> California Department of Justice</p> <p><i>AC Collaboration:</i> Civil and Small Claims Advisory Committee</p>

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## II. LIST OF 2021 PROJECT ACCOMPLISHMENTS

*[Provide highlights and achievements of completed projects that were included in the 2021 Annual Agenda.]*

#	Project Highlights and Achievements <i>[Provide brief, broad outcome(s) and completed date.]</i>
1.	<p><b>Implementation of Legislative Changes from the 2021 Legislative Session (Completed by January 1, 2023) requiring rule or form changes.</b></p> <p>As directed by the Judicial Council, reviewed legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee’s purview. The committee reviewed legislation and proposed rules and forms as appropriate for the council’s consideration.</p> <p><u>Domestic violence:</u> Domestic Violence: Rule and Form Changes to Implement New Laws Effective January 1, 2023, adopts five new forms and revises 19 forms to implement new laws enacted by Senate Bill 320 (Rubio; Stats. 2021, ch. 685), Assembly Bill 1621 (Gipson; Stats. 2022, ch. 76), Senate Bill 374 (Min; Stats. 2021, ch. 135) Senate Bill 24 (Caballero; Stats. 2021, ch. 129), Senate Bill 538 (Rubio; Stats. 2021, ch. 686), and Assembly Bill 277 (Valladares; Stats. 2021, ch. 457). Additionally revokes one form, which will be combined with an existing form, and repeals rule 5.495 of the California Rules of Court, which has been codified by SB 320.</p> <p><u>Family:</u> Family Law: Child Custody and Visitation in Cases Involving Abuse by Parent and Child Testimony Effective January 1, 2023, amends four California Rules of Court and revising three forms to comply with Senate Bill 654 (Stats. 2021, ch. 768).</p> <p>Rules and Forms: Parentage Actions Under AB 429 Effective January 1, 2023, adopts one new rule of court and a new confidential cover sheet to comply with the mandate of Family Code section 7643.5, added by Assembly Bill 429 (Stats. 2021, ch. 52).</p> <p>Civil Law and Family Law: Request to Enter Default Forms Under the Servicemembers Civil Relief Act Effective January 1, 2023, revises six forms so that they comply with the Servicemembers Civil Relief Act (SCRA) and reflect the act’s current title and legal citation.</p> <p>Family Law: Recognition of Tribal Court Orders Relating to Division of Marital Assets Effective January 1, 2023, adopt two new forms to implement Assembly Bill 627 (Stats. 2021, ch. 58).</p> <p><u>Juvenile Delinquency:</u> Appellate Procedure and Juvenile Law: Transfer of Jurisdiction to Criminal Court and Appeal from Transfer Orders Effective January 1, 2023, adopts a new rule of court, amends several other rules, and revises two forms pertaining to the transfer-of-jurisdiction process and juvenile appeals to reflect both legislative changes to the transfer statutes.</p>

#	Project Highlights and Achievements <i>[Provide brief, broad outcome(s) and completed date.]</i>
	<p><u>Juvenile Dependency:</u>  <a href="#">Juvenile Law: Nonminor Dependents</a>            Effective September 1, 2022 amends three rules and adopts 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.</p> <p>Juvenile Law: Housing and Food Security for Youth Exiting Foster Care            Effective January 1, 2023, revises, on three forms, (1) the information that must be provided to the juvenile court about a youth’s housing plans when exiting foster care, enacted by Assembly Bill 546; and (2) the written information that must be provided to the youth at the review hearing before the youth turns 18 years old, enacted by Assembly Bill 674.</p> <p>Rules and Forms: Probate Guardianship and Juvenile Dependency Information and Referral            Effective January 1, 2023, adopts one form, approves two forms, and revises three forms to implement statutory amendments affecting the relationship between probate guardianships and juvenile dependency proceedings.</p> <p>Juvenile Law: Short-Term Residential Therapeutic Program Placement            Effective January 1, 2023, amends three rules and adopts, approves, and revises 30 Judicial Council forms to finalize the implementation of Assembly Bill 153.</p> <p>Juvenile Law: Restraining Orders            Effective January 1, 2023, amends three rules, and adopts eight forms and revises five 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 Senate Bill 320 (Eggman; Stats. 2021, ch. 685) and Assembly Bill 1621 (Gipson; Stats. 2022, ch. 76) regarding firearms and ammunition prohibitions.</p>
2.	<p><a href="#">Civil Practice and Procedure: Remote Appearances</a>            Provided committee member support to the Ad Hoc Committee on Civil Remote Appearance Rule which developed rules of court and forms to implement new Code of Civil Procedure section 367.75, enacted in Senate Bill 241 (Stats. 2021, ch. 214).</p>
3.	<p><a href="#">Family Law: Changes to Child Custody Evaluation Rule and Forms</a>            Effective September 1, 2022 amended one rule and revised four forms relating to child custody evaluations and reports. The revisions were 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.</p>
4.	<p><a href="#">Child Support: Quadrennial Review of Statewide Uniform Child Support Guideline</a>            On May 16, 2022 submitted the legislatively mandated quadrennial review of California’s statewide uniform child support guideline. The study makes recommendations for revision to the guideline to ensure it results in appropriate child support orders, limits deviations</p>

#	<b>Project Highlights and Achievements <i>[Provide brief, broad outcome(s) and completed date.]</i></b>
	from the guideline, or otherwise helps to ensure that the guideline is in compliance with federal law. The review provides a basis for the Legislature to periodically reassess California's child support guidelines and evaluate its impact on children and families.
5.	Provided oversight to implementation of new program to expand funding for court appointed counsel in dependency proceedings.
6.	Provided technical assistance and position recommendations on family and juvenile related proposed legislation via numerous legislative review calls.
7.	Approved list of training providers for court connected child custody mediators, recommending counselors, and evaluators as directed by the Judicial Council.
8.	AB 1058 Funding related activities: in addition to making recommendations to the council for ongoing funding allocations, midyear reallocations and budget increases, the committee also worked on a new funding methodology for family law facilitators and reviewing the previously implemented funding methodology for child support commissioners.
9.	Provided recommendations to the Judicial Council for allocation of funding for the Access to Visitation Grant Program and approved a midyear reallocation of unused funds.
10.	Provided recommendations to the Judicial Council for allocation of funding for CASA programs based on the current methodology as well as a budget directed increase for the Los Angeles CASA program.
11.	Provided support for the activities and meetings of the Violence Against Women Education Program.

**Probate and Mental Health Advisory Committee**  
**Annual Agenda<sup>1</sup>—2023**  
**Approved by Rules Committee: November X, 2022 (pending)**

**I. COMMITTEE INFORMATION**

<b>Chair:</b>	Hon. Jayne Chong-Soon Lee, Judge, Superior Court of San Joaquin County
<b>Lead Staff:</b>	Mr. Corby Sturges, Attorney, Center for Families, Children & the Courts
<p><b>Committee’s Charge/Membership:</b></p> <p><a href="#">Rule 10.44(a)</a> of the California Rules of Court states the charge of the Probate and Mental Health Advisory Committee, which is to make recommendations to the council for improving the administration of justice in proceedings involving decedents’ estates, trusts, conservatorships, guardianships, and other probate matters, as well as in proceedings involving mental health and developmental disability issues. <a href="#">Rule 10.44(b)</a> also directs the committee to coordinate activities and work with the Family and Juvenile Law Advisory Committee in areas of common concern and interest.</p> <p><a href="#">Rule 10.44(c)</a> sets forth the membership positions of the committee. The Probate and Mental Health Advisory Committee currently has 17 members. The current committee <a href="#">roster</a> is available on the committee’s web page.</p>	
<p><b>Subcommittees/Working Groups<sup>2</sup>:</b></p> <ol style="list-style-type: none"> <li>1. Legislation Subcommittee</li> <li>2. Conservatorship and Legal Capacity Subcommittee</li> <li>3. Guardianship Subcommittee</li> <li>4. Trusts and Estates Subcommittee</li> </ol>	
<p><b>Meetings Planned for September 2022 to August 2023<sup>3</sup> (Advisory body and all subcommittees and working groups)</b></p> <p>Monthly meetings by videoconference; possible in-person meeting TBD; Legislation Subcommittee meetings every three weeks when Legislature is in session.</p> <p><input type="checkbox"/> Check here if exception to policy is granted by Executive Office or rule of court.</p>	

<sup>1</sup> The annual agenda outlines the work a committee will focus on in the coming year and identifies areas of collaboration with other advisory bodies and the Judicial Council staff resources.

<sup>2</sup> California Rules of Court, rule 10.30(c) allows an advisory body to form subgroups, composed entirely of current members of the advisory body, to carry out the body’s duties, subject to available resources, with the approval of its oversight committee.

<sup>3</sup> Refer to [Operating Standards for Judicial Council Advisory Bodies](#) for governance on in-person meetings.

## II. COMMITTEE PROJECTS

#	New or One-Time Projects <sup>4</sup>
1.	<p data-bbox="176 256 1606 332"><i>Develop and recommend rules of court and Judicial Council forms to implement the Community Assistance, Recovery, and Empowerment (CARE) Act (SB 1338; Stats. 2022, ch. 319).</i></p> <p data-bbox="1606 256 1978 305"><i>Priority 1(b)<sup>5</sup></i></p> <p data-bbox="1606 305 1978 365"><i>Strategic Plan Goal<sup>6</sup> IV</i></p>
<p data-bbox="176 376 1957 592"><b>Project Summary<sup>7</sup>:</b> The committee will develop and recommend adoption of a mandatory form for use to file a CARE process petition, as required by Welfare and Institutions Code section 5975. The committee will develop and recommend adoption of rules of court to “implement the policies and provisions” in sections 5977–5977.4 “to promote statewide consistency, including, but not limited to, what “is included in the petition form packet”; the “clerk’s review of the petition”; and the “process by which counsel will be appointed,” as required by Welfare and Institutions Code section 5977.4(c). The committee will consider developing additional forms to the extent they would be useful to courts and self-represented petitioners in the CARE process.</p> <p data-bbox="176 636 1785 669"><b>Status/Timeline:</b> Rules and forms anticipated to circulate for comment in the winter cycle and take effect by October 1, 2023.</p> <p data-bbox="176 709 1879 774"><b>Fiscal Impact/Resources:</b> Significant but uncertain impact from legislation. Proposed rules and forms unlikely to increase impact on courts.</p> <p data-bbox="176 790 1900 855"><input type="checkbox"/> <i>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.</i></p> <p data-bbox="176 899 1102 932"><b>Internal/External Stakeholders:</b> Legal Services, Governmental Affairs.</p> <p data-bbox="176 976 1543 1008"><b>AC Collaboration:</b> Criminal Law Advisory Committee, Collaborative Justice Courts Advisory Committee</p>	

<sup>4</sup> All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or a *program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

<sup>5</sup> 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.

<sup>6</sup> Indicate which goal number of The Strategic Plan for California’s Judicial Branch the project most closely aligns.

<sup>7</sup> A key objective is a strategic aim, purpose, or “end of action” to be achieved for the coming year.

#	<b>New or One-Time Projects<sup>4</sup></b>	
2.	<b><i>Recommend revisions to Judicial Council forms and amendments to rules of court to implement the requirements of Assembly Bill 1663 in probate conservatorships and other protective proceedings.</i></b>	<b><i>Priority 1(b)<sup>5</sup></i></b> <b><i>Strategic Plan Goal<sup>6</sup> IV</i></b>
<p><b><i>Project Summary<sup>7</sup></i></b>: Assembly Bill 1663 (Stats. 2022, ch. 894) modified the probate conservatorship process to clarify the standards for appointment of a conservator, increase court oversight of a conservator after appointment, to add to the information that the conservator and the court must provide to a conservatee, and to enact a framework for supported decisionmaking. The bill’s provisions require revision of multiple conservatorship forms to bring them into conformity with its requirements. Amendments to rules of court, including those relating to education and training of appointed counsel, judicial officers, and court staff are also required.</p> <p><b><i>Status/Timeline</i></b>: Rules and forms anticipated to circulate for comment in the spring cycle and take effect January 1, 2024.</p> <p><b><i>Fiscal Impact/Resources</i></b>: N/A</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders</i></b>: Governmental Affairs, Legal Services, CFCC</p> <p><b><i>AC Collaboration</i></b>: CJER Advisory Committee</p>		
3.	<b><i>Review the report to the Legislature on court effectiveness in conservatorship cases mandated by Probate Code section 1458 and recommend Judicial Council approval of the final report.</i></b>	<b><i>Priority 1<sup>5</sup></i></b> <b><i>Strategic Plan Goal<sup>6</sup> IV</i></b>
<p><b><i>Project Summary<sup>7</sup></i></b>: Probate Code section 1458 (added by Assembly Bill 1194; Stats. 2021, ch. 417, § 4) requires the Judicial Council to “report to the Legislature the findings of a study measuring court effectiveness in conservatorship cases, including the effectiveness of protecting the legal rights and best interests of a conservatee.” The statute requires the report to include specific caseload statistics and to recommend “statewide performance measures to be collected, best practices to protect the legal rights of conservatees, and staffing needs to meet case processing requirements.” Council staff will develop the study, contract with a consultant to collect the required data, analyze it, and draft the report. The committee will advise staff on the recommendations to be included in the report, review the final report, and recommend council approval and submission to the Legislature.</p> <p><b><i>Status/Timeline</i></b>: Preliminary staff work on framing the study and issuing a Request for Proposals has begun. The report to the Legislature is due on or before January 1, 2024.</p> <p><b><i>Fiscal Impact/Resources</i></b>: \$1.25 million included in FY2022–2023 Budget Act to fund the study and report.</p>		

#	<b>New or One-Time Projects<sup>4</sup></b>	
	<p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> CFCC, Office of Court Research, consultant</p> <p><b>AC Collaboration:</b> N/A</p>	
4.	<p><b>Recommend revisions to forms for appointment of guardian ad litem in proceedings under the Probate Code to conform to statutory amendments.</b></p>	<p><b>Priority 1(b)<sup>5</sup></b></p> <p><b>Strategic Plan Goal<sup>6</sup> IV</b></p>
	<p><b>Project Summary<sup>7</sup>:</b> Senate Bill 1279 (Stats. 2022, ch. 843) amended Probate Code section 1003 to update the description of persons for whom the court may appoint a guardian ad litem and to require disclosure of conflicts of interest. The petition and order forms for appointment of a guardian ad litem in proceedings under the Probate Code must be revised to conform to these amendments.</p> <p><b>Status/Timeline:</b> Form revisions anticipated to circulate for comment in the spring cycle and take effect January 1, 2024.</p> <p><b>Fiscal Impact/Resources:</b> N/A</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Legal Services, CFCC</p> <p><b>AC Collaboration:</b> Civil and Small Claims Advisory Committee</p>	
5.	<p><b>Recommend adoption of rules of court and forms to implement Elections Code section 2211.5 relating to notification of judicial determinations regarding capacity to vote.</b></p>	<p><b>Priority 1(b)<sup>5</sup></b></p> <p><b>Strategic Plan Goal<sup>6</sup> IV</b></p>
	<p><b>Project Summary<sup>7</sup>:</b> Assembly Bill 2841 (Stats. 2022, ch. 807; operative January 1, 2024) added section 2211.5 to the Elections Code to require that each court notify the Secretary of State once a month of all findings regarding capacity to vote under Elections Code sections 2208–2211 and the total number of specified proceedings in which the court could have made such findings. The statute requires the Judicial Council, in consultation with the Secretary of State, to adopt rules of court to implement the new requirements and adopt forms to be used by the courts for the required notification.</p> <p><b>Status/Timeline:</b> Rules and forms anticipated to circulate for comment in the spring cycle and take effect January 1, 2024.</p> <p><b>Fiscal Impact/Resources:</b> N/A</p>	

#	<b>New or One-Time Projects<sup>4</sup></b>	
	<p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Governmental Affairs, Criminal Justice Services, Legal Services, CFCC; Secretary of State</p> <p><b>AC Collaboration:</b> Criminal Law Advisory Committee</p>	
6.	<p><b>Recommend legal updates and technical revisions to the Judicial Council’s Handbook for Conservators.</b></p>	<p><b>Priority 1<sup>5</sup></b></p> <hr/> <p><b>Strategic Plan Goal<sup>6</sup> IV</b></p>
	<p><b>Project Summary<sup>7</sup>:</b> Probate Code section 1835 requires the council to develop an information package, to make that package available to the courts, and periodically to update the package when changes to the law warrant. (Prob. Code, § 1835(c), (e).) The courts may use the information package to fulfill their duty, under Probate Code section 1835(a)–(b), to provide conservators with specified information. The Judicial Council approved the first edition of the <i>Handbook</i> in 1991 to implement section 1835 on the recommendation of the Advisory Committee on Conservatorships; it was published in 1992. The second edition was published in 2002. The Rules Committee approved work on the third edition of the <i>Handbook</i> in this committee’s 2015 and 2016 annual agendas. The council approved the third edition, effective October 28, 2016. Several recent statutes, most notably AB 1194 (Stats. 2021, ch. 417) and AB 1663 (Stats. 2022, ch. 894) have made significant changes to the duties of probate conservators and the information that must be provided to conservators and conservatees. Staff will prepare draft revisions to the <i>Handbook for Conservators</i>, as required by Probate Code section 1835(c) and (e), incorporate these statutory requirements. In addition, use of the <i>Handbook</i> has moved almost entirely online. The committee also plans to recommend modifying the format of the <i>Handbook</i> to make it more accessible to online users.</p> <p><b>Status/Timeline:</b> Revisions anticipated to circulate for comment in the spring cycle and take effect January 1, 2024.</p> <p><b>Fiscal Impact/Resources:</b> N/A</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> CFCC, EGG</p> <p><b>AC Collaboration:</b> N/A</p>	
7.	<p><b>Consider recommending amendment of Appendix E’s test for determining presumptive eligibility for county payment of the cost of counsel appointed in probate guardianship and conservatorship proceedings.</b></p>	<p><b>Priority 2<sup>5</sup></b></p> <hr/> <p><b>Strategic Plan Goals<sup>6</sup> I, IV</b></p>

**# New or One-Time Projects<sup>4</sup>**

**Project Summary<sup>7</sup>:** Effective January 1, 2013, the council adopted *Guidelines for Determining Financial Eligibility for County Payment of the Cost of Counsel Appointed by the Court in Proceedings Under the Guardianship-Conservatorship Law* as Appendix E to the California Rules of Court to implement the mandate in Probate Code section 1470(c)(3). The *Guidelines* serve the function described in their title. The *Guidelines* set forth a three-part test for determining a responsible person’s presumptive eligibility for county payment. The test is patterned after, but not directly tied to, the standard for an initial court fee waiver under Government Code section 68632 and was intended to be consistent with the standard for determination of presumptive inability to pay the cost of appointed counsel in juvenile dependency proceedings in Appendix F of the California Rules of Court. In response to amendments to the standard in Government Code section 68632 (Assem. Bill 199; Stats. 2022, ch. 57, § 6) that added receipt of WIC Program benefits and unemployment compensation to the list of benefit programs and increased the maximum monthly income level for automatic eligibility from 125 percent of the federal poverty guidelines to 200 percent of those guidelines, the Family and Juvenile Law Advisory Committee is considering proposing conforming amendments to Appendix F. The committee will consider whether to recommend amending Appendix E at the same time to continue to pattern its test for presumptive eligibility after the standard in Government Code section 68632 and to maintain consistency with the standard in Appendix F.

**Status/Timeline:** Amended standard would circulate for comment in the spring cycle and take effect January 1, 2024.

**Fiscal Impact/Resources:** No impact, because the county, not the court, is required to compensate appointed counsel if, and to the extent, the statutorily designated responsible person or estate is found unable to do so.

*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:** Legal Services, CFCC

**AC Collaboration:** Family and Juvenile Law Advisory Committee

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
1.	<i>Review pending legislation</i>	<b>Priority 1<sup>5</sup></b>
		<b>Strategic Plan Goal<sup>6</sup> IV</b>
<p><b>Project Summary<sup>7</sup>:</b> Review pending legislation affecting judicial administration, practice, or procedure in proceedings under the Probate Code, the Lanterman-Petris-Short Act, and other statutes protecting persons with mental health disorders or developmental disabilities; provide technical assistance to Governmental Affairs office, legislative staff, sponsors, and stakeholders, as appropriate; and recommend positions to the council’s Legislation Committee, as required by rule 10.34(a)(3).</p> <p><b>Status/Timeline:</b> Ongoing.</p> <p><b>Fiscal Impact/Resources:</b> N/A</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Governmental Affairs, Legal Services, CFCC</p> <p><b>AC Collaboration:</b> TBD depending on subject of legislation. In the past, the committee has collaborated with the Civil and Small Claims Advisory Committee, the Collaborative Justice Courts Advisory Committee, the Criminal Law Advisory Committee, and the Family and Juvenile Law Advisory Committee, and the Tribal Court–State Court Forum.</p>		
2.	<i>Review enacted legislation</i>	<b>Priority 1<sup>5</sup></b>
		<b>Strategic Plan Goal<sup>6</sup> IV</b>
<p><b>Project Summary<sup>7</sup>:</b> Review all enacted legislation referred to the committee by the Judicial Council’s Governmental Affairs staff to determine whether it raises issues within the advisory committee’s purview and, when appropriate, develop recommendations for amendment to the rules of court or revisions to Judicial Council forms to implement the legislation or to bring rules and forms into conformity with it.</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> TBD</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Governmental Affairs, Legal Services, CFCC</p>		

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
	<i>AC Collaboration:</i> TBD	
3.	<b><i>Review and recommend changes to the probate conservatorship process</i></b>	<b><i>Priority 1, 1(e)<sup>5</sup></i></b> <b><i>Strategic Plan Goal<sup>6</sup> IV</i></b>
	<p><b><i>Project Summary<sup>7</sup>:</i></b> In addition to implementing AB 1663 as discussed above, the Conservatorship and Legal Capacity Subcommittee will continue to examine the Judicial Council rules and forms adopted for use in probate conservatorship proceedings to identify amendments and revisions needed to improve notice and an opportunity to be heard for a proposed conservator; to promote provision of more detailed, relevant information to the court by petitioners, objectors, interested persons, and court-connected professionals, and to promote judicial consideration whether to grant specific requested powers to an appointed conservator.</p> <p><b><i>Status/Timeline:</i></b> Ongoing</p> <p><b><i>Fiscal Impact/Resources:</i></b> TBD</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b><i>Internal/External Stakeholders:</i></b> Legal Services, Governmental Affairs; consultants. Any proposal for new or amended rules of court of new or revised forms would circulate for public comment.</p> <p><b><i>AC Collaboration:</i></b> TBD</p>	
4.	<b><i>Review and recommend changes to the probate guardianship process</i></b>	<b><i>Priority 1, 1(e)<sup>5</sup></i></b> <b><i>Strategic Plan Goal<sup>6</sup> IV</i></b>
	<p><b><i>Project Summary<sup>7</sup></i></b> The Guardianship Subcommittee will continue to examine the Judicial Council rules and forms adopted for use in guardianship proceedings to identify amendments and revisions needed to provide notice and an opportunity to be heard to parents whose children are the subject of a guardianship petition, to implement changes to California law, and to simplify the processes to petition for appointment of a guardian and to object to the petition. Consider separating guardianship forms and conservatorship forms into two discrete form sets.</p> <p><b><i>Status/Timeline:</i></b> Ongoing</p>	

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
	<p><b>Fiscal Impact/Resources:</b> TBD</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Governmental Affairs, Legal Services, Language Access Program staff; Superior Court Self-Help Centers, translation services, plain language consultation. Any proposal for new or revised forms would circulate for public comment.</p> <p><b>AC Collaboration:</b> Family and Juvenile Law Advisory Committee</p>	
5.	<b>Promote gender neutrality in forms</b>	<b>Priority 1(a)<sup>5</sup></b>
	<p><b>Strategic Plan Goal<sup>6</sup> IV</b></p> <p><b>Project Summary<sup>7</sup>:</b> As forms are revised for independent reasons, continue to review and, when possible, replace gendered terms or gender identity questions to conform to legislation providing for gender neutrality and nonbinary gender identity.</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> N/A</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Legal Services staff</p> <p><b>AC Collaboration:</b> N/A</p>	
6.	<b>Review suggestions</b>	<b>Priority 1<sup>5</sup></b>
	<p><b>Strategic Plan Goal<sup>6</sup> IV</b></p> <p><b>Project Summary<sup>7</sup>:</b> As mandated by rule 10.21(c), review suggestions from members of the judicial branch and the public for improving judicial administration, practice, and procedure in decedents' estate, trust, guardianship, conservatorship, and other proceedings under the Probate Code, as well as civil mental health proceedings under the Lanterman-Petris-Short Act, and recommend action by the council or one of its committees.</p>	

#	<b>Ongoing Projects and Activities<sup>4</sup></b>	
	<p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> N/A</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> <i>Include any specific JCC staff resources needed, such as Information Technology, Fiscal, Legal, Education, Security, etc. Also include external stakeholders and partners.</i></p> <p><b>AC Collaboration:</b> TBD</p>	
7.	<p><b>Monitor developments in California guardianship law related to immigrant children</b></p>	<p><b>Priority 1<sup>5</sup></b></p> <p><b>Strategic Plan Goals<sup>6</sup> IV</b></p>
	<p><b>Project Summary<sup>7</sup>:</b> Monitor the implementation, in probate guardianship proceedings, of section 155 of the Code of Civil Procedure (added by Stats. 2014, ch. 685, § 1), section 1510.1 of the Probate Code (added by Stats. 2015, ch. 694), and other statutes concerning state judicial findings to support (proposed) wards’ petitions for Special Immigrant Juvenile (SIJ) classification in federal immigration proceedings. If necessary, recommend amended rules of court or revised forms.</p> <p><b>Status/Timeline:</b> Ongoing</p> <p><b>Fiscal Impact/Resources:</b> N/A</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> <i>Include any specific JCC staff resources needed, such as Information Technology, Fiscal, Legal, Education, Security, etc. Also include external stakeholders and partners.</i></p> <p><b>AC Collaboration:</b> Family and Juvenile Law Advisory Committee</p>	
8.	<p><b>Provide subject-matter expertise</b></p>	<p><b>Priority 1<sup>5</sup></b></p> <p><b>Strategic Plan Goals<sup>6</sup> IV</b></p>

**# Ongoing Projects and Activities<sup>4</sup>**

**Project Summary<sup>7</sup>:** Serve as subject-matter resource for the Judicial Council, its internal committees, other advisory bodies, and Judicial Council staff to support legal work, avoid duplication of efforts, and contribute to the development of recommendations for council action. These efforts may include providing probate and mental health procedural expertise and review to working groups, advisory committees, subcommittees, and Judicial Council staff, as needed.

**Status/Timeline:** Ongoing

**Fiscal Impact/Resources:** N/A

*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:** Judicial Council, internal committees, advisory bodies, Judicial Council staff

**AC Collaboration:** TBD

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### III. LIST OF 2022 PROJECT ACCOMPLISHMENTS

#	Project Highlights and Achievements
1.	Contributed to developing rules of court, effective January 1, 2022, to implement Code of Civil Procedure section 367.75 (added by SB 241; Stats. 2021, ch. 214, § 5), which authorized remote appearances and proceedings in civil cases, including proceedings under the Probate Code.
2.	Collaborated with the Family and Juvenile Law Advisory Committee to implement the requirements of AB 260 by recommending, effective January 1, 2023, new and revised forms to provide information probate guardianships, juvenile dependency proceedings, and the relationship of those proceedings to one another, as well as recommending one new and one revised form to implement processes for a probate court to refer a child to a county child welfare agency for investigation and commencement of dependency proceedings and requesting juvenile court review of the agency’s decision not to commence such proceedings.
3.	Implemented mandates and changes to conservatorship law in AB 1194 by recommending revisions to the form orders for appointment of court investigators in conservatorship proceedings and amendments to the rules of court regarding compensation of conservators, filing of accounts, termination of conservatorships, and conservatorship investigations, effective January 1, 2023.
4.	Recommended approval of guardianship objection form, effective January 1, 2023.
5.	Recommended adoption of one form and revision of three other forms, effective April 1, 2022, to implement the mandate of Probate Code section 890 (added by AB 473; Stats. 2019, ch. 122, § 1) that the Judicial Council adjust the dollar amounts used to determine eligibility for small estate administration and publish those amounts.
6.	Recommended further revision of two forms to clarify the requirements for implementing the requirements of AB 473 in small estate proceedings that took effect upon the aforementioned adjustments, effective January 1, 2023.

**Traffic Advisory Committee**  
**Annual Agenda<sup>1</sup>—2023**  
**Approved by Rules Committee: [Date]**

**I. COMMITTEE INFORMATION**

<b>Chair:</b>	Hon. Gail Dekreon, Judge, Superior Court of San Francisco County
<b>Lead Staff:</b>	Jamie Schechter, Attorney, Criminal Justice Services Office
<b>Committee's Charge/Membership:</b> <a href="#">Rule 10.54</a> of the California Rules of Court states the charge of the Traffic Advisory Committee, which is to make recommendations to the Judicial Council for improving the administration of justice in the area of traffic procedure, practice, and case management and in other areas as set forth in the fish and game, boating, forestry, public utilities, parks and recreation, and business licensing bail schedules.  The Traffic Advisory Committee currently has 13 members. The current committee <a href="#">roster</a> is available on the committee's web page.	
<b>Subcommittees/Working Groups<sup>2</sup>:</b> None.	
<b>Meetings Planned for 2023<sup>3</sup> (Advisory body and all subcommittees and working groups)</b> Date/Time/Location or Teleconference: <ul style="list-style-type: none"><li>• In-person meeting October 2023 in San Francisco.</li><li>• Bi-weekly telephone conferences as needed throughout the year.</li></ul> <input type="checkbox"/> Check here if exception to policy is granted by Executive Office or rule of court.	

<sup>1</sup> The annual agenda outlines the work a committee will focus on in the coming year and identifies areas of collaboration with other advisory bodies and the Judicial Council staff resources.

<sup>2</sup> California Rules of Court, rule 10.30 (c) allows an advisory body to form subgroups, composed entirely of current members of the advisory body, to carry out the body's duties, subject to available resources, with the approval of its oversight committee.

<sup>3</sup> Refer to [Operating Standards for Judicial Council Advisory Bodies](#) for governance on in-person meetings.

## II. COMMITTEE PROJECTS

#	New or One-Time Projects <sup>4</sup> [Group projects by priority number.]	
1.	<b>Placeholder for Projects assigned by the Ad-Hoc Workgroup on Post-Pandemic Initiatives (P3)</b>	<b>Priority 1(e)<sup>5</sup></b>
		<b>Strategic Plan Goal 3<sup>6</sup></b>
<p><b>Project Summary<sup>7</sup>:</b> The Ad Hoc Workgroup on Post-Pandemic Initiatives (P3) is currently working to identify successful court practices that emerged during the COVID-19 pandemic. P3 recommendations may be referred to specific advisory bodies for development and/or implementation.</p> <p><b>Status/Timeline:</b> TBD</p> <p><b>Fiscal Impact/Resources:</b> Include JCC staff/fiscal resources (e.g., potential BCP), fiscal impact to JCC/trial court (e.g., IT contract), and other relevant resource needs.</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> TBD</p> <p><b>AC Collaboration:</b> TBD</p>		

<sup>4</sup> All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or a *program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

<sup>5</sup> 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.

<sup>6</sup> Indicate which goal number of The Strategic Plan for California’s Judicial Branch the project most closely aligns.

<sup>7</sup> A key objective is a strategic aim, purpose, or “end of action” to be achieved for the coming year.

#	<b>New or One-Time Projects<sup>4</sup> [Group projects by priority number.]</b>	
2.	<b>Revision of Traffic Instructions and Citations (TR-INST, TR-100, TR-106, TR-108, TR-115, TR-120, TR-130, TR-135, TR-145)</b>	<b>Priority 1(e)<sup>5</sup></b> <b>Strategic Plan Goal 3<sup>6</sup></b>
<p><b>Project Summary<sup>7</sup>:</b> Traffic citation forms fall within the purview of the Traffic Advisory Committee. The forms were last modified in 2015. The forms are confusing, and some sections are out of date. In 2022, the committee began developing revisions to citation forms using plain language and other updates. Behavioral science experts who helped to identify improvements to the MyCitations system for online ability-to-pay determinations have been assisting with this effort.</p> <p><b>Status/Timeline:</b> Anticipated circulation for comment in Spring 2023.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff, Criminal Law Advisory Committee.</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> California Highway Patrol and other law enforcement agencies.</p> <p><b>AC Collaboration:</b> TCPJAC/CEAC</p>		
3.	<b>Revision of Trial by Declaration forms including: (form TR-200), (form TR-205), (form TR-210), form TR-215), (form TR-220), (form TR-225), and (form TR-235)</b>	<b>Priority 1 (a)<sup>5</sup></b> <b>Strategic Plan Goal 3<sup>6</sup></b>
<p><b>Project Summary<sup>7</sup>:</b> These forms have not been revised since 1999-2000. At least one of the forms cites an incorrect statutory subdivision that was changed over 20 years ago. The forms should be reviewed and potentially revised for legal accuracy and readability.</p> <p><b>Status/Timeline:</b> Anything other than technical changes will require circulation for public comment, anticipated circulation for comment in Spring 2023.</p> <p><b>Fiscal Impact/Resources:</b></p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> Anything other than technical changes will circulate for public comment.</p> <p><b>AC Collaboration:</b> TCPJAC/CEAC</p>		

#	<b>New or One-Time Projects<sup>4</sup> [Group projects by priority number.]</b>	
4.	<b>Amend Cal. Rules of Court, rule 4.107</b>	<b>Priority 1 (a)<sup>5</sup></b>
<p data-bbox="176 293 1980 375"><b>Project Summary<sup>7</sup>:</b> Assembly Bill 199 (2022 Stats., ch. 57) reduced the maximum civil assessment amount from \$300 to \$100. Rule 4.107 references a \$300 civil assessment. The rule needs to be revised to reflect the accurate amount and also reviewed for accuracy.</p> <p data-bbox="176 407 1980 488"><b>Status/Timeline:</b> Anything other than technical changes will require circulation for public comment, anticipated circulation for comment in Spring 2023.</p> <p data-bbox="176 521 1980 553"><b>Fiscal Impact/Resources:</b></p> <p data-bbox="176 570 1980 634"><input type="checkbox"/> <i>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.</i></p> <p data-bbox="176 667 1980 699"><b>Internal/External Stakeholders:</b> Anything other than technical changes will circulate for public comment.</p> <p data-bbox="176 781 1980 813"><b>AC Collaboration:</b> TCPJAC/CEAC</p>		
5.	<b>Revision of Agreement to Pay and Forfeit Bail in Installments forms and Agreement to Pay Traffic Violator School Fees in Installments (form TR-300), (form TR-300 (online)), form TR-310), and (form TR-310 (online))</b>	<b>Priority 2(f)<sup>5</sup></b>
<p data-bbox="176 1000 1980 1162"><b>Project Summary<sup>7</sup>:</b> Assembly Bill 199 (2022 Stats., ch. 57), necessitated some changes to the TR-300 and TR-310, which were done in 2022 on an expedited basis without circulation for comment. However, these forms are in need of a more substantial revision, including a reevaluation about the intended audience of the forms and whether separate “online” versions of the forms are still necessary in light of all council forms being accessible and fillable online.</p> <p data-bbox="176 1195 1980 1227"><b>Status/Timeline:</b> Anticipated circulation for comment in Spring 2023.</p> <p data-bbox="176 1268 1980 1300"><b>Fiscal Impact/Resources:</b></p> <p data-bbox="176 1317 1980 1382"><input type="checkbox"/> <i>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.</i></p> <p data-bbox="176 1422 1980 1455"><b>Internal/External Stakeholders:</b> Any proposal will be circulated for public comment.</p>		

#	New or One-Time Projects <sup>4</sup> [Group projects by priority number.]
	<i>AC Collaboration:</i> TCPJAC/CEAC

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#	<b>Ongoing Projects and Activities<sup>4</sup> [Group projects by priority number.]</b>	
1.	<b>2023 Bail Schedules Revision</b>	<b>Priority 1(a)<sup>5</sup></b>
		<b>Strategic Plan Goal 3<sup>6</sup></b>
<p><b>Project Summary<sup>7</sup>:</b> The Traffic Advisory Committee is required to revise and update the Uniform Bail and Penalty Schedules annually to conform with new laws, as required by Penal Code section 1269b and California Rule of Court 4.102.</p> <p><b>Status/Timeline:</b> Anticipated January 2023 effective date.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> Will be circulated for public comment.</p> <p><b>AC Collaboration:</b> N/A</p>		
2.	<b>Review Pending and Enacted Legislation</b>	<b>Priority 1(a)<sup>5</sup></b>
		<b>Strategic Plan Goal 2, 3<sup>6</sup></b>
<p><b>Project Summary<sup>7</sup>:</b> Review pending and enacted legislation that may have an impact on traffic court administration. Provide subject matter expertise on legislation, including fiscal impacts for the courts. Propose rules and forms necessary to comply with legislation or other directives.</p> <p><b>Status/Timeline:</b> Ongoing.</p> <p><b>Fiscal Impact/Resources:</b> Committee Staff, Governmental Affairs.</p> <p><input type="checkbox"/> <i>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.</i></p> <p><b>Internal/External Stakeholders:</b> N/A</p> <p><b>AC Collaboration:</b> N/A</p>		

#	<b>Ongoing Projects and Activities<sup>4</sup> [Group projects by priority number.]</b>	
3.	<b>Traffic Bench Officer and Temporary Judge Training</b>	<b>Priority 1(a)<sup>5</sup></b>
	<b>Strategic Plan Goal 5<sup>6</sup></b>	
<p><b>Project Summary<sup>7</sup>:</b> Provide advice as requested by the Center for Judicial Education and Research (CJER) with development of traffic training programs and materials for bench officers and temporary judges assigned to traffic proceedings.</p> <p><b>Status/Timeline:</b> Ongoing.</p> <p><b>Fiscal Impact/Resources:</b> Committee staff.</p> <p><input type="checkbox"/> 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.</p> <p><b>Internal/External Stakeholders:</b> N/A</p> <p><b>AC Collaboration:</b> CJER Governing Committee.</p>		

### III. LIST OF 2022 PROJECT ACCOMPLISHMENTS

*[Provide highlights and achievements of completed projects that were included in the 2022 Annual Agenda.]*

#	Project Highlights and Achievements <i>[Provide brief, broad outcome(s) and completed date.]</i>
1.	The committee updated the Uniform Bail and Penalties Schedule to be consistent with 2022 legislation, completed December 2022.
2.	The committee provided Government Affairs office and the council's Legislation Committee subject matter expertise on numerous pending traffic bills, including operational and fiscal impacts of proposed legislation, ongoing.
3.	In order to facilitate remote proceedings for infractions, the committee recommended repealing California Rules of Court, rule 4.220, and revoking the forms based on that rule. Penal Code section 1428.5, which as urgency legislation became effective on signing on July 16, 2021, authorizes remote proceedings for all infraction cases and authorizes the council to adopt rules regarding such proceedings. Rule 4.220, adopted <i>before</i> the new Penal Code section, was more restrictive than permitted under the new statute and is inconsistent with how courts have conducted remote proceedings for infractions under emergency rules. The Judicial Council revoked the rule and related forms by circulating order on May 11, 2022.
4.	The committee has begun examining and revising Traffic Instructions and Citations (TR-INST, TR-100, TR-106, TR-108, TR-115, TR-120, TR-130, TR-135, TR-145) using plain language and other updates, along with Behavioral Science experts who helped to identify improvements to the MyCitations system for online ability-to-pay determinations.