Judicial Council of California
Rules Committee

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RULES COMMITTEE

MINUTES OF OPEN VIDEOCONFERENCE MEETING

March 29, 2023
12:10 p.m. to 1:40 p.m.

Advisory Body Members Present:	Hon. Carin T. Fujisaki, Hon. Kevin C. Brazile, Hon. Samuel K. Feng, Ms. Rachel W. Hill, Mr. Shawn C. Landry, Hon. Kimberly Merrifield, Hon. Glenn Mondo, and Hon. David Rosenberg
Advisory Body Members Absent:	Mr. Maxwell Pritt
Committee Staff Present:	Anne M. Ronan and Benita Downs
Other Staff Present:	James Barolo, Alex Bender, Kerry Doyle, Audrey Fancy, Sarah Fleischer-Ihn, Michael Giden, Ann Gilmore, Diana Glick, Anne Hadreas, Kendall Hannon, John Henzl, Frances Ho, Jason Mayo, Daniel Richardson, Leah Rose-Goodwin, Khayla Salangsang, Jamie Schechter, Gabrielle Selden, Christy Simon, Marymichael Smrdeli, Laura Speed, Corby Sturges, Gregory Tanaka, and Joan Tillman.

OPEN MEETING

Call to Order and Roll Call

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

Approval of Minutes

The advisory body reviewed and approved the minutes of the February 16 Rules Committee meeting.

DISCUSSION AND ACTION ITEMS (ITEMS 01–34)

JUDICIAL BRANCH ADMINSTRATION

Item 01/SPR23-01

Judicial Branch Administration: Procedures for Submitting to Administrative Presiding Justices Contentions Regarding Administration of the Courts of Appeal

The committee reviewed a proposal from the Administrative Presiding Justices Advisory Committee for a new rule to establish procedures for submitting to administrative presiding justices contentions that an administrative presiding justice or presiding justice has not properly addressed or managed an important matter related to the administration of a Court of Appeal or a division of a Court of Appeal. This proposal was based on a recommendation from the Appellate Caseflow Workgroup and would advance the efficient, effective, and just administration of the Courts of Appeal.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 02/SPR23-02

Trial Courts: Exceptional Criminal Case Reporting

The committee reviewed a proposal from the Court Executives Advisory Committee that the Judicial Council amend standard 2.2 of the California Standards of Judicial Administration to repeal subdivision (m). Standard 2.2(m) recommends that trial courts report exceptional criminal case aging in the Judicial Branch Statistical Information System (JBSIS). Currently, most courts do not follow this recommendation, because JBSIS does not allow for such reports. Because the resources required to ensure courts could follow the standard would be substantial, and potential gains of doing so appear to be limited, the committee proposed that the subdivision should be repealed.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

APPELLATE ADVISORY COMMITTEE

Item 03/SPR23-03

Appellate Procedure: Time for Electing and Filing an Appendix

The committee reviewed a proposal from the Appellate Advisory Committee amending the rules regarding appendixes to allow appellants to file an appendix before filing the opening brief and to

allow respondents to elect an appendix when their other record designations are due. The changes are intended to assist courts and litigants by permitting earlier filing of an appendix, which could assist with briefing and courts' consideration of petitions for writ of supersedeas, and to provide respondents the opportunity to elect an appendix after receiving notice that the appellant has designated a clerk's transcript. The committee proposed revising several forms to reflect the rule changes and revoking two forms that would no longer be necessary. The proposal originated with suggestions from an appellate attorney in Berkeley and a bar association in San Diego.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 04/SPR23-04

Appellate Procedure: Remote Appearances at Oral Argument in the Appellate Division

The committee reviewed a proposal from the Appellate Advisory Committee updating the rules regarding oral argument in the appellate division to reflect modern videoconferencing technology and facilitate remote appearances. The current rules narrowly provide for videoconferencing at different courts to accommodate appellate division judges who would have to travel to attend oral argument in the same location. Parties are required to appear in person at the court that issued the order or judgment being appealed unless a local rule or appellate division order permits otherwise. The proposal would replace the videoconferencing provisions with broader authorization for remote appearances. The proposal originated with a suggestion from a committee member.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 05/SPR23-05

Appellate Procedure: Attachment of Trial Court's Order to Petition for Review of Summary Denial of Writ Petition

The committee reviewed a proposal from the Appellate Advisory Committee amending the rule governing petitions for review in the Supreme Court to provide for attachment of the entire trial court order when petitioner seeks review of a Court of Appeal summary denial of a writ petition. Under the current rule, attachments to petitions for review may not exceed 10 pages. The proposal originated with a suggestion from an advisory committee member.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 06/SPR23-06

Appellate Procedure: Forms for Extension of Time

The committee review a proposal from the Appellate Advisory Committee revising the forms used to request an extension of time to file a brief in the Court of Appeal and the appellate division of the superior court. The revisions would add space for the applicant to indicate the work done to date on the appeal and would correct the item on one form regarding who must be served with the application. On the civil forms, an item indicating that the case has calendar preference would be added. Finally, the item on the forms for the applicant to explain why an extension of time should be granted would be revised to require the applicant to address the relevant factors a court will use to determine whether good cause exists. The proposal originated with suggestions from the Chief Justice's Appellate Caseflow Workgroup, an appellate project, a county bar association, and a member of the Judicial Council.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 07/SPR23-07

Appellate Procedure: Notice of Appeal Forms

The committee reviewed a proposal from the Appellate Advisory Committee for revisions to *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002) and *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to (1) include an item by which an attorney can join the appeal to challenge an order directing payment of sanctions by the attorney, (2) add an optional item by which the appellant can attach a copy of the judgment or order being appealed, and (3) on form APP-002 highlight the item requesting the date the order or judgment being appealed was entered so that it is not overlooked. The proposal originated in response to a recent California Supreme Court decision and suggestions by the Family Violence Appellate Project and committee members.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

CIVIL AND SMALL CLAIMS ADVISORY COMMITTEE

Item 08/W23-03/ SPR23-08

Unlawful Detainer: Opportunities for Settlement Before Trial

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee for adoption of a new rule and a new form for optional use in unlawful detainer cases to promote settlement opportunities through the use of alternative dispute resolution processes. The new rule and form were previously circulated for comment between December 2022 and January 2023. The new rule states a policy favoring at least one opportunity for parties in all eviction cases to participate in some form of pretrial alternative dispute resolution process and would allow a court to shorten the existing deadline for submitting a mandatory settlement conference statement. The proposed new form would allow parties to submit any settlement agreement they reached to the court and ask for either an order without judgment or a stipulated judgment.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 09/SPR23-09

Civil Practice and Procedure: Form Revisions to Implement Senate Bill 1200

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee to revise nine Judicial Council forms, and revocation of one form, to implement statutory changes in Senate Bill 1200 (Stats. 2022, ch. 883), enacted September 30, 2022. SB 1200 limits the ability of a judgment creditor to renew or bring an action on a money judgment and lowers the applicable rate of postjudgment interest where the judgment and unsatisfied principal amount of the judgment meet certain criteria. The proposed revisions address these statutory changes.

In addition to those proposed revisions, two form revisions previously approved by the Judicial Council are being proposed for circulation. On December 2, 2022, the Judicial Council approved revisions to *Application for and Renewal of Judgment* (form EJ-190) and *Notice of Renewal of Judgment* (form EJ-195) to address SB 1200's limitations on renewals of judgments. Those revisions became effective on January 1, 2023. The council concluded that speedy revision was necessary, even before the forms were circulated for public comment, to ensure those forms conformed with the law when SB 1200 became effective on January 1, 2023. The revisions were not previously circulated for comment. In addition, the committee proposed further revision of form EJ-195.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 10/SPR23-10

Unlawful Detainer: Forms to Reflect Existing Law and Implement Senate Bill 1017 and Assembly Bill 1726

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee for the adoption of one new form and revision of several other forms relating to unlawful detainer actions. These new and revised forms (1) implement a new law creating a new procedure for partial evictions, (2) implement a new law providing additional time for certain defendants to respond to a summons for unlawful detainer, and (3) update the forms to reflect current law regarding COVID-19 rental protections.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

CENTER FOR JUDICIAL EDUCATION AND RESEARCH ADVISORY COMMITTEE

Item 11/SPR23-11

Judicial Branch Education: Delivery Methods Defined

The committee reviewed a proposal from the Center for Judicial Education and Research Advisory Committee to amend rule 10.493 of the California Rules of Court to provide additional clarification to terms used in a slate of education rule amendments adopted by the Judicial Council that went into effect on January 1, 2023. The proposal is based on public comment received in 2022.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

CRIMINAL LAW ADVISORY COMMITTEE

Item 12/SPR23-12

Criminal Procedure: Appointment of Trial Counsel in Capital Cases

The committee reviewed a proposal from the Criminal Law Advisory Committee proposing amending the rule governing qualifications for appointed trial counsel in capital cases to clarify that appointment of qualified counsel applies to all capital cases unless the district attorney affirmatively states on the record that the death penalty will not be sought.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 13/SPR23-13

Criminal Law: Circumstances in Aggravation

The committee reviewed a proposal from the Criminal Law Advisory Committee to revise the optional Judicial Council felony plea form to reflect statutory changes regarding the right to a trial on circumstances in justifying the imposition of the upper term of a criminal offense or enhancement, and to improve consistency throughout the form.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 14/W23-05/SPR23-34

Criminal Procedure: Petition for Resentencing Based on Health Conditions due to Military Service

The committee reviewed a proposal from the Criminal Law Advisory Committee for revisions to the optional Judicial Council *Petition for Resentencing Based on Health Conditions due to Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412). The proposed revisions clarified that the petitioner may apply for relief if a health condition was discovered after the original sentencing.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 15/SPR23-14

Criminal Procedure: Record Cleaning Forms

The committee reviewed a proposal from the Criminal Law Advisory Committee to revise the optional criminal forms used to petition for dismissals and reductions of convictions and request sealing of arrest records. The proposed revisions reflect statutory changes that allow for automatic record relief, expand who is eligible for relief, and clarify the effect of relief granted.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

FAMILY AND JUVENILE LAW ADVISORY COMMITTEE

Item 16/SPR23-15

Family Law: Summary Dissolution Forms

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee to revise two family law summary dissolution forms, which are mandated by Family Code section 2400, to reflect an increase in the California Consumer Price Index. The committee also proposed additional

changes to the forms to respond to issues raised by court professionals that would help joint petitioners more accurately complete and file the forms needed to request a summary dissolution judgment.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 17/SPR23-16

Child Custody and Visitation Orders Involving Gender-Affirming Health Care

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee to amend one rule of court effective January 1, 2024, to implement Senate Bill 107 (Stats. 2022, ch. 810). SB 107 amends Family Code sections 3421 and 3424 and adopts a new public policy in Family Code section 3453.5 that supports a parent's ability to seek gender-affirming health care and gender-affirming mental health care for a child in the state of California without penalty. The proposed amendments to the rule would provide procedures for situations in which a parent seeks emergency child custody orders in family court because the laws of another state prohibit that parent from providing gender-affirming health care or gender-affirming mental health care for their child.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 18/SPR23-17 (Proposal withdrawn prior to meeting)

Item 19/SPR23-18

Family and Juvenile Law Implementation of Assembly Bill 2495

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee to amend one rule of the California Rules of Court and revise four forms to conform with recent statutory changes enacted by Assembly Bill 2495 (Patterson; Stats. 2022, ch. 159) regarding various topics related to adoptions, including when to display a child's preadoption name on adoption request and order forms, procedures for filing a postadoption contact order, and venue for adoption requests. The committee also proposed technical changes to correct errors and respond to partner and stakeholder feedback.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 20/SPR23-19

Juvenile Law: Psychiatric Residential Treatment Facility Voluntary Admission

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee to adopt one rule of the California Rules of Court and adopting six forms to conform to recent statutory changes enacted by Assembly Bill 2317 (Ramos; Stats. 2022, ch. 589) regarding court oversight of the voluntary admission of a child, nonminor, or nonminor dependent to a psychiatric residential treatment facility.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 21/SPR23-20

Juvenile Dependency Law: Counsel Collections Program Guidelines

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee to amend the *Guidelines for the Juvenile Dependency Counsel Collections Program* (*Guidelines*), Appendix F of the California Rules of Court, to incorporate by reference Government Code section 68632(b)(1), which addresses eligibility for a court fee waiver, to determine the income level at or below which a responsible person is presumed unable to pay the cost of appointed counsel in a juvenile dependency proceeding. The proposed change would maintain the Judicial Council policy adopted with the original *Guidelines* in 2012 linking the presumption of a person's inability to pay the cost of dependency counsel to the income amount in Government Code section 68632(b), which addresses eligibility for a court fee waiver. New legislation recently amended section 68632(b) to increase that amount from 125 percent to 200 percent of the federal poverty guidelines.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 22/SPR23-21

Juvenile Law: Family Finding & Engagement

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee for the amendment of four rules and one form to conform to recent statutory changes clarifying the due diligence that must be used by a social services agency or probation department in performing its family finding obligation when a child is removed from the home. Senate Bill 384 revises Welfare and Institutions Code sections 309 and 628 to define the obligation of the placing agency to engage in family finding in dependency and juvenile justice (delinquency) cases. The bill defines due diligence, which requires a social worker or probation officer to ask the child in an age-appropriate manner

about parents and adult relatives. Due diligence also requires the agency to use a computer-based search engine to identify relatives and kin to provide family support and possible placement for the child. In addition, in the case of an Indian child, the bill also clarifies that the placing agency must contact the Indian child's tribe to help identify relatives and kin.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 23/SPR23-33

Child Support: Amendments to Family Code Section 4007.5

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee to revise several forms in order to provide court users and the public with updated information regarding relief available to incarcerated or involuntarily institutionalized child support obligors. The proposed revisions are necessary to reflect recent amendments made to Family Code section 4007.5.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

PROBATE AND MENTAL HEALTH ADVISORY COMMITTEE

Item 24/SPR23-22

Jointly with the Civil and Small Claims Advisory Committee and Family and Juvenile Law Advisory Committee

Civil Practice and Procedure: Appointment of Guardian ad Litem

The committee reviewed a joint proposal from the Civil and Small Claims Advisory Committee, the Family and Juvenile Law Advisory Committee, and the Probate and Mental Health Advisory Committee for adopting one form, revising two forms, revising and renumbering one form, and revoking one form to reflect a change in the law and to clarify and modernize the existing forms. The forms in the proposal are used to apply for and order the appointment of a guardian ad litem in a civil action or proceeding, including a family law proceeding, and in a proceeding under the Probate Code.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 25 /SPR23-23 (Deferred until April 5 meeting)

Item 26/SPR23-24

Jointly with the Criminal Law Advisory Committee

Trial Courts: Reports of Determinations Affecting Voting Rights (AB 2841)

The committee reviewed a joint proposal from the Probate and Mental Health Advisory Committee and the Criminal Law Advisory Committee for the adoption of one rule of court and two forms to implement recent legislation requiring the trial courts to report to the Secretary of State judicial determinations under Elections Code sections 2208–2211 disqualifying a person from voting or restoring a person's right to register to vote. The legislation expressly required the Judicial Council to adopt rules and forms, including a mandatory form for the courts to use to furnish the required reports.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 27/SPR23-25

Probate Conservatorship and Guardianship: Eligibility for County Payment of Cost of Appointed Counsel

The committee reviewed a proposal from the Probate and Mental Health Advisory Committee to amend the *Guidelines for Determining Financial Eligibility for County Payment of the Cost of Counsel Appointed by the Court in Proceedings Under the Guardianship-Conservatorship Law (Guidelines),* Appendix E of the California Rules of Court, to update the criteria for establishing presumptive eligibility for county payment of the cost of court-appointed counsel. The proposal would maintain the Judicial Council's policy of basing presumptive eligibility for county payment in part on the conditions for granting an initial court fee waiver under Government Code section 68632(a)–(c) by adjusting the criteria in the *Guidelines* to conform to recent amendments to that statute.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

PROTECTIVE ORDER (5)

Item 28/SPR23-26

Jointly with the Civil and Small Claims Advisory

Protective Orders: Updated Law Enforcement Information Form and New Forms for Continuances on Hearings to Renew

The committee reviewed a joint proposal from the Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee recommending revising form CLETS-001 to make needed updates and adopting new forms to be used when a request to renew has been filed in a protective order proceeding and the court or a party wishes to continue a hearing.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 29/SPR23-27

Jointly with the Family and Juvenile Law Advisory Committee

Rules and Forms: Service Form to Implement Assembly Bill 2791

The committee reviewed a joint proposal from the Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee proposing the adoption of a new form, *Request for Sheriff to Serve Court Papers* (form SER-001). The proposed new form complies with the statutory mandate in Assembly Bill 2791 (Stats. 2022, ch. 417) that the Judicial Council adopt a form for civil litigants to request that a sheriff's office serve their court papers.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 30/SPR23-28

Protective Orders: Revisions to Gun Violence Restraining Order Forms

The committee review a proposal from the Civil and Small Claim Advisory Committee to adopt and revise numerous gun violence restraining order forms. The proposed new and revised forms (1) implement a new law permitting additional categories of individuals to petition for gun violence restraining orders, (2) bring the language describing firearm parts on gun violence restraining order forms in line with other protective order forms, (3) include new forms that can be used to request continuance of a hearing to renew a gun violence protective order, and (4) clarify that no additional proof of service is required if the respondent attends the hearing where the order was issued remotely.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 31/SPR23-29

Domestic Violence: Form Changes to Implement New Laws

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee proposing revisions to 14 domestic violence restraining order forms to implement Assembly Bill 2369, Senate Bill 935, and Assembly Bill 1621. The committee also proposed adopting two new forms that would be used to continue a hearing on a request to renew a restraining order.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

Item 32/SPR23-30

Jointly with the Civil and Small Claims Advisory Committee

Protective Orders: Service Requirements after Remote Appearances

The committee reviewed a joint proposal from the Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee to approve two rules of court and revising notice and order forms to clarify the service requirements for respondents who appear remotely in protective order proceedings.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

TRAFFIC ADVISORY COMMITTEE

Item 33/SPR23-31

Traffic and Criminal Law: Notice to Appear Forms

The committee reviewed a proposal from the Traffic Advisory Committee amending a rule of court, revising and revoking notice to appear forms (commonly known as a “citation” or “traffic ticket”), revising the notice to correct violation, and revising the related instruction forms. The changes are proposed to reflect recent statutory changes, improve litigant understanding of the citation, and avoid redundant form requirements.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

TRIBAL COURT-STATE COURT FORUM

Item 34/SPR23-32

Jointly with the Family and Juvenile Law Advisory Committee

Indian Child Welfare Act (ICWA): Discretionary Tribal Participation

The committee reviewed a joint proposal from the Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee proposing that, effective January 1, 2024, the Judicial Council amend California Rules of Court, rules 5.482 and 5.530, and approve *Request for Tribal Participation* (form ICWA-042). Both the rules and the form clarify the process and set standards consistent with California statutes for the court's exercise of discretion to permit the participation of a tribe in juvenile cases involving a child affiliated with the tribe, despite no statutory right to participate or intervene under the Indian Child Welfare Act (ICWA) and section 224.4 of the Welfare and Institutions Code. As discussed in more detail below, although California law set out in the Welfare and Institutions Code protects the relationship between tribes and their children beyond the scope of ICWA and permits tribal participation in juvenile cases in various situations where ICWA does not apply, tribal leaders and other advocates report that courts often decline to permit tribes to participate in juvenile cases if ICWA does not apply.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:31 p.m.

Approved by the advisory body on enter date.

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RULES COMMITTEE

MINUTES OF OPEN VIDEOCONFERENCE MEETING

April 5, 2023
12:10 p.m. to 1:40 p.m.

Advisory Body Members Present:	Hon. Carin T. Fujisaki, Hon. Kevin C. Brazile, Hon. Samuel K. Feng, Ms. Rachel W. Hill, Hon. Kimberly Merrifield, Hon. Glenn Mondo, and Hon. David Rosenberg
Advisory Body Members Absent:	Mr. Shawn C. Landry, and Mr. Maxwell Pritt
Committee Staff Present:	Anne M. Ronan and Benita Downs
Other Staff Present:	James Barolo, Alex Bender, Audrey Fancy, Anne Hadreas, Kendall Hannon, Tracy Kenny, Eric Long, Marymichael Srmdeli, and Corby Sturges

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 p.m., and Ms. Downs took roll call.

DISCUSSION AND ACTION ITEMS (ITEMS 01–13)

APPELLATE

Item 01

Appellate Procedure: Costs on Appeal

The committee reviewed a recommendation from the Appellate Advisory Committee proposing amending the rules governing costs on appeal in civil actions to clarify that the general rule for awarding costs to the prevailing party is subject to exception for statutes requiring a different or additional finding, determination, or analysis. The proposal is responsive to a recent Supreme Court decision and the constitutional principle that rules of court may not be inconsistent with statute.

Action: The committee unanimously approved the Appellate Advisory Committee's recommendation, which is to go to the Judicial Council for action at the May council meeting.

Item 02

Appellate Procedure: Reporters' Transcripts

The committee reviewed a recommendation from the Appellate Advisory Committee to amend several rules relating to the format of reporters' transcripts and borrowing the record on appeal. Code of Civil Procedure section 271 requires that as of January 1, 2023, a reporter's transcript must be delivered in electronic form unless a party or person entitled to the transcript requests it in paper format. In recognition that most reporters' transcripts will be in electronic form, the committee recommends allowing transcripts to be in a single volume in most cases. In addition, the committee recommends clarifying that, to be accepted in lieu of depositing the estimated cost of the transcript with the court, a certified transcript submitted by a party must comply with specified format requirements. The committee also recommended creating an exception to the requirement that the page numbering in an electronic format reporter's transcript match the electronic page counter in PDF view in certain cases involving multiple-reporter cases. This proposal originated with suggestions from the California Court Reporters Association.

Action: The committee unanimously approved the Appellate Advisory Committee's recommendation, which is to go to the Judicial Council for action at the May council meeting.

CIVIL JURY INSTRUCTIONS (CACI)

Item 03

Jury Instructions: Civil Jury Instructions (Release 43)

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

Action: The committee unanimously approved the Advisory Committee on Civil Jury Instructions recommendation, which is to go to the Judicial Council for action at the May council meeting.

Item 04

Memorandum–Recommend Rules Committee Action Only

Civil Jury Instructions: Instructions with Minor or Nonsubstantive Revisions (Release 43)

The committee reviewed a recommendation from the Advisory Committee on Civil Jury Instructions that the Rules Committee approve revisions to the *Judicial Council of California Civil Jury Instructions (CACI)* to maintain and update those instructions. The 23 instructions in this release, prepared by the advisory committee, contain the types of revisions that the Judicial Council has given the Rules Committee final authority to approve—primarily changes to the Sources and Authority that are nonsubstantive and unlikely to cause controversy. Also included within these instructions were grammatical, typographical, and citation corrections for which the Rules Committee has delegated authority to the Advisory Committee on Civil Jury Instructions.

Action: The committee unanimously approved the recommendation for final action by the Rules Committee for minor or nonsubstantive revisions, which the council has delegated authority to the Rules Committee to approve.

CRIMINAL (2)

Item 05

Criminal Procedure: Mental Competency Proceedings

The committee reviewed a recommendation from the Criminal Law Advisory Committee for amendments to rule 4.130 of the California Rules of Court to reflect statutory changes to Penal Code section 1369(a) regarding treatment with antipsychotic medication of a defendant found incompetent to stand trial, statutory changes to Penal Code section 1370 deleting language that the presumption of competency does not apply to a posttrial hearing on competence, the relettering of subdivisions in Penal Code section 1001.36, and to make technical revisions.

Action: The committee unanimously approved the Criminal Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the May council meeting.

Item 06

Criminal Procedure: Defendant's Financial Statement

The committee reviewed a recommendation from the Criminal Law Advisory Committee for revisions to the optional Judicial Council form used by defendants to state financial eligibility for appointment of counsel and for the record on appeal at public expense to reflect statutory changes removing the

authority of the court to make a post-proceeding determination of the defendant's ability to pay and to order the defendant to reimburse the county for the costs of the public defender.

Action: The committee unanimously approved the Criminal Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the May council meeting.

FAMILY AND JUVENILE LAW

Item 07

Juvenile Law: New Disposition for Serious Offenses

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee for adopting three rules of court, amending four rules of court, and repealing one rule of court, as well as approving one optional form, revising eight forms, and revoking one form to reflect the closure of the Department of Juvenile Justice and create new procedures to assist courts in using the new secure youth treatment facility disposition. These revisions would become effective on July 1, 2023, to align with the closure of the Division of Juvenile Justice on June 30, 2023.

Action: The committee unanimously approved the Family and Juvenile Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the May council meeting

Item 08

Juvenile Law: Sex Offender Registration Termination

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee for the adoption of three mandatory forms and the approval of two optional forms to be used to petition the juvenile court for termination of sex offender registration for persons required to register as sex offenders as a result of a juvenile adjudication and commitment to the Division of Juvenile Justice. All five forms are adapted from existing forms that were approved by the council for use in criminal courts that became effective July 1, 2021.

Action: The committee unanimously approved the Family and Juvenile Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the May council meeting

Item 09

Juvenile Law: Transfer of Jurisdiction to Criminal Court

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee for amending one rule of court and revising one form to implement recent legislative changes requiring that the court find by clear and convincing evidence that a youth is not amenable to rehabilitation while under the jurisdiction of the juvenile court. Assembly Bill 2361 amended Welfare and Institutions Code section 707 to include that standard of proof and to require the court, in an order entered upon the minutes, to state the basis for making that finding.

Action: The committee unanimously approved the Family and Juvenile Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the May council meeting

PROBATE

Item 10 (Deferred until April 13)

Item 11/SPR23-23 (Deferred item 25 from the March 29 meeting)

Invitation to Comment–Recommend Circulation for Comment

Probate Conservatorship: Less Restrictive Alternatives

The committee reviewed a proposal from the Probate and Mental Health Advisory Committee for amending three rules of court and revising one form in response to changes to conservatorship law enacted by recent legislation. The rule amendments would implement legislation that requires education on alternatives to conservatorship for judicial officers assigned to probate, probate staff attorneys, probate examiners, court investigators, and counsel appointed in probate conservatorship proceedings. Revisions to the form would implement legislation that requires the supplemental information provided by the petitioner or proposed conservator to specify clearly and discuss in detail the less restrictive alternatives to a conservatorship that were considered or tried before the filing of the petition. Additional revisions to the form would identify the person completing the form, clarify the structure of information to be provided about the reasons for conservatorship, and solicit information about the proposed conservatee's knowledge and opinion of the conservatorship.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 12.

MISCELLANEOUS: JUDICIAL COUNCIL STAFF REPORT

Item 12

Rules and Forms: Technical Revisions to Wage Garnishment Forms

The committee reviewed a recommendation from Judicial Council staff that the Judicial Council, effective September 1, 2023, revise three forms to reflect recent changes to Code of Civil Procedure section 706.050 as enacted in Senate Bill 1477 (Stats 2022, ch. 849).

Action: The committee unanimously approved the Judicial Council staff's recommendation, which is to go to the Judicial Council for action at the May council meeting

Item 13

Rules and Forms: Miscellaneous Technical Changes

The committee reviewed a recommendation from Judicial Council staff to correct errors identified in particular rules and forms resulting from input errors, and minor changes needed to conform to changes in law or previous council actions. These changes are technical in nature and necessary to avoid causing confusion for court users, clerks, and judicial officers.

Action: The committee unanimously approved the Judicial Council staff's recommendation, which is to go to the Judicial Council for action at the May council meeting

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:43 p.m.

Approved by the advisory body on enter date.

Judicial Council of California
Rules Committee

www.courts.ca.gov/rulescomm.htm
rulesmeetings@jud.ca.gov

RULES COMMITTEE

MINUTES OF OPEN VIDEOCONFERENCE MEETING

April 13, 2023
12:00 p.m. to 1:00 p.m.

Advisory Body Members Present:	Hon. Carin T. Fujisaki, Hon. Kevin C. Brazile, Hon Samuel K. Feng, Hon Kimberly Merrifield, and Hon. Glenn Mondo.
Advisory Body Members Absent:	Ms. Rachel W. Hill, Mr. Shawn C. Landry, Hon. David Rosenberg, and Mr. Maxwell Pritt.
Committee Staff Present:	Anne M. Ronan and Benita Downs
Other Staff Present:	Anne Hadreas, Michael Giden, and Corby Sturges
Others Present:	Hon. Jayne Lee

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:05 p.m., and Ms. Downs took roll call.

DISCUSSION AND ACTION ITEMS (ITEM(S) 01)

Item 01

Mental Health Law: Community Assistance, Recovery, and Empowerment Act

The committee reviewed a recommendation from the Probate and Mental Health Advisory Committee for adoption of eleven new rules of court, one amended rule, and thirteen new forms to implement requirements in the Community Assistance, Recovery, and Empowerment (CARE) Act (Stats. 2022, ch. 319). The CARE Act establishes a new, noncriminal proceeding that authorizes a court—in response to a petition and after determining by clear and convincing evidence that the person for whom the petition is filed meets the necessary statutory criteria—to order the county behavioral health agency to work with the person to engage in services and determine whether a CARE agreement can be reached or, if those efforts are unsuccessful, to develop a CARE plan. Once the court has ordered a CARE plan, the court must hold regular status hearings to review the progress of the person and the county behavioral agency with the services ordered. The act requires the Judicial Council to develop a mandatory petition form, any other forms necessary for the court process, and rules of court to implement provisions of the act governing judicial proceedings.

Action: The committee unanimously approved the Probate and Mental Health Advisory Committee's recommendation, which is to go to the Judicial Council discussion agenda for action at the May council meeting

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:40 p.m.

Approved by the advisory body on enter date.

Judicial Council of California
Rules Committee

www.courts.ca.gov/rulescomm.htm
rulesmeetings@jud.ca.gov

RULES COMMITTEE

MINUTES OF ACTION BY EMAIL

Friday, June 2, 2023

Advisory Body Members Who Participated:	Hon. Carin T. Fujisaki, Hon. Kevin C. Brazile, Hon. Samuel K. Feng, Ms. Rachel W. Hill, Mr. Shawn C. Landry, Hon. Kimberly Merrifield, Hon. Glenn Mondo, Mr. Maxwell Pritt, and Hon. David Rosenberg
Advisory Body Members Who Did Not Participate:	None
Committee Staff:	Ms. Anne M. Ronan and Ms. Benita Downs

ACTION BY EMAIL

As provided in the California Rules of Court, rule 10.75 (o)(1)(B), the chair concluded that prompt action was needed. This action by e-mail concerned a matter that would otherwise be discussed in an open meeting; therefore, in accordance with rule 10.75(o)(2), public notice and the proposal were posted on Thursday, June 1, 2023, to allow at least one complete business day for public comment before the committee took action. No public comments were received.

OPEN ACTION AND DISCUSSION ITEMS (01-02)

Item 01

Rules and Forms: Order on Petition for Relief From Financial Obligations During Military Service

The committee reviewed a recommendation from the Civil and Small Claims Advisory Committee to revise a Judicial Council form to reflect statutory amendments prohibiting the accrual of interest on deferred financial obligations for members of the United States military reserves or the National Guard who are called to active duty.

Action: The committee approved the Civil and Small Claims Advisory Committee's recommendation, which is to go to the Judicial Council for action at the July council meeting

Item 02

Rules and Forms: Annual Cost of Living Adjustment

The committee reviewed a recommendation from Judicial Council staff to revise *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156) to reflect increases in the minimum basic standard of care for a family of four.

Action: The committee approved Judicial Council's staff recommendation, which is to go to the Judicial Council for action at the July council meeting

CLOSURE OF ACTION

The action by e-mail concluded on Monday, June 5, 2023, at 12:00 p.m.

Approved by the Committee on

Judicial Council of California
Rules Committee

www.courts.ca.gov/rulescomm.htm
rulesmeetings@jud.ca.gov

RULES COMMITTEE

MINUTES OF OPEN VIDEOCONFERENCE MEETING

June 29, 2023
12:10 p.m. to 12:40 p.m.

Advisory Body Members Present:	Hon. Carin T. Fujisaki, Hon. Kevin C. Brazile, Hon. Samuel K. Feng, Hon. Kimberly Merrifield, Hon. Glenn Mondo, and Hon. David Rosenberg
Advisory Body Members Absent:	Ms. Rachel W. Hill, Mr. Shawn C. Landry, and Mr. Maxwell Pritt
Committee Staff Present:	Anne M. Ronan and Benita Downs;
Other Staff Present:	Deborah Brown and Michael Giden
Others Present:	Hon. Jim Humes

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:18 p.m., and Ms. Downs took roll call.

DISCUSSION AND ACTION ITEMS (ITEM 01)

Item 01

Judicial Branch Administration: Procedures for Submitting Contentions Regarding Administration of the Courts of Appeal

The committee reviewed a recommendation from the Administrative Presiding Justices Advisory Committee for adoption of a new rule to establish procedures for submitting to the administrative presiding justices (APJs) contentions that an APJ or presiding justice has not properly addressed or managed an important matter related to the administration of a Court of Appeal or a division of a Court of Appeal. This proposal is based on a recommendation from the Appellate Caseflow Workgroup and would advance the efficient, effective, and proper administration of the Courts of Appeal.

Action: The committee unanimously approved the Administrative Presiding Justices Advisory Committee's recommendation, which is to go to the Judicial Council for action at the July council meeting.

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:33 p.m.

Approved by the advisory body on enter date.

Judicial Council of California
Rules Committee

www.courts.ca.gov/rulescomm.htm
rulesmeetings@jud.ca.gov

RULES COMMITTEE

MINUTES OF ACTION BY EMAIL

Monday, July 31, 2023

Advisory Body Members Who Participated:	Hon. Carin T. Fujisaki, Hon. Kevin C. Brazile, Hon. Samuel K. Feng, Ms. Rachel W. Hill, Mr. Shawn C. Landry, Hon. Kimberly Merrifield, Hon. Glenn Mondo, Mr. Maxwell Pritt, and Hon. David Rosenberg
Advisory Body Members Who Did Not Participate:	None
Committee Staff:	Ms. Anne M. Ronan and Ms. Benita Downs

ACTION BY EMAIL

As provided in the California Rules of Court, rule 10.75 (o)(1)(B), the chair concluded that prompt action was needed. This action by e-mail concerned a matter that would otherwise be discussed in an open meeting; therefore, in accordance with rule 10.75(o)(2), public notice and the proposal were posted on Friday, July 28, 2023, to allow at least one complete business day for public comment before the committee took action. No public comments were received.

OPEN ACTION AND DISCUSSION ITEM (01)

Item 01

Civil Practice and Procedure: Remote Appearances

The committee considered a recommendation from Judicial Council staff proposing the amendment of several rules of court to implement recent legislation regarding remote appearances in civil matters, enacted in Senate Bill 133 (Stats. 2023, ch. 34) and effective when signed by the Governor. SB 133 amends Code of Civil Procedure section 367.75, the statute that authorizes courts to conduct proceedings using remote technology in all civil matters, extending the sunset date of that statute from July 1, 2023, to January 1, 2026. SB 133 also carves out remote proceedings in certain types of civil matters that are now addressed in two new statutes rather than in section 367.75. The recommended amendments also reflect recent legislation authorizing an Indian child's tribe, notwithstanding any other rule or statute, to participate remotely in proceedings to which the Indian Child Welfare Act applies (Assem. Bill 2960; Stats. 2022, ch. 420, § 43).

Action: The committee approved staff recommendation, which is to go to the Judicial Council via circulating order.

CLOSURE OF ACTION

The action by e-mail concluded on Monday, July 31, 2023, at 5:00 p.m.

Approved by the Committee on

Judicial Council of California
Rules Committee

www.courts.ca.gov/rulescomm.htm
rulesmeetings@jud.ca.gov

RULES COMMITTEE

MINUTES OF ACTION BY EMAIL

Friday, August 11, 2023

Advisory Body Members Who Participated:	Hon. Carin T. Fujisaki, Hon. Kevin C. Brazile, Hon. Samuel K. Feng, Ms. Rachel W. Hill, Mr. Shawn C. Landry, Hon. Glenn Mondo, Mr. Maxwell Pritt, and Hon. David Rosenberg
Advisory Body Members Who Did Not Participate:	Hon. Kimberly Merrifield
Committee Staff:	Ms. Anne M. Ronan and Ms. Benita Downs

ACTION BY EMAIL

As provided in the California Rules of Court, rule 10.75 (o)(1)(B), the chair concluded that prompt action was needed. This action by e-mail concerned a matter that would otherwise be discussed in an open meeting; therefore, in accordance with rule 10.75(o)(2), public notice and the proposal were posted on Thursday, August 10, 2023, to allow at least one complete business day for public comment before the committee took action. No public comments were received.

OPEN ACTION AND DISCUSSION ITEM (01)

Item 01

Civil Practice and Procedure: Remote Appearances

The committee reviewed a proposed Invitation to Comment to circulate on a special cycle from the Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee to adopt two new forms, Request for Sheriff to Serve Court Papers (form SER-001) and an attachment to that form, Special Instructions to Serve Court Papers (form SER-001A). The proposed forms complied with the statutory mandate in Assembly Bill 2791 that the Judicial Council adopt a form or forms for civil litigants to request that a sheriff's office service their court papers.

Action: The committee unanimously approved the proposal for circulation on a special cycle through September 5.

CLOSURE OF ACTION

The action by e-mail concluded on Friday, August 11, at 5:00 p.m.

Approved by the Committee on

Item number: 01

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/22/2023

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

Title of proposal: Trial Courts: Exceptional Criminal Case Reporting

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Repeal Standard 2.2.(m)

Committee or other entity submitting the proposal:
Court Executives Advisory Committee

*Staff contact (*name, phone and e-mail*): Leah Rose-Goodwin, 415-865-7708, leah.rose-goodwin@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*): Annual agenda approved by Executive and Planning Committee on 11/28/2022.
Project description from annual agenda: CEAC Judicial Branch Statistical Information System Subcommittee: Repeal California Standards of Judicial Administration, Standard 2.2 (m)

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

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

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

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

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

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

Judicial Council *of* California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on September 18–19, 2023

Title
Trial Courts: Exceptional Criminal Case Reporting

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Stds. Jud. Admin., standard 2.2

Recommended by
Court Executives Advisory Committee
Rebecca Fleming, Chair
Judicial Branch Statistical Information System Subcommittee
Jake Chatters, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
August 1, 2023

Contact
Leah Rose-Goodwin, 415-865-7708
leah.rose-goodwin@jud.ca.gov

Executive Summary

The Court Executives Advisory Committee recommends that the Judicial Council amend the standard of judicial administration that provides guidance on trial court case disposition time goals to repeal a subdivision that advises trial courts to report exceptional criminal case aging. This subdivision is confusing because there is no definition of exceptional criminal cases nor any specific time standards associated with these cases. Eliminating this subdivision is intended to clarify required data reporting.

Recommendation

The Court Executives Advisory Committee recommends that the Judicial Council amend standard 2.2 of the California Standards of Judicial Administration to repeal subdivision (m), effective January 1, 2024.

The standard appears at page 5 of this report.

Relevant Previous Council Action

Standard 2.1(m), the predecessor to standard 2.2(m), was approved by the Judicial Council at its October 21, 2003, meeting and became effective January 1, 2004. At its June 30, 2006, meeting, the Judicial Council adopted a proposal to revise and reorganize the rules of court. A global change was made to standard 2.1 (Trial court case disposition time standards) to replace the word "standard" with "goal." Also, as part of a broader reorganization of the Standards of Judicial Administration, standard 2.1(m) was renumbered to standard 2.2(m). Both changes became effective January 1, 2007.

Analysis/Rationale

Standard 2.2 of the California Standards of Judicial Administration provides guidance on trial court case disposition time goals. Subdivisions of this section establish time standards for unlimited civil, limited civil, small claims, unlawful detainer, felony, and misdemeanor cases. For example, subdivisions (f), (j), and (k) recommend that courts establish case management practices to dispose all civil cases within two years, all felony cases within one year, and all misdemeanor cases within 120 days, respectively. Other subdivisions of standard 2.2 advise courts to track the aging of different case types, which can then be used to evaluate adherence to the established time standards. For example, subdivision (g) of standard 2.2 asks courts to monitor exceptional civil case aging.

Subdivision (m) of standard 2.2 is similar in concept to subdivision (g). It recommends that courts track the age of exceptional criminal cases, stating:

> An exceptional criminal case is not exempt from the time goal in (j), but case progress should be separately reported under the Judicial Branch Statistical Information System (JBSIS) regulations.

For the reasons discussed below, however this subdivision is confusing and does not appear to serve any useful purpose.

First, unlike subdivision (g), which clearly defines "exceptional" civil cases by referencing the definitions found in California Rules of Court, rules 3.715 and 3.400,[1] subdivision (m) does not provide a definition of an exceptional criminal case. There is also no definition of this term in title 4 of the rules (Criminal Rules). As a result, there is no definition for courts to use to identify these cases for purposes of the tracking recommended by subdivision (m).

Second, subdivision (m) does not establish a purpose for reporting exceptional criminal case aging. Subdivision (g) advises courts to track exceptional civil case aging for the purpose of ensuring that exceptional civil cases are disposed within a special three-year time standard (this is one year greater than the time standard for a nonexceptional civil case). In contrast, subdivision (m) does not explain the utility of tracking exceptional criminal case aging. In

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

addition, subdivision (m) specifically states that an exceptional criminal case "is not exempt from the time goal in (j)," which recommends that all felony cases be disposed within one year of arraignment. Thus, the time goals for exceptional criminal cases and regular felony cases do not differ, eliminating this as a possible reason for separately tracking the progress of exceptional criminal cases.

Finally, courts cannot carry out separate tracking of exceptional civil cases in the way recommended by subdivision (m). Subdivision (m) explicitly states that the progress of exceptional criminal cases should be "separately reported under the Judicial Branch Statistical Information System (JBSIS) regulations." This is the only subdivision of standard 2.2 that explicitly recommends that courts track a type of case aging in JBSIS. Despite this advisement, exceptional criminal case aging has not been reportable in any version of JBSIS—and is not reportable in its current version, JBSIS 3.0. Although the subdivision was adopted in 2004, no case type has been designated in JBSIS to specifically record exceptional criminal cases. Additionally, no data rows have been created to track exceptional criminal case aging within existing case types. Therefore, courts have not been tracking and cannot currently track the progress of exceptional criminal cases in the manner recommended by subdivision (m).

For all of the reasons above, the committee concluded that subdivision (m) is confusing and does not appear to serve a useful purpose.

Policy implications

Currently and historically, the judicial branch has not reported data as recommended in subdivision (m), and there does not appear to be any purpose for or benefit of reporting or tracking this information since these cases are subject to the same time standards as nonexceptional criminal cases. Eliminating this subsection will clarify reporting requirements for trial courts in this case type area.

Comments

This proposal was circulated for public comment between March 30 and May 12, 2023, as part of the regular spring invitation-to-comment cycle. Two comments were received from trial courts, both in support of the proposal. A chart with the full text of those comments and the committee's responses is attached at page 6.

Alternatives considered

As an alternative to proposing the repeal of subdivision (m), the Court Executives Advisory Committee considered the necessary steps for ensuring that subdivision (m) is fulfilled. The Judicial Council would need to adopt a rule or standard defining an exceptional criminal case. Judicial Council staff would need to update the JBSIS data infrastructure and JBSIS manual to allow for reporting and aging such cases. Trial courts would need to review criminal cases and apply exceptional criminal case designations within their case management systems, databases, and/or statistical tools. The completion of these steps would require advisory committee time and effort to develop recommendations for a new rule or standard, Judicial Council staff time to update JBSIS, trial courts' staff time to update their business and reporting procedures and, for

some trial courts, case management system vendor updates. The committee found that, because subdivision (m) provides no stated purpose, it is unclear how the expenditure of these resources would benefit the judicial branch or the public, and so concluded that the subdivision should be repealed.

Fiscal and Operational Impacts

Because the judicial branch is not currently following the recommendations in standard 2.2(m), repealing this subdivision will have no fiscal or operational impacts other than minor staff time costs incurred to update the standards.

Attachments and Links

1. Cal. Stds. Jud. Admin., standard 2.2(m), at page 5
2. Chart of comments, at page 6

Standard 2.2 of the California Standards of Judicial Administration is amended, effective January 1, 2024, to read:

Title 2. Standards for Proceedings in the Trial Courts

Standard 2.2. Trial court case disposition time goals

(a)–(*l*) * * *

~~**(m) Exceptional criminal cases**~~

~~An exceptional criminal case is not exempt from the time goal in (j), but case progress should be separately reported under the Judicial Branch Statistical Information System (JBSIS) regulations.~~

~~(n)~~(m) * * *

~~(o)~~(n) * * *

SPR 23-02

Trial Courts: Exceptional Criminal Case Reporting

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

	Commenter	Position	Comment	Committee Response
1.	Iyana Doherty, Courtroom Operations Supervisor, Superior Court of the County of Orange	A	We agree with the suggested change to repeal that standard as we are currently not tracking “Exceptional Cases” through JBSIS or other means.	No response required.
2.	Lester Perpall, Court Executive Officer, Superior Court of the County of Mono	A	Without a clear definition or use for exceptional criminal cases and their aging, it is appropriate to repeal subdivision m.	No response required.

Item number:02

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Appellate Procedure: Time for Electing and Filing an Appendix

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend Cal. Rules of Court, rules 8.124 and 8.845; revise forms APP-001-INFO, APP-010, APP-101-INFO, and APP-110; revoke forms APP-011 and APP-111

Committee or other entity submitting the proposal:
Appellate 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 1, 2022
Project description from annual agenda: 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 12 # New or One-Time Projects4 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

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.:
For business meeting on September 18–19, 2023

Title
Appellate Procedure: Time for Electing and Filing an Appendix

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.124 and 8.845; revise forms APP-001-INFO, APP-010, APP-101-INFO, and APP-110; revoke forms APP-011 and APP-111

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
June 29, 2023

Contact
Kendall W. Hannon, 415-865-7653
kendall.hannon@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends amending two rules of court regarding appendixes to allow appellants to file an appendix before filing an opening brief and to allow respondents to elect an appendix when their other record designations are due. These amendments are intended to assist courts and litigants by permitting earlier filing of an appendix and to provide respondents the opportunity to elect an appendix after receiving notice that the appellant has designated a clerk's transcript. The committee also recommends revising four forms to reflect the rule changes and revoking two forms that would no longer be necessary.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2024:

1. Amend California Rules of Court, rules 8.124 and 8.845, to change the deadline for a respondent to elect an appendix and to allow an appellant to file an appendix before filing the opening brief.

2. Revise the following forms to reflect the above rule changes:

   - *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO);
   - *Respondent's Notice Designating Record on Appeal* (form APP-010);
   - *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO); and
   - *Respondent's Notice Designating Record on Appeal* (form APP-110).

3. Revoke the following forms as no longer necessary:

   - *Respondent's Notice Electing to Use an Appendix (Unlimited Civil Case)* (form APP-011); and
   - *Respondent's Notice Electing to Use an Appendix (Limited Civil Case)* (form APP-111).

The proposed amended rules and revised forms are attached at pages 7–52.

Relevant Previous Council Action

Rule 8.124 of the California Rules of Court,[1] governing the use of an appendix in unlimited civil appeals, was adopted as rule 5.1 in 2002 and renumbered in 2007. The council adopted rule 8.845, which authorizes the use of an appendix in lieu of a clerk's transcript in limited civil appeals, effective January 1, 2021. Rule 8.124 was amended, effective January 1, 2010, to provide that a respondent may not elect an appendix when the appellant has a fee waiver. No other amendments to rule 8.124 are relevant to the instant proposal.

The council approved form APP-101-INFO effective January 1, 2009; forms APP-010, APP-011, and APP-110 effective January 1, 2010; form APP-001-INFO effective January 1, 2019; and form APP-111 effective January 1, 2021. No previous amendments are relevant to the instant proposal.

Analysis/Rationale

Respondent's election of an appendix

Currently, rule 8.124(a)(1)(B) allows a respondent in a civil appeal to elect to use an appendix instead of a clerk's transcript if (1) the respondent serves and files the notice of election "within 10 days after the notice of appeal is filed" and (2) the appellant is not granted a fee waiver for a clerk's transcript. The respondent's election governs—even if the appellant chooses a clerk's transcript—unless the superior court orders otherwise. The respondent's notice electing an appendix is due the same day as the appellant's notice designating the record on appeal. Rule 8.845(a)(1)(B) contains identical provisions for limited civil appeals.[2] For the respondent's other

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

[2] See rules 8.121(a), 8.124(a)(1)(B), and 8.845(a)(1)(B).

record designations—such as requesting additional proceedings in the reporter's transcript—the respondent's designation is due 10 days after the appellant's designation is filed.[3]

Under these rules, there is a risk that a respondent may miss the opportunity to elect an appendix. Some respondents may be unaware that they must elect an appendix at the same time as the appellants. They may be surprised when an appellant elects a clerk's transcript and then they discover that it is too late for them to elect an appendix. Still other respondents may be unable to secure appellate counsel to advise them during this short time period immediately after the notice of appeal has been filed. A missed opportunity to elect an appendix can impact the length of the appeals process, given the amount of time it can take superior courts to compile the clerk's transcript.

To ensure that respondents have a sufficient opportunity to elect an appendix, this proposal amends rule 8.124(a)(1)(B) and rule 8.845(a)(1)(B) to allow respondents additional time to elect an appendix. It changes the deadline for respondents to elect an appendix to "within 10 days after the appellant's notice designating the record on appeal is filed." This is the same deadline for filing the respondent's notice designating the record on appeal.

The committee believes these amendments will reduce the workload of superior court clerks by relieving them of the burden of preparing clerk's transcripts in certain cases. This, in turn, will help expedite these appeals by eliminating the time needed to compile and transmit the clerk's transcript.

Timing of filing appellant's appendix or joint appendix

Rules 8.124(e)(2) and 8.845(e)(2) require appellant's appendix or a joint appendix to be filed "with the appellant's opening brief." The advisory committee comments to both rules explain that the requirement that the appendix be filed "with" the brief means that any extension of time to file the brief includes the same extension of time to file the appendix.

This proposal amends rules 8.124(e)(2) and 8.845(e)(2) to allow the filing of the appellant's appendix or joint appendix "before or together with the appellant's opening brief."

A clerk's transcript is always filed before the appellant's opening brief.[4] Similarly allowing an appendix to be filed before the appellant's opening brief would facilitate the preparation of the parties' briefs in complex civil cases and would assist the courts' consideration of petitions for writ of supersedeas. These amendments do not affect the automatic extension of time for filing an appendix if the appellant receives an extension of time to file the opening brief.

Forms for respondents to designate the record

Respondents in the Court of Appeal can use *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) to request that additional documents be included in a

[3] Rules 8.122(a)(2), 8.130(a)(3), 8.832(b)(1), and 8.834(a)(3).

[4] Rules 8.212(a) and 8.882(a).

clerk's transcript or additional oral proceedings be included in a reporter's transcript. To elect an appendix, respondents can use *Respondent's Notice Electing to Use an Appendix (Unlimited Civil Case*) (form APP-011).

In light of the recommended rule change (discussed above) allowing respondents more time to elect an appendix, respondents' choices regarding the record on appeal would all be due at the same time. Accordingly, the committee believes that a separate form for the respondent to elect an appendix is no longer needed.

This proposal revises item 1 on form APP-010 to add a check box for respondents to indicate that they are electing to proceed by an appendix. The revised item advises the respondent that if the appellant obtains a fee waiver, respondents cannot elect an appendix. The item further prompts the respondent to designate any additional documents and exhibits for the clerk's transcript in the event that their election of an appendix is not given effect. This proposal makes the same revisions to the form used for respondents to designate the record in limited civil appeals, *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110).[5]

The committee recommends form APP-011 and *Respondent's Notice Electing to Use an Appendix (Limited Civil Case)* (form APP-111) be revoked as no longer necessary.

Information sheet revisions

To reflect the recommended rule changes, this proposal revises *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO) at items 14a and 16 to indicate that a joint appendix or an appellant's appendix may be filed "before or together" with the appellant's opening brief. Additionally, a paragraph has been added to item 25a to advise the respondent that if appellant chooses a clerk's transcript but does not have a fee waiver for a clerk's transcript, the respondent can choose an appendix or a clerk's transcript. This item further advises the respondent that to make this election, the respondent must fill out and file APP-010 within 10 days after the appellant's notice designating the record is filed.

The same revisions have been made to *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) in items 13b, 15, and 24d, but with form APP-110 referenced.

Policy implications

The above rule changes and form revisions will simplify the record designation process and help expedite the appellate process in those cases in which respondents elect to proceed by an appendix. These revisions are therefore consistent with *The Strategic Plan for California's*

[5] In addition, the titles of forms APP-010 and APP-110 have been revised to set apart the "Unlimited Civil Case" and "Limited Civil Case" phrases with an em dash, rather than placing them in parentheses, to make the titles clearer and consistent with other council forms.

Judicial Branch, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).[6]

Comments

This proposal circulated for public comment between March 30 and May 12, 2023. The committee received nine comments from two courts, four county bar associations, and three legal organizations. All commenters agreed with the proposed changes or did not indicate a position. The principal comments are summarized below. A chart with the full text of the comments received and the committee's responses is attached at pages 53–61.

The California Lawyers Association Committee on Appellate Courts commented that the proposal addresses the problem in which respondents may inadvertently miss the deadline to elect an appendix, and that encouraging greater use of appendixes "would speed up appeals and save court resources." The Appellate Courts Section of the Los Angeles County Bar Association stated that the proposal "will potentially eliminate an unnecessary filing by the respondent, and reduce the workload of superior court clerks in compiling clerk's transcripts where the respondent would prefer to elect an appendix, thereby expediting appeals." Regarding the rule change to allow early filing of appendixes, the commenter felt the change would be "unlikely to change actual practice," but acknowledged there may be instances (such as with the filing of a writ of supersedeas), where early filing of the appendix would be helpful.

The invitation to comment asked for comment on the rule changes' potential impact on the deadline for an appellant's opening brief. Under rule 8.212(a), if an appendix is being used and a reporter's transcript has not been designated, the appellant must serve the opening brief within 70 days after the filing of the election to use an appendix.[7] Under the rule change, the respondent's election would be due 10 days later than under current practice, and the appellant's time to file its opening brief would run from this later date. The invitation to comment asked whether this would be problematic.

Four commenters responded to this request and stated that the briefing deadlines would not be problematic. The Family Violence Appellate Project indicated that it "rarely proceeds without a reporter's transcript, and even if that occurred, a 10-day extension would have minimal impact on the total duration of the appeal." It further stated that the appellate courts retain discretion to expedite briefing where necessary. Additionally, the Orange County Bar Association noted that the appellate process would still be faster where a respondent elects an appendix, even where no reporter's transcript is designated, because of the length of time normally needed to compile the clerk's transcript.

[6] Available at *www.courts.ca.gov/3045.htm*.

[7] Similarly, in limited civil appeals, rule 8.882(a) provides that if an appendix is being used and a reporter's transcript has not been designated, the appellant must serve the opening brief within 60 days after the filing of the election to use an appendix.

The invitation to comment also asked whether a separate form for the respondent to elect an appendix should be retained. The commenters who addressed this request for comment uniformly supported moving the respondent's election of an appendix into the form for the respondent's other record designations.

Finally, the commenters did not identify any other record preparation or briefing procedures that would be affected by allowing respondents more time to elect an appendix.

Alternatives considered

The committee considered the alternative of not taking any action but concluded that the amendments would benefit courts and litigants by saving time and expense. The committee also considered retaining separate forms for the respondent to elect an appendix but concluded that consolidating that form into the respondent's record designation form would make the process more efficient.

Fiscal and Operational Impacts

The committee expects that fiscal and operational impacts would be minimal. The Superior Court of San Diego County noted the need for minimal training for staff, but also noted that the proposal could possibly save 1.5–3 hours of clerk time in cases where a respondent elects an appendix over a clerk's transcript.

Attachments and Links

1. Cal. Rules of Court, rules 8.124 and 8.845, at pages 7–10
2. Forms APP-001-INFO, APP-010, APP-011, APP-101-INFO, APP-110, and APP-111, at pages 11–52
3. Chart of comments, at pages 53–61

Rules 8.124 and 8.845 of the California Rules of Court are amended, effective January 1, 2024, to read:

Title 8. Appellate Rules

Division 1. Rules Relating to the Supreme Court and Courts of Appeal

Chapter 2. Civil Appeals

Article 2. Record on Appeal

Rule 8.124. Appendixes

(a) Notice of election

(1) Unless the superior court orders otherwise on a motion served and filed within 10 days after the notice of election is served, this rule governs if:

(A) The appellant elects to use an appendix under this rule in the notice designating the record on appeal under rule 8.121; or

(B) The respondent serves and files a notice in the superior court electing to use an appendix under this rule within 10 days after the appellant's notice ~~of appeal~~ designating the record on appeal is filed and no waiver of the fee for a clerk's transcript is granted to the appellant. If the appellant has a fee waiver, the respondent cannot elect an appendix instead of a clerk's transcript.

(2) When a party files a notice electing to use an appendix under this rule, the superior court clerk must promptly send a copy of the register of actions, if any, to the attorney of record for each party and to any unrepresented party.

(3) The parties may prepare separate appendixes or they may stipulate to a joint appendix.

(b)–(d) * * *

(e) Service and filing

(1) A party preparing an appendix must:

(A) Serve the appendix on each party, unless otherwise agreed by the parties or ordered by the reviewing court; and

(B) File the appendix in the reviewing court.

Rules 8.124 and 8.845 of the California Rules of Court are amended, effective January 1, 2024, to read:

(2) A joint appendix or an appellant's appendix must be served and filed before or together with the appellant's opening brief.

(3) A respondent's appendix, if any, must be served and filed with the respondent's brief.

(4) An appellant's reply appendix, if any, must be served and filed with the appellant's reply brief.

(f)–(g) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). * * *

Subdivision (d). * * *

Subdivision (e). Subdivision (e)(2) requires a joint appendix to be filed with the appellant's opening brief or before the filing of the appellant's opening brief. The provision is intended to improve the briefing process by enabling the appellant's opening brief to include citations to the record and, by allowing earlier filing of the appendix, to assist courts in considering petitions for supersedeas. To provide for the case in which a respondent concludes in light of the appellant's opening brief that the joint appendix should have included additional documents, subdivision (b)(5) permits such a respondent to present in an appendix filed with its respondent's brief (see subd. (e)(3)) any document that could have been included in the joint appendix.

Under subdivision (e)(2)–(4) an appendix is required to be filed, at the latest, "with" the associated brief. This provision is intended to clarify that an extension of a briefing period ipso facto extends the filing period of an appendix associated with the brief.

Subdivision (g). * * *

Division 4. Rules Relating to the Superior Court Appellate Division

Chapter 2. Appeals and Records in Limited Civil Cases

Article 2. Record in Civil Appeals

Rules 8.124 and 8.845 of the California Rules of Court are amended, effective January 1, 2024, to read:

Rule 8.845. Appendixes

(a) Notice of election

(1) Unless the superior court orders otherwise on a motion served and filed within 10 days after the notice of election is served, this rule governs if:

(A) The appellant elects to use an appendix under this rule in the notice designating the record on appeal under rule 8.831; or

(B) The respondent serves and files a notice in the superior court electing to use an appendix under this rule within 10 days after the appellant's notice ~~of appeal~~ designating the record on appeal is filed, and no waiver of the fee for a clerk's transcript is granted to the appellant. If the appellant has a fee waiver, the respondent cannot elect an appendix instead of a clerk's transcript.

(2) When a party files a notice electing to use an appendix under this rule, the superior court clerk must promptly send a copy of the register of actions, if any, to the attorney of record for each party and to any unrepresented party.

(3) The parties may prepare separate appendixes or they may stipulate to a joint appendix.

(b)–(d) * * *

(e) Service and filing

(1) A party preparing an appendix must:

(A) Serve the appendix on each party, unless otherwise agreed by the parties or ordered by the reviewing court; and

(B) File the appendix in the reviewing court.

(2) A joint appendix or an appellant's appendix must be served and filed before or together with the appellant's opening brief.

(3) A respondent's appendix, if any, must be served and filed with the respondent's brief.

Rules 8.124 and 8.845 of the California Rules of Court are amended, effective January 1, 2024, to read:

(4) An appellant's reply appendix, if any, must be served and filed with the appellant's reply brief.

(f)–(g) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). * * *

Subdivision (d). * * *

Subdivision (e). Subdivision (e)(2) requires a joint appendix to be filed with the appellant's opening brief or before the filing of the appellant's opening brief. The provision is intended to improve the briefing process by enabling the appellant's opening brief to include citations to the record and, by allowing earlier filing of the appendix, to assist courts in considering petitions for supersedeas. To provide for the case in which a respondent concludes in light of the appellant's opening brief that the joint appendix should have included additional documents, subdivision (b)(5) permits such a respondent to present in an appendix filed with its respondent's brief (see subd. (e)(3)) any document that could have been included in the joint appendix.

Under subdivision (e)(2)–(4) an appendix is required to be filed, at the latest, "with" the associated brief. This provision is intended to clarify that an extension of a briefing period ipso facto extends the filing period of an appendix associated with the brief.

Subdivision (g). * * *

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about appeals in unlimited civil cases. These are civil cases in which the amount of money claimed is more than $25,000, as well as other types of cases, such as those filed in family court, probate court, and juvenile court.

If you are the party who is appealing (asking for the trial court's decision to be reviewed), you are called the APPELLANT, and you should read "Information for the Appellant," starting on page 3. If you received notice that another party in your case is appealing, you are called the RESPONDENT and you should read "Information for the Respondent," starting on page 13.

This information sheet does not cover everything you may need to know about appeals in unlimited civil cases. It gives you a general idea of the appeal process. To learn more:

- Read rules 8.100–8.278 of the California Rules of Court, which set out the procedures for unlimited civil appeals. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules*.
- Read the local rules and find out about self-help resources for the district in which you filed your appeal at *www.courts.ca.gov/courtsofappeal.htm*.
- Visit the Self-Help Guide to the California Courts at *https://selfhelp.courts.ca.gov/.*
- Review the counties included in each appellate district at *www.courts.ca.gov/documents/appdistmap.pdf.*

2 What is an appeal?

An appeal is a request to a higher court to review a decision made by a judge or jury in the superior court. In an unlimited civil case, the court hearing the appeal is the Court of Appeal for the district in which the superior court is located. The lower court—called the "trial court" in this information sheet—is the superior court.

It is important to understand that **an appeal is NOT a new trial**. The Court of Appeal will not consider new evidence, such as the testimony of new witnesses or new exhibits.

The appellate court's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made.

For information about appeal procedures in other kinds of cases, see:

- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)

You can get these forms at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

3 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative unless you are a legally appointed representative of that person (such as the person's guardian or conservator).

4 Can I appeal *any* decision the trial court made?

No. Generally, you can only appeal the final judgment—the decision at the end that decides the whole case. Other rulings made by the trial court before the final judgment generally cannot be separately appealed but can be reviewed only later as part of an appeal of the final judgment. There are a few exceptions to this general rule. Code of Civil Procedure section 904.1 lists a few types of orders in an unlimited civil case that can be appealed right away. These include orders that:

- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum.
- Grant a new trial or deny a motion for judgment notwithstanding the verdict.
- Discharge or refuse to discharge an attachment or grant a right to attach.
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction. Note: Injunctions include restraining orders.
- Appoint a receiver.
- Are made after final judgment in the case.

- Are made appealable by the Family Code or the Probate Code.

You should consult with a lawyer or a court self-help center to determine if your order is final and appealable. Go to *www.courts.ca.gov/selfhelp-selfhelpcenters.htm* to find information about the self-help center in your county.

(You can view Code of Civil Procedure section 904.1 using the link below: http://leginfo.legislature.ca.gov/faces/codes.xhtml.)

5 What does the appellant need to prove to win on appeal?

The appellant must prove that an error in the trial court proceedings was made and that the error affected the outcome of the court's or jury's decision. An error that affected the outcome of the case is called a "prejudicial error."

An error can include things like errors made by the judge about the law, errors or misconduct by the lawyers or by the jury, incorrect instructions given to the jury, or insufficient evidence to support the judgment, order, or other decision being appealed. Note: This is not a complete list of all possible errors.

When the appellant argues that the error was based on insufficient evidence to support the judgment or other decision being appealed, the Court of Appeal will determine whether there was "substantial evidence" to support the judgment, order, or other decision being appealed. But in conducting its review, the Court of Appeal only looks to see if there was evidence that reasonably supports the decision.

The Court of Appeal generally will not reconsider the jury's or the trial court's conclusions about which side had more or stronger evidence or whether witnesses were believable. It only determines whether the evidence is sufficient to support the judgment, order, or other decision.

The Court of Appeal will generally not overturn the judgment, order, or other decision being appealed unless the record shows a prejudicial error was made. The winning party does not have to prove that the judgment, order, or other decision was correct. Instead, it is up to the appellant to prove that the error was made and that the error affected the outcome of the case.

6 Do I need a lawyer to represent me in an appeal?

You do not *have* to have a lawyer; if you are an individual (rather than a corporation, for example), you are allowed to represent yourself in an appeal in an unlimited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you decide not to use a lawyer, you must put your address, telephone number, fax number (if available), and email address (if available) on the first page of every document you file with the court.

However, if you need to keep your contact information private (for instance, in an appeal involving a domestic violence restraining order), you may give a different mailing address instead. But if you use a different address, be sure to check it regularly to stay informed about your case and about your obligations regarding your case.

You must keep the Court of Appeal, the trial court (if the trial court proceedings continue or are expected to continue), and the other parties in your case informed of any change in your contact information for service of notices and other documents relating to the appeal.

For your trial court case, you may complete *Notice of Change of Address or Other Contact Information* (form MC-040), file it in the trial court, and have it served on the parties in the case.

For your case in the Court of Appeal, you may refer to form MC-040 as an example of the information that you need to include in a notice regarding the change in your contact information. That notice must be filed in the Court of Appeal and served on the parties in the appellate case.

7 Where can I find a lawyer to help me with my appeal?

You have to hire your own lawyer if you want one. You can get information about finding a lawyer on the Self-Help Guide to the California Courts at *https://selfhelp.courts.ca.gov/get-free-or-low-cost-legal-help*.

INFORMATION FOR THE APPELLANT

This part of the information sheet is written for the appellant—the party who is appealing the trial court's decision. It explains some of the rules and procedures relating to appealing a decision in an unlimited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 13 of this information sheet.

8 How do I start my appeal?

First, you must serve and file a notice of appeal. The notice of appeal tells the other party or parties in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal/Cross-Appeal—Unlimited Civil Case* (form APP-002) to prepare a notice of appeal in an unlimited civil case. You can get form APP-002 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm*.

9 How do I "serve and file" the notice of appeal?

"Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the notice of appeal to the other party or parties in the way required by law. If the notice of appeal is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the notice of appeal has been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail, in person, or electronically), and the date the notice of appeal was served.
- Bring or send (by mail or electronically) the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court.

Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm*.

10 Is there a deadline to serve and file my notice of appeal?

Yes. Generally, in an unlimited civil case, the notice of appeal must be served on the other party or parties in the case and filed with the clerk of the superior court within **60 days** after the trial court clerk or a party serves either (1) a document called a "Notice of Entry" of the trial court judgment or appealable order or (2) a file-stamped copy of the judgment or appealable order.

If the clerk or a party served neither of these documents, the notice of appeal must be filed within 180 days after entry of judgment or appealable order (generally, the date the judgment or appeable order is file-stamped).

This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the Court of Appeal will not be able to consider your appeal.

If a notice of appeal has been filed in a case, any other party to the case may file its own appeal from the same judgment or order. This is called a "cross-appeal."

To cross-appeal, a party must file a notice of appeal within either the regular time for filing a notice of appeal or within 20 days after the clerk of the superior court mails notice of the first appeal, whichever is later. A party that wishes to cross-appeal may use *Notice of Appeal/Cross-Appeal—Unlimited Civil Case* (form APP-002) to file this notice in an unlimited civil case.

11 Do I have to pay a fee to file a notice of appeal?

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look up the fee for an appeal in an unlimited civil case in the current Statewide Civil Fee Schedule at *www.courts.ca.gov/7646.htm* (see the "Appeal and Writ Related Fees" section near the end of the schedule).

If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms*. You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.

12 If I file a notice of appeal, do I still have to do what the trial court ordered me to do?

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money, deliver property to another party, or comply with child custody or visitation orders (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at *www.leginfo.legislature.ca.gov/faces/codes.xhtml*). These kinds of judgments or orders will be postponed, or "stayed," only if you request a stay and the court grants your request or some other procedure authorizes a stay (such as filing a bond in appropriate cases).

In most cases, if the trial court denies your request for a stay, you can apply to the Court of Appeal for a stay. If you do not get a stay and you do not do what the trial court ordered you to do, court proceedings to collect the money or otherwise enforce the judgment or order may be started against you.

13 What do I need to do after I file my notice of appeal?

Within 15 days after the trial court clerk mails a notice that a notice of appeal has been filed in an unlimited civil case, the appellant must serve and file in the Court of Appeal a completed *Civil Case Information Statement* (form APP-004), attaching a copy of the judgment or appealed order that shows the date it was entered. See rules 8.100 and 8.104 of the California Rules of Court.

In addition, since the Court of Appeal justices were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the Court of Appeal for its review.

Within 10 days of filing the notice of appeal, the appellant must tell the trial court in writing (designate) what documents and oral proceedings, if any, to include in the record that will be sent to the Court of Appeal. You will need to designate all parts of the record that the Court of Appeal will need to decide the issues you raised in the appeal.

You can use *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to designate the record in an unlimited civil case. You can get form APP-003 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm*.

You must serve and file this notice designating the record on appeal within 10 days after you file your notice of appeal. "Serving and filing" this notice means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (serve) the notice to the other party or parties in the way required by law. If the notice is mailed or personally delivered, it must be by someone who is not a party to the case—-so not you.
- Make a record that the notice has been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the notice, who was served with the notice, how the notice was served (by mail, in person, or electronically), and the date the notice was served.
- Bring or send (by mail or electronically) the original notice and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the notice to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at www.courts.ca.gov/selfhelp-serving.htm.

14 What is the official record of the trial court proceedings?

There are three parts of the official record:

- A record of the documents filed in the trial court (other than exhibits);
- A record of what was said in the trial court (this is called the "oral proceedings"); and
- Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court.

Read below for more information about these parts of the record.

a. Record of the documents filed in the trial court

The first part of the official record of the trial court proceedings is a record of the documents that were filed in the trial court. There are three ways in which a record of the documents filed in the trial court can be prepared for the Court of Appeal:

- A *clerk's transcript* or an *appendix,*
- The original *trial court file,* or
- An *agreed statement.*

Read below for more information about these options.

(1) Clerk's transcript or appendix

Description: A clerk's transcript is a compilation of the documents filed in the trial court that is prepared by the trial court clerk. An appendix is a compilation of these documents prepared by a party. (Cal. Rules of Court, rule 8.124.)

Contents: Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk's transcript or appendix. These documents are listed in rule 8.122(b) and rule 8.124(b) of the California Rules of Court and in *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003).

Clerk's transcript. If you want any documents other than those listed in rule 8.122(b) to be included in the clerk's transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-003 to do this. You will need to identify each document you want included in the clerk's transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.

If you **(**the appellant) request a clerk's transcript, the respondent also has the right to ask the clerk to include additional documents in the clerk's transcript. If this happens, you will be served with a notice saying what other documents the respondent wants included in the clerk's transcript.

Cost: The appellant is responsible for paying for preparing a clerk's transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk's transcript.

You must do one of the following three things within 10 days after the clerk sends this bill or the Court of Appeal may dismiss your appeal:

- Pay the bill.
- Ask the trial court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.htm.* The trial court will review this application to determine if you are eligible for a fee waiver.
- Give the trial court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the clerk's transcript has been paid or waived, the trial court clerk will compile the requested documents into a transcript format and, when the record on appeal is complete, will forward the original clerk's transcript to the Court of Appeal for filing. The trial court clerk will send you a copy of the transcript. If the respondent bought a copy, the clerk will also send a copy of the transcript to the respondent.

Appendix: If you choose to prepare an appendix of the documents filed in the superior court, rather than designating a clerk's transcript, that appendix must include all of the documents and be prepared in the form required by rule 8.124 of the California Rules of Court. The parties may prepare separate appendixes or stipulate (agree) to a joint appendix. If separate appendixes are prepared, each party must pay for its own appendix. If a joint appendix is prepared, the parties can agree on how the cost of preparing the appendix will be paid or the appellant will pay the cost.

The party preparing the appendix must serve the appendix on each other party (unless the parties have agreed or the Court of Appeal has ordered otherwise) and file the appendix in the Court of Appeal. The appellant's appendix or a joint appendix must be served and filed before or together with the appellant's opening brief. See 16 for information about the brief.

(2) Trial court file

When available: If the Court of Appeal has a local rule allowing this, and the parties agree, the clerk can send the Court of Appeal the original trial court file instead of a clerk's transcript as a record of documents filed in the trial court (see rule 8.128 of the California Rules of Court).

Cost: As with a clerk's transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost.

You must do one of the following things within 10 days after the clerk sends this bill or the Court of Appeal may dismiss your appeal:

- Pay the bill.
- Ask the trial court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.court.ca.gov/forms. The trial court will review this application to determine if you are eligible for a fee waiver.
- Give the trial court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the trial court file has been paid or waived and the record on appeal is complete, the trial court clerk will number the pages and send the file and a list of the documents in the file to the Court of Appeal. The trial court clerk will also send a copy of the list of documents to the appellant and respondent so that you can put your own files of documents from the trial court in the correct order and number the pages.

(3) Agreed statement

Description: An agreed statement is a summary of the trial court proceedings agreed to by the parties. (See rule 8.134 of the California Rules of Court.)

When available: If the trial court proceedings were not recorded by a court reporter or if you do not want to use that option, you can choose (elect) to use an agreed statement as the record of the oral proceedings. Please note that it may take more of your time to prepare an agreed statement than to use a reporter's transcript, if it is available.

Contents: An agreed statement must explain what the trial court case was about, describe why the Court of Appeal is the right court to consider an appeal in this case (why the Court of Appeal has "jurisdiction"), and describe the rulings of the trial court relating to the points to be raised on appeal.

The statement should include only those facts that you and the other parties think are needed to decide the appeal.

Preparation: If you elect to use this option, you must file either (1) an agreed statement or (2) a written agreement (called a "stipulation") that the parties are trying to agree on a statement, along with your notice designating the record on appeal. If you file the stipulation and the parties agree on a statement, you must file the statement within 40 days after filing the notice of appeal. If you file the stipulation and the parties cannot agree on the statement, you must file a new notice designating the record within 50 days after filing the notice of appeal.

b. Record of what was said in the trial court (the "oral proceedings")

Important! **The type of record of the oral proceedings that you choose, including a reporter's transcript or a settled statement, should be carefully considered, as it may affect your appeal. You should consult with a lawyer to determine the best option in your case.**

The second part of the official record of the trial court proceedings is a record of what was said in the trial court (this is called a record of the "oral proceedings"). You do not *have* to send the Court of Appeal a record of the oral proceedings. But if you want to raise any issue in your appeal that would require the Court of Appeal to consider what was said in the trial court, the Court of Appeal will need a record of those oral proceedings. For example, if you are claiming that there was not substantial evidence supporting the judgment, order, or other decision you are appealing, the Court of Appeal will presume there was substantial evidence unless it has a record of the oral proceedings.

You are responsible for deciding how the record of the oral proceedings will be provided and, depending on what option you select and your circumstances, you may also be responsible for paying for preparing this record or for preparing an initial draft of the record. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the Court of Appeal. **If the Court of Appeal does not receive this record, you may forfeit your arguments on appeal, or the Court of Appeal may make presumptions in favor of the judgment or order.**

In an unlimited civil case, you can use *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) to tell the trial court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-003 at any courthouse or county law library or online at www.courts.ca.gov/forms.

There are three ways in which a record of the oral proceedings can be prepared for the Court of Appeal:

- If you or the other party arranged to have a court reporter present during the trial court proceedings, the reporter can prepare a record, called a *"reporter's transcript."*
- You can use an *agreed statement.*
- You can use a *settled statement.*

Read below for more information about these options.

(1) Reporter's transcript

Description: A reporter's transcript is a written record (sometimes called a "verbatim" record) of the oral proceedings in the trial court prepared by a court reporter. Rule 8.130 of the California Rules of Court establishes the requirements for reporter's transcripts.

When available: If a court reporter was present in the trial court and made a record of the oral proceedings, you can choose (elect) to have the court reporter prepare a reporter's transcript for the Court of Appeal. But a court reporter might not have been present unless you or another party in your case had made specific arrangements to have a court reporter present. If you are unsure, check with the trial court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

Contents: If you elect to use a reporter's transcript, you must identify by date (this is called "designating") what proceedings you want to be included in the reporter's transcript. You can use the same form you used to tell the court you wanted to use a reporter's transcript—*Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003)—to do this.

If you elect to use a reporter's transcript, the respondent also has the right to designate additional proceedings to be included in the reporter's transcript. If you elect to proceed

without a reporter's transcript, however, the respondent may not designate a reporter's transcript without first getting an order from the Court of Appeal.

Cost: The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.130 with the trial court clerk within 10 days after this notice is sent. (See rule 8.130 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. Money from a special fund, called the Transcript Reimbursement Fund, may be available to help you pay for the transcript. You can get information about this fund at *www.courtreportersboard.ca.gov/consumers/index.shtml#rtf*.

If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a settled statement, which are described below.

Completion and delivery: After the cost of preparing the reporter's transcript or a permissible substitute has been deposited, the court reporter will prepare the transcript and submit it to the trial court clerk. When the record is complete, the trial court clerk will submit the original transcript to the Court of Appeal and send you a copy of the transcript. If the respondent has purchased it, a copy of the reporter's transcript will also be mailed to the respondent.

(2) Agreed statement

Description: An agreed statement is a written summary of the trial court proceedings agreed to by all the parties. See rule 8.134 of the California Rules of Court.

When available: If the trial court proceedings were not recorded by a court reporter or if you do not want to use that option, you can choose (elect) to use an agreed statement as the record of the oral proceedings. Please note that it may take more of your time to prepare an agreed statement than to use a reporter's transcript, if it is available.

Contents: An agreed statement must explain what the trial court case was about, describe why the Court of Appeal is the right court to consider an appeal in this case (why the Court of Appeal has "jurisdiction"), and describe the rulings of the trial court relating to the points to be raised on appeal.

The statement should include only those facts that you and the other parties think are needed to decide the appeal.

Preparation: If you elect to use this option, you must file either (1) an agreed statement or (2) a written agreement (called a "stipulation") that the parties are trying to agree on a statement, along with your notice designating the record on appeal. If you file the stipulation and the parties agree on a statement, you must file the statement within 40 days after filing the notice of appeal. If you file the stipulation and the parties cannot agree on the statement, you must file a new notice designating the record within 50 days after filing the notice of appeal.

(3) Settled statement

Description: A settled statement is a summary of the trial court proceedings that is approved by the trial court judge who conducted those proceedings (the term "judge" includes commissioners, referees, hearing officers, and temporary judges).

When available: Under rule 8.137 of the California Rules of Court, you can choose (elect) to use a settled statement as the record of the oral

proceedings if (1) the trial court proceedings were not recorded by a court reporter or (2) if you have an order waiving your court fees and costs. Please note that it may take more of your time to prepare a settled statement than to use a reporter's transcript, if it is available.

If you want to use a settled statement as the record of the oral proceedings for reasons other than the two previously mentioned, you must file a motion to ask the trial court for an order. You may use *Appellant's Motion to Use a Settled Statement (Unlimited Civil Case)* (form APP-025) for this purpose. Read rule 8.137 about the requirements of your motion or request for order.

Contents: A settled statement must include:

- A statement of the points you (the appellant) are raising on appeal;
- A condensed narrative of the oral proceedings that you specified in the notice designating the record on appeal or motion. The condensed narrative is a summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal; and
- A copy of the judgment or order you are appealing attached to the settled statement.

Preparing a proposed settled statement: If you elect to use a settled statement, you must prepare a proposed settled statement. You may use *Appellant's Proposed Settled Statement (Unlimited Civil Case)* (form APP-014) to prepare your proposed statement. You can get the form at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

(See rule 8.137 of the California Rules of Court for more information about what must be included in a settled statement and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules*.)

Serving and filing a proposed settled statement: You must serve and file the proposed statement within 30 days after filing your notice electing to use a settled statement or within 30 days after the trial court clerk sends, or a party serves, the order granting the motion to use a settled statement. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send (serve) the proposed settled statement to the respondent in the way required by law. If the proposed statement is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed settled statement has been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail, in person, or electronically), and the date the proposed statement was served.
- File the original proposed settled statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm*.

Respondent's review: The respondent has 20 days from the date you serve your proposed settled statement to serve and file either:

- Proposed changes (called "amendments") to the proposed statement; or
- If the oral proceedings in the trial court were reported by a court reporter, a notice indicating that the respondent is electing to provide a reporter's transcript instead of proceeding with a settled statement.

Review of appellant's proposed settled statement: If the respondent proposes changes, the trial court judge then reviews both your proposed statement and the respondent's proposed amendments. The trial judge will either make or order you (the appellant) to make any corrections or modifications to the statement that are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal. For more information, see rule 8.137(f) of the California Rules of Court. See also rule 8.140, which explains the consequences for a party's failure to make corrections that are ordered to be made to the proposed statement.

Request for hearing to review proposed settled statement: No later than 10 days after the respondent files proposed amendments, or the time to do so has expired, a party may request a hearing to review and correct the proposed statement. No hearing will be held unless ordered by the trial court judge. A judge will not ordinarily order a hearing unless there is a factual dispute about a material aspect of the trial court proceeding. If there is a hearing, see rule 8.137 for more information.

Additional review procedures: If there is no hearing after the respondent proposes changes to the settled statement, and if the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you and the respondent for your review.

If the judge orders you to make any corrections or modifications to the proposed statement, you must serve and file the corrected or modified statement within the time ordered by the judge. See rule 8.140, which explains the consequences for a party's failure to make corrections to the proposed statement.

If you or the respondent disagree with anything in the modified or corrected statement, you have 10 days from the date the modified or corrected statement is sent to you to serve and file proposed amendments or objections to the statement. The judge then reviews the modified or corrected statement and any proposed modifications. If the judge decides that further corrections or modifications are necessary, the review process described above takes place again.

Completion and certification: If the judge does not order any corrections or modifications to the proposed statement, the judge must promptly certify the statement as an accurate summary of the evidence and testimony of each witness relevant to the issues you indicated you are raising on appeal.

Alternatively, the parties may serve and file a stipulation (agreement) that the statement as originally served or corrected or modified is correct. Such a stipulation is equivalent to the judge's certification of the statement.

Sending settled statement to the Court of Appeal: Once the trial court judge certifies the statement or the trial court receives the parties' stipulation, the trial court clerk will send the statement to the Court of Appeal as required under rule 8.150 of the California Rules of Court.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) includes a space for you to make this request.

You also can ask the trial court to send original exhibits to the Court of Appeal at the time briefs are filed. (See rule 8.224 for more information about this procedure and see below for information about briefs.)

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for that exhibit to be included in the clerk's transcript or sent to the Court of Appeal, the party who has the exhibit must deliver that exhibit to the trial court clerk as soon as possible.

15 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the Court of Appeal for the district in which the trial court is located. When the Court of Appeal receives the record, it will send you a notice telling you when you must file your brief in the Court of Appeal.

16 What is a brief?

Description: A "brief" is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer, you will have to prepare your brief yourself.

You should read rules 8.200–8.224 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in unlimited civil appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm*.

Contents and format of briefs: If you are the appellant, your brief, called an "appellant's opening brief," must clearly explain the legal errors you believe were made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or the other forms of the record you are using) that support your argument. Each brief must be no longer than 14,000 words if produced on a computer, including footnotes. A brief produced on a typewriter must not be longer than 50 pages. The brief must contain a table of contents and a table of authorities. The cover of appellant's opening brief filed in paper form must be green. For other content and formatting requirements for the brief, read rules 8.40 and 8.204 of the California Rules of Court.

Remember that an appeal is not a new trial. The Court of Appeal will not consider new evidence, such as new exhibits or the testimony of new witnesses, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your opening brief within 40 days after the record is filed in the Court of Appeal or 70 days from the date the appellant chooses to proceed with no reporter's transcript under rule 8.124. "Serve and file" means that you must:

- Have somebody over 18 years old mail, personally deliver, or electronically send (serve) the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.

- File the original brief and the proof of service with the Court of Appeal. You should make a copy of the brief you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.
- Note: If a party chooses to prepare an appendix of the documents filed in the trial court instead of designating a clerk's transcript, the appellant's appendix or a joint appendix must be served and filed before or together with the appellant's opening brief.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at www.courts.ca.gov/selfhelp-serving.htm.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 60 days (see rule 8.212(b) for requirements for these agreements). You can also apply to the presiding justice of the Court of Appeal to extend the time for filing this brief if you can show good cause for an extension (see rule 8.63 for information about extensions of time). You can use *Application for Extension of Time to File Brief—Unlimited Civil Case* (form APP-006) to ask the court for an extension.

If you do not file your brief by the deadline set by the Court of Appeal, the court may dismiss your appeal.

17 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent must respond by serving and filing a respondent's brief. Within 20 days after the respondent's brief was filed, you may, but are not required to, file another brief replying to the respondent's brief. This is called a "reply brief."

18 What happens after all the briefs have been filed?

After all the briefs have been filed or the time to file them has passed, the Court of Appeal will contact you to tell you the date for oral argument in your case or ask if you want to participate in oral argument.

19 What is "oral argument"?

"Oral argument" is not a chance to present new evidence. Instead, it is a chance to orally explain the arguments you made in your brief to the Court of Appeal justices. You do not have to participate in oral argument if you do not want to; you can notify the Court of Appeal that you want to "waive" oral argument. If all parties waive oral argument, the justices will decide your appeal based on the briefs and the appellate record. But if any party requests oral argument, the Court of Appeal will hold oral argument.

If you choose to participate in oral argument, you will have a limited amount of time as set by the court.

Remember that the justices will have already read the briefs, so you do not need to read your brief to the justices or merely repeat the information in it. It is more helpful to tell the justices what you think is most important in your appeal or ask the justices if they have any questions you could answer.

You can find more information about oral argument in appeals cases in rule 8.256 of the California Rules of Court and online at *www.courts.ca.gov/12421.htm*.

20 What happens after oral argument?

After oral argument is held or waived, the justices of the Court of Appeal will make a decision about your appeal. The clerk of the court will mail you a notice of the Court of Appeal's decision.

21 What should I do if I want to give up my appeal?

If you do not want to continue with your appeal, you must notify the court. If the record has not yet been filed in the Court of Appeal, file *Abandonment of Appeal (Unlimited Civil Case)* (form APP-005) in the superior court.

If the record has already been filed in the Court of Appeal, file *Request for Dismissal of Appeal (Civil Case)* (form APP-007) in the Court of Appeal.

INFORMATION FOR THE RESPONDENT

This part of this information sheet is written for the respondent—the party responding to an appeal filed by another party. It explains some of the rules and procedures relating to responding to an appeal in an unlimited civil case. The information may also be helpful to the appellant.

22 I have received a notice of appeal from another party. Do I need to do anything?

You do not *have* to do anything, but there may be consequences if you do nothing. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in an unlimited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow.

If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the Self-Help Guide to the California Courts at https://selfhelp.courts.ca.gov/get-free-or-low-cost-legal-help.

23 If the other party appealed, can I appeal too?

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a "cross-appeal." To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal—Unlimited Civil Case* (form APP-002) to file this notice in an unlimited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 3 of this information sheet, if you are considering filing a cross-appeal.

24 Is there a deadline to file a cross-appeal?

Yes. You must serve and file your notice of appeal within either the regular time for filing a notice of appeal (generally 60 days after service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 20 days after the clerk of the trial court serves notice of the first appeal, whichever is later.

25 I have received a notice designating the record on appeal from another party. Do I need to do anything?

You do not *have* to do anything, but there may be consequences if you do nothing. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the Court of Appeal. Depending on the kind of record chosen by the appellant, however, you may have the option to:

- Add to what is included in the record;
- Participate in preparing the record; *or*
- Ask for a copy of the record.

Look at the appellant's notice designating the record on appeal to see what kind of record the appellant has chosen and read about that form of the record in the response to question 14 above. Then read below for what your options are when the appellant has chosen that form of the record.

a. Clerk's transcript or appendix

Clerk's transcript: If the appellant is using a clerk's transcript, you have the option of asking the clerk to include additional documents in the clerk's transcript. To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript. You may use *Respondent's Notice Designating Record on Appeal—Unlimited Civil Case* (form APP-010) for this purpose.

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent.

If you cannot afford to pay this cost, you can ask the trial court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at www.courts.ca.gov/forms. The trial court will review this application and determine if you are eligible for a fee waiver. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

Appendix: If the appellant is using an appendix, and you and the appellant have not agreed to a joint appendix, you may prepare a separate respondent's appendix. See pages 5–6 for more information about preparing an appendix.

If the appellant chooses a clerk's transcript but does not have a waiver of the fee for a clerk's transcript, you can choose an appendix instead of a clerk's transcript, and the appeal will proceed by appendix. To choose an appendix, you can fill out and file *Respondent's Notice Designating Record on Appeal —Unlimited Civil Case* (form APP-010) within 10 days after the appellant's notice designating the record on appeal is filed.

b. Reporter's transcript

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript. You may use *Respondent's Notice Designating Record on Appeal —Unlimited Civil Case* (form APP-010) for this purpose.

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must generally pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.130 with the trial court clerk within 10 calendar days after this notice is sent. (See rule 8.130 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. Money from a special fund, called the Transcript Reimbursement Fund, may be available to help you pay for the transcript. You can get information about this fund at *www.courtreportersboard.ca.gov/consumers/index.shtml#trf*.

The reporter will not prepare a copy of the reporter's transcript for you unless you deposit the cost of the transcript, or provide one of the permissible substitutes, or your application for payment by the Transcript Reimbursement Fund is approved.

c. Agreed statement

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 40 days after the appellant files its notice of appeal. See rule 8.134 of the California Rules of Court.

d. Settled statement

If the appellant elects to use a settled statement (a summary of the trial court proceedings that is approved by the trial court), the appellant will send you a proposed settled statement to review. You will have 20 days from the date the appellant served you this proposed statement to serve and file either:

- Suggested changes (called "amendments") that you think are needed to make sure that the settled statement provides an accurate summary of the evidence and testimony of each witness relevant to the issues the appellant is raising on appeal (see page 10 of this form and rule 8.137(e)–(h) for more information about the amendment process); or
- If the oral proceedings in the trial court were reported by a court reporter, a notice indicating that you are choosing to provide a reporter's transcript, at your expense, instead of proceeding with a settled statement (see rule 8.137(e)(2) for the requirements for choosing to provide a reporter's transcript).

Have somebody over 18 years old mail, personally deliver, or electronically send (serve) the proposed amendments to the appellant in the way required by law. If the proposed amendments are mailed or personally delivered, it must be by someone who is not a party to the case—so not you.

- Make a record that the proposed amendments have been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record. The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail, in person, or electronically), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm*.

26 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the Court of Appeal. When the Court of Appeal receives this record, it will send you a notice telling you when you must file your brief in the Court of Appeal.

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself.

You should read rules 8.200–8.224 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in unlimited civil appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm*.

The appellant serves and files the first brief, called an "appellant's opening brief." You must respond by serving and filing a "respondent's brief" within 30 days after the appellant's opening brief is filed. "Serve and file" means that you must:

- Have somebody over 18 years old mail, personally deliver, or electronically send (serve) the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) can be used to make this record.

The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.

- File the original brief and the proof of service with the Court of Appeal. You should make a copy of the brief you are planning to file for your own records before you file it with the court. Unless you are filing electronically, it is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) and on the Self-Help Guide to the California Courts at www.courts.ca.gov/selfhelp-serving.htm.

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 60 days (see rule 8.212(b) for requirements for these agreements). You can also apply to the presiding justice of the Court of Appeal to extend the time for filing this brief if you can show good cause for an extension. You can use *Application for Extension of Time to File Brief—Unlimited Civil Case* (form APP-006) to ask the court for an extension.

If you do not file a respondent's brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant. Remember that an appeal is not a new trial. The Court of Appeal will not consider new evidence, such as new exhibits or the testimony of new witnesses, so do not include any new evidence in your brief.

If you file a respondent's brief, the appellant then has an opportunity to serve and file another brief within 20 days to reply to your brief.

27 What happens after all the briefs have been filed?

After all the briefs have been filed or the time to file them has passed, the Court of Appeal will contact you to tell you the date for oral argument in your case or ask if you want to participate in oral argument.

28 What is "oral argument"?

"Oral argument" is not a chance to present new evidence. Instead, it is a chance to orally explain the arguments you made in your brief to the Court of Appeal justices. You do not have to participate in oral argument if you do not want to; you can notify the Court of Appeal that you want to "waive" oral argument. If all parties waive oral argument, the justices will decide your appeal based on the briefs and the appellate record. But if any party requests oral argument, the Court of Appeal will hold oral argument.

If you choose to participate in oral argument, you will have a limited amount of time as set by the court.

Remember that the justices will have already read the briefs, so you do not need to read your brief to the justices or merely repeat the information in it. It is more helpful to tell the justices what you think is most important in your appeal or ask the justices if they have any questions you could answer.

You can find more information about oral argument in appeals cases in rule 8.256 of the California Rules of Court and online at *www.courts.ca.gov/12421.htm*.

29 What happens after oral argument?

After oral argument is held or waived, the justices of the Court of Appeal will make a decision about your appeal. The clerk of the court will mail you a notice of the Court of Appeal's decision.

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):		**DRAFT** **06/22/2023** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:		
RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL—UNLIMITED CIVIL CASE		SUPERIOR COURT CASE NUMBER:
Re: Appeal filed on *(date):*		COURT OF APPEAL CASE NUMBER *(if known)*:

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

1. **RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT**
   The appellant has chosen to use a clerk's transcript under Cal. Rules of Court, rule 8.122. *(You must check a or b):*
   a. ☐ I agree to a clerk's transcript. (*If you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents in item 2.*)
   b. ☐ If the appellant has not been granted a waiver of the fee for a clerk's transcript, I choose an appendix as the record of documents under Cal. Rules of Court, rule 8.124 instead of a clerk's transcript. (*If the appellant has been granted a waiver of the fee for a clerk's transcript, you may not choose an appendix; a clerk's transcript will be used. If a clerk's transcript is used and you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents in item 2.*)
2. **CLERK'S TRANSCRIPT**
   The parties will use a clerk's transcript under Cal. Rules of Court, rule 8.122.
   a. ☐ **Additional documents.** In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents from the superior court proceedings. *(You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)*

	Document Title and Description	Date of Filing
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		
(7)		

☐ See additional pages. *(Check here if you need more space to list additional documents. List these documents on a separate page or pages labeled "Attachment 2(a)," and start with number (8).)*

CASE NAME:	SUPERIOR COURT CASE NUMBER:

2. b. ☐ **Additional exhibits.** In addition to the exhibits designated by the appellant, I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. *(For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence. If the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must deliver it to the superior court clerk within 10 days after service of this notice designating the record. (Cal. Rules of Court, rule 8.122(a)(3).))*

Exhibit Number	Description	Admitted (Yes/No)
(1)		
(2)		
(3)		
(4)		

☐ See additional pages. *(Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 2b," and start with number (5).)*

c. ☐ **Copy of clerk's transcript.** I request a copy of the clerk's transcript. *(Check (1) or (2).)*

(1) ☐ I will pay the superior court clerk for this transcript when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, I will not receive a copy.

(2) ☐ I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record *(check (a) or (b)):*

(a) ☐ An order granting a waiver of court fees and costs under Cal. Rules of Court, rules 3.50–3.58; or

(b) ☐ An application for a waiver of court fees and costs under Cal. Rules of Court, rules 3.50–3.58. (*Use* Request to Waive Court Fees *(form FW-001) to prepare and file this application.*)

3. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

The appellant has chosen to use a reporter's transcript under Cal. Rules of Court, rule 8.130.

a. ☐ **Designation of additional proceedings.** *(If you want any oral proceedings in addition to the proceedings designated by the appellant to be included in the reporter's transcript, you must identify those proceedings here.)*

(1) In addition to the proceedings designated by the appellant, I request that the following proceedings in the superior court be included in the reporter's transcript. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings (if known), and whether a certified transcript of the designated proceeding was previously prepared.)*

CASE NAME:	SUPERIOR COURT CASE NUMBER:

3. a. (1) *(continued)*

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(a)						☐ Yes ☐ No
(b)						☐ Yes ☐ No
(c)						☐ Yes ☐ No
(d)						☐ Yes ☐ No
(e)						☐ Yes ☐ No
(f)						☐ Yes ☐ No
(g)						☐ Yes ☐ No

☐ See additional pages. *(Check here if you need more space to list additional proceedings. List these proceedings on a separate page or pages labeled "Attachment 3a(1)," and start with letter (h).)*

(2) **Deposit for additional proceedings.**

I have *(check a, b, c, or d):*

(a) ☐ Deposited with the superior court clerk the approximate cost of preparing the additional proceedings by including the deposit with this notice as provided in Cal. Rules of Court, rule 8.130(b)(1).

(b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under Cal. Rules of Court, rule 8.130(c)(1)

(c) ☐ Attached the reporter's written waiver of a deposit under Cal. Rules of Court, rule 8.130(b)(3)(A) for *(check either (i) or (ii)):*

(i) ☐ All of the designated proceedings.

(ii) ☐ Part of the designated proceedings.

(d) ☐ Attached a certified transcript under Cal. Rules of Court, rule 8.130(b)(3)(C).

b. **Copy of reporter's transcript.**

(1) ☐ I request a copy of the reporter's transcript.

(2) ☐ I request that the reporters provide *(check (a), (b), or (c))* :

(a) ☐ My copy of the reporter's transcript in electronic format.

(b) ☐ My copy of the reporter's transcript in paper format.

(c) ☐ My copy of the reporter's transcript in electronic format and a second copy of the reporter's transcript in paper format.

(*Code Civ. Proc., § 271.)*

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF RESPONDENT OR ATTORNEY)

APP-101-INFO Information on Appeal Procedures for Limited Civil Cases

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about appeals in limited civil cases. These are civil cases in which the amount of money claimed is $25,000 or less.

If you are the party who is appealing (asking for the trial court's decision to be reviewed), you are called the APPELLANT, and you should read Information for the Appellant, starting on page 2. If you received notice that another party in your case is appealing, you are called the RESPONDENT and you should read Information for the Respondent, starting on page 11.

This information sheet does not cover everything you may need to know about appeals in limited civil cases. It is meant only to give you a general idea of the appeal process. To learn more, you should read rules 8.800–8.843 and 8.880–8.891 of the California Rules of Court, which set out the procedures for limited civil appeals. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

2 What is an appeal?

An appeal is a request to a higher court to review a decision made by a judge or jury in a lower court. **In a limited civil case, the court hearing the appeal is the appellate division of the superior court and the lower court—called the "trial court" in this information sheet—is the superior court.**

It is important to understand that **an appeal is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits. The appellate division's job is to review a record of what happened in the trial court and the trial court's decision to see if certain kinds of legal errors were made:

For information about appeal procedures in other kinds of cases, see:

- *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)

You can get these forms at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

- ***Prejudicial error:*** The appellant (the party who is appealing) may ask the appellate division to determine if an error was made about either the law or court procedures in the case that caused substantial harm to the appellant (this is called "prejudicial error").

  Prejudicial error can include things like errors made by the judge about the law, errors or misconduct by the lawyers, incorrect instructions given to the jury, and misconduct by the jury that harmed the appellant. When it conducts its review, the appellate division presumes that the judgment, order, or other decision being appealed is correct. It is the responsibility of the appellant to show the appellate division that an error was made and that the error was harmful.

- ***No substantial evidence:*** The appellant may also ask the appellate division to determine if there was substantial evidence supporting the judgment, order, or other decision being appealed. When it conducts its review, the appellate division only looks to see if there was evidence that reasonably supports the decision. The appellate division generally will not reconsider the jury's or trial court's conclusion about which side had more or stronger evidence or whether witnesses were telling the truth or lying.

The appellate division generally will not overturn the judgment, order, or other decision being appealed unless the record clearly shows that one of these legal errors was made.

3 Do I need a lawyer to represent me in an appeal?

You do not *have* to have a lawyer; if you are an individual (rather than a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the appeal procedures, you should talk to a lawyer.

If you decide not to use a lawyer, you must put your address, telephone number, fax number (if available), and email address (if available) on the first page of every document you file with the court and let the court know if this contact information changes so that the court can contact you if needed.

4 Where can I find a lawyer to help me with my appeal?

You have to hire your own attorney if you want one. You can get information about finding an attorney on the Self-Help Guide to the California Courts at *https://selfhelp.courts.ca.gov/get-free-or-low-cost-legal-help*.

INFORMATION FOR THE APPELLANT

This part of the information sheet is written for the appellant—the party who is appealing the trial court's decision. It explains some of the rules and procedures relating to appealing a decision in a limited civil case. The information may also be helpful to the respondent. Additional information for respondents can be found starting on page 11 of this information sheet.

5 Who can appeal?

Only a party in the trial court case can appeal a decision in that case. You may not appeal on behalf of a friend, a spouse, a child, or another relative unless you are a legally appointed representative of that person (such as the person's guardian or conservator).

6 Can I appeal *any* decision the trial court made?

No. Generally, you can only appeal the final judgment—the decision at the end that decides the whole case. Other rulings made by the trial court before the final judgment generally cannot be separately appealed but can be reviewed only later as part of an appeal of the final judgment. There are a few exceptions to this general rule. Code of Civil Procedure section 904.2 lists a few types of orders in a limited civil case that can be appealed right away. These include orders that:

- Change or refuse to change the place of trial (venue)
- Grant a motion to quash service of summons or grant a motion to stay or dismiss the action on the ground of inconvenient forum
- Grant a new trial or deny a motion for judgment notwithstanding the verdict
- Discharge or refuse to discharge an attachment or grant a right to attach
- Grant or dissolve an injunction or refuse to grant or dissolve an injunction
- Appoint a receiver
- Are made after final judgment in the case

(You can get a copy of Code of Civil Procedure section 904.2 at *http://leginfo.legislature.ca.gov/faces/codes.xhtml*.)

7 How do I start my appeal?

First, you must serve and file a notice of appeal. The notice of appeal tells the other party or parties in the case and the trial court that you are appealing the trial court's decision. You may use *Notice of Appeal/Cross-Appeal—Limited Civil Case* (form APP-102) to prepare a notice of appeal in a limited civil case. You can get form APP-102 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

8 How do I "serve and file" the notice of appeal?

"Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the notice of appeal to the other party or parties in the way required by law. If the notice of appeal is mailed or personally

delivered, it must be by someone who is not a party to the case—so not you.

- Make a record that the notice of appeal has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the notice of appeal, who was served with the notice of appeal, how the notice of appeal was served (by mail, in person, or electronically), and the date the notice of appeal was served.
- Bring or mail the original notice of appeal and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice of appeal you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice of appeal to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm.*

9 Is there a deadline to file my notice of appeal?

Yes. In a limited civil case, except in the very limited circumstances listed in rule 8.823, you must file your notice of appeal within **30 days** after the trial court clerk or a party serves either a document called a "Notice of Entry" of the trial court judgment or a file-stamped copy of the judgment or within 90 days after entry of the judgment, whichever is earlier.

This deadline for filing the notice of appeal cannot be extended. If your notice of appeal is late, the appellate division will not be able to consider your appeal.

10 Do I have to pay to file an appeal?

Yes. Unless the court waives this fee, you must pay a fee for filing your notice of appeal. You can ask the clerk of the court where you are filing the notice of appeal what the fee is or look up the fee for an appeal in a limited civil case in the current Statewide Civil Fee Schedule linked at *www.courts.ca.gov/7646.htm* (note that the "Appeal and Writ Related Fees" section is near the end of this schedule and that there are different fees for limited civil cases depending on the amount demanded in the case). If you cannot afford to pay the fee, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* You can file this application either before you file your notice of appeal or with your notice of appeal. The court will review this application to determine if you are eligible for a fee waiver.

11 If I file a notice of appeal, do I still have to do what the trial court ordered me to do?

Filing a notice of appeal does NOT automatically postpone most judgments or orders, such as those requiring you to pay another party money or to deliver property to another party (see Code of Civil Procedure sections 917.1–917.9 and 1176; you can get a copy of these laws at *www.leginfo.legislature.ca.gov/faces /codes.xhtml*). These kinds of judgments or orders will be postponed, or "stayed," only if you request a stay and the court grants your request. In most cases, other than unlawful detainer cases in which the trial court's judgment gives a party possession of the property, if the trial court denies your request for a stay, you can apply to the appellate division for a stay. If you do not get a stay and you do not do what the trial court ordered you to do, court proceedings to collect the money or otherwise enforce the judgment or order may be started against you.

12 What do I need to do after I file my notice of appeal?

You must ask the clerk of the trial court to prepare and send the official record of what happened in the trial court in your case to the appellate division.

Since the appellate division judges were not there to see what happened in the trial court, an official record of what happened must be prepared and sent to the appellate division for its review. You can use *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to ask the trial court to prepare this record. You can get form APP-103 at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

You must serve and file this notice designating the record on appeal within 10 days after you file your notice of appeal. "Serving and filing" this notice means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the notice to the other party or parties in the way required by law. If the notice is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the notice has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the notice, who was served with the notice, how the notice was served (by mail, in person, or electronically), and the date the notice was served.
- Bring or mail the original notice and the proof of service to the trial court that issued the judgment, order, or other decision you are appealing. You should make a copy of the notice you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the notice to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm*.

13 What is the official record of the trial court proceedings?

There are three parts of the official record:

- A record of what was said in the trial court (this is called the "oral proceedings")
- A record of the documents filed in the trial court (other than exhibits)
- Exhibits that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court

Read below for more information about these parts of the record.

a. Record of what was said in the trial court (the "oral proceedings")

The first part of the official record of the trial court proceedings is a record of what was said in the trial court (this is called a record of the "oral proceedings"). You do not *have* to send the appellate division a record of the oral proceedings. But if you want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, the appellate division will need a record of those oral proceedings. For example, if you are claiming that there was not evidence supporting the judgment, order, or other decision you are appealing, the appellate division will need a record of the oral proceedings.

You are responsible for deciding how the record of the oral proceedings will be provided and, depending on what option you select and your circumstances, you may also be responsible for paying for preparing this record or for preparing an initial draft of the record. If you do not take care of these responsibilities, a record of the oral proceedings in the trial court will not be prepared and sent to the appellate division. **If the appellate division does not receive this record, it will not be able to review any issues that are based on what was said in the trial court and it may dismiss your appeal.**

In a limited civil case, you can use *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) to tell the court whether you want a record of the oral proceedings and, if so, the form of the record that you want to use. You can get form APP-103

at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

There are four ways in which a record of the oral proceedings can be prepared for the appellate division:

- If you or the other party arranged to have a court reporter there during the trial court proceedings, the reporter can prepare a record, called a "reporter's transcript."
- If the proceedings were officially electronically recorded, the trial court can have a transcript prepared from that recording or, if the court has a local rule permitting this and you and the other party agree ("stipulate") to this, you can use the *official electronic recording* itself instead of a transcript.
- You can use an agreed statement.
- You can use a statement on appeal.

Read below for more information about these options.

(1) Reporter's transcript

Description: A reporter's transcript is a written record (sometimes called a "verbatim" record) of the oral proceedings in the trial court prepared by a court reporter. Rule 8.834 of the California Rules of Court establishes the requirements relating to reporter's transcripts.

When available: If a court reporter was there in the trial court and made a record of the oral proceedings, you can choose ("elect") to have the court reporter prepare a reporter's transcript for the appellate division. In most limited civil cases, however, a court reporter will not have been there unless you or another party in your case made specific arrangements to have a court reporter there. Check with the court to see if a court reporter made a record of the oral proceedings in your case before choosing this option.

Contents: If you elect to use a reporter's transcript, you must identify by date (this is called "designating") what proceedings you want included in the reporter's transcript. You can use the same form you used to tell the court you wanted to use a reporter's transcript—*Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.

If you elect to use a reporter's transcript, the respondent also has the right to designate additional proceedings to be included in the reporter's transcript. If you elect to proceed without a reporter's transcript, however, the respondent may not designate a reporter's transcript without first getting an order from the appellate division.

Cost: The appellant is responsible for paying for preparing a reporter's transcript. The trial court clerk or the court reporter will notify you of the cost of preparing an original and one copy of the reporter's transcript. You must deposit payment for this cost (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for filing the notice of appeal and the costs for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at *www.courtreportersboard.ca.gov/consumers/index.shtml#rtf.* If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by using an agreed statement or a statement on appeal, which are described below.

Completion and delivery: After the cost of preparing the reporter's transcript or a permissible substitute has been deposited, the court reporter will prepare the transcript and submit it to the trial court clerk. When the record is complete, the trial court clerk will submit the original transcript to the appellate division and send you a copy of the transcript. If the respondent has purchased it, a copy of the reporter's transcript will also be mailed to the respondent.

(2) Official electronic recording or transcript

When available: In some limited civil cases, the trial court proceedings were officially recorded on approved electronic recording equipment. If your case was officially recorded, you can choose ("elect") to have a transcript prepared from the recording. Check with the trial court to see if the oral proceedings in your case were officially electronically recorded before you choose this option. If the court has a local rule permitting this and all the parties agree ("stipulate"), a copy of an official electronic recording itself can be used as the record, instead of preparing a transcript. If you choose this option, you must attach a copy of this agreement ("stipulation") to your notice designating the record on appeal.

Contents: If you elect to use a transcript of an official electronic recording, you must identify by date (this is called "designating") what proceedings you want included in the transcript. You can use the same form you used to tell the court you wanted to use a transcript of an official electronic recording —*Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103)—to do this.

Cost: The appellant is responsible for paying the court for the cost of either (a) preparing a transcript *or* (b) making a copy of the official electronic recording.

(a) If you elect to use a transcript of an official electronic recording, you will need to deposit the estimated cost of preparing the transcript with the trial court clerk and pay the trial court a $50 fee. There are two ways to determine the estimated cost of the transcript:

- You can use the amounts listed in rule 8.130(b)(1)(B) for each full or half day of court proceedings to estimate the cost of making a transcript of the proceeding you have designated in your notice designating the record on appeal. Deposit this estimated amount and the $50 fee with the trial court clerk when you file your notice designating the record on appeal.
- You can ask the trial court clerk for an estimate of the cost of preparing a transcript of the proceedings you have designated in you notice designating the record on appeal. You must deposit this amount and the $50 fee with the trial court within 10 days of receiving the estimate from the clerk.

(b) If the court has a local rule permitting the use of a copy of the electronic recording itself, rather than a transcript, and you have attached your agreement with the other parties to do this ("stipulation") to the notice designating the record on appeal that you filed with the court, the trial court clerk will provide you with an estimate of the costs for this copy of the recording. You must pay this amount to the trial court.

If you cannot afford to pay the cost of preparing the transcript, the $50 fee, or the fee for the copy of the official electronic recording, you can ask the court to waive these costs. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this application to determine if you are eligible for a fee waiver.

Completion and delivery: After the estimated cost of the transcript or official electronic recording has been paid or waived, the clerk will have the transcript or copy of the recording prepared. When the transcript is completed or the copy of the official electronic recording is prepared and the rest of the record is complete, the clerk will send it to the appellate division.

(3) Agreed statement

Description: An agreed statement is a written summary of the trial court proceedings agreed to by all the parties. (See rule 8.836 of the California Rules of Court.)

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use an agreed statement as the record of the oral proceedings (please note that it

may take more of your time to prepare an agreed statement than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: An agreed statement must explain what the trial court case was about, describe why the appellate division is the right court to consider an appeal in this case (why the appellate division has "jurisdiction"), and describe the rulings of the trial court relating to the points to be raised on appeal.

The statement should include only those facts that you and the other parties think are needed to decide the appeal.

Preparation: If you elect to use this option, you must file the agreed statement with your notice designating the record on appeal or, if you and the other parties need more time to work on the statement, you can file a written agreement with the other parties (called a "stipulation") stating that you are trying to agree on a statement. If you file this stipulation, within the next 30 days you must either file the agreed statement or tell the court that you and the other parties were unable to agree on a statement and file a new notice designating the record.

(4) Statement on appeal

Description: A statement on appeal is a summary of the trial court proceedings that is approved by the trial court judge who conducted those proceedings (the term "judge" includes commissioners and temporary judges).

When available: If the trial court proceedings were not recorded either by a court reporter or by official electronic recording equipment or if you do not want to use one of these options, you can choose ("elect") to use a statement on appeal as the record of the oral proceedings (please note that it may take more of your time to prepare a statement on appeal than to use either a reporter's transcript or official electronic recording, if they are available).

Contents: A statement on appeal must include:

- A statement of the points you (the appellant) are raising on appeal;
- A summary of the trial court's rulings and judgment; and
- A summary of the testimony of each witness and other evidence that is relevant to the issues you are raising on appeal.

(See rule 8.837 of the California Rules of Court for more information about what must be included in a statement on appeal and the procedures for preparing a statement. You can get a copy of this rule at any courthouse or county law library or online at *www.courts.ca.gov/rules*.)

Preparing a proposed statement: If you elect to use a statement on appeal, you must prepare a proposed statement. If you are not represented by a lawyer, you must use *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104) to prepare your proposed statement. You can get form APP-104 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

Serving and filing a proposed statement: You must serve and file the proposed statement with the trial court within 20 days after you file your notice designating the record. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the proposed statement to the respondent in the way required by law. If the proposed statement is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed statement has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the proposed statement, who was served with the proposed statement, how the proposed statement was served (by mail, in person, or electronically), and the date the proposed statement was served.
- File the original proposed statement and the proof of service with the trial court. You should make a copy of the proposed statement you are planning to file for your own records before you

file it with the court. It is a good idea to bring or mail an extra copy of the proposed statement to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm.*

Review and modifications: The respondent has 10 days from the date you serve your proposed statement to serve and file proposed changes (called "amendments") to this statement. The trial court judge then reviews both your proposed statement and any proposed amendments filed by the respondent. The trial judge will either make or order you (the appellant) to make any corrections or modifications to the statement that are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

Completion and certification: If the judge makes any corrections or modifications to the proposed statement, the corrected or modified statement will be sent to you and the respondent for your review. If the judge orders you to make any corrections or modifications to the proposed statement, you must serve and file the corrected or modified statement within the time ordered by the judge. If you or the respondent disagree with anything in the modified or corrected statement, you have 10 days from the date the modified or corrected statement is sent to you to serve and file objections to the statement. The judge then reviews any objections, makes or orders you to make any additional corrections to the statement, and certifies the statement as an accurate summary of the testimony and other evidence relevant to the issues you indicated you are raising on appeal.

Sending statement to the appellate division: Once the trial court judge certifies the statement on appeal, the trial court clerk will send the statement to the appellate division along with any record of the documents filed in the trial court.

b. Record of the documents filed in the trial court

The second part of the official record of the trial court proceedings is a record of the documents that were filed in the trial court. There are three ways in which a record of the documents filed in the trial court can be prepared for the appellate division:

- *A clerk's transcript or an appendix*
- The original *trial court file* or
- An *agreed statement*

Read below for more information about these options.

(1) Clerk's transcript or appendix

Description: A clerk's transcript is a record of the documents filed in the trial court prepared by the clerk of the trial court. An appendix is a record of these documents prepared by a party. (See rule 8.845 of the California Rules of Court.)

Contents: Certain documents, such as the notice of appeal and the trial court judgment or order being appealed, must be included in the clerk's transcript or appendix. These documents are listed in rule 8.832(a) and rule 8.845(b) of the California Rules of Court and in *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103).

Clerk's transcript: If you want any documents other than those listed in rule 8.832(a) to be included in the clerk's transcript, you must tell the trial court in your notice designating the record on appeal. You can use form APP-103 to do this. You will need to identify each document you want included in the clerk's transcript by its title and filing date or, if you do not know the filing date, the date the document was signed.

If you—the appellant—request a clerk's transcript, the respondent also has the right to ask the clerk to include additional documents in the clerk's transcript. If this happens, you will be served with a notice saying what other

documents the respondent wants included in the clerk's transcript.

Cost: The appellant is responsible for paying for preparing a clerk's transcript. The trial court clerk will send you a bill for the cost of preparing an original and one copy of the clerk's transcript. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the clerk's transcript has been paid or waived, the trial court clerk will compile the requested documents into a transcript format and, when the record on appeal is complete, will forward the original clerk's transcript to the appellate division for filing. The trial court clerk will send you a copy of the transcript. If the respondent bought a copy, the clerk will also send a copy of the transcript to the respondent.

Appendix: If you choose to prepare an appendix of the documents filed in the superior court, rather than designating a clerk's transcript, that appendix must include all of the documents and be prepared in the form required by rule 8.845 of the California Rules of Court. The parties may prepare separate appendixes or stipulate (agree) to a joint appendix. If separate appendixes are prepared, each party must pay for its own appendix. If a joint appendix is prepared, the parties can agree on how the cost of preparing the appendix will be paid or the appellant will pay the cost.

The party preparing the appendix must serve the appendix on each other party (unless the parties have agreed or the appellate division has ordered otherwise) and file the appendix in the appellate division. The appellant's appendix or a joint appendix must be served and filed before or together with the appellant's opening brief. See (15) for information about the brief.

(2) Trial court file

When available: If the court has a local rule allowing this, the clerk can send the appellate division the original trial court file instead of a clerk's transcript (see rule 8.833 of the California Rules of Court).

Cost: As with a clerk's transcript, the appellant is responsible for paying for preparing the trial court file. The trial court clerk will send you a bill for this preparation cost. You must do one of the following things within 10 days after the clerk sends this bill or the appellate division may dismiss your appeal:

- Pay the bill.
- Ask the court to waive the cost because you cannot afford to pay. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms*. The court will review this application to determine if you are eligible for a fee waiver.
- Give the court a copy of a court order showing that your fees in this case have already been waived by the court.

Completion and delivery: After the cost of preparing the trial court file has been paid or waived and the record on appeal is complete, the trial court clerk will send the file and a list of the documents in the file to the appellate division. The trial court clerk will also send a copy of the list of documents to the appellant and respondent so that you can put your own files of documents from the trial court in the correct order.

(3) Agreed statement

When available: If you and the respondent have already agreed to use an agreed statement as the record of the oral proceedings (see a(3) above) and agree to this, you can use an agreed statement instead of a clerk's transcript. To do this, you must attach to your agreed statement all of the documents that are required to be included in a clerk's transcript.

c. Exhibits

The third part of the official record of the trial court proceeding is the exhibits, such as photographs, documents, or other items that were admitted in evidence, refused, or lodged (temporarily placed with the court) in the trial court. Exhibits are considered part of the record on appeal, but the clerk will not include any exhibits in the clerk's transcript unless you ask that they be included in your notice designating the record on appeal. *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103), includes a space for you to make this request. You also can ask the trial court to send original exhibits to the appellate division at the time briefs are filed (see rule 8.843 for more information about this procedure and see below for information about briefs).

Sometimes, the trial court returns an exhibit to a party at the end of the trial. If the trial court returned an exhibit to you or another party and you or the other party ask for that exhibit to be included in the clerk's transcript or sent to the appellate division, the party who has the exhibit must deliver that exhibit to the trial court clerk as soon as possible.

14 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When the appellate division receives the record, it will send you a notice telling you when you must file your brief in the appellate division.

15 What is a brief?

Description: A "brief" is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer in your appeal, your lawyer will prepare your brief. If you are not represented by a lawyer, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get copies of these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

Contents: If you are the appellant, your brief, called an "appellant's opening brief," must clearly explain what you believe are the legal errors made in the trial court. Your brief must refer to the exact places in the clerk's transcript and the reporter's transcript (or the other forms of the record you are using) that support your argument. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

Serving and filing: You must serve and file your brief in the appellate division by the deadline the court set in the notice it sent you, which is usually 30 days after the record is filed in the appellate division or 60 days from the date the appellant chooses to proceed with no reporter's transcript under rule 8.845. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.

- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.
- Note: If a party chooses to prepare an appendix of the documents filed in the trial court instead of designating a clerk's transcript, the appellant's appendix or a joint appendix must be served and filed before or together with the appellant's opening brief.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm.*

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an extension). You can use *Application for Extension of Time to File Brief—Limited Civil Case* (form APP-106) to ask the court for an extension.

If you do not file your brief by the deadline set by the appellate division, the court may dismiss your appeal.

16 What happens after I file my brief?

Within 30 days after you serve and file your brief, the respondent may, but is not required to, respond by serving and filing a respondent's brief. If the respondent does not file a brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant.

If the respondent files a brief, within 20 days after the respondent's brief was filed, you may, but are not required to, file another brief replying to the respondent's brief. This is called a "reply brief."

17 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the appellate division will notify you of the date for oral argument in your case.

18 What is "oral argument"?

"Oral argument" is the parties' chance to explain their arguments to the appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. If all parties waive oral argument, the judges will decide your appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in your appeal or ask the judges if they have any questions you could answer.

19 What happens after oral argument?

After oral argument is held (or the date it was scheduled passes if all the parties waive oral argument), the judges of the appellate division will make a decision about your appeal. The appellate division has 90 days after the date scheduled for oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

20 What should I do if I want to give up my appeal?

If you decide you do not want to continue with your appeal, you must file a written document with the appellate division notifying it that you are giving up (this is called "abandoning") your appeal. You can use *Abandonment of Appeal (Limited Civil Case)* (form APP-107) to file this notice in a limited civil case. You

can get form APP-107 at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

INFORMATION FOR THE RESPONDENT

This section of this information sheet is written for the respondent—the party responding to an appeal filed by another party. It explains some of the rules and procedures relating to responding to an appeal in a limited civil case. The information may also be helpful to the appellant.

21 I have received a notice of appeal from another party. Do I need to do anything?

You do not *have* to do anything. The notice of appeal simply tells you that another party is appealing the trial court's decision. However, this would be a good time to get advice from a lawyer, if you want it. You do not *have* to have a lawyer; if you are an individual (not a corporation, for example), you are allowed to represent yourself in an appeal in a limited civil case. But appeals can be complicated and you will have to follow the same rules that lawyers have to follow.

If you have any questions about the appeal procedures, you should talk to a lawyer. You must hire your own lawyer if you want one. You can get information about finding a lawyer on the Self-Help Guide to the California Courts at *https://selfhelp.courts.ca.gov/get-free-or-low-cost-legal-help.*

22 If the other party appealed, can I appeal too?

Yes. Even if another party has already appealed, you may still appeal the same judgment or order. This is called a "cross-appeal." To cross-appeal, you must serve and file a notice of appeal. You can use *Notice of Appeal/Cross-Appeal—Limited Civil Case* (form APP-102) to file this notice in a limited civil case. Please read the information for appellants about filing a notice of appeal, starting on page 2 of this information sheet, if you are considering filing a cross-appeal.

23 Is there a deadline to file a cross-appeal?

Yes. You must serve and file your notice of appeal within either the regular time for filing a notice of appeal (generally 30 days after mailing or service of Notice of Entry of the judgment or a file-stamped copy of the judgment) or within 10 days after the clerk of the trial court mails notice of the first appeal, whichever is later.

24 I have received a notice designating the record on appeal from another party. Do I need to do anything?

You do not *have* to do anything. A notice designating the record on appeal lets you know what kind of official record the appellant has asked to be sent to the appellate division. Depending on the kind of record chosen by the appellant, however, you may have the option to:

- Add to what is included in the record
- Participate in preparing the record *or*
- Ask for a copy of the record

Look at the appellant's notice designating the record on appeal to see what kind of record the appellant has chosen and read about that form of the record in the response to question 13 above. Then read below for what your options are when the appellant has chosen that form of the record.

(a) Reporter's transcript

If the appellant is using a reporter's transcript, you have the option of asking for additional proceedings to be included in the reporter's transcript. To do this, within 10 days after the appellant files its notice designating the record on appeal, you must serve and file a notice designating additional proceedings to be included in the reporter's transcript.

Whether or not you ask for additional proceedings to be included in the reporter's transcript, you must generally pay a fee if you want a copy of the reporter's transcript. The trial court clerk or reporter will send you a notice indicating the cost of preparing a copy of the reporter's transcript. If you want a copy of the reporter's transcript, you must deposit this

amount (and a fee for the trial court) or one of the substitutes allowed by rule 8.834 with the trial court clerk within 10 days after this notice is sent. (See rule 8.834 for more information about this deposit and the permissible substitutes, such as a waiver of this deposit signed by the court reporter.)

Unlike the fee for preparing a clerk's transcript, the court cannot waive the fee for preparing a reporter's transcript. A special fund, called the Transcript Reimbursement Fund, may be able to help pay for the transcript. You can get information about this fund at *www.courtreportersboard.ca.gov/consumers/index.shtml#trf*. The reporter will not prepare a copy of the reporter's transcript for you unless you deposit the cost of the transcript, or one of the permissible substitutes, or your application for payment by the Transcript Reimbursement Fund is approved.

If the appellant elects not to use a reporter's transcript, you may not designate a reporter's transcript without first getting an order from the appellate division.

(b) Agreed statement

If you and the appellant agree to prepare an agreed statement (a summary of the trial court proceedings that is agreed to by the parties), you and the appellant will need to reach an agreement on that statement within 30 days after the appellant files its notice designating the record.

(c) Statement on appeal

If the appellant elects to use a statement on appeal (a summary of the trial court proceedings that is approved by the trial court), the appellant will send you a proposed statement to review. You will have 10 days from the date the appellant sent you this proposed statement to serve and file suggested changes (called "amendments") that you think are needed to make sure that the statement provides an accurate summary of the testimony and other evidence relevant to the issues the appellant indicated the appellant is raising on appeal. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the proposed amendments to the appellant in the way required by law. If the proposed amendments are mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the proposed amendments have been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the proposed amendments, who was served with the proposed amendments, how the proposed amendments were served (by mail, in person, or electronically), and the date the proposed amendments were served.
- File the original proposed amendments and the proof of service with the trial court. You should make a copy of the proposed amendments you are planning to file for your own records before you file them with the court. It is a good idea to bring or mail an extra copy of the proposed amendments to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm*.

(d) Clerk's transcript or appendix

Clerk's transcript: If the appellant is using a clerk's transcript, you have the option of asking the clerk to include additional documents in the clerk's transcript.

To do this, within 10 days after the appellant serves its notice designating the record on appeal, you must serve and file a notice designating additional documents to be included in the clerk's transcript. You may use *Respondent's Notice Designating Record on*

Appeal—Limited Civil Case (form APP-110) for this purpose.

Whether or not you ask for additional documents to be included in the clerk's transcript, you must pay a fee if you want a copy of the clerk's transcript. The trial court clerk will send you a notice indicating the cost for a copy of the clerk's transcript. If you want a copy, you must deposit this amount with the court within 10 days after the clerk's notice was sent.

If you cannot afford to pay this cost, you can ask the court to waive it. To do this, you must fill out and file a *Request to Waive Court Fees* (form FW-001). You can get form FW-001 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* The court will review this application and determine if you are eligible for a fee waiver. The clerk will not prepare a copy of the clerk's transcript for you unless you deposit payment for the cost or obtain a fee waiver.

Appendix: If the appellant is using an appendix, and you and the appellant have not agreed to a joint appendix, you may prepare a separate respondent's appendix. See pages 8–9 for more information about preparing an appendix.

If the appellant chooses a clerk's transcript but does not have a waiver of the fee for a clerk's transcript, you can choose an appendix instead of a clerk's transcript, and the appeal will proceed by appendix. To choose an appendix, you can fill out and file *Respondent's Notice Designating Record on Appeal—Limited Civil Case* (form APP-110) within 10 days after the appellant's notice designating the record on appeal is filed.

25 What happens after the official record has been prepared?

As soon as the record on appeal is complete, the clerk of the trial court will send it to the appellate division. When the appellate division receives this record, it will send you a notice telling you when you must file your brief in the appellate division.

A brief is a party's written description of the facts in the case, the law that applies, and the party's argument about the issues being appealed. If you are represented by a lawyer, your lawyer will prepare your brief. If you are not represented by a lawyer in your appeal, you will have to prepare your brief yourself. You should read rules 8.882–8.884 of the California Rules of Court, which set out the requirements for preparing, serving, and filing briefs in limited civil appeals, including requirements for the format and length of these briefs. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.htm.*

The appellant serves and files the first brief, called an "appellant's opening brief." You may, but are not required to, respond by serving and filing a respondent's brief within 30 days after the appellant's opening brief is filed. "Serve and file" means that you must:

- Have somebody over 18 years old mail, deliver, or electronically send ("serve") the brief to the other parties in the way required by law. If the brief is mailed or personally delivered, it must be by someone who is not a party to the case—so not you.
- Make a record that the brief has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) or *Proof of Electronic Service (Appellate Division)* (form APP-109E) can be used to make this record. The proof of service must show who served the brief, who was served with the brief, how the brief was served (by mail, in person, or electronically), and the date the brief was served.
- File the original brief and the proof of service with the appellate division. You should make a copy of the brief you are planning to file for your own records before you file it with the court. It is a good idea to bring or mail an extra copy of the brief to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed. You can get more information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm.*

You and the other parties can agree (stipulate) to extend the time for filing this brief by up to 30 days (see rule 8.882(b) for requirements for these agreements). You can also ask the court to extend the time for filing this brief if you can show good cause for an extension (see rule 8.811(b) for a list of the factors the court will consider in deciding whether there is good cause for an

extension). You can use *Application for Extension of Time to File Brief—Limited Civil Case* (form APP-106) to ask the court for an extension.

If you do not file a respondent's brief, the appellant does not automatically win the appeal. The court will decide the appeal on the record, the appellant's brief, and any oral argument by the appellant. Remember that an appeal is not a new trial. The appellate division will not consider new evidence, such as the testimony of new witnesses or new exhibits, so do not include any new evidence in your brief.

If you file a respondent's brief, the appellant then has an opportunity to serve and file another brief within 20 days replying to your brief.

26 What happens after all the briefs have been filed?

Once all the briefs have been filed or the time to file them has passed, the court will notify you of the date for oral argument in your case.

"Oral argument" is the parties' chance to explain their arguments to appellate division judges in person. You do not have to participate in oral argument if you do not want to; you can notify the appellate division that you want to "waive" oral argument. If all parties waive oral argument, the judges will decide the appeal based on the briefs and the record that were submitted. But if one party waives oral argument and another party or parties does not, the appellate division will hold oral argument with the party or parties who did not waive it.

If you do choose to participate in oral argument, you will have up to 10 minutes for your argument unless the appellate division orders otherwise. Remember that the judges will have already read the briefs, so you do not need to read your brief to the judges. It is more helpful to tell the judges what you think is most important in the appeal or ask the judges if they have any questions you could answer.

After oral argument is held (or the scheduled date passes if all parties waive argument), the judges of the appellate division will make a decision about the appeal. The appellate division has 90 days after oral argument to decide the appeal. The clerk of the court will mail you a notice of the appellate division's decision.

APP-110 Respondent's Notice Designating Record on Appeal—Limited Civil Case

Clerk stamps date here when form is filed.

DRAFT

06/22/2023

Not approved by the Judicial Council

Instructions

- This form is only for choosing ("designating") the record on appeal in a **limited civil case.** Note that any rules referenced in this form are to the California Rules of Court.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) or on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm.*
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order that is being appealed. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of respondent (the party who is responding to an appeal filed by another party):

Name: _____

b. Respondent's contact information *(skip this if the respondent has a lawyer for this appeal):*

Street address: _____ *Street* _____ *City* _____ *State* _____ *Zip*

Mailing address *(if different):* _____ *Street* _____ *City* _____ *State* _____ *Zip*

Phone: _____ Email: _____

c. Respondent's lawyer *(skip this if the respondent does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____ *Street* _____ *City* _____ *State* _____ *Zip*

Mailing address *(if different):* _____ *Street* _____ *City* _____ *State* _____ *Zip*

Phone: _____ Email: _____

Fax: _____

Information About the Appeal

2 On *(fill in the date):* _____ another party filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 On *(fill in the date):* _____ the appellant filed an appellant's notice designating the record on appeal.

Record of the Documents Filed in the Trial Court

4 The appellant elected (chose) to use a clerk's transcript under rule 8.832 as the record of the documents filed in the trial court. *(You must check a or b):*

a. ☐ I agree to a clerk's transcript. *(If you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents in item 5.)*

b. ☐ If the appellant has not been granted a waiver of the fee for a clerk's transcript, I elect (choose) to use an appendix as the record of documents under rule 8.845 instead of a clerk's transcript. (*If the appellant has been granted a waiver of the fee for a clerk's transcript, you may not choose an appendix; a clerk's transcript will be used. If a clerk's transcript is used and you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents in item 5.*)

Clerk's Transcript

5 The parties will use a clerk's transcript.

a. **Additional documents and exhibits.**

☐ I understand that if I do not identify any additional documents or exhibits below, only the documents and exhibits designated by the appellant will be included in the clerk's transcript.

(1) **Documents**

☐ In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents that were filed in the trial court. *(Identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)*

Document Title and Description	Date of Filing
(a)	
(b)	
(c)	
(d)	

☐ *Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write "APP-110, item 5a(1)."*

(2) **Exhibits**

☐ In addition to the exhibits designated by the appellant, I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. *(For each exhibit, give the exhibit number (such as Plaintiff's #1 or Defendant's A) and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.)*

5 a. (2) *(continued)*

Exhibit Number	Description	Admitted Into Evidence
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No
		☐ Yes ☐ No

☐ *Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-110, item 5a(2)."*

b. ☐ **Copy of clerk's transcript.** I request a copy of the clerk's transcript. *(Check and complete (1) or (2).)*

(1) ☐ I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript.

(2) ☐ I am asking that a copy of the clerk's transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record *(check (a) or (b) and submit the checked document):*

(a) ☐ An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).

(b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). (*Use* Request to Waive Court Fees *(form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

Record of Oral Proceedings in the Trial Court

6 The appellant elected to use the following record of what was said in the trial court proceedings *(check and complete **only one** of the following below—a, b, or c):*

a. ☐ **Reporter's Transcript.** The appellant elected to use a reporter's transcript under rule 8.834 as the record of the oral proceedings in the trial court.

(1) ☐ **Designation of additional proceedings to be included in the reporter's transcript.** *(If you want any proceedings in addition to the proceedings designated by the appellant to be included in the reporter's transcript, you must identify those proceedings here.)*

In addition to the proceedings designated by the appellant, I request that the following proceedings in the trial court be included in the reporter's transcript. *(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.)*

Date	Department	Description	Reporter's Name	Prev. prepared?
(a)				☐ Yes ☐ No
(b)				☐ Yes ☐ No
(c)				☐ Yes ☐ No
(d)				☐ Yes ☐ No
(e)				☐ Yes ☐ No
(f)				☐ Yes ☐ No
(g)				☐ Yes ☐ No

☐ *Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write "APP-110, item 6a(1)."*

6 a. *(continued)* **Copy of reporter's transcript.** I request a copy of the reporter's transcript.

(2) ☐ **Certified transcripts.** I have attached to this *Respondent's Notice Designating Record on Appeal* an original certified transcript of all the proceedings I have designated in (1). The transcript complies with the format requirements in rule 8.144 of the California Rules of Court.

(3) ☐ **Copy of reporter's transcript.** I request a copy of the reporter's transcript. *(Check and complete (a) or (b).)*

(a) ☐ I will pay for the reporter's transcript. Within 10 days of receiving the reporter's estimate of the cost of the transcript, I will *(check and complete (i) or (ii)):*

(i) ☐ Deposit an amount equal to the estimated cost of the transcript with the trial court, and a fee of $50 for the trial court to hold this deposit in trust. I understand that if I do not comply with this requirement, I will not receive a copy of the transcript.

(ii) ☐ Pay the reporter directly and file with the trial court a copy of the written waiver of deposit signed by the reporter. I understand that if I do not comply with this requirement, I will not receive a copy of the transcript.

(b) ☐ I am unable to afford the cost of the reporter's transcript and am therefore applying to the Transcript Reimbursement Fund to pay for this transcript. Within 10 days of receiving the reporter's estimate of the cost of the transcript, I will file with the trial court a copy of my application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund. I understand that within 90 days of filing my application, I must file with the trial court a copy of the provisional approval of my application or pay for the reporter's transcript as provided in (a). I understand that if I do not comply, I will not receive a copy of the transcript.

(4) **Format of reporter's transcript.** I request that the reporter provide my copy of the transcript in:

(a) ☐ Electronic format only.

(b) ☐ Paper format only.

(c) ☐ Electronic format and a second copy of the reporter's transcript in paper format.

OR

b. ☐ **Transcript From Official Electronic Recording.** The appellant elected to use the transcript from an official electronic recording as the record of the oral proceedings in the trial court under rule 8.835(b).

(1) ☐ **Designation of additional proceedings to be included in the transcript.** *(If you want any proceedings in addition to the proceedings designated by the appellant to be included in the transcript, you must identify those proceedings here.)*

In addition to the proceedings designated by the appellant, I request that the following proceedings in the trial court be included in the transcript. (*You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings, and if you know it, the name of the electronic recording monitor who recorded the proceedings.)*

6 b. (1) *(continued)*

Date	Department	Description	Electronic Monitor's Name
(a)			
(b)			
(c)			

☐ *Check here if you need more space to describe any proceeding or to list other proceedings and attach a separate page describing or listing those proceedings. At the top of each page, write "APP-110, item 6b(1)."*

(2) **Copy of the transcript from an official electronic recording.** I request a copy of this transcript. *(Check and complete (a) or (b).)*

(a) ☐ I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the cost of the transcript. I understand that if I do not pay for the transcript, I will not receive a copy.

(b) ☐ I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record. *(Check (i) or (ii) and submit the appropriate document):*

(i) ☐ An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).

(ii) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(Use* Request to Waive Court Fees *(form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

OR

c. ☐ **Copy of Official Electronic Recording.** The appellant and I have agreed to use the official electronic recording itself as the record of the oral proceedings in the trial court under rule 8.835(a). I request a copy of this recording. *(Check and complete (1) or (2).)*

(1) ☐ I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy.

(2) ☐ I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record. *(Check (a) or (b) and submit the appropriate document):*

(a) ☐ An order granting a waiver of the cost under rules 3.50–3.58 and 8.818(d).

(b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(Use* Request to Waive Court Fees *(form FW-001). The court will review this form to decide if you are eligible for a fee waiver.)*

Date: _____

_____ ▶ _____

Type or print your name *Signature of respondent or attorney*

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:
NAME:
FIRM NAME:
STREET ADDRESS:
CITY: STATE: ZIP CODE:
TELEPHONE NO.: FAX NO.:
E-MAIL ADDRESS:
ATTORNEY FOR (*name*):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

PLAINTIFF/PETITIONER:

DEFENDANT/RESPONDENT:

SUPERIOR COURT CASE NUMBER:

RESPONDENT'S NOTICE ELECTING TO USE AN APPENDIX (UNLIMITED CIVIL CASE)

RE: Appeal filed on *(date)*:

COURT OF APPEAL CASE NUMBER *(if known)*:

Notice: Please read Judicial Council form APP-001 before completing this form. This form must be filed within 10 days after the notice of appeal is filed. It must be filed in the superior court, not in the Court of Appeal.

The appellant in this case has not been granted a waiver of the fees for preparing a clerk's transcript. I elect under rule 8.124(a) to use an appendix in lieu of a clerk's transcript.

Date: _____

_____
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF RESPONDENT OR ATTORNEY)

APP-111 Respondent's Notice Electing to Use an Appendix (Limited Civil Case)

Clerk stamps date here when form is filed.

Instructions

- This form is only for choosing ("electing") to use an appendix as the record of the documents filed in the trial court on appeal in a **limited civil case.**
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms.*
- You must serve and file this form **no later than 10 days** after the notice of appeal is filed.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) or on the California Courts Online Self-Help Center at *www.courts.ca.gov/selfhelp-serving.htm.*
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order that is being appealed. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order.

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

1 Your Information

a. Name of respondent (the party who is responding to an appeal filed by another party):

Name: _____

b. Respondent's contact information *(skip this if the respondent has a lawyer for this appeal):*

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Mailing address *(if different):* _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Phone: _____ E-mail: _____

c. Respondent's lawyer *(skip this if the respondent does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Mailing address *(if different):* _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Phone: _____ E-mail: _____

Fax: _____

Trial Court Case Name: _____

Trial Court Case Number:

Information About the Appeal

2 On *(fill in the date):* _____ another party filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

3 On *(fill in the date):* _____ the appellant filed an appellant's notice designating the record on appeal.

Record of the Documents Filed in the Trial Court

4 The appellant has not been granted a waiver of the fees for a clerk's transcript. I elect under rule 8.845(a) to use an appendix instead of a clerk's transcript under rule 8.832 as the record of the documents filed in the trial court.

Date: _____

_____
Type or print your name

▶ _____
Signature of respondent or attorney

SPR23-03

Appellate Procedure: Time for Electing and Filing an Appendix (Amend Cal. Rules of Court, rules 8.124 and 8.845; revise forms APP-001-INFO, APP-010, APP-101-INFO, and APP-110; revoke forms APP-011 and APP-111)

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

	Commenter	Position	Comment	Committee Response
1.	California Academy of Appellate Lawyers by Wendy Cole Lascher, Rule Commentary Chair	A	No specific comment.	The committee notes the commenter's support for the proposal.
2.	California Lawyers Association by Kelly Woodruff, Chair Litigation Section, Committee on Appellate Courts	A	In Invitation to Comment SPR23-03, the Appellate Advisory Committee (AAC) proposes several changes to rules and forms regarding the Respondent's Election of Appendix, which will require amending California Rules of Court, rules 8.124 and 8.845, revising forms APP-001-INFO, APP010, APP-101-INFO, and APP-110, and revoking forms APP-011 and APP-111.	No response required.
			Most importantly, the AAC proposes to move the deadline for submitting the Respondent's Election of Appendix from 10 days after notice of appeal to 10 days after appellant files and serves its notice of designation of record. A member of the CAC had first made this recommendation to the AAC, and other members concur with the recommendation.	No response required.
			As noted in the Invitation to Comment, this rule change "is intended to reduce the likelihood that respondents miss their opportunity to elect an appendix; relieve superior court clerks of the burden of compiling some clerk's transcripts, reducing their workload; and expedite appeals by eliminating the time it takes for superior court clerks to compile the clerk's transcript." The AAC also observed that some attorneys may not be aware of the deadline and be unpleasantly surprised that they can no longer elect an appendix after the appellant serves a notice designating the election of a clerk's transcript.	No response required.
			The CAC agrees that facilitating the greater use of the appendix would speed up appeals and save court resources. The CAC also agrees that, in the experience of its members, too many	The committee appreciates the commenter's feedback on this proposal and notes the

	Commenter	Position	Comment	Committee Response
			respondents miss the deadline to elect an appendix under the current rule. These objectives would be furthered by the proposal to move the deadline for the respondent's election of an appendix to 10 days after appellant's notice of designation of record (with the election of an appendix superseding the appellant's election of a clerk's transcript), and various minor rule changes to ensure consistency with the new deadline. The CAC also supports the proposal to combine two current forms—(1) respondent's notice to designate the record to add additional items to the clerk's transcript or reporter's transcript, and (2) respondent's notice to designate election of an appendix—into one form.	commenter's support for the proposal.
3.	Family Violence Appellate Project by Shuray Ghorishi, Senior Managing Attorney	NI	On behalf of the Family Violence Appellate Project (FVAP), I write to offer comments on ITC SPR23-03. FVAP is a legal support center and the only nonprofit organization in California dedicated to providing free appellate representation to low-income survivors of domestic violence and other gender-based abuse in civil appeals. FVAP's goal is to empower survivors of abuse through the court system and ensure that they and their children can live in safe and healthy environments. In addition to providing legal representation to survivors who need to appeal dangerous trial court decisions that leave them or their children at risk of ongoing abuse, FVAP also provides trainings, technical assistance, and legal information to pro bono attorneys, domestic violence advocates, and self-represented survivors on the appellate process, including how to perfect an appeal.	See responses to specific comments below.
			Does the proposal appropriately address the stated purpose? Yes, the proposal appropriately addresses the stated purpose of	

	Commenter	Position	Comment	Committee Response
			reducing the likelihood that respondents miss their opportunity to elect an appendix, reducing the burden of superior court clerks to compile clerk's transcripts, and expediting the appellate process in general.	The committee appreciates the commenter's feedback on this proposal and notes the commenter's support for the proposal.
			Allowing the respondent more time to elect an appendix can extend the time for filing the appellant's opening brief if no reporter's transcript is being used. Is this problematic? No, the extension of the appellant's opening brief would not be problematic for the low-income and self-represented litigants that FVAP serves. In our practice, FVAP rarely proceeds without a reporter's transcript, and even if that occurred, a 10-day extension would have minimal impact on the total duration of an appeal. Moreover, if an appeal necessitated urgent resolution such that this extension would become problematic, then the appellate court would still have discretion to grant expedited briefing under California Rules of Court, rule 8.240. (See Advisory Com. com, Cal. Rules of Court, rule 8.240 [explaining that calendar preference may be granted when a statute permits trial preference or on other nonstatutory grounds].)	The committee appreciates the response.
			With that said, FVAP has an additional suggestion for the Council to consider for rule 8.240. We have recently observed more and more appellate courts denying calendar preference in appeals involving abuse, even when trial preference is mandated by statute. For example, Family Code section 244 provides that an application for a restraining order under the Domestic Violence Prevention Act (Fam. Code, § 6200 et seq.) is afforded calendar preference in the trial court. (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1500.) Yet appellate courts still deny calendar preference motions in such cases. As such, we	This suggestion is outside the scope of the instant proposal. The committee will consider the issue in the future as time and resources allow.

	Commenter	Position	Comment	Committee Response
			recommend this Committee consider adding to the Advisory Committee Comment of California Rules of Court, rule 8.420 (emphasis added): The rule is broad in scope: it includes motions for preference on the grounds (1) that a statute provides for preference in the reviewing court (e.g., Code Civ. Proc., §§ 44 [probate proceedings, contested elections, libel by public official), 45 [judgment freeing minor from parental custody]); (2) that the reviewing court should exercise its discretion to grant preference when a statute provides for trial preference (e.g., *id*., §§ 35 [certain election matters], 36 [party over 70 and in poor health; party with terminal illness; minor in wrongful death action]; ***Fam. Code, § 244 [domestic violence restraining order matter];*** see *Warren v. Schecter* (1997) 57 Cal.App.4th 1189, 1198-1199); and (3) that the reviewing court should exercise its discretion to grant preference on a nonstatutory ground (e.g., economic hardship).	
			Should separate forms for the respondent to elect an appendix be retained? No. FVAP supports the proposed change to integrate the Respondent's selection of an appendix into the Respondent's Notice Designating Record on Appeal form, in both unlimited and limited cases. In FVAP's experience, many, if not most, low-income and self-represented litigants already struggle to navigate the appellate process and find the number of forms to perfect an appeal daunting. This is especially true for litigants who have a language barrier. Consolidating these requests into one form	The committee appreciates the response.

	Commenter	Position	Comment	Committee Response
			would make the process less cumbersome for these litigants, especially since the proposal suggests adding only one check box and instructions on when that box cannot be selected. It would also eliminate the additional hurdle for this demographic of having to effectuate service on two occasions.	
			In conclusion, FVAP supports this proposal.	No further response required.
4.	Los Angeles County Bar Association Appellate Courts Section by John A. Taylor, Jr., Executive Committee Member	A	The Appellate Courts Section of the Los Angeles County Bar Association (LACBA-ACS) supports SPR23-03. Under the existing rule, a respondent may not know within the current 10-day period following the filing of the notice of appeal whether the appellant is going to elect an appendix, because the designation often is not filed that soon. An appellant may file on the 10th day, or may go into the default period, and it is inefficient to require a respondent to file an election while the status of the appellant's designation is in flux. Extending the deadline until after the respondent learns whether the appellant has designated a clerk's transcript will potentially eliminate an unnecessary filing by the respondent, and reduce the workload of superior court clerks in compiling clerk's transcripts where the respondent would prefer to elect an appendix, thereby expediting appeals. In addition, with recent bookmarking and electronic filing requirements that are lacking with clerk's transcripts, efficiencies in the brief and opinion writing processes will be promoted with greater use of appendices.	The committee appreciates the commenter's feedback on this proposal and notes the commenter's support for the proposal.
			The LACBA-ACS also support amending form APP-010 to add a check box for respondents to indicate their election of an appendix, eliminating the need for APP-011.	The committee appreciates the response.
			As for the proposed change allowing for the early filing of an	The committee appreciates the

SPR23-03
Appellate Procedure: Time for Electing and Filing an Appendix (Amend Cal. Rules of Court, rules 8.124 and 8.845; revise forms APP-001-INFO, APP-010, APP-101-INFO, and APP-110; revoke forms APP-011 and APP-111)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			appendix, that seems unlikely to change actual practice; the appellant generally cannot be sure exactly what to include in the appendix until the opening brief is all but final. However, the LACBA-ACS agrees that there may be instances—e.g., when a writ of supersedeas is necessary—that the early filing of an appendix would be advantageous, so LACBA-ACS does not object to the proposal.	response.
5.	Orange County Bar Association by Michael A. Gregg, President	A	1. The proposal adequately addresses the stated purpose. It is a welcome change.	The committee notes the commenter's support for the proposal.
			2. The fact that allowing the respondent to designate the appendix at the normal time for respondent to designate the record will potentially allow an extension of time for appellant to file the opening brief (in cases where no reporter's transcript is designated) is not a problem. If a respondent does not want to give appellant that extra time, the respondent does not have to designate the appendix method but can allow appellant's designation of the clerk's transcript to stand. And because the clerk's transcript is generally slower anyway, a respondent who designates the appendix under these new rules will still likely speed up the process even when there is no reporter's transcript.	The committee appreciates the response.
			3. We do not see the need for separate forms, so long as trial court clerks know to look to the respondent's designation and not prepare the clerk's transcript.	The committee appreciates the response.
6.	Sacramento County Bar Association, Appellate Law Section by Brendan J. Begley, Co-Chair	A	In addition to the proposed changes, the Sacramento County Bar Association's Appellate Law Section suggests that you consider amending rule 8.140(a)(2) of the California Rules of Court to confirm whether the trial court must send a default notice to the respondent if the respondent does not counter-designate the	This suggestion is outside the scope of the instant proposal. The committee will consider the issue in the future as time and resources allow.

	Commenter	Position	Comment	Committee Response
			record within the time specified by the amended rules 8.124 and 8.845 of the California Rules of Court. Currently rule 8.140(a) expressly applies to a default by both the appellant in designating the record and the respondent in counter-designating the record (albeit with different sanctions depending on which party defaulted). We do NOT advocate for any alteration of that even-handed approach, but prefer to keep it intact. Still, we believe it is in need of more clarification -- especially if the other rules are amended in this fashion -- since we have met some resistance from certain trial courts when we have tried to elect an appendix for a respondent after the ten-day period had expired where no default notice had been previously issued to the respondent.	
7.	San Diego County Bar Association, Appellate Practice Section by John T. Sylvester, Certified Legal Specialist – Family Law	A	The Appellate Practice Section of the San Diego County Bar Association (APS) strongly supports the proposed amendment to Rules of Court, rule 8.124(e)(2), which it proposed to the Judicial Council by letter on August 10, 2020. Permitting the filing of a party-prepared appendix before the filing of the appellant's opening brief would be a salutary change for the reasons described in the invitation to comment.	The committee notes the commenter's support for the proposal.
			The APS also supports the extension of time for a respondent to elect to use an appendix, and the related form changes, for the reasons stated in the invitation to comment. The proposal appropriately addresses the stated purpose. It is beneficial, not problematic, to allow the respondent more time to elect an appendix and to extend the time for filing the appellant's opening brief if no reporter's transcript is being used. There are no record preparation or briefing procedures affected by allowing respondents more time to elect an appendix.	The committee appreciates the response.
			Separate forms for the respondent to elect an appendix do not	The committee appreciates the

SPR23-03
Appellate Procedure: Time for Electing and Filing an Appendix (Amend Cal. Rules of Court, rules 8.124 and 8.845; revise forms APP-001-INFO, APP-010, APP-101-INFO, and APP-110; revoke forms APP-011 and APP-111)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			appear to be necessary if item 1 of the Respondent's Notice Designating Record on Appeal (APP-010) were appropriately revised, as suggested, to permit such an election by the respondent. A separate, respondent's notice to elect an appendix filed before the timely filing of the Respondent's Notice Designating Record on Appeal would be unnecessary. And a separate, respondent's notice to elect an appendix filed after the Respondent's Notice Designating Record on Appeal might well be untimely. Use of the Judicial Council form (APP-010) to elect an appendix, rather than a separate form, would serve to remind respondents of the possible need to augment the reporter's transcript designated by the appellant.	response.
			In keeping with the views expressed above, it is APS's position that the Judicial Council's proposal appropriately addresses the stated purpose of the proposed rule.	The committee appreciates the response.
			Thank you for considering our feedback. If you have any further questions, you may contact Lisa Cannon, Appellate Practice Section Chair.	No further response required.
8.	Superior Court of California, County of Orange by Iyana Doherty Courtroom Operations Supervisor	A	The proposed changes are to forms that are filed and processed in the appellate court. No impact to us.	The committee appreciates the response.
9.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	A	• Does the proposal appropriately address the stated purpose? **Yes.**	The committee appreciates the response and information.
			• Allowing the respondent more time to elect an appendix can extend the time for filing the appellant's opening brief if no reporter's transcript is being used. Is this problematic? **No.**	The committee appreciates the response and information.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR23-03
Appellate Procedure: Time for Electing and Filing an Appendix (Amend Cal. Rules of Court, rules 8.124 and 8.845; revise forms APP-001-INFO, APP-010, APP-101-INFO, and APP-110; revoke forms APP-011 and APP-111)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			• Are any other record preparation or briefing procedures affected by allowing respondents more time to elect an appendix? **No.**	The committee appreciates the response and information.
			• Should separate forms for the respondent to elect an appendix be retained? **No.**	The committee appreciates the response and information.
			• Would the proposal provide cost savings? If so, please quantify. **Possibly. This court estimates 1.5-3 hours of clerk time would be saved when not producing a clerk's transcript.**	The committee appreciates the response and 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? **Minimal training for staff (e.g., notice and an internal processing "tip sheet" update).**	The committee appreciates the response and information.
			• Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.**	The committee appreciates the response and information.
			• How well would this proposal work in courts of different sizes? **This proposal would work fine in the San Diego Superior Court (a large court).**	The committee appreciates the response and information.

Item number: 03

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Appellate Procedure: Attachment of Trial Court Order to Petition for Review of Summary Denial of Writ Petition

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend Cal. Rules of Court, rule 8.504

Committee or other entity submitting the proposal:
Appellate Advisory Committee

*Staff contact (*name, phone and e-mail*): Kendall Hannon, 415-865-7653, kendall.hannon@jud.ca.gov; Heather Anderson, 415-865-7803, heather.anderson@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 1, 2022
Project description from annual agenda: 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

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

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

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

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

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

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

Judicial Council *of* California

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-
For business meeting on September 18–19, 2023

Title
Appellate Procedure: Attachment of Trial Court Order to Petition for Review of Summary Denial of Writ Petition

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.504

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 25, 2023

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Executive Summary

The Appellate Advisory Committee recommends amending the rule of court governing petitions for review in the Supreme Court to provide for attachment of the entire trial court order when the petitioner seeks review of a Court of Appeal summary denial of a writ petition. This change will facilitate review on the merits and streamline procedures. When the Court of Appeal summarily denies a writ petition, the underlying trial court order is necessary to identify the issues in dispute. Under the current rule, however, a petitioner cannot attach a trial court order that exceeds 10 pages to a petition for review without first requesting and obtaining the permission of the Chief Justice.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2024, amend California Rules of Court, rule 8.504, to require that if a petition for review seeks review of a Court of Appeal order summarily denying a writ petition, a copy of the underlying

trial court order challenged in the Court of Appeal writ proceeding must be attached to the petition for review.

The proposed amended rule is attached at page 5.

Relevant Previous Council Action

The Judicial Council adopted the predecessor to rule 8.504, which addresses the contents of petitions for review, effective September 1, 1928, as part of the original Rules for the Supreme Court and District Courts of Appeal. The original rule required that a petition be accompanied by a copy of the relevant Court of Appeal opinion. Since 1928, the council has amended and renumbered the rule on numerous occasions. As of July 1, 1988, permissible attachments included the Court of Appeal opinion, any trial court order as to which relief was sought, and any evidentiary exhibit or order of a trial court that counsel considered of unusual significance and that did not exceed 10 pages. Effective January 1, 2003, as part of an overall revision to the appellate rules, these provisions were consolidated into a single sentence providing: "No attachments are permitted except an opinion or order from which the party seeks relief and exhibits or orders of a trial court or Court of Appeal that the party considers unusually significant and do not exceed a total of 10 pages."

The January 2003 amendment has been interpreted as applying the 10-page limitation to all attachments to petitions for review. Effective January 1, 2009, the Judicial Council amended the rule to require that, if the petition for review challenges an order of the Court of Appeal, that order must be attached to the petition. The council also amended the rule to make clear that a Court of Appeal opinion or order required to be attached to the petition is not subject to the 10-page limit on attachments. The most recent amendments, in 2011 and 2016, have no bearing on this proposal.

Analysis/Rationale

If a petition seeks review of a Court of Appeal opinion or order, that opinion or order must be attached to the petition. (California Rules of Court, rule 8.504(b)(4), (5) & (e)(1)(A).)[1] In addition, rule 8.504 permits attachment of "[e]xhibits or orders of a trial court or Court of Appeal that the party considers unusually significant." (Rule 8.504(e)(1)(B).)[2] However, the permissible attachments other than the Court of Appeal opinion or order "must not exceed a combined total of 10 pages." (Rule 8.504(e)(2).) "On application and for good cause, the Chief Justice may permit a longer . . . attachment." (Rule 8.504(d)(4).)

[1] This and all subsequent rule references are to the California Rules of Court.

[2] The rule also provides for attaching "[c]opies of relevant . . . regulations or rules, out-of-state statutes, or other similar citable materials that are not readily accessible" and an unpublished opinion that is "required to be attached under rule 8.1115(c)." (Rule 8.504(e)(1)(C), (D).)

The Appellate Advisory Committee recommends amending rule 8.504 to provide for the attachment of the trial court order, regardless of its length, to a petition for review of a Court of Appeal order summarily denying a writ petition. When a Court of Appeal summarily denies a writ petition, it does not issue an opinion or address the merits of the trial court's order. Rather, a summary denial is just that—a brief order indicating that the petition is denied. Currently, the rule requires a party seeking Supreme Court review of a summary denial to attach the Court of Appeal order and permits attachment of the trial court's order only if it does not exceed 10 pages. However, the Supreme Court's review of the matter would focus on the trial court's reasoning and decision. Attachment of the complete trial court order would assist the Supreme Court in addressing the merits of the petition for review. It would also assist both the court and parties in expediting the matter, eliminating the need for an application to the Chief Justice to allow attachment of a trial court order exceeding 10 pages.

Specifically, the committee proposes a new subdivision (b)(6):

> If the petition seeks review of a Court of Appeal order summarily denying a writ petition, a copy of the underlying trial court order that was the subject of the writ proceeding in the Court of Appeal showing the date it was entered must be bound at the back of the original petition and each copy filed in the Supreme Court or, if the petition is not filed in paper form, attached.

This language mirrors the provisions of subdivisions (b)(4) and (5) providing for attachment of the Court of Appeal opinion or order that is the subject of the petition.

Policy Implications

There are no direct policy implications. These revisions will help ensure that the Supreme Court has easy access to sufficient information to assess petitions for review where the Court of Appeal has summarily denied a writ petition. These revisions are therefore consistent with the *Strategic Plan for California's Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

Comments

This proposal was circulated for public comment from March 31 to May 12, 2023, as part of the regular spring comment cycle. Seven comments were received: one from the California Attorney General's Office, five from committees or other organizations of appellate attorneys, and one from a bar association. All seven of the commentors indicated that they agreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 6–12.

A member of the committee also suggested some possible changes to the proposal as circulated for public comment. In response to these suggestions, the committee recommends adding language to clarify that it is the underlying trial court order *that was the subject of the writ proceeding in the Court of Appeal* that must be attached to the petition for review (italics added for emphasis).

Alternatives considered

The committee considered whether the rule should *require* attachment of the trial court's order or merely permit it. Based on the benefits of including the complete order, including facilitating the Supreme Court's review and streamlining procedures for the court and litigants, the committee concluded that requiring attachment was the better option. Requiring attachment of the trial court order is consistent with the rule's requirement that the Court of Appeal opinion or order under review be attached. In circumstances other than a summary denial of a writ petition, that Court of Appeal opinion or order may contain the trial court's analysis and reasoning; review of a summary denial instead requires the Supreme Court to consider the trial court's order.

The committee also considered taking no action but concluded there were clear benefits to amending the rule.

Fiscal and Operational Impacts

Other than training for court staff to advise them of the rule change, the committee anticipates no fiscal or operational impacts. Several commentors expressed the view that the proposed amendment will save time and resources for both the court and practitioners by ensuring that the trial court order at issue is attached without the need for the petitioner to file or the court to consider an application to permit a longer attachment.

Attachments and Links

1. Cal. Rules of Court, rule 8.504, at page 5
2. Chart of comments, at pages 6–12

Rule 8.504 of the California Rules of Court is amended, effective January 1, 2024, to read:

Rule 8.504. Form and contents of petition, answer, and reply

(a) * * *

(b) Contents of a petition

(1)–(5) * * *

(6) If the petition seeks review of a Court of Appeal order summarily denying a writ petition, a copy of the underlying trial court order that was the subject of the writ proceeding in the Court of Appeal showing the date it was entered must be bound at the back of the original petition and each copy filed in the Supreme Court or, if the petition is not filed in paper form, attached.

~~(6)~~(7) The title of the case and designation of the parties on the cover of the petition must be identical to the title and designation in the Court of Appeal opinion or order that is the subject of the petition.

~~(7)~~(8) Rule 8.508 governs the form and content of a petition for review filed by the defendant in a criminal case for the sole purpose of exhausting state remedies before seeking federal habeas corpus review.

(c)–(d) * * *

(e) Attachments and incorporation by reference

(1) No attachments are permitted except:

(A) An opinion or order required to be attached under (b)~~(4) or (5)~~(4)–(6);

(B)–(D) * * *

(2) The attachments under (1)~~(B)–(C)~~(B) and (C) must not exceed a combined total of 10 pages.

(3) * * *

SPR23-05

Appellate Procedure: Attachment of Trial Court Order to Petition for Review of Summary Denial of Writ Petition

(Amend Cal. Rules of Court, rule 8.504)

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

	Commenter	Position	Comment	Committee Response
1.	California Academy of Appellate Lawyers by Wendy Cole Lascher, Rules Commentary Chair	A	The California Academy of Appellate Lawyers ("CAAL") is devoted to promoting and encouraging reforms in appellate practice that ensure effective representation of litigants and more efficient administration of justice.	The committee appreciates this comment and acknowledges the commenter's support for the proposal.
2.	California Appellate Defense Counsel by Rebecca P. Jones, Vice President	A	On behalf of California Appellate Defense Counsel (CADC), I would like to submit the following comment in support of the proposed change to Rule 8.504, which would require litigants to attach a copy of a trial court ruling on a writ to a petition for review of an appellate court order summarily denying the petition. CADC is a voluntary statewide professional association of attorneys who handle indigent appeals by court appointment in criminal and dependency matters. Our members regularly litigate petitions for writs of habeas corpus and petitions for writs of mandamus in the Courts of Appeal and, less frequently, in the superior courts. In our experience, it is not at all uncommon that a superior court addressing a petition will issue a reasoned order on the petition but the Court of Appeal will summarily deny any "appeal" of that order, pursued through a newly filed petition. Once the Court of Appeal denies the petition, counsel has two options for seeking review in the Supreme Court: They may file a petition for review, as relevant to this rule, or they may file a new petition in the Supreme Court. We have been told that the preferred mechanism is a petition for review.	The committee appreciates this comment and acknowledges the commenter's support for the proposal.

SPR23-05
Appellate Procedure: Attachment of Trial Court Order to Petition for Review of Summary Denial of Writ Petition
(Amend Cal. Rules of Court, rule 8.504)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			As this proposed new rule implicitly recognizes, when a petition for review is filed challenging a Court of Appeal summary denial of a petition, the Supreme Court would have some difficulty discerning the basis for a summary denial or the issues presented by petition. By requiring the petitioner to attach a reasoned superior court order to the petition for review, the amendment to this rule would give the Supreme Court much more context for understanding the basis for the petition for review. Furthermore, by making attachment of the superior court order mandatory rather than optional, the rule provides helpful clarity to practitioners who might otherwise feel like they need to guess at the best way to make their case to the Supreme Court. Because this rule provides helpful clarity for our practice, and because it will make writ practice in the Supreme Court more efficient, CADC urges adoption of this proposed amendment.	
3.	California Department of Justice by Michael J. Mongan, Solicitor General	A	On behalf of the Office of the Attorney General at the California Department of Justice, I submit the following comment regarding Item Number SPR23-05, "Appellate Procedure: Attachment of Trial Court's Order to Petition for Review of Summary Denial of Writ Petition": The Office of the Attorney General supports this proposed rule change. We further agree that attachment of the underlying trial court order should be mandatory rather than permissive. The Attorney	The committee appreciates this comment and acknowledges the commenter's support for the proposal.

SPR23-05
Appellate Procedure: Attachment of Trial Court Order to Petition for Review of Summary Denial of Writ Petition
(Amend Cal. Rules of Court, rule 8.504)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			General is frequently in the position of responding to petitions for review under extremely tight deadlines. Often, when the petition for review challenges a Court of Appeal's summary denial of a writ, we have made no appearance in the lower courts and lack immediate access to relevant records. We anticipate that attachment of the underlying trial court order to the petition for review in such cases would save valuable time and resources and improve our ability to prepare a response that would be of most assistance to the Court. Please let me know if you need any additional information or if there is anything else we can do to be of assistance.	
4.	California Lawyers Association by Kelly Woodruff, Chair, Litigation Section, Committee on Appellate Courts	A	Invitation to Comment SPR23-05 sets forth a proposal allowing for a full trial court order to be attached to a petition for review of a summary denial of a writ petition. The new California Rule of Court, rule 8.504(b)(6) is meant to patch a hole in the current rule, which permits the petitioner to attach only the applicable appellate court order and attachments up to 10 pages, unless the presiding justice permits additional pages to be attached upon good cause. The CAC agrees with this proposal. When the appellate court summarily denies a writ petition, it does not issue any orders addressing the underlying issues. In that case, the order on review would be the underlying trial court order. But under the current rule, if the trial court order exceeds 10 pages, the petitioning party must apply to the presiding justice for leave to file additional	The committee appreciates this comment and acknowledges the commenter's support for the proposal.

SPR23-05
Appellate Procedure: Attachment of Trial Court Order to Petition for Review of Summary Denial of Writ Petition
(Amend Cal. Rules of Court, rule 8.504)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			page attachments. This additional step would waste the court's (and the petitioner's) time and resources. The proposed amendment would eliminate this unnecessary procedure. Under amended Rule 8.504(b), when a writ petition is summarily denied, the underlying trial court order would be treated the same as an appellate court order—as a required attachment. Because amended Rule 8.504(b) would ease administrative burdens and eliminate an unnecessary procedure, the CAC urges its adoption.	
5.	The Los Angeles County Bar Association, Appellate Courts Section by John A. Taylor, Jr., Executive Committee Member	A	The Appellate Courts Section of the Los Angeles County Bar Association (LACBA-ACS) supports SPR23-05. The proposed rule requires the attachment of trial court order when the petitioner seeks review of a Court of Appeal summary denial of a writ petition, even when the underlying trial court order exceeds 10 pages. The practice would roughly parallel the rule requiring that a Court of Appeal opinion be attached to a petition for review, and LACBA-ACS agrees with this statement in the Invitation to Comment: "Attachment of the complete trial court order would assist the Supreme Court in addressing the merits of the petition for review. It would also assist both the court and parties in expediting the matter, eliminating the need for an application or motion to allow attachment of a trial court order exceeding 10 pages."	The committee appreciates this comment and acknowledges the commenter's support for the proposal.
6.	Orange County Bar Association by Michael Gregg, President	A	*The proposal appropriately addresses the stated purpose.	The committee appreciates this comment and acknowledges the commenter's support for the proposal.

SPR23-05

Appellate Procedure: Attachment of Trial Court Order to Petition for Review of Summary Denial of Writ Petition

(Amend Cal. Rules of Court, rule 8.504)

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

	Commenter	Position	Comment	Committee Response
7.	San Diego County Bar Association Appellate Practice Section by Lisa Cannon, Chair	A	The Appellate Practice Section of the San Diego County Bar Association (APS) supports a requirement that trial courts' orders be attached to petitions for review of Court of Appeal orders summarily denying writ petitions. Such a requirement would facilitate the work of the central staff of the Supreme Court in preparing conference memoranda and the consideration of such petitions by the justices. Proposed rule 8.504(b)(6) should be adopted as drafted. The Supreme Court has recognized that upon occasion certain cases involve "instances of such grave nature or of such significant legal impact" that the Court is "compelled to intervene through issuance of an extraordinary writ." (Babb v. Superior Court (1971) 3 Cal.3d 841, 851 [rulings on pleadings].) For example, the writs of mandate are properly used in discovery matters "to review questions of first impression that are of general importance to the trial courts and to the profession, and where general guidelines can be laid down for future cases." (Daly v. Superior Court (1977) 19 Cal.3d 132, 140 (superseded by statute on unrelated grounds) [discovery matters].) Indeed, "the need for the availability of prerogative writs in discovery cases where an order of the trial court granting discovery allegedly violates a privilege of the party against whom discovery is granted, is obvious." (Roberts v. Superior Court (1973) 9 Cal.3d 330, 336.) In such cases, mandate is appropriate for "immediate review of a question of statewide importance so that lower decisions in other cases will be uniform." (Hogya v. Superior Court (1977) 75 Cal.App.3d 122, 129.)	The committee appreciates this comment and acknowledges the commenter's support for the proposal.

SPR23-05
Appellate Procedure: Attachment of Trial Court Order to Petition for Review of Summary Denial of Writ Petition
(Amend Cal. Rules of Court, rule 8.504)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			Appellate courts have broad discretion in deciding whether to intervene by writ. (Hogya v. Superior Court (1977) 75 Cal.App.3d 122, 128–130.) Whether writ review should have been granted cannot be known without understanding how the trial court adjudicated the disputed issue. The Court of Appeal may have acted well within its discretion in determining that appeal from a final judgment would be an adequate legal remedy. (Ibid.) On the other hand, its discretion may have been abused if the petitioner waw seeking review of a trial court order compelling discovery over a legitimate and important claim of privilege or confidentiality. (Roberts, supra, 9 Cal.3d at p. 336.) Petitions seeking Supreme Court review of orders summarily denying writ petitions may often be denied and may rarely result in plenary Supreme Court review. However, these petitions sometimes result in grant and transfer orders directing the Court of Appeal to issue an order to show cause or alternative writ. "This practice commonly occurs when the court of appeal summarily denied a writ petition, but the supreme court feels an opinion by the court of appeal is warranted—either for the benefit of the parties or so that the supreme court may have the benefit of the court of appeal's reasoning." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2021) ¶ 13:125.1, p. 13-32.) As a practical matter, determining the merits of such petitions always requires analyses of the underlying issues and the trial court's adjudications, which the mandatory attachment of trial court orders	

SPR23-05
Appellate Procedure: Attachment of Trial Court Order to Petition for Review of Summary Denial of Writ Petition
(Amend Cal. Rules of Court, rule 8.504)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			would facilitate. With electronic filing, the burden of attaching the trial court's order to a petition for review is very minimal. And any ethical petitioner should want to assist the Supreme Court's consideration of the petition by attachment of the underlying trial court order. It is APS's position that the Judicial Council's proposal appropriately addresses the stated purpose of the proposed rule. There are clear administrative benefits to proposed rule 8.504(b)(6). And those administrative benefits would only be diminished if the attachment of trial court orders were optional.	

Item number: 04

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Appellate Procedure: Forms for Extension of Time

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Revise forms APP-006, APP-106, CR-126, JV-816, and JV-817

Committee or other entity submitting the proposal:
Appellate 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 1, 2022
Project description from annual agenda: : 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.

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.: 23-
For business meeting on September 18-19, 2023

Title
Appellate Procedure: Forms for Extension of Time

Rules, Forms, Standards, or Statutes Affected
Revise forms APP-006, APP-106, CR-126, JV-816, and JV-817

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
June 29, 2023

Contact
Kendall W. Hannon, 415-865-7653
kendall.hannon@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends revising the forms used to request an extension of time to file a brief in the Court of Appeal and the appellate division of the superior court to ensure that courts receive sufficient information to determine whether good cause exists for an extension. The recommended revisions would (1) add an item on the civil forms to indicate that the case is entitled to, or has been granted, calendar preference or priority; and (2) revise the item where the applicant explains why good cause exists for an extension to direct the applicant to address the relevant factors a court will use in ruling on the motion. Additionally, minor additions or corrections are being recommended to each form.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2024, revise the following forms to add items to indicate that an appeal is entitled or eligible for calendar preference or priority, revise the items addressing why good cause exists for an extension of time to file a brief, and make other minor additions and corrections:

- *Application for Extension of Time to File Brief (Civil Case)* (form APP-006)
- *Application for Extension of Time to File Brief (Limited Civil Case)* (form APP-106)

- *Application for Extension of Time to File Brief (Criminal Case)* (form CR-126)
- *Application for Extension of Time to File Brief (Juvenile Delinquency Case)* (form JV-816)
- *Application for Extension of Time to File Brief (Juvenile Dependency Case)* (form JV-817)

The proposed revised forms are attached at pages 9–18.

Relevant Previous Council Action

Form APP-006, for unlimited civil cases, was adopted effective January 1, 2004. It has been revised previously, most recently effective January 1, 2017, but these prior revisions are not relevant to this proposal. Form APP-106, for limited civil cases, was adopted effective January 1, 2010. Minor, nonsubstantive revisions were made to this form, effective January 1, 2017. Form CR-126, for criminal cases; form JV-816, for juvenile delinquency cases; and form JV-817, for juvenile dependency cases, were adopted effective January 1, 2015. Form CR-126 has never been revised. Minor, nonsubstantive revisions were made to forms JV-816 and JV-817, effective January 1, 2017.

Analysis/Rationale

California Rules of Court,[1] rules 8.212, 8.360, 8.412, 8.416, 8.417, and 8.810 permit parties to apply to the Court of Appeal for an extension of time to file a brief in civil, criminal, and juvenile appeals. Extensions of time to file a brief in the appellate division are permitted by rule 8.882. This proposal recommends revising the optional forms a party may use to request an extension of time to file a brief as follows.

Calendar preference

Forms APP-006 and APP-106 have been revised to add new items by which an applicant can indicate whether an appeal is eligible for, or has previously been granted, calendar preference or priority. The items then direct the applicant to either cite authority (such as a statute that gives the appeal preference or priority) or otherwise explain why the appeal should be given preference or priority.

For civil cases in the Court of Appeal, rule 8.240 governs calendar preference: "A party seeking calendar preference must promptly serve and file a motion for preference in the reviewing court. As used in this rule, 'calendar preference' means an expedited appeal schedule, which may include expedited briefing and preference in setting the date of oral argument." The advisory committee comment states that this rule is "broad in scope" and that the Court of Appeal can order calendar preference on the motion of a party or, where the ground is apparent on the face of the appeal, on its own without a motion. Additionally, the note recognizes that the rule covers motions for preference on the following grounds:

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

> (1) [T]hat a statute provides for preference in the reviewing court (e.g., Code Civ. Proc., §§ 44 [probate proceedings, contested elections, libel by public official), 45 [judgment freeing minor from parental custody]); (2) that the reviewing court should exercise its discretion to grant preference when a statute provides for trial preference (e.g., id., §§ 35 [certain election matters], 36 [party over 70 and in poor health; party with terminal illness; minor in wrongful death action]; see Warren v. Schecter (1997) 57 Cal.App.4th 1189, 1198-99); and (3) that the reviewing court should exercise its discretion to grant preference on a nonstatutory ground (e.g., economic hardship).[2]

In its December 2022 report, the Chief Justice's Appellate Caseflow Workgroup recommended that the Judicial Council consider whether form APP-006 should "require additional information such as whether the appeal is a priority case."[3] The committee believes requiring this information on the civil extension of time forms will aid the reviewing court in determining whether good cause exists for an extension and, if so, the appropriate length of the extension.[4]

Statement of reasons for extension

On each extension of time form, the item directing the applicant to state the reasons why the extension of time is needed has been revised. The instructional parenthetical has been revised to direct the appellant to (1) address the factors that the applicable rule of court require the court to use in ruling on the motion (rule 8.63 for APP-006, CR-126, JV-816, and JV-817; rule 8.811(b) for APP-106), and (2) specifically address possible prejudice to the parties, defendant, or juvenile. Additionally, the parenthetical on form JV-816 has been further revised to advise the applicant that an "exceptional showing of good cause is required" in cases subject to rule 8.417.[5]

Currently, the extension of time forms provide an open prompt for the applicant to list the reasons why an extension is needed and direct the applicant to the relevant rule for the "factors used in determining whether to grant extensions." The committee has determined that instead directing the applicants to address these factors (as opposed to simply referring the applicant to them) will increase the likelihood that the applicant will provide sufficient information for the reviewing court to assess whether good cause exists for an extension.

Additionally, directing the applicant to address the prejudice factor in particular would be beneficial to reviewing courts given the potential importance of this factor. The committee notes that, in its December 2022 report, the Chief Justice's Appellate Caseflow Workgroup recommended that the Judicial Council consider whether the civil and criminal extension of time

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[2] Advisory Committee comment, Cal. Rules of Court, rule 8.240.

[3] Appellate Caseflow Workgroup, *Report to the Chief Justice* (Dec. 6, 2022), p.24, *newsroom.courts.ca.gov/sites/default/files/newsroom/2022-12/Appellate Caseflow Workgroup Report_Final.pdf*.

[4] See, e.g., Rule 8.63(b)(6) (listing "[w]hether the case is entitled to priority" as one of the factors to be considered in determining whether good cause for an extension exists); *id.*, rule 8.811(b)(6) (same).

[5] See Rule 8.417(g).

forms should be revised to require additional information about whether an extension would prejudice the client, opponent, or criminal defendant.[6]

Proof of service items

The proof of service statement on form CR-126 has been revised to match the other applications for extensions of time. Currently, item 11 on form CR-126 provides: "A proof of service of this application on all those entitled to receive a copy of the brief under rule 8.360(d)(1), (2), and (3) is attached (see rule 8.360(d).)"

However, the rule regarding extensions of time does not require service on "all those entitled to receive a copy of the brief." Rather, it requires service on "all parties."[7] For this reason, the other forms for requesting an extension of time in unlimited civil, juvenile dependency, and juvenile justice appeals all require service on "all other parties," not those entitled to receive a copy of the brief. CR-126 has been revised to similarly require proof of service on "all parties."

In addition, the proof of service statements on APP-006, JV-816, and JV-817 have been revised to cite to rule 8.60(c). Currently, these forms cite to rules that relate to applications in general, permit a court to order an extension of time to file a brief, or require service of briefs.[8] The committee believes that rule 8.60(c), which requires an that extension of time application be served on all parties, is better authority for this item.

Additional revisions or corrections

The notice at the top of form APP-006 has been revised to correct the reference to form APP-001-INFO.

Item 4 on form APP-106 has been revised to correctly reflect the 15-day window for filing a brief on receipt of a default notice under rule 8.882(c).

Item 1 on forms APP-006, CR-126, JV-816, and JV-817 and item 2 on form APP-106 have been revised to add an option for the party to seek an extension of time to file a "supplemental or other brief." Because an extension could be sought for such a brief after the filing of a reply brief or supplemental brief, options have been added for "ARB" and "Other" to item 5 on form APP-006; item 9 on form APP-106; and item 4 on forms CR-126, JV-816, and JV-817.

In response to a comment, item 1 on forms APP-006, CR-126, JV-816, and JV-817 has been reformatted to add subdivisions to ensure that the information regarding the current due date and requested extension date are provided.

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[6] Appellate Caseflow Workgroup, *supra*, at p. 24.

[7] See Cal. Rules of Court, rule 8.60(c)(1).

[8] See, e.g., *id.*, rule 8.50; rule 8.360(d); rule 8.412(c) and (e).

Item 2 on forms APP-006, CR-126, JV-816, and JV-817 and item 4 on APP-106 have been revised to add the word "default" before "notice." The committee believes that identifying the notice as a "default notice" would clarify the item.

Item 4 on form APP-006 and item 6 on APP-106 have been revised to add a check box for the applicant to indicate that "the maximum stipulated time has already been used" in explaining why the parties are unable to stipulate to an extension of time.

Item 7 on form CR-126 has been revised to change "jury verdict" to "jury or court trial" to include convictions resulting from a court trial.

In response to a comment, hyperlinks to the applicable rules listing the factors a reviewing court will use in assessing whether good cause exists for an extension of time have been added to item 9 on form APP-006, item 8 on form APP-106, item 10 on form CR-126, item 9 on form JV-816, and item 7 on form JV-817.[9]

Nonsubstantive revisions to each form title have been made to conform with Judicial Council style guidelines. First, the parentheticals in the titles have been replaced with an em dash followed by a description of the case for which the form may be used. Second, the phrase "Civil Case" in the title of form APP-006 has been replaced with "Unlimited Civil Case" to clarify the cases for which that form is to be used. Third, the term "juvenile delinquency case" has been replaced with "juvenile justice case" on form JV-816.

Policy implications

These revisions will help ensure that the extension of time forms submitted in appeals provide the reviewing court with sufficient information to determine whether good cause exists for an extension. These revisions are therefore consistent with the *Strategic Plan for California's Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

Comments

This proposal circulated for public comment between March 30 and May 12, 2023 as part of the regular spring invitation-to-comment cycle. Eight comments were received: five from organizations of appellate practitioners; one from the Family Violence Appellate Project (FVAP), one from a county bar association, and one from a superior court. The comments largely agreed with the proposed changes stated above but disagreed with one of the proposed revisions circulated for comment. The principal comments are summarized below. A chart with the full text of the comments received and the committee's responses is attached at pages 19–52.

[9] Further, to comply with Judicial Council formatting guidelines, all other form and rule references on each form have been hyperlinked.

Item for listing amount of work completed on the appeal

The proposal as circulated for public comment included an item on each extension of time form for the applicant to state the amount of work that had been completed on the appeal at the time of the extension request. It had been suggested that the item would assist the courts in evaluating the extension of time request and would aid the appellate projects in supervising the work of panel attorneys. The committee sought specific comment on this item. In response, the majority of the commenters expressed their disagreement with the inclusion of this item.

The California Lawyers Association Committee on Appellate Courts (CAC) and FVAP noted that the rules require a reviewing court to consider eleven factors in determining whether an applicant seeking an extension of time has shown good cause.[10] CAC and FVAP stated that an item requiring an applicant to list the amount of work done on the appeal would inject a new factor, not contained in the rules, into the inquiry. These commenters recommended keeping the inquiry focused on the factors contained in the rule. The San Diego County Bar Association Appellate Practice Section expressed its belief that the new item is unnecessary in light of the item on the forms requiring the applicant to explain why an extension of time is required. These commenters thus expressed their view that the factors contained in the rule are sufficient for a reviewing court to determine whether good cause exists for an extension of time.

Commenters also raised a variety of practical concerns with this proposed new item. The California Academy of Appellate Lawyers, CAC, Complex Appellate Litigation Group LLP, FVAP, and the San Diego County Bar Association Appellate Practice Section expressed a concern that this item could be read as requiring an attorney to divulge information protected by the attorney-client privilege or work product doctrine. FVAP further stated that the item may confuse self-represented litigants who may struggle to determine the level of detail, or nature of the disclosures, the item requires. Similarly, the Superior Court of San Diego County stated that the proposed item as worded was vague and overbroad. FVAP also expressed the concern that the new item would further complicate the extension of time applications, requiring an attorney to expend additional time to draft the application—time the attorneys may not have if they are seeking an extension.

Finally, the Sacramento County Bar Association Appellate Law Section disagreed with the proposed new item on two grounds. First, it stated that the item could suggest that an attorney must have completed some work on an appeal to be eligible for an extension of time. The commenter noted there may be situations in which an attorney has not yet begun work on an appeal but still requires an extension of time—for instance if the attorney is diligently working to settle the appeal. Second, it stated that the item could make obtaining extensions harder, thus leading to a situation where the hasty filing of briefs is given priority over other public policy considerations.

[10] See Rules 8.63(b) and 8.811(b).

In light of these comments, the committee has modified the proposal to remove this item from each of the extension of time forms. The committee believes that the current item where applicants list the reasons for the extension of time (revised, as stated above, to direct the applicant to address the relevant factors) will provide reviewing courts with sufficient information to determine whether the requested extension is warranted by good cause. Further, to the extent that applicants believe that the work they have done on the appeals is relevant to one of the enumerated factors, they will be free to so indicate in that item. Finally, the committee concluded that, as noted by a commenter, the presence of the item may create the erroneous impression that some work must have been completed on an appeal before an extension of time could be received.

The committee recognizes that the proposal, as circulated with this item, was intended, in part, to aid the appellate projects in supervising the work of the panel attorneys. The committee concludes, however, that the proposal's other revisions, including the requirement that an attorney specifically address the relevant factors in the application when explaining why the extension is needed, will still aid the project's supervision of the panel attorneys.

Requesting information on prejudice to the parties

FVAP opposed revising the item where the applicant states the reasons an extension of time is needed to the extent the revision directs the applicant to address possible prejudice. It indicated that if a party is not claiming prejudice, it should not need to discuss the factor at all in the application. It relies on the fact that although the applicable rules require a court to consider certain factors, they do not require the parties to address them all.

The committee disagrees. Often, the presence or absence of prejudice will be an important consideration for a reviewing court, such as in a criminal case in which a criminal defendant's liberty is at issue. As FVAP recognizes, a court is required to consider the factors included in rule 8.63(b), and the degree of prejudice to any party from a grant or denial of an extension is one of the factors that must be considered. The parties are in the best position to articulate whether and, if so, to what extent there is a risk of prejudice should an extension of time be granted or denied. The committee believes that requiring the party to discuss possible prejudice in the application will aid the reviewing court in determining whether an extension is warranted. To the extent a party does not believe there is a risk of prejudice should an extension of time be granted or denied, the party may simply state that belief.

Whether the committee should consider making the application forms mandatory

In the invitation to comment, the committee sought specific comment on whether the committee should explore making the extension of time application forms mandatory in a future proposal.

FVAP stated that the application forms should be made mandatory, so long as they do not contain an item requiring the applicant to state the work that has been done on the appeal. FVAP noted that local forms are stylized differently and may seek different information. It stated that if a party used their own form, or a less-informative local form, important information including the relevant factors contained in the rules of court may be missed.

By contrast, the Orange County Bar Association and Sacramento County Bar Association Appellate Law Section stated the forms should not be made mandatory because a party may need to provide a more thorough explanation for why an extension of time is needed. The committee notes that the application forms allow an applicant to state the reasons an extension of time is needed either directly on the form or on an attached declaration.

The committee may address whether these forms should be made mandatory in a future proposal as time and resources allow. In any such proposal, the committee will consider whether any revisions are needed to ensure that applicants have sufficient space to state the reasons the extensions are needed.

Alternatives considered

As discussed above, the committee considered adding to the extension of time forms an item that would require the applicant to state what work the applicant has completed on the appeal. In light of the comments received, the committee has revised the proposal to remove this item.

The committee also considered the alternative of taking no action but concluded that the proposed revisions will improve the extension of time forms, making them more usable and more likely to provide reviewing courts with the information needed to assess extension of time requests.

Fiscal and Operational Impacts

Fiscal or operational impacts, if any, are expected to be minimal, and there are no apparent barriers to implementation.

Attachments and Links

1. Forms APP-006, APP-106, CR-126, JV-816, and JV-817, at pages 9–18
2. Chart of comments, at pages 19–52

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER:
APPELLANT: RESPONDENT:	**DRAFT 07.12.2023 Not approved by Judicial Council**
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF— UNLIMITED CIVIL CASE	

Notice: Please read Judicial Council form APP-001-INFO before completing this form.

1. a. I *(name):* request that the time to file *(check one)*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see Cal. Rules of Court, rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see Cal. Rules of Court, rule 8.216)
   - ☐ appellant's reply brief (ARB)
   - ☐ supplemental or other brief

   b. now due on *(date):*

   c. be extended to *(date):*
2. I ☐ have ☐ have not received a Cal. Rules of Court, rule 8.220 default notice.
3. I have received
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

   (number of extensions): extensions by stipulation totaling *(total number of days):*

   (number of extensions): extensions from the court totaling *(total number of days):*

   Did the court mark any previous extension "no further"? ☐ Yes ☐ No
4. I am unable to file a stipulation to an extension because
   - ☐ the other party is unwilling to stipulate to an extension.
   - ☐ the maximum stipulated time has already been used.
   - ☐ other reason *(please specify):*
5. The last brief filed by any party was ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB ☐ ARB ☐ Other filed on *(date):*
6. The record in this case is

	Volumes (#)	Pages (#)	Date filed
Appendix/Clerk's Transcript:			
Reporter's Transcript:			
Augmentation/Other:			

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:

7. ☐ The trial court has ordered the proceedings in this case stayed until this appeal is decided.

8. ☐ This appeal is eligible for, or has been granted, calendar preference/priority *(cite authority or explain):*

9. The reasons that I need an extension to file this brief are stated
   ☐ below
   ☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031A) for this purpose.
   (Please address the Cal. Rules of Court, rule 8.63 factors, including possible prejudice to the parties):

10. For attorneys filing application on behalf of client, I certify that I have delivered a copy of this application to my client (Cal. Rules of Court, rule 8.60).

11. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS

☐ granted to *(date)*:

☐ denied

Date:

▶ (SIGNATURE OF PRESIDING JUSTICE)

APP-106 Application for Extension of Time to File Brief—Limited Civil Case

Clerk stamps date here when form is filed.

DRAFT 07.12.2023 Not approved by Judicial Council

Instructions

- This form is only for requesting an extension of time to file a brief in an appeal in **a limited civil case.** Note that any rules referenced in this form are from the California Rules of Court.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the Self-Help Guide to the California Courts at *www.courts.ca.gov/selfhelp-serving.htm*.
- Take or mail the completed form and proof of service on the other parties to the appellate division clerk's office. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order that is being appealed:

Superior Court of California, County of

You fill in the number and name of the trial court case in which the judgment or order is being appealed:

Trial Court Case Number:

Trial Court Case Name:

You fill in the appellate division case number:

Appellate Division Case Number:

1 Your Information

a. Name of party requesting extension of time to file brief: _____

b. Party's contact information *(skip this if the appellant has a lawyer for this appeal):*

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Mailing address *(if different):* _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Phone: _____ Email: _____

c. Party's lawyer *(skip this if the appellant does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Mailing address *(if different):* _____ (*Street*) _____ (*City*) _____ (*State*) _____ (*Zip*)

Phone: _____ Email: _____

Fax: _____

2 I am requesting an extension on the time to file:

- ☐ Appellant's opening brief, which is now due on *(date):* _____
- ☐ Respondent's brief, which is now due on *(date):* _____
- ☐ Appellant's reply brief, which is now due on *(date):* _____
- ☐ Supplemental or other brief, which is now due on *(date):* _____

3 I am requesting that the time to file the brief identified in (2) be extended to *(date):* _____

4 I ☐ have ☐ have not received a default notice under rule 8.882(c) from the clerk that this brief must be filed within 15 days.

5 The time to file the brief *(check all that apply):*

- ☐ Has not been extended before.
- ☐ Has been extended before by the stipulation of the parties. The parties stipulated to *(number of extensions)* _____ totaling *(number of days)* _____
- ☐ Has been extended before by the court. The court granted *(number of extensions)* _____ totaling *(number of days)* _____

6 I am not able to stipulate to an extension to file this brief because *(check one):*

- ☐ The other party is not willing to stipulate to an extension.
- ☐ The maximum stipulated time has already been used.
- ☐ Other reason *(please describe the reason):*

_____

_____

7 ☐ This appeal is eligible for calendar preference/priority because *(cite authority or explain):*

_____

8 The reason I need an extension to file this brief is *(describe the reason you need an extension; please address the* rule 8.811(b) factors, *including possible prejudice to the parties):*

_____

_____

9 The last brief filed by any party in this case was:

- ☐ The appellant's opening brief, filed on *(date):* _____
- ☐ The respondent's brief, filed on *(date):* _____
- ☐ The appellant's reply brief, filed on *(date):* _____
- ☐ A supplemental or other brief, filed on *(date):* _____

10 If this extension is being requested by a lawyer on behalf of a client, the lawyer must complete this item.

- ☐ I certify that I have delivered a copy of this application to my client (rule 8.810(e)). I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____
Type or print your name

▶ _____
Signature of party or attorney

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER:
APPELLANT: RESPONDENT:	**DRAFT 07.12.2023 Not approved by Judicial Council**

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF—CRIMINAL CASE

1. a. I *(name):* request that the time to file *(check one)*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see Cal. Rules of Court, rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see Cal. Rules of Court, rule 8.216)
   - ☐ appellant's reply brief (ARB)
   - ☐ supplemental or other brief

   b. now due on *(date):*

   c. be extended to *(date):*

2. I ☐ have ☐ have not received a Cal. Rules of Court, rule 8.360(c)(5) default notice.

3. I have received
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

   (number of extensions): extensions from the court totaling *(total number of days):*

   Did the court mark any previous extension "no further"? ☐ Yes ☐ No

4. The last brief filed by any party was ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB ☐ ARB ☐ Other filed on *(date):*

5. The record in this case is

	Volumes (#)	Pages (#)	Date filed
Clerk's Transcript:			
Reporter's Transcript:			
Augmentation/Other:			

6. Defendant was convicted of *(specify):*

7. The conviction is based on a *(check one)*
   - ☐ jury or court trial.
   - ☐ plea of guilty or no contest.

Form Approved for Optional Use
Judicial Council of California
CR-126 [Rev. January 1, 2024]

Cal. Rules of Court, rules 8.50, 8.60, 8.63, 8.360
www.courts.ca.gov

APPELLANT: RESPONDENT	COURT OF APPEAL CASE NUMBER:

8. The court imposed the following punishment:

9. The defendant ☐ is ☐ is not on bail pending appeal.

10. The reasons that I need an extension to file this brief are stated
   ☐ below.
   ☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031A) for this purpose.
   (Please address the Cal. Rules of Court, rule 8.63 factors, including possible prejudice to the defendant):

11. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS

☐ granted to *(date)*:
☐ denied

Date:

(SIGNATURE OF PRESIDING JUSTICE)

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER(S):
Case Name: In re , person(s), coming under the juvenile court law	**DRAFT 07.12.2023 Not approved by Judicial Council**
APPELLANT: RESPONDENT:	

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF—JUVENILE JUSTICE CASE

1. a. I *(name):* request that the time to file *(check one)*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see Cal. Rules of Court, rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see Cal. Rules of Court, rule 8.216)
   - ☐ appellant's reply brief (ARB)
   - ☐ supplemental or other brief

   b. now due on *(date):*

   c. be extended to *(date):*
2. I ☐ have ☐ have not received a Cal. Rules of Court, rule 8.412(d)(1) default notice.
3. I have received
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

   (number of extensions): extensions from the court totaling *(total number of days):*

   Did the court mark any previous extension "no further"? ☐ Yes ☐ No
4. The last brief filed by any party was ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB ☐ ARB ☐ Other filed on *(date):*
5. The record in this case is

	Volumes (#)	Pages (#)	Date filed
Clerk's Transcript:			
Reporter's Transcript:			
Augmentation/Other:			

6. The juvenile was adjudicated a ward of the court based on commission of the following offense(s):

7. The disposition followed *(check one)*
   - ☐ a contested hearing.
   - ☐ an admission.

Form Approved for Optional Use
Judicial Council of California
JV-816 [Rev. January 1, 2024]

Cal. Rules of Court, rules 8.50, 8.60, 8.63, 8.412
www.courts.ca.gov

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:

8. The court imposed the following disposition:

9. The reasons that I need an extension to file this brief are stated
   ☐ below.
   ☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031A) for this purpose.
   (Please address the Cal. Rules of Court, rule 8.63 factors, including possible prejudice to the juvenile. Note that an exceptional showing of good cause is required in cases subject to Cal. Rules of Court, rule 8.417.)

10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS

☐ granted to *(date)*:
☐ denied

Date:

(SIGNATURE OF PRESIDING JUSTICE)

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER(S):
Case Name: In re , person(s), coming under the juvenile court law	**DRAFT 07.12.2023 Not approved by Judicial Council**
APPELLANT: RESPONDENT:	

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF—JUVENILE DEPENDENCY CASE

1. a. I *(name):* request that the time to file *(check one)*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see Cal. Rules of Court, rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see Cal. Rules of Court, rule 8.216)
   - ☐ appellant's reply brief (ARB)
   - ☐ supplemental or other brief

   b. now due on *(date):*

   c. be extended to *(date):*

2. I ☐ have ☐ have not received a Cal. Rules of Court, rule 8.412(d)(1) default notice.

3. I have received
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

     (number of extensions): extensions from the court totaling *(total number of days):*

     Did the court mark any previous extension "no further"? ☐ Yes ☐ No

4. The last brief filed by any party was ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB ☐ ARB ☐ Other filed on *(date):*

5. The record in this case is

	Volumes (#)	Pages (#)	Date filed
Clerk's Transcript:			
Reporter's Transcript:			
Augmentation/Other:			

6. The order appealed from was made under Welfare and Institutions Code *(check all that apply)*

   a. ☐ section 360 (declaration of dependency) ☐ removal of custody from parent or guardian ☐ other orders
   ☐ with review of section 300 jurisdictional findings

   b. ☐ section 366.26

   ☐ termination of parental rights ☐ appointment of guardian ☐ planned permanent living arrangement

Form Approved for Optional Use
Judicial Council of California
JV-817 [Rev. January 1, 2024]

Cal. Rules of Court, rules 8.50, 8.60, 8.63, 8.412, 8.416
www.courts.ca.gov

APPELLANT: RESPONDENT:	COURT OF APPEAL CASE NUMBER:

6. c. ☐ section 366.28
   d. ☐ other appealable orders relating to dependency *(specify):*

7. The reasons that I need an extension to file this brief are stated
   ☐ below.
   ☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031A) for this purpose.
   (Please address the Cal. Rules of Court, rule 8.63(b) factors, including possible prejudice to the parties. Note that an exceptional showing of good cause is required in cases subject to Cal. Rules of Court, rule 8.416.)

8. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.60(c)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS

☐ granted to *(date)*:
☐ denied

Date:

(SIGNATURE OF PRESIDING JUSTICE)

SPR23-06

Appellate Procedure: Forms for Extension of Time (revise forms APP-006, APP-106, CR-126, JV-816, JV-817)

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

	Commenter	Position	Comment	Committee Response
1.	California Academy of Appellate Lawyers by Wendy Cole Lascher Rules Commentary Chair	N	The California Academy of Appellate Lawyers ("CAAL") is devoted to promoting and encouraging reforms in appellate practice that ensure effective representation of litigants and more efficient administration of justice.	No response necessary.
			CAAL could not reach consensus on the proposal concerning Forms for Extension of Time, Item Number SPR23-06. The debate centered around the part of the proposal adding space to indicate the work done to date on the appeal. Two main competing views emerged:	The committee appreciates the feedback. In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Similarly, the committee believes that the item where the applicant lists the reasons an extension of time is required, as revised, will provide the courts with sufficient information to assess whether the requested extension is supported by good cause. Finally, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.
			1. That the proposal should be supported because it places accountability for appellate delay on attorneys in tandem with the courts; and	See above response.

	Commenter	Position	Comment	Committee Response
			2. That the proposal should be opposed because in some situations, disclosure of the work done to date on the appeal would invade attorney-client privilege and/or work-product privileged information. For example, work on a brief may occasionally be delayed because of tension in the attorney-client relationship, material and substantive disagreements about the case that are being discussed but are not yet resolved, or a client who is not meeting an obligation to the lawyer, such as paying fees.	See above response.
2.	California Lawyers Association, Litigation Section, Committee on Appellate Courts (CAC) by Kelly Woodruff Chair	NI	**1. Space for Applicant to Provide Facts Regarding Amount of Work Completed on Appeal** In SPR23-06, the AAC proposes to revise Judicial Council forms used by parties to request an extension of time to file a brief. Among the proposed revisions are: (1) adding space for the applicant to indicate the amount of work done to date on the appeal; (2) providing that service of the extension of time request is to "all parties" for Form CR-126 to conform to the forms for civil and juvenile appeals; (3) adding a calendar preference entry to have a party indicate whether the appeal is eligible for an expedited appeal; and (4) several minor typographical changes to the form for clarity.	No response required.
			The CAC disagrees with the proposal to have an applicant provide details regarding the amount	The committee appreciates the feedback. In light of this and other comments received on this point,

	Commenter	Position	Comment	Committee Response
			of work on the appeal completed to date on the form to request for extension of time to file a brief. First, under California Rules of Court, rule 8.63, the applicant must show good cause to obtain an extension of time. The Rule expressly recognizes that, "'[f]or a variety of legitimate reasons, counsel may not always be able to prepare briefs or other documents within the time specified in the rules of court. (Cal. Rules of Ct., rule 8.63, subs.(a)(2).) The Rule's multi-factor test for "good cause" seeks to "balance the competing policies" of accommodating applicants with legitimate grounds for needing more time with the need for "expeditious conduct for appellate business." (Cal. Rules of Ct., rule 8.63, subd. (a)(3).) To that end, the existing rule—which the Appellate Advisory Committee does not propose to amend—sets forth ten non-exclusive specific factors, along with a "catch-all" provision, for the court to consider in granting an extension. (Cal. Rules of Ct., rule 8.63, subd. (b)(1)-(11).)	the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Similarly, the committee believes that the item where the applicant lists the reasons an extension of time is required, as revised, will provide the courts with sufficient information to assess whether the requested extension is supported by good cause. Finally, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.
			The "good cause" multi-factor test would be undermined by the current proposal. Currently (and consistent with Rule 8.63), applicants are free to identify the factor(s) most applicable to their situation in requesting an extension of time. But the proposal highlights a single factor, the time that counsel has already spent on the case, for special consideration, which necessarily places more weight on this factor than others. [FN 1 Notably, the work already	See above response.

	Commenter	Position	Comment	Committee Response
			performed on the case is not even a specific factor for "good cause" enumerated under Rule 8.63, subdivision (b).] Applicants would likely be compelled to provide this information on the space provided, even if not required to do so. And courts may be more tempted to reject a well-supported application because they are not satisfied that the applicant has sufficiently progressed on the appellate work—even though "good cause" does not require that the applicant make any specific showing as to the work done on appeal. In short, this would upset the multi-factor balancing test for good cause. For this reason alone, the proposal should be reconsidered and abandoned.	
			Second, given the "good cause" requirement, the additional space for progression of the appeal is superfluous.	See above response.
			Third, there are numerous practical reasons for rejecting this proposal. Attorneys are concerned that providing facts concerning what work has been done could reveal confidential work product or attorney-client privilege. In addition, the proposal may also inadvertently lead to a power imbalance between the applicant, who must divulge work details, and the opposing party, who does not. It may give the opposing party an unfair litigation advantage and potentially undermine the applicant's settlement position.	See above response.

	Commenter	Position	Comment	Committee Response
			Finally, the CAC, which is composed of criminal and civil attorneys (including several who focus on family law), believes that none of the forms should include the proposed item on work progress. The reasons set forth above apply to attorneys in all fields, including criminal panel attorneys.	See above response.
			2. Other Proposals The CAC supports the other proposals set forth in SPR23-06. The CAC supports the proposal to "revise the parenthetical on these forms to direct the applicant to address the factors contained in the relevant rule, including prejudice to the parties (forms APP-006, APP106, and JV-817), defendant (form CR-126), or juvenile (form JV-816)." Indeed, the CAC believes this revision, which focuses the applicant on the specific "good cause" factors, comports with its stance above. The CAC believes that the extension form should focus on the "good cause" factors and not overweigh a factor that would be not required to be demonstrated for good cause, such as showing how much work was already done on the appeal. The proposed revisions to the extension request forms would do exactly that.	The committee appreciates the feedback.
			The CAC also supports the rule adding space for the applicant to indicate whether the item may be entitled to calendar preference. The CAC recognizes that attorneys practicing in	The committee appreciates the feedback.

	Commenter	Position	Comment	Committee Response
			appellate courts may not always be aware of the rules regarding the types of appeals eligible for calendar preference. This prompt may facilitate parties to research and seek calendar preference. The proposal will also assist the Court of Appeal in determining whether to grant an extension if appeal is eligible for calendar preference.	
			The CAC has no objections to changing Form CR-126 to have parties in criminal appeals serve the request for extension of time on "all parties."	The committee appreciates the feedback.
			Finally, the CAC supports the minor typographical revisions and changes indicated in SPR23-06.	The committee appreciates the feedback.
3.	Complex Appellate Litigation Group LLP by Ben Feuer, Chairman	AM	The proposed revised extension of time forms ask lawyers to report what work they have completed on an appeal when requesting an extension of time.	The committee appreciates the feedback. In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Further, the committee believed that the item may imply that some work must have been completed on the appeal before an

	Commenter	Position	Comment	Committee Response
				extension of time could be received.
			This type of information would appear to be privileged in most situations. The amount of work performed, what type of work has been performed, and the status of an ongoing unfiled brief is all confidential under Rule of Professional Conduct 3-100 and the Business & Profession 6068, at least for private client civil appellate litigation.	See above response.
			There are many reasons a party may not wish to disclose this kind of information to the opposing party, particularly if settlement remains a possibility. In particular clients hoping to settle before expending financial resources on a brief, or having trouble coming up with attorney fees, could be placed in a problematic position by this rule change.	See above response.
			Accordingly, I suggest the committee remove the requirement that attorneys disclose what work they have performed on a brief when requesting an extension of time for an appeal.	See above response.
4.	Family Violence Appellate Project by Cory Hernandez Senior Staff Attorney	NI	The following comments are submitted by Family Violence Appellate Project (FVAP) regarding the Judicial Council's Invitation to Comment number SPR23-06. We support the recommendation **except for item 9 on form APP-006, and have additional recommendations discussed below.**	The committee appreciates the feedback and notes the commenters support for the proposal with the exception noted.

	Commenter	Position	Comment	Committee Response
			FVAP is a State Bar-funded legal services support center and the only nonprofit organization in California dedicated to representing survivors of domestic violence and other forms of gender-based abuse in civil appeals for free. We are also funded by the California Office of Emergency Services to support domestic violence, sexual assault and human trafficking advocates who work directly with self-represented litigants seeking protection or other relief from the court system. FVAP is devoted to ensuring survivors can live in healthy, safe environments, free from abuse. This includes ensuring appellate procedures and rules are straightforward enough to follow for parties without representation, which includes most survivors.	No response necessary.
			I. OPTIONAL V. MANDATORY The forms should be mandatory, ***unless the Council adds item 9 to APP-006, because as discussed below, we think that item is likely to require disclosure of privileged and confidential material, and so if that item were included, the forms should remain optional because we would not want to use APP-006***. Local forms are stylized differently and sometimes request different information. The Council's forms are not long and do not require too much information, but they do ask for targeted information and point to California Rules of Court, rule 8.63, which is important	The committee appreciates the feedback. The committee will consider the question of whether the extension of time forms should be made mandatory at a future date, as time and resources allow.

	Commenter	Position	Comment	Committee Response
			and may be missed if a party files their request on their own pleading form, or a less-informative local form.	
			Our recommendation extends to forms for stipulation of extending time—which should be addressed by the Council in a future proposal. For instance, the Second District has a local form 2DCA-01 for stipulating to an extension, and there is no apparent reason why a local form is needed. Indeed, the form is formatted in a way that can cause confusion. The items say the brief is extended "by a period of [x] days, so that the time to file the [brief] is extended to [y] days from the filing of the [brief]." Having these two numbers (x and y) so close to each other, and no clear date of when the extended deadline would be, we have seen courts and parties misunderstand which number, x or y, applies to the extension itself.	This recommendation is outside the scope of the instant proposal. The committee will consider this recommendation in the future as time and resources allow.
			II. FORM APP-006 *Item 1*	
			We would recommend adding amicus briefs here, as amici may need to request an extension. (Cal. Rules of Court, rule 8.200(c)(1).) We recommend this for item 2 on form APP- 106 as well.	Amicus briefs are covered by the "supplemental or other brief" option already contained on the form.
			We would also recommend adding a line break to separate "now due on *(date)*:" and "be	The committee has made the suggested revision.

	Commenter	Position	Comment	Committee Response
			extended to *(date)*:" because we have seen parties forget to complete both items, and having both items so close together causes confusion. Further, we would recommend dividing item 1 into separate subparts, as we have seen many parties, especially those without counsel, forget to complete the "now due on" and "be extended to" parts. We would suggest having item 1(a) be the name, item 1(b) be the "request that the time to file" with the list of types of briefs, item 1(c) be "now due on," and item 1(d) be "be extended to."	The committee has revised item 1 on form APP-006 as well as form CR-126, JV-816, and JV-817 so that these items are divided into sub parts.
			Item 8 There are some cases where the court has already granted calendar preference. There are others where the court has not yet granted preference, but the party may want to file that motion. We would thus suggest dividing item 8 into two subparts with checkboxes for the litigant to select one or the other: 8(a) "The Court granted this appeal calendar preference on [ ]"; and 8(b) "This appeal is eligible for calendar ".	Item 8 has been revised to read "This appeal is eligible for, or has been granted, calendar preference/priority *(cite authority or explain):*" Item 7 on form APP-106 has been similarly revised.
			Item 9 **We STRONGLY OPPOSE adding item 9 on form APP-006,** requiring the party to state the work they've completed so far. We oppose for	The committee appreciates the feedback. In light of this and other comments received on this point, the committee has modified the proposal to

	Commenter	Position	Comment	Committee Response
			many reasons. We oppose this item 8 on form APP-106 as well.	remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Similarly, the committee believes that the item where the applicant lists the reasons an extension of time is required, as revised, will provide the courts with sufficient information to assess whether the requested extension is supported by good cause. Finally, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.
			First, this item goes beyond what is required in rule 8.60 or 8.63 of the California Rules of Court; if the Council wants to do rulemaking and amend either rule 8.60 or 8.63, then we suggest going that route instead of doing rulemaking by amending forms. There is already a lot that has to be discussed before requesting an extension of time to file a brief. This means, while a party is trying to prepare their brief and do all their other work, they have to take additional time to write up this application. Adding in more required information just means they must take even	See above response.

	Commenter	Position	Comment	Committee Response
			more time to write up the application, when they're already asking for additional time for the brief. The application should be as simple as possible, to reduce the workload required on parties.	
			Second, adding this item is likely to cause confusion for self-represented litigants. They may justifiably think they have to recount every entry on the appellate docket, and then go into even more detail on how much research they have done, how much they have written, to whom they have spoken for any guidance or advice (e.g., law library), and maybe even attach a copy of their draft brief so far to show what they have done. Indeed, some may think it would be simpler to write in item 9 "See attached" and just attach dozens or more of pages of cases they've read, their draft brief, and so on, thereby adding to the Court's and parties' workloads. The Council likely has better numbers available, but from what I could find, a 2008 study found that about one-third of appellate parties were self-represented. (Cordova, *Services for Self-Represented Litigants: What Can Be Done in California's Appellate Courts?* (Master's thesis, California State University, Sacramento, 2009) p. 4, tbl. 1.1.) We need to keep self-represented parties in mind for all court forms and rules, including appellate forms and rules.	See above response.
			Third, adding this item is, simply, unnecessary.	See above response.

	Commenter	Position	Comment	Committee Response
			The factors and requirements in rules 8.60 and 8.63 are more than sufficient to allow the Court to make a determination whether to grant an application. If a request for extension is denied and a party wants to try asking again, they can add in more information if needed, but asking for much more information upfront, compared to what is in the rules, should not be required of every party.	
			Fourth, this item is likely to lead to ethical issues. Since this item is added in addition to item 10, it must be asking for different information not already covered by item 10. That is likely to lead people to feel they have to disclose even more information about what they have been doing, and could lead to serious ethical issues. The phrase "work on this appeal" done so far may, and likely will, require disclosing attorney work-product, or other privileged or confidential material. If this item 9 were added, I would strongly suspect that many more attorneys will be filing their own pleading forms to request an extension, using rules 8.60 and 8.63, and not use this form APP-006. Indeed, I do not know if I would feel comfortable using this form APP-006, as I do not fully understand what this item 9 is asking about, and my reading of that item is basically asking me to divulge privileged and confidential information, which I would be unwilling and unable to do. (As such, if item 9 were added, the Council should not make this form APP-006	See above response.

	Commenter	Position	Comment	Committee Response
			mandatory.)	
			Item 10 **We oppose adding "including possible prejudice to the parties"** to the parenthetical directions. We oppose this on item 9 for APP-106 as well. Again, rulemaking should be done through the rules and not court forms. Rule 8.63(b) says that these factors must be considered by the court, but not necessarily addressed by the parties. Rule 8.63(b)(1) does say that, "A party claiming prejudice must support the claim in detail," but then, by its plain language, that provision suggests if a party is *not* claiming prejudice, they need not discuss it at all. As such, the directions in item 10 of this form add requirements beyond which are stated in the rule, which seems unnecessary and unduly burdensome.	The committee declines to modify its proposed revision to item 9 on form APP-106 as suggested. Prejudice to the parties if an extension is granted or denied is an important factor that should be addressed. Parties are in the best position to discuss potential prejudice to any party resulting from the grant or denial of an extension. The committee also notes that the Chief Justice's Appellate Caseflow Workgroup specifically encouraged the council to consider whether the extension of time forms "should require additional information such as . . . the degree to which any extension might prejudice the client or opponent." The committee believes that directing the applicant to address the any prejudice to the parties will aid the court in determining whether good cause for the extension exists. To the extent an applicant is not claiming prejudice, or does not believe that the other side will be prejudiced by the grant of an extension, the party can simply state that belief.
			Furthermore, we strongly suggest adding a hyperlink to where the California Rules of Court can be found. Self-represented litigants will likely not know how or where to find these rules. And Googling may lead to confusion because they may find outdated rules, or local	The committee agrees and has added a hyperlink to the applicable rules at item 10 on form APP-006, item 9 on form APP-106, item 11 on form CR-126, item 10 on form JV-816, and item 8 on form JV-817.

	Commenter	Position	Comment	Committee Response
			rules for specific districts or divisions.	
			Item 12 **We oppose the Council's decision not to allow for space to say service is done through TrueFiling.** This item cites to rule 8.60(c), but that rule just says the application has to be served on all parties, not that the application has to have a proof of service attached. It would be much simpler to have a checkbox on item 12 that allows parties and attorneys to state they are using the automatically produced proof of service generated by Truefiling. While paper filings may be used by some—and so the other options can be maintained in item 12 for parties attaching a proof of service—we would venture to guess (the Council likely has more accurate and precise numbers) most of these applications are submitted through TrueFiling. Requiring an additional proof of service just adds to the time and work needed to file this application—which is itself already about needing more time for other work on the appeal.	The committee declines to modify item 12 as suggested at this time. It would not be appropriate to reference a specific vendor on a Judicial Council form. Further, the committee believes the form in its current state allows a party to use their own proof of service form or a form automatically generated and attached by an e-filing service. While item 12 (and the related items on the other extension of time forms) states that the applicant "may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose," these are optional forms and an applicant is not required to use them.
			III. ADDITIONAL SUGGESTION Since this proposal is about extending time to file briefs, we suggest the Council also consider amending rule 8.200(c)(1)—and/or the advisory committee comments to that rule—to clarify the deadline to file an amicus brief in an appeal where a respondent's brief has not been filed.	This recommendation is outside tfhe scope of the instant proposal. The committee will consider this recommendation at a later date as time and resources allow.

	Commenter	Position	Comment	Committee Response
			Rule 8.200(c)(1) currently says the amicus brief is due "[w]ithin 14 days after the last appellant's reply brief is filed or could have been filed under rule 8.212, whichever is earlier." The advisory committee comment clarifies that the latter time "includes any authorized extension of the deadline specified in rule 8.212." To us, this means, if no respondent's brief is filed, the amicus brief would be due after the reply brief could've been filed, if the respondent's brief were filed. But we have encountered differing interpretations depending on the division or district we are filing in. Discussing a hypothetical may help elucidate the issue.	See above response.
			Say the appellant files their opening brief on date A. The respondent's brief would be due within 30 days, so by date B (A+30=B). (Rule 8.212(a)(2); while also taking into account whether that last day falls on a holiday or weekend, per rule 1.10.) If no respondent's brief is filed, the Court would issue a 15-day default notice, setting the deadline at date C (B+15=C). (Rule 8.220.) Then, to us, the reply brief "could have been filed" by date D (C+20=D). (Rule 8.212(a)(3).) Then the amicus would be due 14 days after that, so by date E (D+14=E). (Rule 8.200(c)(1).)	See above response.
			However, we have seen differences with at least the Third and Fourth Districts. For them, in appeals where no respondent's brief has been	See above response.

	Commenter	Position	Comment	Committee Response
			filed, the amicus brief deadline is either *right after* the respondent's brief was due (Third District) or within 14 days after the *respondent's brief* could've been filed (Fourth District), even though rule 8.200(c)(1) makes no mention of the respondent's brief. We have received no explanation for how either Court interprets the rule in this way. Perhaps, though, it is because when no respondent's brief is filed, no reply brief "could have been filed," so perhaps they think rule 8.200(c)(1) simply makes no mention of when amicus briefs are due in appeals without respondent's briefs, so they think they need to craft a rule for themselves. (Also, arguably, under this type of interpretation, a Court could say, if no respondent's brief is filed, no amicus brief could be filed, because rule 8.200(c)(1) only mentions amicus briefs when reply briefs were or could have been filed.)	
			So for these (and perhaps other) Courts, if the opening brief is filed on date A, the respondent's brief would be due still by date B, as stated above. Then there would be the 15-day default notice, so the date C would be the same. And at this point, our views differ. For these other courts, if no respondent's brief is filed by date C, the amicus would be due immediately (Third District) or within C+14 days (Fourth District), instead of our reading of the rule, essentially, C+34 days (reaching date E, as noted above). This effectively removes at least	See above response.

	Commenter	Position	Comment	Committee Response
			20 days for amicus to prepare and file their brief.	
			We respectfully request the Council clarify in rule 8.200(c)(1), in the text itself and/or in the advisory committee comments, how the amicus brief deadline is supposed to work with appeals where no respondent's brief is filed. And if the deadline is different/earlier than appeals where a respondent's brief is filed, it could be helpful to explain why that difference exists, in the advisory committee comments.	See above response.
			This ambiguity and confusion make it more difficult to secure amicus support. Even without a respondent's brief on appeal, the heavy burden for demonstrating prejudicial legal error or abuse of discretion is difficult and with the appellant, so having amicus support can be quite useful.	See above response.
			In conclusion, we support much of this proposal but have major disagreements as noted above, and additional suggestions. Should you wish to discuss these comments further, please contact me.	The committee appreciates the feedback.
5.	Orange County Bar Association by Michael A. Gregg President	A	The changes to the forms address the stated purpose and allow a party to say what they have already done to further the appeal.	The committee appreciates the feedback.

	Commenter	Position	Comment	Committee Response
			The forms should not be mandatory because counsel for a party may need to provide a more thorough explanation.	The committee may address whether these forms should be mandatory, or remain optional, at a later date as time and resources allow. If the committee addresses this question in the future, it will consider whether revisions are needed to ensure that applicants have sufficient space to state the reasons the extensions are needed.
6.	Sacramento County Bar Association, Appellate Law Section by Brendan J. Begley Co-Chair	N	We, the Sacramento County Bar Association's Appellate Law Section and its members, wish to comment on the revision that would add an item on the application an extension of time to file a brief where the applicant would state the amount of work that has been completed on the appeal at the time of the request for a continuance. As we understand it, there are two stated purposes of this proposed revision; one is to assist the appellate projects in supervising the work of panel attorneys, and the other is to assist the courts in considering these applications.	The committee appreciates the feedback. In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Similarly, the committee believes that the item where the applicant lists the reasons an extension of time is required, as revised, will provide the courts with sufficient information to assess whether the requested extension is supported by good cause. Finally, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.
			We have no comment on how this revision might assist the appellate projects. However,	See above response.

	Commenter	Position	Comment	Committee Response
			we are very concerned that this well-intended revision – as it stands without more clarification on the form – will undermine rather than appropriately address this other stated purpose of assisting the courts in considering these applications. There are two reasons for this concern.	
			First, this revision runs a significant risk of misleading appellate justices who rule on these applications into believing that some amount of work must have been done on an appellate brief in order for a continuance to be warranted; in truth, such a factor is neither paramount nor even listed as an appropriate consideration in the applicable California Rules of Court. Second, this revision runs the risk of reinforcing a widespread and incorrect notion that the hasty filing of an appellate brief is a primary goal while other considerations are somehow secondary or subordinate to that aim.	See above response.
			Accordingly, if the application is to be revised to include this inquiry, we believe it should include more than just this bare question. For example, it could include a parenthetical statement acknowledging that there may be instances when it would be improper to have performed any work up to that point. Similarly, it may include a prompt for the applicant to explain why it would have been inappropriate to have performed such work by that point. Alternatively, rule 8.63 of the California Rules	See above response.

	Commenter	Position	Comment	Committee Response
			of Court could be revised to include a subdivision expressly clarifying the reality that no amount of previous work is actually required (so that applicants may point appellate justices to that rule when answering this inquiry).	
			The Prosed Revision Risks Undermining Vital Public Policies To elaborate, there are many instances where it would be against both a client's best interest and public policy to perform work on a brief. The most obvious (but far from the only) example of when such work should be postponed is when the parties are striving to or have become engaged in settlement discussions. Any requirement (even an implicit one) that work on a brief must be performed leading up to or during settlement negotiations will drive up the cost of settlement while reducing the time counsel can devote to negotiating or achieving preliminary objectives to facilitate settlement; consequently, it will diminish the likelihood of a voluntary resolution.	See above response.
			Of course, the public policy of promoting settlement has been firmly established in California for well over a century. (See McClure v. McClure (1893) 100 Cal. 339, 343 [affirming that that settlement agreements "'are highly favored as productive of peace and good will in the community'" because they reduce "'the expense and persistency of litigation'"].) This public policy covers both pre-trial	See above response.

	Commenter	Position	Comment	Committee Response
			settlements and post-judgment settlements. (See Neary v. Regents of Univ. of California (1992) 3 Cal. 4th 273, 278 [explaining that "appellate courts have enough to do without deciding cases the parties no longer wish to litigate"].)	
			Adopting this revision without appropriate clarification also runs the significant risk of further cementing the existing and growing problem of having an excessive number of appellate justices operating under the mistaken impression that the expedient preparation of appellate briefs is the paramount goal. Well-established public policies confirm that such expediency should not be mistaken as a primary objective.	See above response.
			For example, public policy acknowledges that "[t]he effective assistance of counsel to which a party is entitled" requires providing "adequate time for counsel to prepare briefs or other documents that fully advance the party's interests." (Cal. Rules of Court, rule 8.63(a)(2).) Honoring this public policy benefits not only appellate litigants but also appellate courts by facilitating "the preparation of accurate, clear, concise, and complete submissions that assist the courts." (Ibid.)	See above response.
			Public policy also demands that a "client's right to [be represented by her] chosen counsel" should be facilitated whenever possible.	See above response.

	Commenter	Position	Comment	Committee Response
			(People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc. (1999) 20 Cal.4th 1135, 1145.) Attorneys who focus on appeals often (and quite sensibly) are the top choice of an existing or prospective client to handle an appeal, but many of those appellate attorneys are stretched thin (e.g., by settlement negotiations in the existing case or obligations in other cases or illness or other personal circumstances). Those lawyers will be stretched too thin to accept a new appeal or to continue handling an existing one if briefing deadlines become too immovable or needless work on an appellate brief is implicitly required but cannot be performed due to other valid constraints. Thus, prioritizing the hasty preparation of briefs harms rather than facilitates the right to be represented by chosen counsel, and it does so without any compelling reason.	
			Promoting the Needless or Hasty Preparation of Briefs is Unadvisable Indeed, there is no compelling public policy served by demanding the hasty (and frequently needless and counter-productive) preparation of appellate briefs. Instead, public policy expressly mandates that that briefing deadlines "should generally be met to ensure expeditious conduct of appellate business and public confidence in the efficient administration of appellate justice." (Cal. Rules of Court, rule 8.63(a)(1).)	See above response.

	Commenter	Position	Comment	Committee Response
			The proper metric should be used to measure whether appellate business is being carried out in an appropriately expeditious fashion; at the same time, the expeditious conduct of appellate business should not be confused with arbitrarily rushed conduct. In the vast majority of cases, the expeditious conduct of appellate business should be measured from when briefing concludes to when the matter is decided, rather than from when the notice of appeal is filed to when the matter is decided. Of course, some cases that have unusual urgency should be measured differently given their unique circumstances, but that is not the norm.	See above response.
			Requiring more cases to become fully briefed more quickly indisputably adds to the Court of Appeal's existing caseload and, in some courts, backlog. With more and more fully briefed cases awaiting decision and no more justices to decide them, it obviously will take longer for appellate courts to render a decision in many of those fully briefed cases that await decision. Thus, adopting an approach that will result in more briefs being filed sooner and fewer settlements being reached will negatively impact the metric of measuring the time from when a given case is fully briefed to when it is decided. In other words, this approach will measurably diminish the expeditious conduct of appellate business.	See above response.
			The alternative is unthinkable; i.e.,	See above response.

	Commenter	Position	Comment	Committee Response
			compromising the quality of the decisions in those burgeoning cases that are fully briefed and awaiting decision in order to improve the stats of both the improper and the proper metric. In this regard, "the expeditious conduct of appellate business" should not be confused with arbitrarily rushed conduct in connection with appellate business. (Cal. Rules of Court, rule 8.63(a)(1).) That is especially true when the rush to serve an inapplicable metric (i.e., the time between the notice of appeal and the decision) creates tension with meeting the aim of the proper metric (i.e., the time from when a case is fully briefed to the decision).	
			Public confidence in our appellate courts will be greatly damaged if those courts proclaim (or are forced to admit) that they sped up the average time between the fling of the notices of appeal and the resulting decisions while either 1) lengthening the average span of time between the cases being fully briefed and decided or 2) maintaining or even shortening that average timespan without taking any step to maintain (much less improve) the quality of the decisions in those rushed cases. The aim of being expeditious does not require imposing arbitrary conditions that create the reality of being rushed.	See above response.
			The Existing Applicable Rules Should be Honored In sum, the top two considerations to	See above response.

	Commenter	Position	Comment	Committee Response
			determine whether an application for an extension of time should be granted are 1) the degree of prejudice to the parties and 2) whether the established factors demonstrate good cause for the requested continuance. (Cal. Rules of Court, rule 8.63(b).) The amount of work already done on a brief is simply not an express factor; in many cases it is not a highly significant factor, and often it is not even an appropriate factor. Public confidence in the efficient administration of appellate justice is diminished, rather than bolstered, by reinforcing misguided notions that a hasty brief is the main objective while other well-established considerations (especially those that are mandated by the applicable rule or advance public policies) are subordinate.	
			Finally, because some situations require more elaborate explanation than the space on the application form (or even the related declaration form) provides, we do not believe the committee should explore making these application forms mandatory in a future proposal. The controlling rule already expressly requires any party who seeks a continuance to address the appropriate factors. (Cal. Rules of Court, rule 8.60(c)(2).) It is difficult for us to see what purpose would be served by forcing a party who needs a continuance to use a form that may well diminish that party's ability to address the pertinent factors adequately.	The committee may address whether these forms should be mandatory, or remain optional, at a later date as time and resources allow. If the committee addresses this question in the future, it will consider whether revisions are needed to ensure that applicants have sufficient space to state the reasons the extensions are needed.

	Commenter	Position	Comment	Committee Response
			Thank you for considering our comments on this important question and for your efforts to improve the quality and efficiency of appellate justice.	The committee appreciates the feedback.
7.	San Diego County Bar Association, Appellate Practice Section by John T. Sylvester, Certified Legal Specialist – Family Law	NI	The Appellate Practice Section of the San Diego County Bar Association (APS) supports some but not all of the proposed changes to Judicial Council forms regarding extensions of time to file briefs. After canvassing our membership and forming a subcommittee to discuss the proposed changes, we submit the following comments.	The committee appreciates the feedback.
			1. APS does not agree with adding an item to state the amount of work completed on the appeal. APS's main comment addresses the proposed requirement of having the attorney-applicant specifying the work done to date on the appeal. Adding this as a requirement could require the attorney applicant to either divulge information that is protected attorney work product or violates client confidentiality. Thus, the attorney would be left with a Hobson's choice: (1) decline to file an extension request to protect these duties but in doing so violate their duty of reasonable diligence, or (2) file an extension request without this required information and risk denial of the extension request, also violating their duty of reasonable diligence.	In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Further, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.
			An extension request may be necessary to allow	See above response.

	Commenter	Position	Comment	Committee Response
			for further communication, research, and other legal purposes, making the request an act of reasonable diligence dedicated to the interest of the client. (Rules Prof. Conduct, rule 1.3.) Such requests are often considered reasonably standard by professional norms. (See *Strickland v. Washington* (1984) 466 U.S. 668, 688 ["proper measure of attorney performance remains simply reasonableness under prevailing professional norms."].)	
			Currently, the extension request forms contain a section that allows the applicant to explain his or her need for additional time to file a brief. Attorneys should use this box already to identify and explain the "good cause" for an extension when appropriate. (See Rules of Court, rule 8.63(b) [addressing factors for good cause to grant an extension of time].) Thus, requiring a separate box for "work already completed" is unnecessary.	See above response.
			As proposed, item 9 reads: "I have completed the following work on this appeal." Addressing work done could require reference to an attorney's impressions, conclusions, opinions, legal research, or theories, which is protected by the attorney work product privilege under Code of Civil Procedure, section 2018.030. Further, an attorney is statutorily required to maintain inviolate the confidence of his or her client. (Bus. & Prof. Code, § 6068, subd. (e)(1).) Rule 1.6 of the Rules of Professional Conduct	See above response.

	Commenter	Position	Comment	Committee Response
			similarly prohibits an attorney from revealing information under Business and Professions Code section 6068, subdivision (e)(1).	
			The proposed change could be read to suggest that the attorney should expose information protected by the work-product privilege and violate the duty of client confidentiality. Therefore, a problem could arise if the attorney must communicate with a client before deciding whether there are issues that merit an appeal or if the client wants to abandon the appeal. Providing this information in an extension request could present the case to the court and opposing counsel as having a weak argument or otherwise potentially expose a weakness in the case.	See above response.
			For example, an attorney may need additional time to communicate with a client or trial counsel while deciding whether to file a brief under *Anders v. California* (1976) 386 U.S. 738, *People v. Wende* (1979) 25 Cal.3d 436, *In re Phoenix H.* (2010) 47 Cal.4th 835, *In re Sade C.* (1996) 13 Cal.4th 952, or *Conservatorship of Ben C.* (2007) 40 Cal.4th 529. Communications regarding grounds for filing one of the above briefs *necessarily* implicates client confidentiality. "As codified in Evidence Code section 954, the attorney-client privilege protects from disclosure confidential communications between lawyer and client." (*City of San Diego v. Superior Court* (2018) 30	See above response.

	Commenter	Position	Comment	Committee Response
			Cal.App.5th 457, 466.)	
			Additional information from such communication may bring to light an issue that should be briefed or give rise to whether a habeas writ petition must be filed in conjunction with a brief. Such communication could be required to obtain authorization from a client as to whether to proceed with an appeal at all, depending on whether it is in the best interest of the client. Requiring the attorney applicant to indicate specifically what work product was completed would place the attorney in the unfair position of either not filing a necessary extension request, filing an extension request that may be perceived to be inadequate, or violating duties related to client confidentiality and work product.	See above response.
			Moreover, should such statements be required, and if an attorney chooses not to request an extension to avoid disclosure of work product and to protect client confidentiality, this could lead to undue delays in the case and related appellate court procedures. This is because such extension requests prevent further delays later in the case such when additional information comes to light that requires a brief to later be stricken or an entire appeal withdrawn. Therefore, an extension request may prevent unnecessary work, time, and expense by the court or opposing counsel.	See above response.

	Commenter	Position	Comment	Committee Response
			APS recognizes that additional time requested may seem more than warranted but highlights how there may be underlying reasons for which an attorney is precluded by statute, rule, and general standards of professional conduct to divulge to the court or opposing counsel. Thus, information about work done should not be required as reasons needed for additional time. Moreover, sometimes an extension is sought because no work has been able to be done due to illness, press of business, or other reasons, and making progress on the brief is not a requirement of the good cause showing per rule 8.63.	See above response.
			Due to the problems caused by these reasons for needing an extension, APS recommends the Council decline to add the item regarding work already completed to the civil, criminal, and juvenile extension request forms.	See above response.
			2. APS agrees with amending the proof of service statement. APS agrees that the proof of service statement on form CR-126 should be revised to match the other applications for extension of time. This would make this form consistent with the other forms for requesting an extension of time to file a brief and prevent confusion as to which parties must be served.	The committee appreciates the feedback.
			3. APS's suggested corrections and additions.	

SPR23-06
Appellate Procedure: Forms for Extension of Time (revise forms APP-006, APP-106, CR-126, JV-816, JV-817)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			The APS suggests two additional technical amendments: a. In its present format, in the address box of the caption, the fillable field for the attorney applicant' State Bar Number automatically enters a comma in the middle of the state bar number. APS recommends reformatting the State Bar Number field to stop adding a comma.	The State Bar Number field has been corrected on APP-006, APP-106, CR-126, JV-816, and JV-817.
			b. Currently, there is a section described as "last brief filed by any party." Often this form is used prior to filing any briefs. For this reason, the APS proposes these boxes either be "un-clickable" or to add a box indicating something to the effect of: "no brief has been filed yet."	The committee declines to revise the items. In cases where an appellant is seeking an extension of time before any brief has been filed, the committee envisions that this item would simply not be filled out.
			Other than objecting to the including of "work completed" on the extension form, and the additional suggestions highlighted above, it is APS's position that the Judicial Council's proposal appropriately addresses the stated purpose of the proposed rule. Thank you for considering our feedback. If you have any further questions, you may contact Lisa Cannon, Appellate Practice Section Chair, at: ecannon@sandiego.edu	The committee appreciates the feedback.
8.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	A	**Request for Specific Comments** • Does the proposal appropriately address the stated purpose? **Yes.**	The committee appreciates the feedback.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			• Should the committee explore making the extension of time application forms mandatory in a future proposal? **No.**	The committee appreciates the feedback. The committee may address this question in the future as time and resources allow.
			• Regarding the proposed new item on each form for the applicant to describe the work that has been completed on the appeal: o Should this item be worded differently? **Yes. The language is vague and overbroad.** o Should this item be included on the civil forms as well as the criminal and juvenile forms? **No.** o Should it be combined with the following item on the forms in which the applicant describes the reasons for needing an extension? **Yes.**	In light of this and other comments received on this point, the committee has modified the proposal to remove the item where an applicant would list the work done to date on the appeal. The committee concluded that including this item would not be appropriate as the work an attorney has done on the appeal is not a factor listed in the applicable rules governing extensions of time. The committee also concludes that the factors stated in the rules will permit applicants to discuss the work they have completed on appeal to the extent they feel it is relevant. Further, the committee believed that the item may imply that some work must have been completed on the appeal before an extension of time could be received.
			• Should the application forms in criminal, juvenile, and limited civil cases include an item regarding calendar priority/preference? **Yes.**	The committee appreciates the feedback.
			• Would the proposal provide cost savings? If so, please quantify. **No.**	The committee appreciates the feedback.
			• 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	The committee appreciates the feedback.

	Commenter	Position	Comment	Committee Response
			management systems? **Minimal or none.**	
			• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.**	The committee appreciates the feedback.
			• How well would this proposal work in courts of different sizes? **This proposal would work well in the San Diego Superior Court (a large court).**	The committee appreciates the feedback.

Item number: 05

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Appellate Procedure: Notice of Appeal

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Revise forms APP-002 and APP-102

Committee or other entity submitting the proposal:
Appellate 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 1, 2022
Project description from annual agenda: Consider revising notice of appeal form APP-002 to include space for an attorney who intends to join the appeal. In K.J. v. LA Unified School District (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

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

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

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

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

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

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

Judicial Council *of* California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: September 18–19, 2023

Title
Appellate Procedure: Notice of Appeal

Rules, Forms, Standards, or Statutes Affected
Revise forms APP-002 and APP-102

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
June 29, 2023

Contact
Kendall W. Hannon, 415-865-7653
kendall.hannon@jud.ca.gov

Executive Summary

The Appellate Advisory Committee recommends revising *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002) and *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) to (1) include an item by which an attorney can join the appeal to challenge an order directing payment of sanctions by the attorney; (2) add an optional item by which the appellant can attach a copy of the judgment or order being appealed; and (3) on form APP-002, reorganize item 1 to ensure that the item requesting the date of the judgment or order being appealed was entered is not overlooked.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2024, revise the following forms to add an item by which attorneys can indicate they are appealing to challenge a sanctions order, add an item to allow appellants to attach the order or judgment being appealed, and make other minor additions or corrections:

- *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002)
- *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102)

The proposed revised forms are attached at pages 6–9.

Relevant Previous Council Action

Notice of Appeal/Cross-Appeal (Unlimited Civil Case) (form APP-002) was adopted by the Judicial Council effective January 1, 2004. *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102) was adopted by the Judicial Council effective January 1, 2009. Both forms have been revised since adoption (most recently in 2017 for form APP-002 and 2019 for form APP-102), but these prior revisions are not relevant for the council's consideration of this proposal.

Analysis/Rationale

This proposal recommends revising the civil notice of appeal forms (forms APP-002 and APP-102) as follows.

Addition of item for attorneys to indicate they are appealing a sanction order

In 2020, the Supreme Court in *K.J. v. Los Angeles Unified School District*[1] addressed whether a Court of Appeal has jurisdiction to review an order directing an attorney to pay sanctions when the notice of appeal only identifies the attorney's client as appellant. Relying on the rule of liberal construction of the notice of appeal,[2] the Supreme Court held that the Court of Appeal has appellate jurisdiction over the sanctions order, even if the attorney omitted themselves as an appellant on the notice of appeal, so long as it is "clear from the record that the omitted attorney intended to participate in the appeal and the respondent was not misled or prejudiced by the omission."[3] The court noted, however, that to avoid any unnecessary litigation on this question, the "better practice is for the attorney to file a notice of appeal that expressly identifies himself or herself as an appealing party."[4]

To encourage the "better practice" identified by the Supreme Court, item 1d on *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* (form APP-002) and item 3c on *Notice of Appeal/Cross-Appeal (Limited Civil Case)* (form APP-102)[5] have been added for the attorney to indicate that the judgment or order being appealed directed the attorney to pay sanctions and that the attorney is appealing that order.

Optional item for appellant to attach the judgment or order being appealed

Items 3 and 3d have been added to forms APP-002 and APP-102, respectively, to allow the appellant to indicate that they are attaching a copy of the judgment or order being appealed. The committee believes that allowing an appellant to attach the judgment or order to the notice of

[1] *K.J. v. Los Angeles Unified School District* (2020) 8 Cal.5th 875.

[2] Cal. Rules of Court, rule 8.100(a)(2).

[3] *K.J. v. Los Angeles Unified School District*, *supra*, 8 Cal.5th 878.

[4] *Id.* at p. 889.

[5] To comply with Judicial Council form style guidelines, the titles of the forms have been revised to *Notice of Appeal/Cross-Appeal—Unlimited Civil Case* (form APP-002) and *Notice of Appeal/Cross-Appeal—Limited Civil Case* (form APP-102).

appeal would aid a litigant who was uncertain about how to classify the order or judgment in item 2c (on form APP-002) or item 3b (on form APP-102) and would, in such cases, help the court determine the proper scope of the appeal.

Reformatting of item 1 on form APP-002

Currently item 1 on form APP-002 contains no subitems and requires appellants to list their name, provide the date on which the judgment or order being appealed was entered, and then specify which judgment or order is being appealed. The committee received feedback from the Family Violence Appellate Project that a significant number of self-represented litigants with whom they interact overlook the "date" portion of this item, making it more difficult to determine if an appeal is timely.

Under rule 8.104(a)(1) of the California Rules of Court, a notice of appeal must be filed on or before the earliest of "(A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled 'Notice of Entry' of judgment or a filed-endorsed copy of the judgment, showing the date either was served; [¶] (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled 'Notice of Entry' of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or [¶] (C) 180 days after entry of the judgment." A timely filed notice of appeal is a jurisdictional prerequisite to an appeal.[6]

To ensure that an appellant fills out all required information, item 1 on form APP-002 has been reformatted to provide subitems, each with its own line. In subitem a, an appellant provides their name. Subitem b asks for the date on which the judgment and each order being appealed was entered. Subitem c is a list of judgments or orders, with check boxes for the appellant to indicate the type of order or judgment being appealed. Finally, item 1d, as discussed above, would permit an attorney to indicate they are also appealing a judgment or order directing them to pay sanctions.

Policy implications

The above revisions to forms APP-002 and APP-102 will make these notice of appeal forms clearer and will help avoid unnecessary litigation over the scope or jurisdiction of the appeal. These revisions are therefore consistent with *The Strategic Plan for California's Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

Comments

This proposal circulated for public comment between March 30 and May 12, 2023 as part of the regular spring invitation-to-comment cycle. The committee received six comments: three from organizations of appellate practitioners; one from the Family Violence Appellate Project, one from a county bar association, and one from a superior court. Five commentors agreed with the proposed changes and one agreed if amended. The principal comments are summarized below. A

[6] See, e.g., *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 113.

chart with the full text of the comments received and the committee's responses is attached at pages 10–18.

The Family Violence Appellate Project and Los Angeles County Bar Association Appellate Courts Section recommended further revisions to reflect the fact that an appellant may be appealing from multiple orders. To account for this possibility, form APP-002 has been further revised as follows: (1) the parenthetical in item 1b has been revised to read "*(list the date or dates the judgment and each order being appealed was entered)*"; and (2) item 1c has been revised to add the parenthetical "*(check all that apply)*." Similarly, the parenthetical at item 3 on form APP-102 has been revised to read "*(check a, b, or both*)," and the parenthetical at item 3b has been revised to include the parenthetical "*(check all that apply)*."

The Los Angeles County Bar Association Appellate Courts Section also recommended that a box be added to item 1c for the appellant to specify that the appeal is from a collateral order. The committee believes that an appeal from a collateral order would fit within the "other" box (item 1c in form APP-002 and item 3(b)(9) in form APP-102) and that a specific box for collateral orders is unnecessary. To make clear that the "other" box can be used where a nonstatutory basis for appellate jurisdiction over an order exists, however, the phrase "other authority" has been added to the parenthetical on the "other" box on form APP-002. The parenthetical has been revised to read "*(describe and specify the code section or other authority that authorizes this appeal)*."

The Orange County Bar Association stated that it did not believe it is necessary to add an option by which an appellant could indicate that the judgment or order being appealed is attached. The committee agrees with the commenter that attaching a copy of the judgment or order being appealed is not necessary for the notice of appeal to be effective. However, for the reasons stated above, the committee believes it may be useful to self-represented appellants and the court in certain cases.

Alternatives considered

The committee considered taking no action, but ultimately concluded that the revisions would aid both appellants in filling out the civil notice of appeal forms and courts in processing the notices.

Because an appellant may seek to appeal from multiple orders, the committee considered using the plural "orders" throughout forms APP-002 and APP-102. However, the committee concluded that using "orders" may be confusing in those cases where only a single order or judgment is being appealed. The committee believes that the revisions discussed above sufficiently account for cases where an appellant is appealing from multiple orders.

The committee considered adding items to the criminal and juvenile notice of appeal forms similar to the new item 1c on form APP-002 and item 3c on form APP-102 relating to sanctions orders. In response to a request for specific comment on this point, the Superior Court for San Diego County stated that the other notice of appeal forms should be revised. However, in the

absence of any indication that attorney appeals from sanction orders in criminal or juvenile cases have created jurisdictional issues similar to those addressed in *K.J. v. Los Angeles Unified School District*, the committee decided not to recommend revising the criminal or juvenile notices of appeal at this time.

Fiscal and Operational Impacts

Fiscal or operational impacts, if any, are expected to be minimal and there are no apparent barriers to implementation.

Attachments and Links

1. Forms APP-002 and APP-102, at pages 6–9
2. Chart of comments, at pages 10–18

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT 06.22.2023 Not approved by Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
☐ **NOTICE OF APPEAL** ☐ **CROSS-APPEAL** **(UNLIMITED CIVIL CASE)**	CASE NUMBER:

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

1. NOTICE IS HEREBY GIVEN that:
   a. *(Name)*: appeals from a judgment or order in this case.
   b. The judgment or order was entered on *(list the date or dates the judgment and each order being appealed were entered):*
   c. The appeal is from the following order or judgment *(check all that apply)*:
      - ☐ Judgment after jury trial
      - ☐ Judgment after court trial
      - ☐ Default judgment
      - ☐ Judgment after an order granting a summary judgment motion
      - ☐ Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
      - ☐ Judgment of dismissal after an order sustaining a demurrer
      - ☐ An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
      - ☐ An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)
      - ☐ Other *(describe and specify the code section or other authority that authorizes this appeal):*

   d. ☐ The judgment or order being appealed directs payment of sanctions by an attorney for a party. The attorney *(name)*: appeals.
2. For cross-appeals only:
   a. Date notice of appeal was filed in original appeal:
   b. Date superior court clerk mailed notice of original appeal:
   c. Court of Appeal case number *(if known)*:
3. ☐ The judgment or order being appealed is attached *(optional).*

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-002 [Rev. January 1, 2024]

NOTICE OF APPEAL/CROSS-APPEAL—UNLIMITED CIVIL CASE (Appellate)

Cal. Rules of Court, rule 8.100
www.courts.ca.gov

APP-102 Notice of Appeal/Cross-Appeal—Limited Civil Case

Clerk stamps date here when form is filed.

DRAFT 06.22.2023 Not approved by Judicial Council

Instructions

- This form is only for appealing in a **limited civil case.** You can get other forms for appealing in unlimited civil cases at any courthouse or county law library or online at *www.courts.ca.gov/forms.*
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- You must serve and file this form **no later than 30 days** after the trial court or a party serves a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or 90 days after entry of judgment, whichever is earlier (see rule 8.823 of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, your appeal will be dismissed.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the Self-Help Guide to the California Courts at *https://selfhelp.courts.ca.gov/*.
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:

Trial Court Case Name:

The clerk will fill in the number below

Appellate Division Case Number:

1 Your Information

a. Name of appellant (the party who is filing this appeal):

☐ *Check here if more than one appellant and attach a separate page or pages listing the other appellants and their contact information. At the top of each page, write "APP-102, item 1a."*

b. Appellant's contact information *(skip this if the appellant has a lawyer for this appeal):*

Street address: _____ _____ _____ _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____ _____ _____ _____
Street *City* *State* *Zip*

Phone: _____ Email: _____

c. Appellant's lawyer *(skip this if the appellant does not have a lawyer for this appeal):*

Name: _____ State Bar number: _____

Street address: _____ _____ _____ _____
Street *City* *State* *Zip*

Mailing address *(if different):* _____ _____ _____ _____
Street *City* *State* *Zip*

Phone: _____ Email: _____

Fax: _____

2 This is *(check a or b):*

a. ☐ The first appeal in this case.

b. ☐ A cross-appeal (an appeal filed after the first appeal in this case *(complete (1), (2), and (3)).*

(1) The notice of appeal in the first appeal was filed on *(fill in the date that the other party filed its notice of appeal in this case):* _____

(2) The trial court clerk served notice of the first appeal on *(fill in the date that the clerk served the notice of the other party's appeal in this case):* _____

(3) The appellate division case number for the first appeal is *(fill in the appellate division case number of the other party's appeal, if you know it):* _____

3 Judgment or Order You Are Appealing

I am/My client is appealing *(check a, b, or both):*

a. ☐ The final judgment in the trial court case identified in the box on page 1 of this form.
The date the trial court entered this judgment was *(fill in the date):* _____

b. ☐ Other *(check all that apply)*:

(1) ☐ An order made after final judgment in the case.
The date the trial court entered this order was *(fill in the date):* _____

(2) ☐ An order changing or refusing to change the place of trial (venue).
The date the trial court entered this order was *(fill in the date):* _____

(3) ☐ An order granting a motion to quash service of summons.
The date the trial court entered this order was *(fill in the date):* _____

(4) ☐ An order granting a motion to stay or dismiss the action on the ground of inconvenient forum.
The date the trial court entered this order was *(fill in the date):* _____

(5) ☐ An order granting a new trial.
The date the trial court entered this order was *(fill in the date):* _____

(6) ☐ An order denying a motion for judgment notwithstanding the verdict.
The date the trial court entered this order was *(fill in the date):* _____

(7) ☐ An order granting or dissolving an injunction or refusing to grant or dissolve an injunction.
The date the trial court entered this order was *(fill in the date):* _____

(8) ☐ An order appointing a receiver.
The date the trial court entered this order was *(fill in the date):* _____

3 *(continued)*

(9) ☐ Other action *(please describe and indicate the date the trial court took the action you are appealing):*

_____

_____

_____

_____

_____

_____

c. ☐ The judgment or order being appealed directs payment of sanctions by an attorney for a party. The attorney *(name)*: appeals.

d. ☐ The order or judgment being appealed is attached *(optional)*.

4 **Record Preparation Election**

Complete this section only if you are filing the first appeal in this case. If you are filing a cross-appeal, skip this section and go to the signature line.

If you are filing the first appeal in this case, you must serve and file a notice in the trial court designating the record on appeal. You may use Appellant's Notice Designating Record on Appeal (Limited Civil Case) *(form APP-103). Check a or b:*

a. ☐ I will serve and file a notice designating the record on appeal together with this notice of appeal.

b. ☐ I will serve and file a notice designating the record on appeal later. I understand that I must file this notice in the trial court within 10 days of the date I file this notice of appeal, and that if I do not file the notice designating the record on time, the court may dismiss my appeal.

REMINDER: Except in the very limited circumstances listed in California Rules of Court, rule 8.823, you must serve and file this form no later than (1) 30 days after the trial court clerk or a party serves either a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment, or (2) within 90 days after entry of judgment, whichever is earlier. If your notice of appeal is late, your appeal will be dismissed.

Date: _____

_____ ▶ _____

Type or print your name *Signature of appellant/cross-appellant or attorney*

Date: _____

_____ ▶ _____

Type or print your name *Signature of appellant/cross-appellant or attorney*

Date: _____

_____ ▶ _____

Type or print your name *Signature of appellant/cross-appellant or attorney*

SPR23-07
Appellate Procedure: Notice of Appeal Forms (Revise forms APP-002 and APP-102)

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

	Commenter	Position	Comment	Committee Response
1.	California Academy of Appellate Lawyers by Wendy Cole Lascher Rules Commentary Chair	A	The California Academy of Appellate Lawyers ("CAAL") is devoted to promoting and encouraging reforms in appellate practice that ensure effective representation of litigants and more efficient administration of justice.	The committee notes the commenter's support for the proposal.
2.	California Lawyers Association by Kelly Woodruff, Chair Litigation Section, Committee on Appellate Courts	A	In Invitation to Comment SPR23-07, the AAC proposed three changes to the notice of appeal (NOA) form. First, it adds an item by which an attorney can join the appeal to challenge an order directing payment of sanctions by the attorney. Second, it adds an optional item by which the appellant can attach a copy of the judgment or order being appealed. Third, the form will be reformatted to break out the request for the date of the order or judgment being appealed. The CAC supports all three recommendations. Members of the CAC, especially those who practice in family law, can attest to mistakes on the NOA committed primarily by pro se litigants. In particular, the date of the order or judgment being appealed is often overlooked, which creates additional work for court staff. Both the reformatting of the NOA and the option to attach a copy of the order or judgment being appealed will assist the court in determining whether the NOA was timely filed.	The committee appreciates the commenter's feedback on this proposal and notes the commenter's support for the proposal.
3.	Family Violence Appellate Project by Cory Hernandez Senior Staff Attorney	A	The following comments are submitted by Family Violence Appellate Project (FVAP) regarding the Judicial Council's Invitation to	The committee notes the commenter's support for the proposal and addresses the individual points below.

SPR23-07
Appellate Procedure: Notice of Appeal Forms (Revise forms APP-002 and APP-102)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			Comment number SPR23-07. We support the recommendations, and wanted to make three more recommendations below, for the benefit of courts and parties, whether represented or not. FVAP is a State Bar-funded legal services support center and the only nonprofit organization in California dedicated to representing survivors of domestic violence and other forms of gender-based abuse in civil appeals for free. We are also funded by the California Office of Emergency Services to support domestic violence, sexual assault and human trafficking advocates who work directly with self-represented litigants seeking protection or other relief from the court system. FVAP is devoted to ensuring survivors can live in healthy, safe environments, free from abuse. This includes ensuring appellate procedures and rules are straightforward enough to follow for parties without representation, which includes most survivors. We first want to express our appreciation for the Council in responding to our suggestion for amending form APP-002 to make it clearer for parties that they need to include the date of the order being appealed from. The proposed changes to item 1, and elsewhere, on form APP-002, responded well to our suggestion and, we think, will make it easier for parties and courts to understand the exact order(s) being appealed.	No response necessary. The committee notes the commenter's support for the proposal.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			We also have three additional suggestions outlined below.	
			I. FORM APP-002 We think the changes on APP-002 in the proposal look great. One additional suggestion for new item 1(c) is to add a parenthetical saying, emphasis added for our suggestion: "The appeal is from the following order or judgment ***(check all that apply)***:" We suggest this addition because often more than one box would apply in any given appeal. Plus, some appeals are from multiple orders. And in particular with self-represented litigants, those parties are less likely to know exactly which one statute applies, or may know a statute applies but be confused between, say "Judgment after court trial" and "order . . . under [CCP], § 904.1(a)(2)," because both boxes could apply in, e.g., child custody cases.	The committee agrees with the proposed revision. The parenthetical has been added to item 1c.
			II. CITING NONPUBLISHED OPINIONS Currently, rule 8.1115(b) of the California Rules of Court disallows citation of nonpublished state court opinions, except in two limited	This suggestion is outside the scope of the instant proposal. The committee will consider the issue in the future as time and resources allow.

	Commenter	Position	Comment	Committee Response
			circumstances, (b)(1) (law of case or estoppel) and (b)(2) (same defendant, reasons from prior opinion). We respectfully request the Council consider adding two more limited circumstances, which, from our experience, are already effectively allowed in practice in most courts. These two additional circumstances could be added in (b)(3) and (b)(4), described below. This (b)(3) could say: "When the opinion is relevant to a request for publication, partial publication, or depublication, or opposition thereto." Citing nonpublished cases can be useful to show the rule 8.1105(c) factors are (or are not) met—e.g., that publication of a specific opinion would be helpful for settling or creating a conflict of law, to show the opinion involves an issue of widespread public importance (e.g., many nonpublished opinions on this issue, but nothing precedential), or to show the sparsity of case law on the issue. And this (b)(4) could say: "When the opinion is relevant for seeking review in the Supreme Court." Nonpublished opinions can be helpful to show why review should be granted pursuant to rule 8.500(b)—e.g., a split of authority, differences in legal reasoning, or the statewide importance of an issue.	

	Commenter	Position	Comment	Committee Response
			We have seen nonpublished opinions cited in both fashions discussed above, and thus adding these (b)(3) and (b)(4) to rule 8.1115(b) would not drastically change the law or current practice, but basically codify and clarify current procedures. These suggested (b)(3) and (b)(4) are narrowly tailored to avoid unduly expanding the use of nonpublished cases as precedential authority, and since they essentially codify extant practice, adding them will not open the floodgates to start adding in even more exceptions to rule 8.1115(b).	
			III. MEDIATION ON APPEAL The Third District has a local rule 1 that suspends the typical rules of appellate procedure, for a time, until it rules on whether to send particular appeals to mediation. The local rule automatically exempts only certain types of cases: conservatorships, guardianships, and sterilization matters. No explanation is provided in the rule for why these cases are exempted, and others are not. Notably, civil restraining orders, including domestic violence restraining orders, are not automatically exempted—but they should be. In our experience, appeals from civil restraining order cases are never selected for this mediation program. As such, this local rule 1 just adds	This suggestion is outside the scope of the instant proposal. The committee will consider the issue in the future as time and resources allow.

	Commenter	Position	Comment	Committee Response
			extra steps to an already lengthy, detailed appellate process. And from a policy perspective, these cases should not be selected for mediation. Civil restraining order appeals necessarily involve a power imbalance between the restrained party (abuser) and protected party (survivor). Mediation serves only to give the abuser another opportunity to exert their power and control, coerce the survivor into dropping their case or defense. Indeed, even before mediation happens, just knowing that mediation with their abuser may happen is likely to discourage survivors from seeking appeals at all, or continuing their appeal after learning of the possibility of mediation. Having to mediate with their abuser can be traumatizing for survivors. This understanding is reflected in the policy behind, e.g., rule 5.215 of the California Rules of Court, which forbids forcing survivors of domestic violence into joint child custody mediation with their abuser. We thus recommend adding a rule in Title 8 of the California Rules of Court—maybe in Article 1 of Chapter 1 of Division 1, perhaps a new rule 8.21 or something—that forbids local appellate courts, districts and divisions, from adopting local rules that require parties in civil restraining order cases (or at least domestic violence restraining order cases) to participate in mediation programs.	

	Commenter	Position	Comment	Committee Response
			Alternatively stated, the rule could require local appellate courts to automatically exempt civil restraining order appeals (or at least domestic violence restraining order appeals) from mediation, if the court has a mediation program.	
4.	Los Angeles County Bar Association, Appellate Courts Section by John A. Taylor, Jr. Executive Committee Member	A	The Appellate Courts Section of the Los Angeles County Bar Association (LACBA-ACS) supports SPR23-07 for the reasons stated in the proposal, with additional proposed modifications to forms APP-002 and APP-102. The LACBA-ACS suggests that in section 1, a box be added for an appeal from a collateral order, such as an order awarding attorney fees. (See, e.g., Madrigal v. Hyundai Motor America (Cal. Ct. App., Apr. 11, 2023, No. C090463) 2023 WL 2883009; Apex LLC v. Korusfood.com (2013) 222 Cal.App.4th 1010, 1015.) In addition, we suggest adding "(s)" to the term "order" in section 1.a.-c., and enough blank space to accommodate multiple dates when an appeal challenges not only the judgment but also other appealable orders (e.g., denial of JNOV, an attorney fees award, etc.)	The committee believes that appeals from collateral orders would properly fit within item 1c's "Other" box on form APP-002. However, the committee has revised the parenthetical after the "Other" box to make clear that nonstatutory authority (such as the collateral order doctrine) can authorize the appeal. The parenthetical has been revised to read "*(describe and specify code section or other authority that authorizes this appeal)*." The committee agrees that an appellant may be appealing multiple orders. The committee, however, declines to replace "order" with "order(s)" as such construction can be ambiguous to self-represented parties and therefore inconsistent with the Judicial Council form format. Instead, to address this point, the committee has made the following revisions to form APP-002: (1) the parenthetical in item 1b now reads"*(list the date or dates the judgment and each order being appealed was entered)*"; and (2) item 1c now includes the parenthetical "*(check all that apply)*." Similarly, item 3b on form APP-102

SPR23-07
Appellate Procedure: Notice of Appeal Forms (Revise forms APP-002 and APP-102)

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

	Commenter	Position	Comment	Committee Response
				has been revised to include the parenthetical "*(check all that apply)*."
5.	Orange County Bar Association by Michael A. Gregg President	AM	1. We agree with the modification that allows the attorney to more clearly appeal a sanctions order.	The committee appreciates the feedback.
			2. We do not think it is necessary to modify the forms to add the "d." option for attaching the order or judgment being appealed. Attaching the order/judgment is not necessary for the notice of appeal to be effective, and adding an explicitly option for attachments could lead to more confusion.	The committee agrees that attaching an order or judgment being appealed is not necessary in order for the notice of appeal to be effective. However, the committee believes the item will be useful to self-represented appellants and the courts in cases where the appellant is uncertain how to describe the order being appealed.
6.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	A	• Does the proposal appropriately address the stated purpose? **Yes.** • Should similar changes be made to other notice of appeal forms? **Yes.** • Would the proposal provide cost savings? If so, please quantify. **No.** • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **Minimal or none.** • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.**	The committee appreciates the information.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR23-07
Appellate Procedure: Notice of Appeal Forms (Revise forms APP-002 and APP-102)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			• How well would this proposal work in courts of different sizes? **This proposal would work well in the San Diego Superior Court (a large court).**	

Item number: 06

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 08/22/2023

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

Title of proposal: Unlawful Detainer: Opportunities for Settlement Before Trial

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Adopt Cal. Rules of Court, rule 3.2005 and approve form UD-155

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

*Staff contact (*name, phone and e-mail*): Eric Long, 415-865-7691 eric.long@jud.ca.gov*
James Barolo, 415-865-8928 james.barolo@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): 11/01/2022
Project description from annual agenda: 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.

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.)
This proposal circulated for public comment during the winter comment cycle and agaun during the regular spring comment cycle.

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

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

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

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

Judicial Council *of* California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: TBD
For business meeting on September 18–19, 2023

Title
Rules and Forms: Opportunities for Settlement Before Trial in Unlawful Detainer Cases

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 3.2005; approve form UD-155

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 26, 2023

Contact
Eric Long, 415-865-7691
eric.long@jud.ca.gov
James Barolo, 415-865-8928
james.barolo@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends a new rule of court and a new form for optional use in unlawful detainer cases to promote settlement opportunities using alternative dispute resolution processes. The new rule states a policy favoring at least one opportunity for participation in some form of pretrial dispute resolution and would allow a court to shorten the existing deadline for submitting a mandatory settlement conference statement. The new form allows parties to submit to the court a settlement agreement and ask for either an order without judgment or a stipulated judgment. The new rule and optional form are intended to increase settlement opportunities in eviction cases and to promote consistency throughout the state.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2024:

1. Adopt California Rules of Court, rule 3.2005, to promote opportunities for settlement before trial in unlawful detainer cases; and

2. Approve *Eviction Case (Unlawful Detainer) Stipulation* (form UD-155) to identify elements common to settlement agreements in eviction cases, and to provide a road map to help the parties, neutrals, and courts memorialize terms and conditions of performance of an agreement to resolve a case before trial.

The proposed new rule and form are attached at pages 7–14.

Relevant Previous Council Action

Effective January 1, 2003, the council approved *Stipulation of Entry of Judgment* (form UD-115) for optional use (along with forms UD-110 (judgment), UD-110S (conditional judgment), and UD-116 (declaration for default judgment by the court)) in unlawful detainer proceedings to promote statewide uniform practice as it relates to entry of judgment.

Analysis/Rationale

The recommended new rule and form are responsive to the directive from the Ad Hoc Workgroup on Post-Pandemic Initiatives to develop a proposal to encourage more frequent use of settlement conferences in unlawful detainer cases or other ways to encourage parties in unlawful detainer cases to work on solutions not requiring trials. The rule promotes participation in any form of pretrial alternative dispute resolution (ADR), including mandatory settlement conferences (MSCs), and the form gives parties in eviction cases a framework for use in reaching an agreement, whether it be a stipulation and order without entry of judgment or a stipulated judgment.

Courts are currently authorized to set mandatory settlement conferences under California Rules of Court, rule 3.1380, but courts are not required to hold them. To understand current practice for pretrial dispute resolution of eviction cases, the committee informally surveyed superior courts around the state. Through this survey the committee learned that ADR programs for eviction cases vary by court. Some courts offer day-of-trial mediation using volunteer mediators. A few courts require participation in an MSC, as resources allow. And some courts have no pretrial ADR programs for eviction cases in place at present. Because the courts that have ADR programs in place are using different processes based on the resources available, the committee concluded that a rule requiring courts to use one particular ADR process would be undesirable and potentially burdensome if resources were not available. Plus, a rule focused on MSCs alone would not account for existing court-connected mediation programs or other ADR processes that may be successful in resolving eviction cases without a trial.

Rule 3.2005

The recommended rule adopts a policy encouraging—in all unlawful detainer actions—an opportunity for participating in any ADR process before trial. Because eviction cases move more quickly than most civil litigation, the recommended rule allows a court to exempt the parties

from the five-court-day deadline for mandatory settlement conference statements set in rule 3.1380(c). The committee acknowledges that there may be other deadlines relating to ADR processes that may need to be shortened for parties in eviction cases to participate in those processes. An advisory committee comment has been included to note that the rule's stated exemption is not meant to limit courts in granting relief from other deadlines that may facilitate a party's participation in any ADR process that might result in resolution before trial. Another advisory committee comment states that the rule does not require parties to participate in any type of for-cost mediation or ADR process.

Form UD-155

Because eviction cases may involve self-represented parties, the committee recommends adoption of a plain-language form (UD-155) that parties can use to submit a settlement agreement that they reach to the court and ask for either a Stipulation and Order (without entry of judgment and with or without a conditional judgment) or a Stipulated Judgment. The recommended form, which is designed to be understood by both attorneys and self-represented parties, can also be used as a guide for discussions that might lead to resolution before trial. The form addresses the most common components of a stipulated agreement in eviction cases. Items 6, 8, and 10 of the form also include an "Other" option in which the parties may specify other terms that are necessary to the agreement.

If approved by the council, form UD-155 will serve as an alternative to *Stipulation for Entry of Judgment* (form UD-115). Form UD-115 allows parties to tell the court that there is an agreement to finish an eviction case and ask the judge to approve it by entering judgment. That form may still be used if preferred by the parties. Form UD-115, however, is not easily modified to reflect a settlement that avoids entry of judgment. New recommended form UD-155, in contrast, does just that; it allows for the parties to reach an agreement that seeks an end to an eviction case without a judgment. The committee understands that avoiding a judgment may be an important goal for defendants in eviction cases.

Policy implications

The new rule and form are intended to increase settlement opportunities in eviction cases and to promote consistency throughout the state while furthering the Ad Hoc Workgroup on Post-Pandemic Initiatives' goal of increasing access to justice.

Comments

The proposal previously circulated for public comment from December 9, 2022, to January 20, 2023, as part of the winter invitation-to-comment cycle. After making changes to both the rule and the form based on the comments received, the committee recommended recirculation of the proposal for further comment. The proposal circulated a second time during the regular spring invitation-to-comment cycle between March 30 and May 12, 2023.

In the winter cycle, the committee received comments from 13 commenters: a court, a court attorney, a bar association, and 10 legal organizations and their attorneys. One commenter agreed with the proposal; 2 agreed if the proposal was modified; 3 disagreed with the proposal in the

form it was circulated; and 7 did not take a position but offered numerous suggestions focused on improving clarity, fairness, and accessibility. A chart with the full text of the comments received in the winter cycle and the committee's responses is attached at pages 42–119.

Legal aid and tenant advocacy organizations offered numerous general and specific suggestions they believed would make the form language simpler and fairer, including more options to resolve cases without directing tenants into eviction and more balance in the terms offered, especially for the notice and hearing terms following a failure to perform under the stipulation. A court attorney suggested increasing the size of the form's blanks for amounts and dates to facilitate in-court completion by hand. The Orange County Bar Association suggested including additional terms found in existing forms and on the California Courts Self-Help Guide for Unlawful Detainer Proceedings.

The committee substantially modified proposed form UD-155 in light of the comments received by adopting many of the suggestions received and recirculated it for further comment. For example, the committee changed the form to add more information about the voluntary nature of resolving a case without a trial and what happens if an agreement is not reached or if a party does not do everything agreed to. The committee also added more optional terms, including a grace period, an opportunity to cure a breach of the agreement, and a provision allowing parties to exclude some terms in the stipulation from necessarily resulting in an eviction judgment. The recommended form allows parties to identify terms for which a plaintiff will not seek eviction if a tenant fails to comply with them.

In the spring cycle, the committee received comments from 9 commenters: 3 courts, a court attorney, a bar association, 3 organizations, and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. Of the 9 commenters, 3 agreed with the proposal, 2 agreed if modified, and 4 did not indicate a position. Most of the commenters indicated their support of the proposal or that the proposal appropriately addressed its stated purpose. The more significant suggestions are discussed below. A chart of comments and the committee's responses from the spring cycle is attached at pages 14–40.

Payment plan

The committee agrees with the Joint Rules Subcommittee's suggestion for item 6's payment plan. The committee recommends replacing the text-based payment plan options that were circulated for comment with a table that displays the amounts due and due dates for 12 payments (one year's worth, assuming monthly payments). The committee agreed with the Joint Rules Subcommittee's comment that a visual schedule of payments is preferable to a lump sum or a textual sentence.

The ex parte application process

When the proposal was circulated for comment in the spring, the form allowed the parties to elect for a particular notice-and-hearing schedule in items 7 and 9 and to specify the relief that would be sought if the other party did not do everything agreed to in the agreement. The Joint Rules Subcommittee observed that these two provisions included terms that were not necessary,

that the options might not get high use and may conflict with local practices, and that the timelines may deter settlements. Other commenters observed that the term "ex parte" and the process could be confusing to litigants, especially those without representation. The committee was persuaded that the form would better serve litigants if it provided more general information about the process for a hearing with less advance notice in items 7 and 9 and therefore modified these items in the recommended form.

Terms presented in UD-155

The committees sought specific comment on the terms and language of the proposed form, seeking suggestions on ways to more plainly state information for self-represented litigants and asking if there were other terms common to agreements in eviction cases that ought to be considered. The commenters indicated that the form was comprehensive and did not suggest any additional terms. With respect to plain language, the committee agreed with many of the commenters' suggestions for clarifying and simplifying the information presented as much as possible while still communicating accurate legal information and incorporated many suggested changes into the recommended form.

***Stipulation of Entry of Judgment* (form UD-115)**

The committee decided against recommending the revocation of form UD-115, which is a more streamlined form for entry of judgment. It is not clear how frequently UD-115 is used. According to one commenter, the form is not used by advocates in Los Angeles County. Another commenter—a member of the Joint Rules Subcommittee—indicated that the form is used regularly to resolve eviction cases in at least one court. Because both forms are optional, the committee does not see a conflict in allowing parties to choose to use either one. The committee will reevaluate form UD-115 as time and resources allow after form UD-155 has been in use.

Alternatives considered

The advisory committee considered whether to propose that parties in unlawful detainer cases be required to participate in an MSC before trial. The committee concluded that there are other ADR processes that may also help parties reach solutions not requiring trials, and that requiring MSCs would unnecessarily promote one form of ADR to the exclusion of other available processes. The committee also had concerns about whether courts had the resources necessary to successfully hold an MSC before every unlawful detainer trial (or even a subset of unlawful detainer cases).

The committee also considered taking no action because some courts already offer court-connected mediation or require participation in MSCs in eviction cases. However, the committee determined that a policy favoring settlement opportunities and adoption of an optional form would be helpful to parties, neutrals, and courts.

Fiscal and Operational Impacts

The proposal's fiscal or operational impacts, if any, are expected to be minimal. The new form is intended to assist parties, neutrals, and courts in resolving eviction cases before trial by setting

out the most common terms at issue in stipulated eviction-case agreements. Court staff, judicial officers, and self-help center staff may need to be trained on the new form. Case management systems may need to be adjusted to appropriately handle the new form.

Attachments and Links

1. Cal. Rules of Court, rule 3.2005, at page 7
2. Form UD-155, at pages 8–14
3. Chart of comments (spring 2023), at pages 15–41
4. Chart of comments (winter 2023), at pages 42–119

Rule 3.2005 of the California Rules of Court is adopted, effective January 1, 2024, to read:

Title 3. Civil Rules

Division 20. Unlawful Detainers

Rule 3.2005. Settlement opportunities

(a) Policy favoring an opportunity for resolution without trial

The intent of this rule is to promote opportunities for resolution of unlawful detainer cases before trial. Courts should encourage participation, to the extent feasible, in at least one opportunity for resolution before trial, including but not limited to a settlement conference, mediation, or another alternative dispute resolution process.

(b) Exemption for mandatory settlement conference statement deadline

The court may exempt the parties in an unlawful detainer case participating in a mandatory settlement conference from the five-court-day deadline for submitting a settlement conference statement set out in rule 3.1380(c).

Advisory Committee Comment

The Judicial Council has adopted an optional form—*Eviction Case (Unlawful Detainer) Stipulation* (form UD-155)—that can be used to advise the court about any settlement that has been reached before trial.

Subdivision (a). The committee notes that parties may choose but cannot be required to participate in for-cost mediation or alternative dispute resolution (ADR). This rule is not intended in any way to mandate for-cost mediation or ADR.

Subdivision (b). Because unlawful detainer cases generally proceed on an expedited basis, this exemption allows parties in unlawful detainer cases to participate in and complete mandatory settlement conferences on shorter timelines. Nothing in this rule, including the exemption set out in subdivision (b), is intended to preclude a court from shortening other deadlines related to alternative dispute resolution processes.

UD-155 Eviction Case (Unlawful Detainer) Stipulation

Clerk stamps date here when form is filed.

DRAFT

07/26/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Instructions

- This form is for use only in an **eviction (unlawful detainer) case**.
- This form may be used if the parties agree to resolve the case before trial.
- Agreeing to resolve the case before trial is voluntary. If the parties do not reach an agreement, the case will go to trial and a judge or jury will hear from both sides and decide if the tenant has to move out and pay money (if plaintiff asked for money in the complaint).
- If a party agrees to terms to resolve the case and then does not do everything agreed to, an eviction and lockout may take place, entry of judgment may occur, or a trial may be necessary.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 The plaintiff (the person or entity asking the court to order defendant to move out) is:

a. Name: _____

b. Lawyer *(complete if plaintiff has one for this case):*

Name: _____

State Bar No.: _____ Firm Name: _____

c. Address *(if plaintiff has a lawyer, use the lawyer's information):*

_____

City: _____ State: ____ Zip: _____

Email Address: _____

☐ *Check here if there is more than one plaintiff and attach one sheet of paper or form MC-025 and write "UD-155, Item 1" at the top.*

2 The defendant (the tenant being sued for a court order to move out) is:

a. Name: _____

b. Lawyer *(if defendant has one for this case):*

Name: _____

State Bar No.: _____ Firm Name: _____

c. Address *(if defendant has a lawyer, use the lawyer's information):*

_____

City: _____ State: ____ Zip: _____

Email Address: _____

☐ *Check here if there is more than one defendant and attach one sheet of paper or form MC-025 and write "UD-155, Item 2" at the top.*

3 The property is located at:

Address: _____

_____

Apt./Unit No.: _____ City: _____ State: ____ Zip: _____

4 Type of Stipulation

- A **Stipulation and Order** tells the court about the parties' agreement and makes it part of the court record (no judgment will be entered at this time). A Stipulation and Order can include, but is not required to, a **Conditional Judgment**, which tells the court how to resolve the case if a party does not do everything agreed to in the Stipulation. Once signed by the court, the Stipulation becomes a legally binding order that must be obeyed or else the other party can go back to court and ask for the Stipulation to be enforced.
- A **Stipulated Judgment** is similar except that it ends the case once the court signs the Stipulation. If the Stipulated Judgment is approved, the court will enter a judgment against the defendant immediately. This will have the same effect as though the defendant lost the eviction case at a trial. Plaintiff will be able to ask the sheriff for a lockout. The eviction judgment against the defendant may become public.

Select the type of stipulation you are agreeing to (check a or b):

a. ☐ Stipulation and Order (no entry of judgment at this time) *(Check one.)*
   ☐ without Conditional Judgment *(Skip 11.)* ☐ with Conditional Judgment *(Complete 11.)*

b. ☐ Stipulated Judgment

5 Purpose of the Stipulation *(Check one.)*

a. ☐ Defendant will stay in the property with conditions stated in this Stipulation.

b. ☐ Defendant will stay in the property if defendant does everything that the parties agree is necessary to avoid an eviction judgment. *(Check one.)*
   (1) ☐ Everything in this Stipulation is necessary to avoid an eviction judgment.
   (2) ☐ Only some terms in this Stipulation may result in an eviction judgment. *(Complete item 8i.)*

c. ☐ Defendant will move out of (vacate) the property with conditions stated in this Stipulation.

d. ☐ Other *(describe any other purpose of the Stipulation):* _____

_____

☐ *Check here if you need more space. Attach one sheet of paper or form MC-025 and write "UD-155, Item 5" at the top.*

6 Defendant agrees to do the following *(Check all that defendant agrees to.)*

a. ☐ To pay:

Past Due Rent	Damages	Attorney Fees	Court Costs	**Total**
$	$	$	$	$

(Damages may include an amount based on daily rental value if plaintiff asked for money in the complaint.)

(1) ☐ This amount is all that defendant owes plaintiff as of the date of this Stipulation.
(2) ☐ Defendant has fully paid plaintiff this amount.

b. ☐ To follow a payment plan, making payments as follows:

Amount Due	Date Payment Due	Amount Due	Date Payment Due

6 b. *(continued)*

Amount Due	Date Payment Due	Amount Due	Date Payment Due

☐ *Check here if you need more space for a payment schedule. Use additional pages as necessary.*

(1) ☐ Payments will be made in addition to regularly due rent payments.

(2) ☐ All future payments will be applied first to rent due and then to the amounts due under the payment plan.

(3) ☐ Payments will be made in cash, certified funds, cashier's check, or money order until *(state date of final payment):* _____.

(4) ☐ Payments will be made payable to and delivered to *(state name of person or entity and delivery terms):*

_____

_____

c. ☐ To move out of (vacate) the property no later than 11:59 p.m. on *(date):* _____

d. ☐ To incorporate and comply with the General Terms agreed to in **10**. (Additional terms relating to what both parties are agreeing to do are located in **10**.)

e. ☐ Other *(describe any other things agreed to by defendant):* _____

_____

☐ *Check here if you need more space. Attach one sheet of paper or form MC-025 and write "UD-155, Item 6" at the top.*

7 **If defendant does not do everything that the parties agree is necessary to avoid an eviction judgment** *(Check all that the parties agree to.)*

a. ☐ Defendant agrees that plaintiff can tell the court how defendant has not complied with the Stipulation and ask the court to quickly make the judgment in the eviction case.

Notice and Hearing: Plaintiff may ask the court for a hearing on a quicker schedule with less advance notice to defendant than is usually given—possibly even notice on the same day as the hearing—by submitting **an ex parte application** supported by **a declaration** under penalty of perjury signed by a person with personal knowledge of the facts of defendant's noncompliance and **a declaration** establishing notice to defendant of the ex parte application. (See Cal. Rules of Court, rule 3.1200 et seq.) Depending on the ex parte application and the circumstances, the court may set a hearing on a quicker schedule. **Courts have different hearing and filing times.**

b. ☐ Opportunity to Fix (Cure) Violations: Plaintiff must first provide defendant with reasonable notice of any violations of this Stipulation and an opportunity to fix (cure) them. The notice will be sent to defendant at *(state delivery terms):* _____.
Defendant will have *(state number of hours or days)* _____ to fix any violations of this Stipulation after notice from plaintiff.

8 **Plaintiff agrees to do the following** *(Check all that plaintiff agrees to.)*

a. ☐ To dismiss permanently (with prejudice) the eviction case that is currently pending within _____ business days after defendant has done everything agreed to in **6**.

b. ☐ To request an immediate court order to enforce eviction (writ of possession) for the property identified in **3** but to wait to act (stay actual execution of such writ) until *(date):* _____

c. ☐ To waive all rent, late fees, and damages that were requested in the case.

d. ☐ To make the payment plan interest/penalty free, and not to charge any fees or interest on the total amount agreed to in **6**.

8 e. ☐ To make the following repairs *(describe all repairs to the property):* _____

_____

_____

(1) ☐ The repairs will be completed by *(date):* _____

(2) ☐ Plaintiff agrees to temporarily relocate defendant at plaintiff's expense while the repairs are made.

f. ☐ To credit all future payments first to rent due and then to the amounts due under the stipulated judgment/order entered by the court in this eviction case.

g. ☐ To pay $ _____ in certified funds, in exchange for moving out as agreed to in item 6c. Payment will be made payable to _____, and delivered to _____ on or by _____. If plaintiff fails to make payment as agreed, then the defendant's move out (vacate) date will be extended by _____ days for each day that the payment is late.

h. ☐ To pay defendant's attorney fees in the amount of $ _____.

i. ☐ Not to request a court order to enforce eviction (writ of possession) for failure to comply with the following terms from 6 and 10 *(state all items by number and letter):* _____

_____

j. ☐ To incorporate and comply with the General Terms agreed to in 10. (Additional terms relating to what both parties are agreeing to do are located in 10.)

k. ☐ Other *(describe any other things agreed to by plaintiff):* _____

_____

☐ *Check here if you need more space. Attach one sheet of paper or form MC-025 and write "UD-155, Item 8" at the top.*

9 **If plaintiff does not do everything agreed to** *(Check if the parties agree to this process.)*

☐ Plaintiff agrees that defendant can tell the court how plaintiff has not complied with the Stipulation and ask the court to quickly act.

Notice and Hearing: Defendant may ask the court for a hearing on a quicker schedule with less advance notice to plaintiff than is usually given—possibly even notice on the same day as the hearing—by submitting **an ex parte application** supported by **a declaration** under penalty of perjury signed by a person with personal knowledge of the facts of plaintiff's noncompliance and **a declaration** establishing notice to plaintiff of the ex parte application. (See Cal. Rules of Court, rule 3.1200 et seq.) Depending on the ex parte application and the circumstances, the court may set a hearing on a quicker schedule. **Courts have different hearing and filing times.**

10 **General Terms** *(Check all that the parties agree to.)*

a. ☐ There is a grace period of _____ days to do anything agreed to in this Stipulation that has a specific due date. No violation of the Stipulation happens if the thing agreed to is done within the grace period.

b. ☐ Defendant states that all adults who live in the property are named as defendants in this eviction case. No other adult lives in the property or has a right to live there.

c. ☐ Defendant states that all tenants have already moved out of the property. Plaintiff may lawfully take possession of the property effective immediately.

10 d. ☐ Defendant agrees to leave the property free of garbage, debris, and all personal belongings. Any personal items left in the property after *(date):* _____ are deemed abandoned. This means the plaintiff will have the right to dispose of any abandoned personal items. Personal items left in the property will not be considered a violation of this Stipulation.

e. ☐ The security deposit will be handled according to California law in the following manner *(check all that apply):*

(1) ☐ Plaintiff is awarded the security deposit of $ _____ to cover rent due in the amount of $ _____ for the period of *(state period of time):* _____. Defendant gives up any claim to return of the security deposit and any interest.

(2) ☐ Plaintiff may apply the security deposit toward the judgment in this eviction case.

(3) ☐ Plaintiff will return the security deposit to defendant by *(date):* _____

(4) ☐ Plaintiff will mail an itemized statement along with any unused portion of the security deposit to the defendant within 21 days after the defendant moves out of (vacates) the property. (See Civ. Code, § 1950.5.)

f. ☐ The court will retain jurisdiction over the parties (continue to be able to make orders) to enforce this settlement if one party does not do what they say they will do until everything agreed to in this Stipulation has been done. A party will not have to file a new case to tell the court about any noncompliance.

g. ☐ The parties agree to waive all attorney fees and costs associated with this eviction case.

h. ☐ This agreement resolves the issue of possession only. The parties agree all other claims between them may be addressed by a new complaint filed in the appropriate division of the court. *(Check this item if the parties are agreeing to resolve only the issue of whether the tenant will stay or leave the property. All other issues in the case are being reserved.)*

i. ☐ Plaintiff agrees to provide a neutral, or better, rental reference of defendant to any person who asks for a reference of defendant relating to housing.

j. ☐ Plaintiff agrees they have not reported and will not report this action to any credit reporting agencies.

k. ☐ The parties request that the court bar access to the court record. (See Code Civ. Proc., § 1161.2(a)(2).)

l. ☐ Other *(describe any other terms agreed to by the parties):* _____

_____

☐ *Check here if you need more space. Attach one sheet of paper or form MC-025 and write "UD-155, Item 10" at the top.*

11 ☐ **Conditional Judgment** *(Skip if the parties do not want the court to enter a conditional judgment.)*

A **Conditional Judgment** means the parties agree that plaintiff has a right to ask for eviction (for example, because of defendant's failure to pay rent) but plaintiff will ask the court to enter judgment (for eviction and lockout and possibly for money) ***only if*** defendant does not meet the special conditions of this Stipulation. Defendant will stay in the property if all conditions are met that the parties agree are necessary to avoid an eviction judgment. Plaintiff will dismiss permanently (with prejudice) the eviction case that is currently pending within _____ business days after defendant has done everything agreed to in this Stipulation.

a. ☐ If defendant delivers the sum of $ _____ to plaintiff/plaintiff's lawyer by *(time)*: _____ on *(date):* _____ at *(state delivery terms):* _____, then defendant will retain possession of the property and plaintiff will dismiss the action with prejudice. If defendant does not deliver the agreed-upon sum of money then plaintiff may seek *(check all that apply):*

(1) ☐ Eviction (writ of possession/defendant will be locked out/plaintiff will have control of the property).

11 a. (2) ☐ Cancellation of the rental agreement/forfeiture of the lease.

(3) ☐ Defendant will have an eviction judgment entered against them and owe money to plaintiff for *(check only one):*

(a) ☐ The sums stated in 6.

(b) ☐ The sums stated in 6 and $ _____ in attorney fees, and $ _____ in court costs.

(c) ☐ The original sums alleged in the complaint including back rent of $ _____, holdover damages of $ _____, attorney fees of $ _____, costs of $ _____, and any additional attorney fees and costs related to enforcing the conditional judgment.

b. ☐ However, if plaintiff receives payment in full before judgment is entered, plaintiff will not seek entry of judgment against defendant.

c. ☐ Notice and Hearing: Plaintiff may ask the court for a hearing on a quicker schedule with less advance notice to defendant than is usually given—possibly even notice on the same day as the hearing—by submitting **an ex parte application** supported by **a declaration** under penalty of perjury signed by a person with personal knowledge of the facts of defendant's noncompliance and **a declaration** establishing notice to defendant of the ex parte application. (See Cal. Rules of Court, rule 3.1200 et seq.) Depending on the ex parte application and the circumstances, the court may set a hearing on a quicker schedule or even act on the ex parte application without another court hearing under the terms of the Stipulation and Conditional Judgment. **Courts have different hearing and filing times.**

d. ☐ Incorporate General Terms agreed to in 10. (Additional terms relating to what both parties are agreeing to do are located in 10.)

I have read the entire Stipulation and I understand and agree that there are no promises, representations, or terms other than what is contained within this written Stipulation. I understand this Stipulation fully and ask that this Stipulation be incorporated by the court as its order.

Date: _____

_____
Type or print name

▶ _____
Signature of Plaintiff or Plaintiff's Lawyer

_____
Type or print name

▶ _____
Signature of Defendant or Defendant's Lawyer

☐ Names and signatures of additional parties follow last attachment.

Judge will fill out section below.

Order

a. ☐ It is so ordered.

b. ☐ Based on the stipulation of the parties, and under Code of Civil Procedure section 1161.2(a)(2), the court bars access to the court file and all court records, electronic or otherwise, of this case by any person except the parties, counsel of record, and the court until further order of the court.

c. ☐ Under Code of Civil Procedure section 664.6, the court will retain jurisdiction over the parties (continue to be able to make orders) to enforce this settlement if one party does not do what they say they will do until everything agreed to in this Stipulation has been done. A party will not have to file a new case to tell the court about any noncompliance.

d. ☐ The parties agree and accept the terms of the Stipulation, which is approved by the court. The case is calendared for dismissal or entry of judgment on *(date):* _____ at *(time):* _____ in Department: _____

e. ☐ Judgment is entered.

f. ☐ Other *(specify any additional terms or modifications):* _____

Date: _____

_____
Signature of Judicial Officer

SPR23-08
Unlawful Detainer: Opportunities for Settlement Before Trial (Adopt Cal. Rules of Court, rule 3.2005 and approve form UD-155)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
1.	Neighborhood Legal Services of Los Angeles County by William Simonsick Legal Technology Attorney	NI	Neighborhood Legal Services of Los Angeles County (NLSLA) is a 501(c)(3) non-profit Legal Services Corporation providing free legal services to the Antelope, San Gabriel, and San Fernando Valleys of Los Angeles County, California. NLSLA serves hundreds of thousands of individuals and families per year through a combination of systemic advocacy, direct client representation, and self-help centers, in many civil legal fields including housing, family law, worker's rights, and disaster recovery. Due to NLSLA's experience managing multiple housing self-help centers, assisting indigent self-represented litigants (SRLs) facing eviction, NLSLA has a unique perspective at the front lines of the housing crisis. Specifically, NLSLA witnesses first-hand the impediments that SRLs face when trying to avoid housing insecurity. In a time of extreme crisis, SRLs are left to navigate a system designed for attorneys, with an uncompromising complexity that traps the unwary into negative case outcomes. We appreciate the Judicial Council's efforts to improve accessibility to court forms through the use of plain language, as this will reduce the number of unfair outcomes that stem solely from the lack of an attorney representing the individual facing eviction.	See the committee's responses to NLSLA's specific comments, below.
			An immense number of all cases in the United States has at least one pro se litigant. [FN 1 Legal Service Corporation Justice Gap 2022 Report. *Also see generally* R. Sandefur, 'What We Know and Need to Know about the Legal Needs of the Public', 67(2) South Carolina Law Review (2016); Y. Cannon, 'Unmet Legal Needs as Health Injustice', 56 *University of Richmond Law Review* (2022) 801-877.] Due to the legal needs crisis, SRLs are forced to complete complex litigation independently that has an outsized effect on health and fiscal outcomes. This includes eviction cases, where the stakes are perhaps the highest. Despite eviction cases having one of the highest differential outcome ratios depending on if tenants are represented or not, [FN 2 *See* I. Ellen, K. O'Regan, S. House, R. Brenner, 'Do Lawyers Matter? Early Evidence on Eviction Patterns After the Rollout of Universal Access to Counsel in New York City', 31(3) *Housing Policy Debate* (2021). *See also* E. Petersen, 'Building a House for Gideon:	The committee thanks NLSLA for the information and has revised the recommended form to simplify it as much as possible while still communicating accurate legal information.

	Commenter	Position	Comment	Committee Response
			The Right to Counsel in Evictions', 14 *Stanford Journal of Civil Rights & Civil Liberties* (2020) 63-112.] a large percentage of defendants are SRLs. Evictions cause long-term mental and physical health problems, as well as severe financial impacts on those who are ultimately evicted. [FN 3 A recent survey found over two thousand publications linking eviction to negative mental and physical health outcomes, *see* H. Vasquez-Vera, L. Palencia, I. Magna, C. Mena, J. Neira, C. Borrell, 'The threat of home eviction and its effects on health through the equity lens: A systematic review', 175 *Social Science & Medicine* (2017).] Meanwhile, California is in the middle of a severe housing shortage that disproportionately affects low-income individuals and families. [FN 4 D. Cuff, S. Phillips, C. Reid, 'Housing And Community Development in California: An In-Depth Analysis of the Facts, Origins and Trends of Housing and Community Development in California', *UCLA Reports (UCLA Lewis Center for Regional Policy Studies, UCLA cityLAB, UC Berkeley Terner Center for Housing Innovation)* (2022).] Unfortunately, the difficulties in accessing judicial processes for SRLs exacerbates these problems, [FN 5 *See generally* S. Schersei, 'Knock Knock…Who's There? California's First Statewide Rent Cap and Eviction Tenant Protection Law, 52 *University of the Pacific Law Review* 283 (2021) at 284, 285.] increasing the chances of eviction.	
			Improving accessibility to court forms can go a long way towards reducing the number of improper evictions and keeping vulnerable, elderly, disabled, and indigent individuals and families housing-secure. This requires plain language, such as at an 8th grade reading level or below, as well as proper visual distinction. [FN 6 J. Griener, D. Jimenez, L. Lupica, 'Self-Help, Reimagined', 92 Indiana Law Journal 3 (2017) at 1156-1158.] For example, the usage of bold font to highlight terms of art is encouraged. This draws visual attention to the terms, and should be accompanied by a plain-language definition of the term of art. [FN 7 Id at 1158-1159.] Separating these into text boxes next to the main text can help break up the text in a way that makes it easier for non-law trained individuals to	To improve clarity, the committee has recommended adding some bolding to form UD-155 as suggested and replacing terms with simpler language where possible.

	Commenter	Position	Comment	Committee Response
			comprehend it. Formatting, such as including bullet points and making sure that headings break up the text, can also assist in readability. [FN 8 R. Robbins, 'Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents', 2 *Journal of the Association of Legal Writing Directors* (2004) at 125, 126.] Utilizing these best practices can go a long way in improving fairness in judicial proceedings for those who are unable to afford an attorney.	
			NLSLA would like to reiterate their gratitude for the Judicial Council's efforts so far in improving court forms in the state of California. NLSLA has a few clarifying questions in regards to the new Rule 3.2005, as well as a number of suggestions for potential textual changes to the proposed form UD-155. Staff at NLSLA has indicated some concerns with the timeframes involved in the proposed Rule 3.2005. Specifically, more clarity in regards to the revised timelines that would occur after a waived mandatory settlement conference under Rule 3.2005(b) would be appreciated. There are some concerns that a reduced timeframe would either confuse SRLs or be used in bad faith by landlords to reduce time to prepare for an eventual trial, therefore improperly forcing tenants to accept unfair settlement offers.	The committee recognizes NLSLA's concerns about the timeframes for settlement conferences and trials in eviction cases. Most expedited litigation deadlines for eviction cases are statutory. The committee does not see a way to address the concerns in proposed rule 3.2005 or in form UD-155.
			Generally, NLSLA would be pleased to see additional reductions in the reading level of the UD-155 form. NLSLA expects that the form will ultimately be tagged for accessibility for screen readers, but also would like to see an increase in the use of plain language descriptions, and a reduction of difficult words used. [FN 9 Suffolk Law School has a tool called RateMyPDF that provides suggestions for increasing language accessibility to court forms (https://ratemypdf.com). The proposed UD-155 form was run through this tool as a part of the research for this comment letter.] NLSLA's suggestions for UD-155 textual edits, outside of general word choice changes, are contained in the table below, for ease of readability:	The committee recognizes that form UD-155 presents complex information and has revised the recommended form to simplify it as much as possible while still communicating accurate legal information.

SPR23-08
Unlawful Detainer: Opportunities for Settlement Before Trial (Adopt Cal. Rules of Court, rule 3.2005 and approve form UD-155)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			Instructions: Add the word "only" to "Complete the form [only] if the parties have agreed."	The committee does not see much improved clarity in the suggested addition and therefore is not recommending this change.
			Instructions: Bold "stipulation" on the third line.	The comment has rephrased the introductory information on the recommended form in a way that has mooted this suggestion. The committee, however, has added bolding to the term on page 2 where a stipulation is explained in more detail, as suggested by NLSLA below.
			Instructions: Bold "Agreeing to resolve this case before trial is voluntary".	The committee does not see improved clarity or readability in bolding the entire sentence and therefore is not recommending this change.
			Question 4: First "Stipulation and Order" should be in bold	The committee has bolded the term as suggested in the recommended form.
			First "Conditional Judgment" should be in bold	The committee has bolded the term as suggested in the recommended form and has added a better definition of the term in item 11, as suggested by NLSLA below.
			"[L]egally binding order" should be defined, explaining that it becomes law and must be obeyed or else the other party can go back to court and have it enforced immediately.	The committee has expanded the sentence in the recommended form to explain the effect of a legally binding order.

	Commenter	Position	Comment	Committee Response
			"Stipulated Judgment" needs to be better defined.	The committee believes the explanation provided is accurate and does not see value to providing a more legalistic explanation for the term and therefore is not recommending this change.
			Generally, the definitions of "Stipulation and Order", "Conditional Judgment", "Legally binding order", and "Stipulated Judgment" can be separated into text boxes outside of the main text for better visual distinction.	To keep the form a more manageable length, the committee is not recommending text boxes as suggested. The committee believes that the bullets offer adequate visual separation of the concepts.
			Question 6: The text "Check all that defendant agrees to" should make it more clear that these are all voluntary as a part of the settlement	The committee believes form UD-155's introductory bullet adequately emphasizes the voluntary nature of entering into a settlement agreement and therefore is not recommending this change. The committee also believes that *defendant agrees* as used in the header of item 6 and in the parenthetical instruction connotes a defendant's agency and implies the voluntary nature of agreeing to any terms.
			Question 6(e) will be confusing to litigants and needs a better description. Cross-referencing other questions is difficult for many *pro se* individuals and there is a high risk that these are missed by vulnerable individuals.	The committee understands the commenter's concern but sees no better solution than offering the option of incorporating the other terms found in item 10, many of which will be important to resolving eviction cases before trial. The committee is recommending the addition of a

	Commenter	Position	Comment	Committee Response
				parenthetical explaining that item 10 contains additional terms relating to what both parties are agreeing to do. The addition of this explanation is also being recommended for to items 8j and 11d.
			Question 9: "Ex parte" needs to be explained. In particular, the fact that ex parte proceedings generally need attorneys and requires court filings that do not have fillable forms needs to be highlighted to SRLs.	The committee is recommending a revised item 9, similar to the recommended revisions to item 7, to directly reference the California Rules of Court on the subject of *ex parte applications* and to provide more general information about notice and hearing schedules.
			Question 10: Questions 10(e) and 10(j) are contradictory, as if the record is sealed under 10(e) the landlord cannot report the eviction to credit reporting agencies. At minimum, the form makes it look like both need to be negotiated, which is not true and puts an additional burden on the defendant.	The committee disagrees and therefore is not recommending changes in response to this comment. The committee believes that whatever additional burden is placed on litigants in having to negotiate these two options, if desired by the parties, is outweighed by the clarity provided by offering both. One relates to access to a court record; the other relates to notice to credit agencies of an unpaid judgment.
			Question 11: "Conditional Judgment" needs both a definition as well as more details. At minimum, the court timeframe (which is very short) and the process needs to be outlined for SRLs. However, this process, in general, is one-sided against defendants and should be reformed. As drafted, plaintiffs do not appear to need a hearing but defendants do. A plaintiff in this circumstance should also have to file an ex parte instead of just a declaration as currently described in the process.	The committee has added information in item 11 in the recommended form so that parties will know when to elect for this process. To the extent NLSLA's comment asks for the process to be reformed, the committee does not believe that form UD-155 is the appropriate

	Commenter	Position	Comment	Committee Response
				mechanism for making reforms. Item 11's conditional judgment presents the most common eviction issues: unpaid rent and possession. To provide more information about the quicker timelines, the committee has added information about ex parte applications and the notice and hearing process to the recommended form as suggested.
			NLSLA is thankful of the opportunity to comment on these changes to eviction-related court forms. Please feel free to contact William Simonsick (williamsimonsick@nlsla.org) or Trinidad Ocampo (trinidadocampo@nlsla.org) if you have any questions or would like further information on what NLSLA is observing in regards to the usage of housing court forms by SRL individuals.	No further response required.
2.	Abby Frost Lucha, Esq. FLF/FCS Director/ LSHC Manager/ CIU Manager Superior Court of California, County of Marin	NI	I am not seeing that this is a required form for service on defendant. • Should we require a party to serve a form? o Otherwise defendant may not know this is a possibility AND o The language in the new CRC 3.2005 reads in part: "Courts should encourage participation, to the extent feasible, in at least one opportunity for resolution before trial"	The committee has recommended the adoption of form UD-155 for optional use. The committee believes that the policy goal stated in new rule 3.2005 can be achieved without requiring litigants to use form UD-155 and without requiring its service on litigants.
3.	Orange County Bar Association by Michael A. Gregg, President Newport Beach	A	Agree	The committee thanks the Orange County Bar Association for its input.
4.	Public Law Center by Jonathan Bremen	NI	Public Law Center (PLC) is a 501(c)(3) not-for-profit organization that provides free civil legal services to low-income individuals and families	See the committee's responses to PLC's specific comments, below. The

	Commenter	Position	Comment	Committee Response
	Staff Attorney, Impact Litigation Gina Verraster Staff Attorney, Operation Veterans Re-Entry Ryan Ueda Supervising Attorney, Operation Veterans Re-Entry Richard Walker Supervising Attorney, Housing and Homelessness Prevention Unit		across Orange County. The civil legal services that we provide include consumer, family, immigration, housing, veterans, community organizations, and health law. PLC commented previously on Invitation W23-03 and appreciates the opportunity to comment on Invitation SPR23-08, regarding: (1) the adoption of California Rules of Court, rule 3.2005; and (2) a new form (UD-155) for optional use in unlawful detainer cases.	committee thanks PLC for its previous comments as well.
			I. Proposed Rule 3.2005 PLC supports the use of alternative dispute resolution processes in unlawful detainer actions, as it helps our clients reach a mutually satisfactory resolution more quickly and efficiently than going through the traditional legal process. PLC also supports the comment related to subdivision (a), which helps ensure both parties can engage in the dispute resolution process regardless of financial means.	The committee thanks PLC for this information and notes its support for the advisory committee comment (a) for rule 3.2005.
			II. Proposed Form UD-155 (*Eviction Case Stipulation*) As discussed in our previous comments letter, PLC generally supports the adoption of form UD-155, as its plain language would assist our pro per unlawful detainer clients in reaching settlements with their landlords. However, PLC recommends additional minor modifications to the form to better protect the rights of our clients.	See the committee's responses to PLC's specific comments, below.
			A. Instructions The fourth bullet point in the "Instructions" section reads: "If the parties do not reach an agreement, the case will go to trial and the judge will hear from both sides and decide if the tenant has to move out and pay money (if plaintiff asked for money in Complaint – Unlawful Detainer (UD-100))." However, there may be instances where the plaintiff has filed a complaint on pleading paper rather than the Judicial Council form. To address this	The committee acknowledges that form UD-100 is optional. In the recommended form, the bullet has been simplified to state "the complaint" without reference to form UD-100.

	Commenter	Position	Comment	Committee Response
			potential issue, PLC recommends amending the parenthetical statement to read: "(if plaintiff asked for money in its Complaint [e.g., Complaint – Unlawful Detainer (UD-100)])."	
			B. Section 4 Under Section 4, the last sentence of the Stipulated Judgment paragraph says, "The eviction judgment against the defendant will become public." However, Code of Civil Procedure section 1161.2 ("CCP section 1161.2") restricts public access to the records in an unlawful detainer for 60 days from the date the complaint is filed. The records are only accessible to the public if judgment is entered in favor of the plaintiff within 60 days of filing of the complaint or after trial more than 60 days since filing of the complaint. CCP section 1161.2 does not provide for public access to records in the case of settlement. In other words, if the parties settle, then the records *must* be sealed. Thus, Section 4 should not indicate that the judgment against the defendant will become public.	The committee believes that the last sentence of the paragraph is accurate if the word *may* is used instead of *will* because there may be circumstances in which the case records may not be sealed. The committee believes it is important, as urged by commenters during the previous invitation-to-comment cycle, to provide a warning to the parties of the effect of a stipulated judgment.
			C. Section 7 Regarding Sections 7 and 9, PLC has concerns about the inclusion of the Latin phrase "ex parte" in parentheses. While subsequent paragraphs provide information on the timing and method of notice, adding the phrase may make the form less accessible. PLC acknowledges that there may be value in informing unrepresented parties that they must style their request for order to enforce the stipulation as an "ex parte" request, rather than simply labeling it as a "Notice of Motion and Motion" on the cover sheet. Nonetheless, PLC is uncertain if this benefit outweighs the potential for confusion or consternation caused by having an undefined legal term such as "ex parte" included in the form. Moreover, the phrase "ex parte" could create confusion because of the ex parte notice timing under the Cal Rules of Court, which might conflict with this form's two days' notice. If the Judicial Council deems it important to specify "ex parte," perhaps it could	The committee agrees with the suggested phrasing "without the usual amount of notice" and has used ex parte application only as needed. The committee has revised item 7 in the recommended form and added information about the ex parte application and hearing process with a citation to the California Rules of Court. To the extent PLC asks for a change to 2 court days' notice, the comment is now moot because in the recommended form the committee has revised item 7 and item 9 to leave the form silent as to the time frames that might be sought or available from a court.

	Commenter	Position	Comment	Committee Response
			be modified to read "(ex parte - without the usual amount of notice)," or a similar phrasing. In addition, for clarity, PLC recommends amending subdivision (a) to read: "Before requesting a court hearing, Plaintiff will give 2 court days' notice to defendant"	
			D. Section 11 Section 11 should clarify that if the plaintiff seeks eviction and lockout, the notice procedures in Sections 7 and 9 apply.	In the recommended form, the committee has expanded item 11 to reference an ex parte application, notice, and hearing without specifying time frames that might be sought or available from a court.
			III. Conclusion While proposed form UD-155 aims to facilitate the early resolution of unlawful detainer cases, it is crucial that additional revisions and adjustments are made to ensure fairness for all parties. At PLC, we are concerned about the lack of access to justice for individuals who are facing an unlawful detainer and do not have access to legal assistance. These individuals are at a disadvantage and are likely to be unprepared, uninformed of their legal rights, and under stress during any form of early dispute resolution. To ensure that the settlement process is fair for all parties, it is essential to create forms that are easy to understand and that provide a level playing field for all litigants. PLC appreciates the efforts made by the Judicial Council Civil and Small Claims Advisory Committee to make this form as accessible and comprehensive as possible. Should you have any questions, please do not hesitate to reach out to PLC using the contact information below.	No further response required.
5.	Superior Court of California, County of Los Angeles	AM	The following comments are submitted on behalf of the Los Angeles Superior Court.	The committee thanks the commenter for the information submitted on behalf of the Los Angeles Superior Court.

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	Commenter	Position	Comment	Committee Response
	by Bryan Borys Director of Research and Data Management		Regarding UD-155, Eviction Case (Unlawful Detainer) Stipulation form:	
			o Page 1, Instructions, 4th bullet: Suggest replacing "judge" with "judicial officer" as not every location has a judge assigned to handle UD cases.	In the recommended form, the committee has expanded the bullet to include a jury, as suggested by the Western Center on Law & Poverty, below, but has retained "judge" because California Rules of Court, rule 1.6(12), defines judge as "a judge of the superior court, a commissioner, or a temporary judge."
			o Page 1, Section 3: "Apartment No." seems restrictive, as other property types could be in question, such as a unit, suite, back house, or garage conversion.	The committee understands the concern; in the recommended form, the main address line has been expanded to two lines and may be used to provide additional building information for other property types. The committee has also changed Apartment No. to Apt./Unit No., which may be used if it is applicable.
			o Page 1, Section 4: Suggest replacing "will" with "may" in the last sentence, "The eviction judgment against the defendant will become public."	The committee agrees and has made the change suggested in the recommended form.
			o Page 3, Section 7b and Page 4, Section 9b: What is the authority for the 6-10 day time frame?	The committee is persuaded by comments from the Joint Rules Subcommittee (below) that courts have different schedules for hearings and that agreement of the parties alone may not allow for a hearing to be held within the

	Commenter	Position	Comment	Committee Response
				6–10 day timeframe, especially if courts have different hearing schedules. The committee is also concerned that resolution of cases may be hampered by the 6–10 day timeframe originally proposed. Based on the comments received, the committee has revised item 7 and item 9 in the recommended form to directly reference the California Rules of Court on the subject of ex parte applications and to provide more general information about notice and hearing schedules without specifying timeframes that might be sought or available from a court.
			o Page 6, Section 11a(4): Only monetary lines are included for attorney's fees and court costs. What about past due rent and holdover damages?	The committee has expanded the payment information in item 11a(3) of the recommended form. The item was renumbered because items (a)–(c) were added.
			o Page 6, Section 11a(5): Can this sentence be interpreted to mean that defendant may pay in full the amount after the due date but before the court enters judgment and still remain in possession of the property?	To resolve potential confusion arising from full payments sent by defendant but not yet received by plaintiff, in the recommended form the committee has rephrased the sentence to focus on the plaintiff not seeking a judgment if plaintiff receives full payment after the due date but before entry of judgment. If a plaintiff does not want to agree to late receipt, the committee notes that item 11b (renumbered from 11a(5)) is

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	Commenter	Position	Comment	Committee Response
				optional.
6.	Superior Court of California, County of Riverside by Susan Ryan Chief Deputy of Legal Services	A	Does the proposal appropriately address the stated purpose? The stated purpose is to promote settlement opportunities. This new form does provide a canvas for parties to open a discussion if both parties are willing.	The committee thanks Riverside County Superior Court for the information provided.
			Are there terms or language in the proposed form that might be stated more plainly for self-represented litigants? If so, suggest alternative language for the committee to consider. The terms listed in the form are clear. Each section of terms are sorted into topics that are clearly defined with in the form. Though there are a lot of options, a litigant that reads through the options slowly should be able to navigate the form.	The committee thanks Riverside County Superior Court for the information provided.
			Are there other terms common to stipulated agreements in eviction cases that ought to be considered for inclusion on the form? If there are any common terms that might be added, specify which item the term would best be located under and any proposed phrasing for it. No. The form appears to contain a complete list of options typically included on a stipulation.	The committee thanks Riverside County Superior Court for the information provided.
			Are there other terms common to orders in eviction cases that might be considered for inclusion on the form? For example, does the form need to state when the case is to be calendared for dismissal? No. The form contains an abundance of options from questions about goals, possible consequences, and common provisions to consider both during a tenancy and after.	The committee thanks Riverside County Superior Court for the information provided.

	Commenter	Position	Comment	Committee Response
			Would the proposal provide cost savings? If so, please quantify. Though the quantity is uncertain, this will potentially allow the court to reducing the amount of negotiating on the day of trial which slows the calendar. Ideally, fewer trials will be needed.	The committee thanks Riverside County Superior Court for the information provided.
			What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? The court will need to train staff on the different options contained in the stipulation. Different options will require the court have different procedures. For example, some options might include the court sealing the case, setting OSC hearings, entering judgment, etc. Each of these will require the clerk to enter a set of codes and follow a procedure.	The committee thanks Riverside County Superior Court for the information provided.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Unable to comment on operations timeline. Self Help Legal Services will be able to train and share the new form with 3 months notice.	The committee thanks Riverside County Superior Court for the information provided.
			How well would this proposal work in courts of different sizes? Riverside County benefits from mediation programs through local legal aids as well as Civil Self Help Legal Services. Without such resources a smaller court may not be able to provide enough support for customers who want to mediate.	The committee thanks Riverside County Superior Court for the information provided.
7.	Superior Court of California, County of	A	Does the proposal appropriately address the stated purpose? **Yes.**	The committee thanks San Diego County Superior Court for the information

	Commenter	Position	Comment	Committee Response
	San Diego by Mike Roddy Executive Officer			provided.
			Are there terms or language in the proposed form that might be stated more plainly for self-represented litigants? If so, suggest alternative language for the committee to consider. **No, the language of the proposed form appears to be stated plainly for self-represented litigants.**	The committee thanks San Diego County Superior Court for the information provided.
			Are there other terms common to stipulated agreements in eviction cases that ought to be considered for inclusion on the form? If there are any common terms that might be added, specify which item the term would best be located under and any proposed phrasing for it? **No, the proposed form appears to capture the common terms included in stipulated agreements.**	The committee thanks San Diego County Superior Court for the information provided.
			Are there other terms common to orders in eviction cases that might be considered for inclusion on the form? For example, does the form need to state when the case is to be calendared for dismissal. **No.**	The committee thanks San Diego County Superior Court for the information provided.
			Would the proposal provide cost savings? If so, please quantify. **No.**	The committee thanks San Diego County Superior Court for the information provided.
			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? **If the form remains optional, implementation requirements would be minimal and consist of informing affected staff that this form may be used by parties. If the form is made mandatory, in addition to notifying staff, it would require updating internal procedures and**	The committee thanks San Diego County Superior Court for the information provided. Form UD-155 is recommended for optional use.

	Commenter	Position	Comment	Committee Response
			updates to the court's case management system.	
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.**	The committee thanks San Diego County Superior Court for the information provided.
			How well would this proposal work in courts of different sizes? **It appears the proposal would work for courts of all sizes.**	The committee thanks San Diego County Superior Court for the information provided.
			No additional Comments.	No response required.
8.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) (TCPJAC/CEAEC Joint Rules Subcommittee ["JRS"])	AM	**JRS Position: Agree** with proposed changes. The JRS notes the following impact to court operations: • Significant fiscal impact. • Impact on existing automated systems. • Trial court labor or employment related issues. • Requires development of local rules and/or forms. • Increases staff workload. • Impact on court security. • Results in additional training, which requires the commitment of staff time and court resources.	The committee thanks the subcommittee for this information.
			A JRS member provided the following comments on behalf of the subcommittee: Our court currently provides a UD settlement program funded by backlog monies. Due to the high volume of UD filings, the nature of post-pandemic UD cases and the housing crisis, UD cases are more difficult to resolve than 5 years ago and typically involve all possible defenses instead of only the failure to pay rent. Our mid-size court has 2 days of UD hearings scheduled each week and added 2 days of settlement conferences per week. The settlement conferences are staffed by pro tems but also require	The committee thanks the subcommittee for this information. For many of the reasons noted by the JRS member, the committee has serious concerns about the impacts of a mandatory pretrial settlement conference on court workloads and whether courts would have the resources necessary. The recommended new rule aims to increase opportunities for settlement before trial

	Commenter	Position	Comment	Committee Response
			courtroom space, courtroom clerks, bailiffs and IT infrastructure. We do not have self-help services for UDs other than the UD hotline. It takes longer to explain and educate litigants about the pros and cons of moving forward with a UD trial and the benefits of settlement. Small and mid-size courts are less able to absorb a UD settlement conference program than larger and more urban courts due to economies of scale and lack of access to services by community-based organizations. When backlog funds expire, there is no new source of funds available for our court to pay for this settlement program. While we are now authorized to use visiting judges for settlement programs, we have difficulty filling absences of sitting judges due to the shortage of visiting judges. We estimate the settlement program resolves 50% of cases, resulting in significant savings and efficiencies. Without this program, we will need to add up to 2 additional days of UD court and jury trials. However, we will reduce the number of courtrooms and court staff as existing departments will be required to absorb this work increase. One of the benefits of the current UD-115 is it is a short form and pro pers are less likely to become lost in the terms or cross-referencing. Our court uses an informal stipulated addendum to UD-115 to include terms missing from UD-115 that we typically use.	but does not to require courts to offer or use any particular settlement or alternative dispute resolution (ADR) process. The committee is recommending this approach because it is aware that staffing, funding, and resources may be issues for courts as it related to providing an opportunity for settlement before trial. That the JRS member estimates their court resolves approximately 50% of cases through its unlawful detainer settlement conference program is encouraging information. The committee hopes that rule 3.2005 and litigants' use of form UD-155 will provide additional avenues for parties to resolve eviction cases before trial. The committee also notes the JRS member's use of existing form UD-115 with a supplemental local form. The committee will continue to monitor the use of form UD-115 and will consider ways to improve that form as time and resources allow.
			The proposed UD-155 has great potential, but it is very long and may be trying to solve too many issues. It might be easier to separate a Stipulation and Conditional Judgment from a Stipulated Judgment. And, some terms still incorporate code sections instead of plain language. The following are some suggestions:	The committee recognizes that form UD-155 presents complex information in a lengthy form. The committee has revised the recommended form to simplify it as much as possible while still communicating accurate legal information. One of the starting points for the committee was that the existing

	Commenter	Position	Comment	Committee Response
				stipulated judgment form (UD-115), which had been criticized as being too narrow and not allowing for resolution of eviction cases without entry of judgment. The committee, therefore, chose to develop form UD-155 as an alternative to offer a fuller menu of options for use in resolving these cases while also maintaining form UD-115. With respect to the suggestions on the terms and language of form UD-155, see the committee's responses, below.
			(a) 5b(1) and (2): Delete	The committee does not recommend this change. The committee added these 2 options based on suggestions from several commenters in the previous invitation-to-comment cycle. The commenters noted that it was important to allow parties to choose a process that would not make minor breaches of a stipulated settlement agreement automatically evictable. The committee has chosen to maintain options (1) and (2) in item 5b.
			(b) 6a. A more detailed payment plan or example might help (although it takes space). We find that having a visual schedule of monthly payments is better than just a single lump sum or sentence. The language should clarify to defendants that payments received will be applied first to rent due that month and then to arrearages to better place the defendant on notice as a basis for default rather than making it a covenant for the plaintiff to perform.	The committee has replaced item 6b in the recommended form with a more visual schedule of payments as suggested. With respect to how payments will be applied, the committee has added two options. The first option indicates that payments under the payment plan

	Commenter	Position	Comment	Committee Response
				will be made in addition to regularly due rent payments. The committee made this an option because a payment plan may be agreed to even if all tenants have vacated the property/possession has been returned to the plaintiff. The second option allows the parties to acknowledge that any payments made will be applied first to regular rent due.
			(c) 7 and 9 (b)-(d). These paragraphs add a lot of terms for the ex parte hearing process that really are not necessary, will not get high use and may conflict with local practices. The important terms to specify are whether upon default a plaintiff will notify defendant and provide yet another opportunity to cure, if so how long, and that plaintiff will apply ex parte for judgment upon default and a writ of possession. It is too difficult to explain the variables of the ex parte process as well as all of the other UD terms. Plus, courts and judges handle ex parte UD defaults differently. Some judges will administratively process ex parte applications without setting an ex parte hearing. And, because UDs are exigent, an ex parte hearing may be set on shortened time less than traditional ex partes. Suggesting to a plaintiff that an ex parte upon default will not be held for potentially another 2 weeks could deter settlements.	The committee appreciates the subcommittee's concerns about the ex parte application and hearing process, especially that courts and judges handle them differently. The committee recommends revising items 7 and 9 to state the general requirements of an ex parte application, and to omit terms that are not necessary or potentially in conflict with local practices. The committee has added a citation to the California Rules of Court and noted that ex parte hearings and schedules differ by court.
			(d) 8b is an example of why you may wish to separate a stipulated conditional judgment from a stipulated judgment. This section will be checked by pro pers and attorneys who do not understand the difference between a conditional judgment and judgment. A writ will only issue upon a judgment for possession being entered.	The committee is not recommending changes in response to this comment. Item 8b is for cases in which the plaintiff is willing to give additional time to the defendant to surrender possession without that time necessarily being conditioned on any other terms of the agreement. For that reason, the

	Commenter	Position	Comment	Committee Response
				committee does not see a basis to change or remove the Conditional Judgment item, which is generally geared toward the defendant keeping possession if all conditions are satisfied.
			(e) 10.a. Delete	The committee does not recommend this change. The committee believes the option of a grace period is appropriate. As suggested by Western Center on Law & Poverty, the committee has added more detail in the recommended form to explain the effect of a grace period.
			10e. This is not understandable to a pro per. Release language could be helpful. Adding a provision that explains that there are other claims between the parties but that each party agrees to waive all other claims and cannot sue each other for any other relief known or knowable to the party as of the date the agreement is signed.	The committee is not recommending changes in response to this comment. For item 10e, the committee has not found alternative language that would be clearer to self-represented litigants. The committee believes "barring access" is clearer than "sealing" or "masking." With respect to the suggested release language in item 10h, the committee agrees that waiver of other known claims may be desirable to certain parties. If waiver is of interest to parties, then item 10*l* (Other) is available.
			10k. It might help to make security deposit its own subsection. Add language that if additional damages exist beyond regular wear and tear and the security deposit has been applied to overdue rent the landlord may pursue damages in a separate suit. At this point, most landlords have not had the chance to inspect the property.	The committee is not recommending changes in response to this comment. Security deposits are a separate item of the General Terms in item 10 in the recommended form. The committee has

	Commenter	Position	Comment	Committee Response
				moved the item up in the order. To the extent JRS suggests adding language about other damages for property damage, the committee notes that parties may use item 10*l* (Other) to address them.
			(f) 11. The first sentence is not fully accurate. Conditional judgments can also be used in non-possessory circumstances. You could add a paragraph indicating that possession has been surrendered and the case is converted to a limited jurisdiction case for damages.	The committee is not recommending changes in response to this comment. The committee believes that form UD-155 is better suited to addressing the most common conditional judgment—cases that involve possession and unpaid rent. In addition to non-possessory circumstances, the committee is aware that conditional judgments may be used in cases involving the plaintiff's breach of the covenant to provide habitable premises to defendant. To keep the form a more manageable length, however, the committee has chosen to focus on possession and unpaid rent.
			UD is one of the most complicated areas of law. The drafters should be commended for this work product.	No response required.
			Upon receipt of an at-issue memoranda, a court trial must be set within 20 days. With notice sent by mail and intervening weekends, it is difficult to schedule both settlement conferences and court trials in the brief statutory time period absent an advance waiver of time by both parties. This requires setting a settlement conference the day prior to a court trial. Changing the at-issue memorandum to request a settlement conference and to waive an additional 5 days might be a useful tool.	The committee will consider this suggestion in the future as time and resources allow. The committee notes that the suggested option may be available by local rule in courts that have the resources to use mandatory settlement conferences in eviction cases.

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	Commenter	Position	Comment	Committee Response
9.	Western Center on Law & Poverty by Lorraine A. Lopez Senior Attorney	NI	Western Center on Law & Poverty writes in response to the Judicial Council's Invitation to Comment SPR23-08, *Unlawful Detainer: Opportunities for Settlement Before Trial*. We greatly appreciate that the Judicial Council chose to make substantial revisions to the forms after taking into consideration comments from practitioners and advocates in response to Invitation to Comment W23-03. The current version of the form includes many revisions that make the forms clearer, provide meaningful notice of the effect of entering a settlement, and allow tenants an opportunity to engage in meaningful settlement negotiations. However, as outlined in this letter, there is still some room for additional revisions. We make these suggestions in consideration of the unfortunate reality that the unlawful detainer process is stressful and confusing for many tenants, especially in jurisdictions where free and low-cost legal services are not readily available. Thus, it is especially important to ensure that the forms accurately lay out each party's obligations and avoid unfairly burdening tenants with costs and fees that would not be included in a court judgment. Below we address the Council's specific inquiries and offer additional suggestions.	See the committee's responses to the Western Center on Law & Poverty's comments, below.
			I. Does the proposal appropriately address the stated purpose? The changes address the stated purpose in part by encouraging early resolution of cases and creating a framework that allows the parties to enter into a stipulated settlement agreement that does not necessarily result in an entry of judgment against a defendant(s) in an unlawful detainer case. The current draft of Form UD-155 includes revisions that are more fairly balanced than the prior iteration of the form which favored the plaintiff in terms of settlement outcomes.	The committee thanks the Western Center on Law & Poverty for its input.

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	Commenter	Position	Comment	Committee Response
			II. Are there terms or language in the proposed form that might be stated more plainly for self-represented litigants? Yes, we have identified provisions in the form that could be more clearly stated for self-represented litigants. We have also identified provisions that should be revised to include additional information for self-represented litigants.	See the committee's responses to the suggested changes, below.
			A. Revision to Instructions. The fourth bullet point should include language indicating that a judge or jury may decide the outcome at trial. We suggest that the second sentence be revised to read "the case will go to trial and *a judge or jury* will hear from both sides and decide if the tenant has to move out and pay money (if plaintiff asked for money on *Complaint-Unlawful Detainer* (UD-100))."	The committee has expanded the phrasing in the recommended form to include a jury as suggested.
			B. Revisions to Section 4. The first bullet point should include additional language to make clear that the consequences of breaching a conditional judgment may result in the issuance of writ of possession in favor of the plaintiff. We suggest that the second sentence be split into two parts as follows: "A Stipulation and Order can include, but is not required to, a Conditional Judgment, which tells the court how to resolve the case if one of the parties does not do everything agreed to in the Stipulation and Order. *This may include entering an eviction judgment against the defendant and an immediate order to the Sheriff to lock out the defendant*."	The committee has added language in item 10 on the recommended form explaining Conditional Judgment in more detail. To the extent, the Western Center on Law & Poverty suggests more information in item 4, the committee believes the existing information is adequate.
			The last sentence in the second bullet point should be revised to say that an eviction judgment "*may*" become public instead of "*will*" become public so as not to contradict the parties' ability to choose the provision for sealing in Section 10(e).	The committee has made the suggested change in the recommended form.

	Commenter	Position	Comment	Committee Response
			C. Revision to Section 10(a) While a "grace period" is a common term for attorneys, this provision as drafted may create confusion for self-represented litigants as to how it applies. The suggested language below would make it clearer for litigants to determine when a grace period applies: "There is a grace period of _____ days to do anything in this stipulation where the parties have agreed to a specific due date for performance. The grace period would apply to the date(s) specified in the agreement."	The committee believes that the term "grace period" is relatively common and used outside legal contexts, for example, in billing and employment contexts. The committee nevertheless recommends expanding the language of item 10a to include more information about the effect of a grace period.
			III. Are there other terms common to stipulated agreements in eviction cases that ought to be considered for inclusion on the form? The current version of the form incorporated many of the suggested revisions from Western Center's comment letter from January 19, 2023. At this time, we do not have additional common terms to suggest.	The committee thanks Western Center on Law & Poverty for it previous comments.
			IV. Additional issues and proposed revisions. **A. Revise Section 6(a).** We reiterate our prior comment that the parenthetical under Section 6(a) should be deleted. If a judgment were to issue after trial in an unlawful detainer action, only holdover damages and attorney's fees and costs would be awarded to the landlord. We maintain that it is a misstatement to include "(Damages may include an amount based on daily rental value or any harm to the property.)" While the parties may negotiate their own terms in a settlement, it would be improper to suggest that property damages could be recouped as part of a settlement when such damages could not be awarded if the defendant was found guilty of unlawful detainer after a trial on the merits. If the form must include explanatory language under the chart in Section 6(a) that it should be consistent with	The committee has been persuaded that the form will better serve the parties without reference to other damages in item 6a (even if the parties could agree to include damages that might be recouped in a separate lawsuit in a settlement agreement). In the recommended form, the committee has revised the parenthetical for the damages table to narrow the language to what was requested in the complaint. The committee agrees that form UD-155 does not need to address other potential damages in item 6a. The committee

	Commenter	Position	Comment	Committee Response
			the language in the instructions such that it reads: "Damages may include an amount based on daily rental value if plaintiff asked for money on *Complaint-Unlawful Detainer* (UD-100)."	notes that the parties would not be precluded from agreeing to other damages or expressly reserving the issue of other damages in item 6e (Other) or item 10*l* (Other).
			B. Revise Order Subpart (b). This provision of the court's Order implies that the case may become public despite the agreement of the parties that the case is subject to seal in Section 10(e). Section 10(e) does not provide for any further authority for the court to unseal the case. We recommend that the language "until further order of the court" be stricken from this paragraph so that it is consistent with 10(e).	The committee is not recommending changes in response to this comment. Notwithstanding the agreement of the parties, there may be a basis for a court to unseal a case record in limited circumstances. To account for that possibility, the committee believes it is appropriate to keep the language "until further order of the court" in the order section. The language does not authorize a court to unseal a case, nor does it restrict a court from doing so in the appropriate circumstances. The committee therefore believes that the language should remain.
			C. Revise Section 11. In our previous comment we recommended that Section 11 should also refer to Section 7 outlining what happens when the defendant does not do everything that the parties agree is necessary to avoid an eviction judgment. Specifically, that "plaintiff may seek eviction and lockout (immediate possession of the rental property), subject to Section 7, if defendant does not comply with the material terms in this Stipulation." Since the current draft did not incorporate this suggested language, we recommend that if the parties opt for the Conditional Judgment and have agreed to the hearing process in Section 7, then a subsection should be	Instead of the cross-reference to item 7 suggested, the committee recommends adding information about notice and hearing for an ex parte application under the California Rules of Court and adding information that advises litigants that schedules and hearing times differ by court.

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			added to state, "Incorporate Provisions agreed to in 7." This is to ensure there is no confusion as the connection with the agreements as set forth in Sections 6 through 10.	
			D. Add a declaration attesting to translation of the stipulation. As currently drafted, the stipulation form still does not include any attestation as to whether the parties received translation assistance. Since all legal pleadings in the State of California must be filed in English, it is important that litigants with limited English proficiency receive interpretation (verbal) and translation (written) services during settlement negotiations, drafting of the agreement, and prior to signing. This is true even if the judicial council plans to release these forms in a version for each dominant language spoken in California. The form should include a notice in all dominant languages spoken in California notifying litigants that they should secure an interpreter/translator to assist in the preparation of the settlement agreement. In addition, the form should include an attestation for litigants requiring translation services that they have received those services in the preparation and execution of the stipulation. If available, there should also be an attestation for an interpreter to sign as well to certify that the document was translated.	The committee appreciates the concerns raised. The committee agrees that language access is critical. Adding an attestation to the form that indicates that translation services were received, however, would be confusing if those services are not available. To the extent the commenter is suggesting a notice advising litigants that they should secure an interpreter/ translator to assist in the preparation of the settlement agreement in other dominant languages, the committee will consider adding such notices in other languages as translation resources become available.
			E. Retire Form UD-115. We maintain our position that form UD-115 should be eliminated and replaced by UD-155. UD-155 is comprehensive enough to serve the same purpose as form UD-115 if the parties agree to a stipulated judgment. Form UD-115 has not been substantially revised since 2003 and is not used by advocates in a large majority of the State. For example, advocates in Los Angeles County have long utilized a local court form (LACIV-136) or draft their own settlement agreement pleadings. Most advocates around the State have long phased-out the use of UD-115 for settlement purposes. As previously stated, retaining UD-115 will create conflict with the	The committee thanks the Western Center on Law & Poverty for the information concerning form LACIV-136. The committee believes that form UD-115, which is also optional and much shorter, should remain an option. Form UD-115 is an alternative stipulation for entry of judgment only. Though form UD-115 has more limited use, the committee is aware that it is regularly used by at least one court with

	Commenter	Position	Comment	Committee Response
			framework envisioned by UD-155.	an unlawful detainer settlement program. Because both forms are optional, the committee does not see a conflict between them. The committee will consider whether to propose revising form UD-115 as time and resources permit.
			Conclusion While intended to facilitate early resolution of unlawful detainer cases, it is necessary to adopt these additions and revisions to ensure that the form places the parties on equal footing, provides essential information, and is easy to navigate during the negotiation process. We appreciate your efforts to make the proposed forms as accessible and comprehensive as possible. Thank you for your work and thank you for the opportunity to provide additional comments. If you have any questions, please feel free to contact me at llopez@wclp.org.	No further response required.

	Commenter	Position	Comment	Committee Response
1.	Alliance of Californians for Community Empowerment (ACCE) by Leah Simon-Weisberg Legal Director	NI	We write on behalf of ACCE Institute to provide comment on the proposed Rule 3.2005 and proposed form UD-155. ACCE Institute is a statewide grassroots organization with offices in six cities and a legal department. We have over 6,000 members statewide. ACCE's legal department is composed of career tenant attorneys who have litigated unlawful detainer cases in five different counties in California. **We strongly object to the Form UD-155 in its current form and propose that more equitable terms be added.** The form's proposed terms are not common in unlawful detainer cases in all California jurisdictions. Instead, they include many one-sided terms that steer defendants into unnecessary move-out agreements, money judgments, and easily breachable stipulations that risk homelessness over minor infractions. These are not terms that we recommend to clients we represent, and many are terms on which we have never settled an unlawful detainer case before. Most tenants appear unrepresented in unlawful detainer actions, without sufficient access to legal services. Many have less information about legal processes and are easily convinced to enter into settlement agreements that they do not understand. Without a balanced framing of the possible settlement terms, unrepresented litigants are likely to agree to one-sided outcomes. In unlawful detainer actions, the proliferation of forms such as these can easily translate to an increase in homelessness. Without substantial edits to this form, we object to any use of Form UD-155. A list of our proposed issues and changes, based on common unlawful detainer settlement practices in the courts we have litigated in, are included with this comment. Below are our responses to the Judicial Council's request for specific comments.	The committee thanks ACCE Institute for their input. See the committee's responses to the specific comments, below. The committee substantially modified proposed form UD-155 in light of this and other comments as described below and recirculated it for further comments.
			1. Does the proposal appropriately address the stated purpose? **A. Proposed Rule 3.2005(a) - Policy Favoring an Opportunity for Resolution Without Trial** We support this proposed rule with changes. We favor policies that promote opportunities for resolution of unlawful detainer cases before trial. However, certain programs are less likely to promote fair and just resolution for unrepresented litigants.	The committee disagrees. The committee does not believe that it would be appropriate to eliminate mediation from the proposed rule or to emphasize participation in dispute resolution by represented

	Commenter	Position	Comment	Committee Response
			We believe that prior dispute resolution opportunities like settlement conferences are most helpful when both parties are represented. Additionally, we do not believe that mediation is a good practice in settling unlawful detainer cases. Our experiences with in-court mediation is that it tends to favor agreements that are one-sided towards plaintiffs. We find that mediations often result in move-out agreements, even when a defendant has substantial defenses in their case. We therefore suggest the following edit: "The intent of this rule is to promote opportunities for resolution of unlawful detainer cases before trial. Courts should encourage participation, to the extent feasible, in at least one opportunity for resolution before trial, including but not limited to a settlement conference~~**, mediation,**~~ or another alternative dispute resolution process**, especially where both parties are represented by counsel**."	parties. The rule is intended to apply regardless of whether a party has representation. Further, mediation can be beneficial to both plaintiffs and defendants. Mediators are specially trained to help people with conflicts find constructive ways to resolve them. Mediation allows the parties involved in a case to choose solutions that work best for them.
			B. Proposed Rule 3.2005(a) - Exemption for mandatory settlement conference statement deadline We believe that explicitly permitting courts to exempt parties from the mandatory settlement conference statement deadline will promote effective settlement, and have seen it in practice already in courts that we practice in.	The committee appreciates the commenter's input.
			C. Proposed Form UD-155 We believe that, with substantial and meaningful changes, UD Form-155 could be used to facilitate settlements between landlords and tenants. In its current form, however, it is likely to encourage one-sided stipulations that primarily benefit landlords and lead to evictions and homelessness. Our proposed changes are below.	The committee substantially modified proposed form UD-155 in light of this and other comments as described below and recirculated it for further comments. See the committee's responses to ACCE Institute's specific comments on proposed form UD-155, below.
			Additionally, while we understand that this form is intended to replace a form 115, which encourages entry of judgment, we do not believe that form UD-115 is currently	The committee disagrees with this comment because it is not recommending form UD-155 as

	Commenter	Position	Comment	Committee Response
			widely used. Form UD-155 could therefore displace accepted settlement practices in courts where the terms listed here are not typically used.	a replacement for form UD-115, but as an optional plain-language form for use in various types of settlements. Optional form UD-115 is an alternative only for entry of judgment. Neither form is required and therefore they need not displace any existing settlement practices.
			2. Are there other terms common to stipulated agreements in eviction cases that ought to be considered for inclusion on the form? Many if not most of the terms proposed in Form UD-155 are not common in the courts that we practice in. We believe that these are one-sided terms that strongly favor plaintiffs. While there may be some jurisdictions in which the proposed terms are used, they are not common in areas where there is not an expectation that every tenant will have to leave their home simply because an unlawful detainer action is filed. We strongly object to the Judicial Council promoting a form that contains provisions that steer defendants into move-out agreements, serious risk of eviction judgments, and homelessness. Some defendants appear at settlement conferences with substantial defenses. Defendants who have had pretextual unlawful detainer actions filed against them should not be encouraged to forego their rights. Below we explain our concerns with Form UD-155 and propose edits to bring it into line with common settlement practice.	See the committee's responses to ACCE Institute's specific comments on form UD-155, below.
			A. Insufficient Explanation That a Conditional Judgment can Result in an Eviction Judgment	The committee modified the proposal in light of this and

	Commenter	Position	Comment	Committee Response
			[*Language of item 4's bullets omitted.] Explanation: Section 4 includes the option to choose a stipulated judgment or conditional judgment, but fails to explain in plain language that a stipulated judgment will have the effect of the defendant losing the case and that the defendant will be evicted with a public eviction judgment that will prevent them from finding new housing. It similarly does not explain that a conditional judgment could have that effect. Proposed changes: A Stipulation and Order tells the court about the parties' agreement and makes it part of the court record. A Stipulation and Order can include a Conditional Judgment, which tells the court how to resolve the case if one of the parties does not do everything agreed to in the Stipulation and Order**, such as entering an eviction judgment against the defendant**. Once signed by the court, the stipulation becomes a legally binding order. A Stipulated Judgment is similar except that it ends the case once the court signs the Stipulation. If the Stipulation and Judgment is approved, the court will enter a judgment against the defendant immediately. **This will have the same effect as though the defendant lost the eviction case and had an eviction judgment entered against them. The plaintiff can then proceed to have the sheriff lock out the defendant. The eviction judgment against the defendant will be public.**"	other comments and recirculated it for further comments. The committee agrees that it is important for the form to explain in clear and accessible terms the consequences of a conditional judgment. Considering the comments received on the second invitation to comment, the committee is recommending language like what the commenter has suggested to item 4 and item 11. Based on other comments, the committee changed the warning about the eviction judgment being public to a warning that it "may become public."
			B. The Stipulation Form Should Not Default to Making All Terms of the Settlement Agreement Evictable in Case of Breach. [*Language of item 5.a–c omitted.] Explanation: The stipulation asks the parties to choose whether the defendant will move out or stay in the property only if the defendant follows all terms of the agreement. In our experience,	The committee modified the proposal in light of this and other comments and recirculated it for further comments. The committee is recommending options allowing the parties to agree that everything or only some

	Commenter	Position	Comment	Committee Response
			parties often ask for additional terms in a settlement agreement that may not be material. Often these terms are not actions for which the defendant could have been evicted in the original action. When drafting such settlement agreements, our clients typically do not agree to make the penalty for breaching these extra terms entry of judgment, which is an extreme and disfavored remedy. Often there are extra terms that the parties want to be legally enforceable but not evictable. This is a difficult distinction for many low income people to understand. Conversely, many landlords try to take advantage of this lack of understanding and throw in a term saying that the tenant agrees to comply with their lease - so that any small noncompliance, which normally would not be evictable, could now result in the tenant's eviction. This is especially troubling given the recent proliferation of lease agreements that are dozens of pages long, filled with countless unlawful or legally unenforceable terms. Further, the stipulation presupposes that as part of the settlement the defendant must do something specific in order to not be evicted. In our experience, there are eviction actions settled where the plaintiff agrees that the defendant can stay, with no terms that are further enforced by an eviction judgment. Proposed changes: 5) "Purpose of the Stipulation **a. ☐ Defendant will stay in the rental property.** b. ☐ Defendant will stay in the rental property if defendant does ~~everything~~ **certain actions** agreed to in this Stipulation **that will lead to an eviction judgment if defendant does not perform them.** c. ☐ Defendant will move out of (vacate) the rental property with conditions stated in this Stipulation. **d. ☐ Defendant has already moved out of (vacated) the rental property.** e. ☐ Other (describe any other purpose of the Stipulation)"	terms are material to the agreement. The committee is not recommending adding "Defendant has already moved out of (vacated) the property" as an option in item 5 because that does not reflect the purpose of the stipulation. If a defendant has already vacated the property, the Other option at the end of item 5 may be used to state the agreement's purpose.

	Commenter	Position	Comment	Committee Response
			C. Payment Terms Should Define all Payment Types and Clarify Total Amount Owed [*Language of item 6.a /table of payment terms omitted.] Explanation: In the amount to be paid by the defendant, there is an 'other' category of costs that is not specifically defined. This is a change from form UD-115, which does require that the 'other' category of payment be specifically defined. In our experience, many landlords will attempt to add extra costs as a condition of settling a case with a pro-per defendant. To prevent predatory and disproportionately large settlements, all costs should be specifically delineated. Additionally, this section does not contain a term stating that this amount is all money owed to the plaintiff by the defendant at this time. Without such a term, the case might resolve with the payment, but the defendant could be charged additional funds later on due to the ambiguity in this stipulation. Finally, this section should contain a term to acknowledge the plaintiff's receipt of the defendant's payment in court or some other location, if the defendant pays at the time the stipulation is signed, which occasionally happens. Proposed changes: 6) Defendant agrees to do the following a. ☐ To pay the following: Past Due Rent Damages Attorneys Fees Court Costs Other **(define)**:_____ Total $ $ $ $ $ $ ☐ **Plaintiff and defendant agree that this amount is all that defendant owes plaintiff as of the date of this stipulation.** ☐ **Plaintiff acknowledges receipt of defendant's payment of $_____.**	The committee modified the proposal in light of this and other comments and recirculated it for further comments. The committee agrees in part with the commenter's suggestions and added information to item 6a. The parties may agree that the total is all that is owed (item 6a(1)) and acknowledge that defendant has paid in full (item 6a(2)). The committee has eliminated "Other" as an option from the payment terms table. If there is another item to be paid, it can be identified in the "Other" option at the end of item 6.
			D. The Judicial Council Should not Encourage Waiver of Stays and Relief from Forfeiture in Case of Move-out	The committee modified the proposal in light of this and

	Commenter	Position	Comment	Committee Response
			[*Language of item 6.d omitted] Explanation: We never advise our clients to waive stays of execution, even when they agree to move out per the terms of stipulation. We also do not advise waiving other emergency relief, such as the right to request relief from forfeiture. These are emergency measures that should never be removed and are only applicable in very limited circumstances; we believe in particular that waiving stays of execution can be an unconscionable term. We strongly object to any suggestion that defendants should agree to such terms, much less a stipulation that has such terms as its only move-out option. Proposed changes: 6) Defendant agrees to do the following … d. ☐"To move out of (vacate) the rental property no later than midnight____ **~~and not to request any further delays (or stays of execution).~~**"	other comments by deleting the waiver of stays of execution in item 6d and recirculated it for further comments. For clarity, the committee also replaced "midnight" with "11:59 p.m."
			E. All Terms of the Agreement Should not Result in Eviction in Case of a Breach by Defendant [*Language of item 7 omitted.] Explanation: The current language essentially requires that breach of any term in the stipulation by the defendant will result in the defendant's eviction, even if a minor term. Often landlords add terms that had nothing to do with the case into their settlement agreement; their inclusion should not allow the landlord to evict the tenant. Additionally, we do not believe that characterizing an ex parte motion as without one party's participation is accurate, especially where a defendant has the ability to participate in a resulting hearing. Proposed language:	The committee modified the proposal in light of this and other comments, adopting a phrasing similar to "that the parties agree are necessary to avoid an eviction judgment," and recirculated it for further comments.

	Commenter	Position	Comment	Committee Response
			7. "If defendant does not do everything **~~agreed to~~ in this agreement that is a material term** "Defendant agrees that plaintiff can tell the court **~~without defendant's participation~~** (ex parte) how defendant has not complied with the Stipulation and ask the court to quickly make the judgment in the eviction case as follows"	
			F. Unequal Enforcement of Terms, Especially Terms that Lead to Evictions [*Language of form items 7 and 9 omitted] Explanation: The enforcement terms proposed in the form stipulation propose that plaintiff be able to seek an order of enforcement, including for entry of judgment against plaintiff, with no notice and no hearing. In contrast, it proposes that the defendant can seek enforcement only after two days' notice to plaintiff and a hearing in 6-10 days. These unequal terms belie the fact that the remedy suggested for plaintiff to enforce judgment is by evicting defendant, and that the remedy suggested for defendant is simply an order requiring plaintiff to comply with the terms already agreed to. In our own practice, only advise defendants to agree to terms that could lead to entry of judgment where absolutely necessary. Often there are terms included in an agreement that do not lead to entry of judgment against the defendant, because such a remedy is too extreme in relation to the plaintiff's requested terms. Additionally, the terms we commonly see in such a situation are at least two court days' notice and the opportunity to respond in a hearing, so that the defendant is not evicted based on facts that are not actually true and the opportunity to present evidence. The no notice framework is an invitation for a bad faith actor to evict a tenant without due process. Additionally, the defendant deserves a better enforcement mechanism against the plaintiff, especially since the defendant may be enforcing terms such as repairs that the plaintiff is required to make within a specified amount of time. Proposed changes:	The committee modified the proposal in light of this and other comments and recirculated it for further comments. The committee is not recommending adding a check box that reads, "If defendant does not do this, defendant can be evicted" below each term in items 6 and 10, as suggested by the commenter. Instead, the committee is recommending the addition of items 5b(1) and (2) which will allow form users to specifically identify which terms are necessary to avoid eviction. In light of comments received on the second invitation to comment, the committee has revised items 7 and 9 to make the notice and hearing information more general and to omit the list of potential results.

	Commenter	Position	Comment	Committee Response
			To fix this serious issue, we propose adding a check box below each of the terms in Section 6 and Section 10 that reads, "If defendant does not do this, defendant can be evicted." Any of the form's brevity lost in such a change will be outweighed by the clarity it will provide to unrepresented litigants. That way, both parties can clearly choose which terms could result in eviction if they are breached, and which will not. We also propose an additional edit as listed below. 7. If defendant does not do everything agreed to **that is listed as resulting in eviction,** … a. Notice ~~(check one):~~ ☐ ~~Plaintiff is not required to give additional notice to defendant.~~ ☐ Plaintiff will give **2 court days'** ~~hours'~~ notice to defendant **at** _____. b. Hearing ~~(check one)~~ ☐ ~~The court can make the judgment without holding another hearing~~ ☐ ~~Plaintiff can ask the court for a hearing~~ **Plaintiff will ask the court for a hearing in 6–10 days.** c. Result (check all that apply): **(1) ☐ That defendant be ordered to do what was promised** (2) ☐ That defendant be ordered to move out (evicted) and locked out (immediate possession) of the property identified in 3. (3) ☐ That defendant be ordered to pay any amount of money still unpaid (4) ☐ Cancellation of the rental agreement (5) ☐ Other 9. If the plaintiff does not do everything agreed to Plaintiff agrees that defendant can tell the court without plaintiff's participation (ex parte) how plaintiff has not complied with the Stipulation and ask the court to quickly act as follows: d. Notice: Defendant will give 2 days notice to plaintiff. d. Hearing: Defendant will ask the court for a hearing in 6–10 days. d. Result:	

	Commenter	Position	Comment	Committee Response
			☐ That plaintiff be ordered to do what was promised, to pay damages, or both. ☐ That plaintiff be ordered to pay damages ☐ That plaintiff be ordered to immediately make repairs ☐ **Other: _____**	
			G. The Form Should Clarify that the Payment Amount Stated in the Agreement is the Full Amount Owed [*Language of item 8.c omitted.] Explanation: The proposed form suggests that the payment amount agreed on in the form is all that is owed, but does not specifically state this. Its current language also suggests that plaintiff is entitled to charge interest and fees, which may not be the case. We propose language to clarify this point. Proposed language: 8. Plaintiff agrees to do the following (Check all that plaintiff agrees to.) … **c.** ☐ **That the amount listed in section (6) of this agreement is the full amount that defendant owes plaintiff as of this date.** Plaintiff shall not charge ~~**To waive all**~~ fees and interest for the amount owed and **shall** make the payment plan interest/penalty free.	The committee modified the proposal in light of this and other comments by recommending an option to indicate that the amount is all that is owed at the time of the Stipulation and recirculated it for further comments.
			H. A Defendant's Failure to Pay on Time or Minor Breach Should not Necessarily Lead to an Eviction Judgment or Increased Costs [*Language of item 11.a–b omitted.] Explanation: This provision suggests that if a defendant fails to pay an agreed-on amount in time, then not only should judgment be entered against them, but they should have a judgment for rent, damages, attorney fees, and court costs entered against them. We	The committee modified the proposal in light of this and other comments, adding items 5b(1) and (2) which will allow form users to specifically identify which terms are necessary to avoid eviction, and recirculated it for further comments. In light of

	Commenter	Position	Comment	Committee Response
			ordinarily see agreements that may agree to entry of judgment in such a case, but that do not agree to add additional costs in such a case beyond those already agreed to in the stipulation. Additionally, the stipulation should make clear to defendants which terms they can be evicted for and which are not evictable. Incorporating the general provisions of Item (10) will not put defendants on notice for such an important provision of an agreement. Proposed changes: "11. Conditional Judgment (Skip if the parties do not want the court to enter a conditional judgment.) Defendant will stay in the rental property if all conditions are met **that the parties agree are necessary to avoid an eviction judgment**. Plaintiff will dismiss permanently (with prejudice) the eviction case that is currently pending as soon as defendant has done everything agreed to in this Stipulation. But plaintiff may seek eviction and lockout (immediate possession of the rental property) if defendant does not do everything agreed to in this Stipulation **that the parties agree below is necessary to avoid eviction**." a. ☐ If defendant delivers the sum of $ in cash, certified check, cashier's check, or money order to plaintiff/plaintiff's lawyer by (time):_____ on (date): _____at (state delivery terms):_____ then defendant will retain possession of the rental property and plaintiff will dismiss the action with prejudice. If defendant does not deliver the agreed-upon sum of money as stated in this Stipulation, then plaintiff may file a declaration regarding the nonpayment **as listed in section 7** and may enforce (check all that apply) **_____the eviction (writ of possession), (defendant will be locked out of the property)** **_____cancellation of the rental agreement/lease,** **_____ a judgment for in rent and damages, (defendant will have an eviction judgment entered against them and owe money to plaintiff)** **_____in attorney fees**	comments received on the second invitation to comment, the committee has provided additional information about the conditional judgment and the ex parte application process.

	Commenter	Position	Comment	Committee Response
			_____ in court costs. **☐ However, if defendant pays in full before judgment is entered, no judgment shall be entered against defendant.** b. ☐ Incorporate General Provisions agreed to in (10). **The following provisions must be complied with by defendant or plaintiff will be able to enter an order against defendant for eviction (list all that apply):** _____	
			Conclusion Thank you for your consideration. In making decisions related to the proposed rule and form UD-155, we ask that you keep in mind that most defendants in eviction proceedings are unrepresented and have an imbalance of information and resources as compared to the plaintiffs. Defendants in unlawful detainer actions already must litigate their cases on expedited timelines, without the ability to cross claim, in a setting where a judgment results in homelessness. No other civil litigants are treated in this manner. We further ask that the Judicial Council ensure that its policies not exacerbate these existing inequities and contribute to the statewide housing crisis.	No further response required.
2.	Bay Area Legal Aid by Consuelo Amezcua & Asma Fatima Husain, Staff Attorneys	NI	Bay Area Legal Aid writes in response to the Judicial Council's Invitation to Comment W23-03, *Unlawful Detainer: Opportunities for Settlement Before Trial*. We appreciate that the Judicial Council is attempting to address the challenge of meaningful settlement opportunities in unlawful detainer cases, especially as we stand on the brink of a wave of evictions once the remaining COVID-19 eviction protections expire. We are generally in favor of early dispute resolution in unlawful detainer cases, but as outlined in this letter, we have concerns regarding the substance of the proposed form as well as the accompanying proposed change to the California Rules of Courts. We raise these concerns because the unfortunate reality is that tenants are on unequal footing when it comes to dispute resolution because they do not always have the benefit of legal counsel, especially in jurisdictions where free and low-cost legal services are not readily available. Thus, it is especially important to ensure that the forms make it easy for tenants and landlords to make agreements that preserve tenants' housing and avoid unfairly burdening tenants with costs and fees that would not be included in a court	The committee thanks Bay Area Legal Aid for its input. See the committee's responses to the specific comments, below.

	Commenter	Position	Comment	Committee Response
			judgment. It is also important that the forms be clear, easy to use, and allow tenants an opportunity to engage in meaningful settlement negotiations.	
			Below we address the Council's specific inquiries and offer additional suggestions. **I. Does the proposal appropriately address the stated purpose?** The changes address the stated purpose in part by encouraging early resolution of cases and creating a framework that allows the parties to enter into a stipulated settlement agreement that does not necessarily result in an entry of judgment against a defendant(s) in an unlawful detainer case. However, as drafted, Form UD-155 favors the plaintiff in terms of settlement outcomes. Many of the terms included in the form are not common in unlawful detainer settlements and are one-sided. Advocates and attorneys who regularly engage in the settlement of unlawful detainer cases would be glad to provide additional input and work with the Judicial Council to revise the current proposed form. Unlawful detainers are summary proceedings and move exceptionally quickly. Tenants who are low-income, disabled, elderly, or of limited English proficiency already have a difficult time seeking and obtaining legal assistance and representation on such a shortened timeline. Tenants are more vulnerable earlier in the process and they are more likely to engage in settlement negotiations without understanding their legal rights or what they may request as part of a settlement. Tenants in unlawful detainer actions are facing the loss of their housing and stability and are more likely to enter negotiations in a heightened state of stress and duress. The unequal power dynamic in landlord-tenant relationships only heightens this stress. To facilitate genuine and fair dispute resolution, the form needs extensive revisions and additions so there is not an imbalance of justice.	The committee substantially modified proposed form UD-155 in light of this and other comments and recirculated it for further comments.
			A. Proposed Rule 3.2005 Proposed Rule 3.2005 has the potential to place defendants in a precarious situation if they are mandated to engage in formal dispute resolution, such as mandatory settlement	The committee modified the proposal in light of this and other comments and recirculated it for further

	Commenter	Position	Comment	Committee Response
			conferences or mandatory mediation if these options are not provided at no-cost to the parties. Therefore, we suggest the following changes (in bold) to proposed Rule 3.2005: Rule 3.2005. Settlement opportunities (a) Policy favoring an opportunity for resolution without trial The intent of this rule is to promote opportunities for resolution of unlawful detainer cases before trial. Courts **may** encourage participation, to the extent feasible, in at least one opportunity for resolution before trial, including but not limited to a settlement conference, mediation, or another alternative dispute resolution process **at no-cost to the litigants**. (b) Exemption for mandatory settlement conference statement deadline **For Courts with local mandatory settlement conference rules in unlawful detainer cases**, the court may **exempt the parties** from the five-court-day deadline for submitting a settlement conference statement set out in rule 3.1380(c). **A party who fails to timely submit a settlement conference statement shall not be subject to sanctions, monetary or otherwise.** The changes in subsection (a) are consistent with many alternative dispute resolution programs that already exist in some jurisdictions, where those programs are provided at no cost to litigants. This ensures that both parties can engage in the dispute resolution process regardless of financial means. Further, in recognition of limited judicial resources and limited access to free alternative dispute resolution options in some jurisdictions, the rule should encourage but not mandate any form of dispute resolution that will raise financial barriers to low-income litigants. For example, in May 2020, the Napa Superior Court began offering voluntary settlement conferences via Zoom and, now in-person, for unlawful detainer actions. The voluntary settlement conferences are typically led by a court-appointed mediator or staff from the Self-Help Center. Generally, during a case management conference or before commencing trial proceedings, the presiding judge or commissioner encourages litigants to engage in same-day voluntary settlement conferences. At times, litigants might have little to no time to prepare a settlement conference statement. Given that these voluntary settlement conferences are highly likely to be offered and scheduled by	comments. The committee added an advisory committee note that acknowledges that parties may choose to participate in for-cost mediation or ADR but that they cannot be required to do so. The committee recommends against excluding for-cost mediation and ADR from the rule, and against limiting subdivision (b)'s application to courts that have local mandatory settlement conference rules. The committee intends for the rule to apply broadly. The committee also does not intend the rule to authorize mandatory participation in for-cost ADR. Finally, the committee does not recommend adding a provision that proscribes a court's ability to impose sanctions on parties for failure to comply with court rules or local rules.

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			litigants without notice on the same day as a hearing or trial, it's imperative that litigants be informed (1) that the dispute resolution process will be provided at no cost to the them and (2) that failure to provide a settlement conference statement will not results in any sanction or otherwise. The changes to subsection (b) are necessary since there are a limited number of Courts that require mandatory settlement conferences for unlawful detainer cases. For clarity, it is important that the rule is not seen as a blanket requirement for all Courts. Further, to avoid any negative repercussions for pro per litigants who fail to file a settlement conference statement, it should be clear that the Court is not authorized to issue sanctions, whether financial or procedural, for failing to comply with Rule 3.1380(c).	
			B. Proposed Form UD-155 Additionally, the instructions and terms as written on the proposed UD-155 form frame an eviction judgment as the default in unlawful detainer matters. This obscures defendants' understandings of their rights and negotiating position. A defendant's greatest advantage in an unlawful detainer is often pushing to have the case heard on the merits. Although vanishingly few cases actually make it to trial, the closer a case gets to trial, the more likely a defendant is to get a favorable outcome through settlement. For instance, in the San Francisco Superior Court, settlement conferences are usually held on Wednesday and Thursday afternoons, with trial assignments proceeding the following Monday. If a defendant chooses not to accept a settlement offer at settlement conference, a plaintiff will often propose better terms on Monday morning in order to avoid trial. The difference between three and four days can affect fundamental terms in a settlement agreement, often including whether a defendant will vacate their home or stay in it, or whether the defendant will pay money to the plaintiff, or the plaintiff will pay the defendant.	The committee substantially modified proposed form UD-155 in light of this and other comments by adding more information to the instructions of form UD-155 to emphasize the voluntary nature of settlement and that the case will proceed to trial if no agreement is reached. The committee recirculated the proposal for further comments with those changes.

	Commenter	Position	Comment	Committee Response
			The proposed form provides a template of basic terms for an agreement between plaintiff and defendant. A form stipulation would give defendants a better sense of the full scope of a stipulated agreement as well as the specific terms they should be considering and bargaining for. It would additionally limit parties' opportunities to stipulate to terms beyond the scope of an unlawful detainer action. However, in considering a proposal aimed at resolving disputes outside of trial, the Judicial Council should carefully consider the impact of the proposal on each parties' rights. In this case, the proposed form stipulation is written in a way that presupposes judgment against the defendant and therefore obscures the rights that the defendants are entitled to. Absent a stipulation, the court may not enter judgment against a defendant in an unlawful detainer case without a showing of proof. When a case reaches the point of potential resolution before trial, the defendant has already participated in the case to the extent necessary to avoid a default judgment. When a defendant is so present, a plaintiff may not obtain an eviction judgment against them unless the plaintiff can make a showing of proof of the claims that gave rise to the case. Therefore, the proposed form should make clear that judgment against the defendant is not an inevitable outcome. The instructions currently state: "if a party does not do everything agreed to in this stipulation, an eviction and lockout may take place, entry of judgment may occur, or a trial may be necessary." We propose the following alternative language: **If a party agrees to this stipulation and does not do everything agreed to,** an eviction and lockout may take place, entry of judgment may occur, or a trial may be necessary. **If the parties do not agree to this stipulation, this case may proceed to trial. The court may enter a judgment for eviction if the Plaintiff offers proof that [defendant did not pay rent / defendant created a nuisance at the premises / etc.]**	

	Commenter	Position	Comment	Committee Response
			At a baseline, defendant should be informed of their bargaining position when entering settlement discussions. Defendant should be aware that not settling will not automatically subject them to an eviction judgment, and that a stipulation may make it *easier* for plaintiff to get an eviction judgment against defendant. Furthermore, both parties should be informed of the limits of an unlawful detainer case. The form stipulation should clearly state that if a plaintiff prevails at trial, the court may enter a judgment for eviction and damages, but no further relief. The form should additionally state that if a defendant prevails at trial, the judgment will allow them to remain in their home but will not waive any rent owed nor provide them with any other type of relief. We believe that the effectiveness and equity of the proposed form stipulation rests on the parties' understandings of their rights and the further unlawful detainer proceedings. Parties should be informed of the basic facts about their rights and procedure before being encouraged to enter into a stipulation.	
			II. Are there other terms common to stipulated agreements in eviction cases that ought to be considered for inclusion on the form? Yes, there are several commonly used terms that should be added to the form as well as terms that are not common to stipulated agreements that should be deleted. Below we will detail the necessary additions and revisions by section. These common settlement terms have been carefully crafted over time by tenant advocates and should be familiar to most counsel involved in these types of negotiations.	See the committee's responses to Bay Area Legal Aid's specific comments, below.
			A. Additions and revisions to Section 8 Section 8(c) should be rewritten to provide an option whereby the landlord waives all rent amounts if the defendant agrees to move out. As it currently reads, section 8(c) only waives fees and interests for "the amount owed" which leaves a tenant with the only option to pay and move when in most jurisdictions, tenants with attorneys more	The committee modified the proposal in light of this and other comments by adding language similar to that suggested by the commenter and recirculated it for further comments.

	Commenter	Position	Comment	Committee Response
			commonly only enter into agreements to vacate their home in exchange for waiver of all rent amounts. We propose the following revision: "c. For any rent demanded in the complaint: (1) □ To waive all rent, late fees, and holdover damages associated with defendant's tenancy that were demanded in the complaint. (2) □ To waive any and all fees and interest, if any, for the amount owed in 6"	
			Section 8(d) should also include a term whereby the plaintiff agrees to temporarily relocate defendant if necessary to complete the repairs. In some instances, the needed repairs may be so extensive or of a type that require the defendant to vacate the unit for a prolonged length of time. Examples of this include but are not exclusive to mold remediation, lead paint hazards, structural defects, and pest control work to name a few. We propose that Section 8(d) instead read as "To make the following repairs (describe all repairs to the property). If the defendant must leave the rental property in order for plaintiff to complete the repairs, Plaintiff agrees to temporarily relocate defendant at plaintiff's expense:"	The committee modified the proposal in light of this and other comments, adding a term providing for temporary relocation of the tenant, and recirculated it for further comments.
			Section 8(e) should be revised to "all future rent payments." As currently drafted, the agreement can create ambiguity as to whether it is referring to the payments listed in the stipulation rather than "future rent payments." This is consistent with current law requiring that a payment designated for a certain obligation must first be applied to that obligation.	The committee is not recommending this change because it concluded that the suggested change creates more ambiguity than it solves.
			A subsection should be inserted to account for when a plaintiff agrees to pay a tenant a sum of money to vacate the rental property by a certain date. These are commonly known as "cash for keys" agreements. The subsection should outline the amount to be paid to the tenant, the method of payment, date of payment and the penalty for failing to make payment. A proposed term would read: "Plaintiff agrees to pay defendant $_____ in certified funds, in exchange for moving out as agreed to in 6(d). Payment to made payable to _____, and delivered to _____ on or by [DATE]. If plaintiff fails to make payment as	The committee modified the proposal in light of this and other comments, adding an item regarding payment to the defendant in exchange for moving out, and recirculated it for further comments.

	Commenter	Position	Comment	Committee Response
			agreed, then the defendant's vacate date will be extended by _____ days for each day that the payment is late."	
			Section 8 should also include a provision whereby both parties agree to waive all attorneys' fees and costs associated with the unlawful detainer action.	The committee modified the proposal in light of this and other comments by adding the provision suggested in item 10 and recirculated it for further comments.
			B. Additions and Revisions to Section 10 Subsection (d) should be qualified to only apply when the parties agree to a stipulated judgment. An order barring access to the court record should be automatic when the parties agree to a stipulated order rather than a stipulated judgment. We recommend that this provision be moved to the order section as an automatic order when the parties agree to a stipulated order. This is consistent with C.C.P. § 1161.2 subsections (a)(1)(E), (F) and (a)(1)(G) which provide that an unlawful detainer action only becomes public if judgment is entered in favor of the plaintiff within 60 days of filing of the complaint or after trial more than 60 days since filing of the complaint. Any policy encouraging early resolution of unlawful detainer cases should also be consistent with current public policy favoring sealing of court records to incentivize defendant participation in early dispute resolution and to reduce the harm of an unlawful detainer judgment to a defendant especially during the current housing crisis in California.	The committee modified the proposal in light of this and other comments and recirculated it for further comments. The committee is recommending including an option for the parties to stipulate to restrict access under subdivision (a)(2) of Code of Civil Procedure section 1161.2. The committee disagrees to the extent the commenter is requesting that the form not allow the parties to stipulate to limit access to the court record as provided in section 1161.2(a)(2). The committee reads subdivision (a)(2) to be broader than the "automatic order" under the provisions of subdivision (a)(1).

	Commenter	Position	Comment	Committee Response
			Subsection (c) should be revised to conform to current law and to minimize disputes regarding the condition of the property as a material breach of a settlement agreement. The following revision aligns with a commonly used settlement term: "Defendant agrees to leave the rental property free of garbage and debris and all personal belongings. Any personal items left in the rental property after [DATE] are deemed abandoned. This means the items will no longer be considered defendant's personal belongings and Plaintiff will have the right to dispose of these items without further notice or cost to defendant(s). Any personal belongings deemed abandoned will not be considered a breach of this agreement."	The committee modified the proposal in light of this and other comments by adding language similar to the suggested language in item 10 and recirculated it for further comments.
			III. Are there other terms common to orders in eviction cases that might be considered for inclusion on the form? For example, does the form need to state when the case is to be calendared for dismissal? Yes. As drafted, the Stipulation form does not include an option for the parties to lodge the stipulation and provide for dismissal once the terms of the stipulations have been satisfied. There should be an additional checkbox stating that "The above-named parties agree to abide the terms of the stipulation which is approved by the court. The case is calendared for dismissal or entry of judgment on [DATE] at [TIME] in Department [_____]."	The committee modified the proposal in light of this and other comments, adding an option for the court to calendar a date for dismissal to form UD-155's order terms, and recirculated it for further comments.
			There should also be an additional checkbox allowing the Court to retain jurisdiction such as "the Court shall retain jurisdiction to enforce the terms of this agreement pursuant to C.C.P. § 664.6." Currently this is only found in Section 10(e). This should be included in the order to ensure that the court's jurisdiction to enforce is easily located in the event of a dispute over compliance with the agreement.	The committee modified the proposal in light of this and other comments by adding retained jurisdiction to the Order section of the form and recirculated it for further comments.
			Lastly, as set forth in II(B) above the Order should include automatic sealing of the court record if the parties agree to a stipulated order rather than a stipulated judgment.	The committee disagrees because it does not believe the order needs to address the

	Commenter	Position	Comment	Committee Response
			Again, we believe this is consistent with C.C.P. § 1161.2 and current public policy favoring sealing of court records in unlawful detainer actions.	automatic access restrictions of Code of Civil Procedure section 1161.2(a)(1).
			IV. Additional issues and proposed revisions. **A. Revision of Section 4** As drafted this section does not adequately describe the exact consequences of a stipulated judgment for either party. The second bullet should be revised to provide concise information as to the result of entering a stipulated judgment: "A Stipulated Judgment will end the case once the Court signs the Stipulation. If the Stipulation and Judgment is approved, the Court will enter a judgment in favor of the plaintiff and against the defendant. The Court will issue a "writ of possession" immediately which orders the lockout and eviction of the defendant on a specified date."	The committee modified the proposal in light of this and other comments by adding more information to the definition of Stipulated Judgment and recirculated it for further comments.
			B. Revision of Section 5 As drafted subsection (a) is written in a non-neutral language which implies that all of the terms of the Stipulation are material, and that defendant will be automatically evicted for any alleged breach of the stipulation. Subsection (a) should be revised with more neutral language such as: "Defendant will stay in the rental property pursuant to the conditions stated in this agreement." This revision is consistent with the wording of subsection (b) and eliminates any conflict with the settlement terms the parties negotiate under Sections 7 through 10.	The committee modified the proposal in light of this and other comments by adding items 5b(1) and (2) which will allow form users to specifically identify which terms are necessary to avoid eviction and recirculated it for further comments.
			C. Revision of Section 6 The parenthetical under Section 6(a) should be deleted. If a judgment were to issue after trial an unlawful detainer action, only holdover damages and attorneys fees and costs would be awarded to the landlord. It is a misstatement to include "(Damages may include an amount based on daily rental value or any harm to the property.)" While the parties may negotiate their own terms in a settlement, it would be improper to suggest	The committee disagreed with this comment at the time it was recirculated for further comments because parties may negotiate their own terms in a settlement, as the commenter acknowledges. In light of

	Commenter	Position	Comment	Committee Response
			that property damages could be recouped as part of a settlement when such damages could not be awarded if the defendant was found guilty of unlawful detainer after a trial on the merits. The "Damages" category in the table should be replaced by "Holdover Damages." The "Other" box should be deleted entirely. There is no definition of the term "other" and as with "damages" leaves room for including amounts that could not be recovered as part of judgment in unlawful detainer. This is consistent with existing local forms, such as LACIV-136 (Unlawful Detainer Stipulation and Judgment) currently used in Los Angeles Superior Court. A statement should be added that the amounts listed in the table are the only amounts owed to the plaintiff as of the date of the agreement and that plaintiff may not demand additional amounts once the settlement is approved by the Court.	comments received on the second invitation to comment, the committee has modified item 6a's explanatory parenthetical to delete "harm to the property" and to reference "an amount based on daily rental value if plaintiff asked for money in the complaint," which narrows the language to holdover damages without using the term.
			Section 6(b) of the proposed Stipulation should be revised. In the first sentence the checkbox for "received" should be accompanied by a parenthetical indicating that it applies "for in-person payments."	This comment is mooted by changes made after the second invitation to comment.
			Section 6(b)(2) should be deleted while replacing it with the "Other payment schedule" in Section 6(b)(3) along with additional blank lines followed by "until paid in full" to allow the parties to set out an alternative and potentially longer payment schedule without the limitation of the 5 blank spaces in (b)(2).	This comment is mooted by changes made after the second invitation to comment.
			Section 6(c) should be more specific, we propose: Payment shall be made payable to: _____ and delivered to _____ □ via mail □ hand-delivery (during business days and hours: _____). This provides clarity for payments that may be payable to a person or entity that is not the named plaintiff but are received by an authorized agent or property manager who is named in the unlawful detainer action.	The committee modified the proposal in light of this and other comments by adding the information suggested in item 6 and recirculated it for further comments. In light of comments received on the second invitation to comment, the committee modified the payment plan information further, moving the suggested content to item 6b(4).

	Commenter	Position	Comment	Committee Response
			Section 6(d) should be amended to delete "and not request any further delays (or stays of execution)." Again, while parties are free to negotiate the terms of a settlement, there should not be an automatic conditioning of the move out date with a waiver of critical rights. While we agree that settlement should be final, the COVID-19 pandemic has shown us that unforeseen events may necessitate a stay of execution. Litigants should also not be foreclosed from requesting additional time to move out in the form of a reasonable accommodation, should the need for a request arise. If this is a material term for some parties, it can be added in the "other" section.	The committee modified the proposal in light of this and other comments by deleting the language identified and recirculated it for further comments.
			Lastly, "midnight" should be changed to 11:59 p.m. on [DATE] to avoid ambiguity as to whether the defendant is agreeing to move out the morning of the vacate date rather than at the end of the day on the vacate date.	The committee modified the proposal in light of this and other comments as suggested and recirculated it for further comments.
			An additional checkbox should be added to Section 6 to acknowledge receipt of the amounts agreed to under this paragraph if they are tendered at the time of settlement in open court.	The committee modified the proposal in light of this and other comments as suggested and recirculated it for further comments.
			D. Revision of Section 7 We object to Section 7 as drafted to the extent that it includes various provisions allowing the plaintiff to request an entry of judgment without notice to the defendant nor an opportunity for hearing. It is common practice by unlawful detainer defense attorneys to include terms that require advanced notice of a breach of a settlement agreement as well as an opportunity for hearing in the event of a breach. This is an important due process safeguard in any agreement where disputes may arise as to what is "compliance" with a settlement term. It also ensures that a tenant has reasonable advanced notice of any judgment and any writ of possession that may be issued should they be found in breach of a material term of the settlement agreement. Below are the proposed revisions:	The committee modified the proposal in light of this and other comments and related comments and recirculated it for further comments. In light of comments received on the second invitation to comment, the committee is now recommending that items 7 and 9 provide more general information about notice and hearing and omit the list of potential results.

	Commenter	Position	Comment	Committee Response
			7. □ If defendant does not do everything agreed to, the parties agree that plaintiff can return the court to state that defendant has not complied with the material terms Stipulation and ask the court to make a judgment as follows: a. Plaintiff agrees to give _____ business days' notice to defendant(s) with an opportunity to cure the alleged breach. b. After the notice in (a.) above expires, plaintiff may request an ex parte hearing to enforce the agreement within _____ business days. This does not waive any notice required by court rules for an ex parte hearing. c. Result (check all that apply): (1) □ That defendant be ordered to comply with the terms of the Stipulation in Section(s):_____ by [DATE]. (2) That defendant be ordered to move out (evicted) and locked out (immediate possession) of the rental property identified in 3. (3) □ That judgment be entered for any amount of money that remains unpaid pursuant to the terms of this agreement. (4) □ Cancellation of the rental agreement/lease. (5) □ Plaintiff to provide a neutral reference of defendant to any new landlord. (6) □ Other:	
			E. Revision of Section 9 For consistency, Section 9 which provides the terms regarding the plaintiff's breach of the agreement should also be revised so they reflect similar provisions in Section 7. Below are the proposed revisions: 9. □ If plaintiff does not do everything agreed to, the parties agree that defendant can return the court to state that plaintiff has not complied with the Stipulation and ask the court to make an order as follows: a. Defendant agrees to give _____ business days' notice to plaintiff(s).	The committee modified the proposal in light of this comment and other comments and recirculated it for further comments. In light of comments received on the second invitation to comment, the committee is now recommending that items 7 and 9 provide more general information about notice and

	Commenter	Position	Comment	Committee Response
			b. After the notice in (a.) above expires, defendant may request an ex parte hearing to enforce the agreement within _____ business days. This does not waive any notice required by court rules for an ex parte hearing. c. Result (check all that apply): (1) □ Plaintiff be ordered to do what was promised by [DATE]. (2) □ Plaintiff pays defendant damages in the amount of $_____ by [DATE]. (3) □ Defendant's move out date is now [DATE] due to plaintiff's failure to pay the amounts in 8(¶).	hearing and omit the list of potential results.
			F. Revise Section 11 As drafted, Section 11 may create confusion with the agreements as set forth in Sections 6 through 10. It should be rewritten as: "Plaintiff shall dismiss permanently (with prejudice) the eviction case that is currently pending within ____ business days after defendant has done everything agreed to in this Stipulation. If the agreement provides that the defendant will stay in the rental property if all conditions are met, then the defendant's tenancy will be reinstated without further conditions once the case is dismissed. But plaintiff may seek eviction and lockout (immediate possession of the rental property), subjection to Section 7, if defendant does not comply with the material terms in this Stipulation."	The committee modified the proposal in light of this comment and other comments and recirculated it for further comments. In light of comments received on the second invitation to comment, the committee is now recommending that item 11 provide more general information about notice and hearing.
			G. Add a declaration attesting to translation of the stipulation. As currently drafted, the stipulation form does not include any attestation as to whether the parties received translation assistance. It is important that litigants with limited English proficiency receive interpretation (verbal) and translation (written) services during settlement negotiations, drafting of the agreement, and prior to signing. The form should include a notice in all major languages spoken in California notifying litigants that they should secure an interpreter/translator to assist in the preparation of the settlement agreement. In addition, the form should include an attestation for litigants requiring translation services that they have received those services in the preparation	The committee appreciates the concerns raised by these comments. The committee agrees that language access is critical. Adding an attestation to the form that indicates that translation services were received, however, would be confusing if those services are not available. To the extent the

	Commenter	Position	Comment	Committee Response
			and execution of the stipulation. If available, there should also be an attestation for an interpreter to sign as well to certify that the document was translated.	commenter is suggesting a notice advising litigants that they should secure an interpreter/translator to assist in the preparation of the settlement agreement in other dominant languages, the committee will consider adding notices in other languages as translation resources become available.
			H. Retire Form UD-115 If the goal of the Judicial Council is to create a form that will act as either a stipulated order or a stipulated judgment, then Form UD-115 – Stipulation for Entry of Judgment (Unlawful Detainer), should be eliminated and replaced by form UD-155. Form UD-115 has not been substantially revised since 2003 and is not used by advocates in a large majority of the State. For example, advocates in Los Angeles County have long utilized a local court form (LACIV-136) or draft their own settlement agreement pleadings. Most advocates around the State have long phased-out the use of UD-115 for settlement purposes. Further, retaining UD-115 will create conflict with the framework envisioned by UD-155.	The committee disagrees with the comment because form UD-115 is optional and is used in some courts.
			Conclusion While intended to facilitate early resolution of unlawful detainer cases, it is necessary to adopt extensive additions and revisions to these forms to maintain some parity in a judicial proceeding where tenants too often start out at a massive disadvantage. We are deeply concerned about access to justice for people who receive an unlawful detainer and cannot access legal assistance. These are people who are likely to head into any type of early dispute resolution unprepared, unaware of their legal rights and under extreme stress. To ensure that any settlement process is fair for all litigants involved, it	No further response required.

	Commenter	Position	Comment	Committee Response
			is important to create forms that set the parties on equal footing and that are easy to navigate. We appreciate your efforts to make the proposed forms as accessible and comprehensive as possible.	
3.	East Bay Community Law Center by Laura Bixby, Attorney	N	I do not agree with the proposed judicial council form. This form will primarily be used for unrepresented tenants, as represented tenants will prefer to draft their own settlement form, and the vast majority of landlords settling cases are represented. Because of that imbalance, the form should be written to err on the side of preserving the rights of tenants who don't have a lawyer to assist them. Instead, the form is skewed heavily towards protecting landlord's interests.	The committee thanks the commenter for their input. The committee notes that the form itself is optional, and that the recommended form has been written to include terms that are most common to settlements in eviction cases.
			For example, Item 6(d) stipulates that a defendant will not be permitted to seek a stay of execution of judgment; a defendant should not be forced to give up this right.	The committee modified the proposal in light of this and other comments by deleting the language identified and recirculated it for further comments.
			On Item 7, landlords are given the option to provide NO notice before seeking an ex parte application for judgment. By contrast, the form requires that tenants agree to give 2 days notice--a clear imbalance of power.	The committee modified the proposal in light of this and other comments and recirculated it for further comments. In light of comments received on the second invitation to comment, the committee has revised items 7 and 9 to make the notice and hearing information more general.
			The form as it's currently written also suggests that only a tenant will be responsible for paying attorneys' fees. There are times when it is appropriate--and indeed, legally required, see Cal. Code Civ. Pro. § 1174.21--for a landlord to pay attorneys' fees.	The committee modified the proposal in light of this and other comments by adding an

	Commenter	Position	Comment	Committee Response
				option for a plaintiff to agree to pay attorney fees and recirculated it for further comments.
			This form provides for consequences if a tenant defaults on the agreement, but has no section to include consequences if the landlord breaches the agreement (for example, by failing to pay a move-out payment).	The committee modified the proposal in light of this and other comments and recirculated it for further comments. In light of comments received on the second invitation to comment, the committee has revised item 9 to make the notice and hearing information more general.
			The form also does not have a section where the parties would be able to draft terms enabling a party to "cure" a breach--for example, by moving out after the deadline but before a hearing.	The committee modified the proposal in light of this and other comments by adding an opportunity to cure to item 7 and recirculated it for further comments.
			This form is also very lengthy, with many different possible selections, and has numerous legal terms that are not clearly defined in plain language that a non-lawyer could understand.	The committee recognizes that form UD-155 presents complex information and has revised the recommended form to simplify it as much as possible while still communicating accurate legal information.
			If the Judicial Council wishes to proceed with a form for this use, it should heavily revise this form, both to make it clearer and easier to understand, and also to ensure it is not unfairly tilted towards the interests of landlords.	The committee substantially modified form UD-155 in light of this and other comments and

	Commenter	Position	Comment	Committee Response
				recirculated it for further comments.
4.	East Bay Community Law Center by Marc S. Janowitz, Housing Practice Attorney & Emily Pia, Law Student Intern	NI	INTRODUCTION: We write as tenant advocates working in the field of eviction defense in Alameda County, California. I have been doing this work for over four decades. I am working with our legal intern, law student Emily Pia of the University of California, at Berkeley Law, who has provided invaluable work and input. The feedback we provide is based on our experience negotiating thousands of eviction cases. As tenants' advocates who represent clients in eviction proceedings, we recognize the value of settling cases. We also acknowledge the reality of our industry that legal practitioners and the courts require significant percentages of cases to settle in order for the system to function. We have reviewed the Judicial Council's proposed rule (Cal. Rule of Court 3.2005) and form (UD-155), and researched various legal, factual, and practical issues related to the proposals. We assume significant numbers of tenants who may be asked to use the form will be unrepresented. Numerous defendants are of different language abilities, different physical and mental abilities and disabilities, as well as varieties of technological skills. We therefore ask the Advisory Committee Members to consider use of the form from those points of view. Based on all of the above, we make the following conclusions and recommendations.	The committee thanks East Bay Community Law Center for their input. See the committee's responses to specific comments, below.
			RECOMMENDATIONS - GENERAL: **First, we strongly recommend that the Judicial Council reexamine this form from the perspective of an unrepresented tenant.** As tenants' attorneys, we would rarely, if ever, choose to use a form like UD-155 to construct settlement agreements for our clients—drafting our own settlement agreements helps us to better protect our clients' legal rights and interests and allows for a level of flexibility (e.g., conditional terms) which a rigid form cannot generally accomplish. Accordingly, we believe that *unrepresented* tenants are the parties most likely to use UD-155, and as such, we	The committee substantially modified proposed form UD-155 in light of this and other comments and recirculated it for further comments. The committee has considered the interests of all parties and has taken care to add or revise options as appropriate. See the

	Commenter	Position	Comment	Committee Response
			recommend that the Judicial Council take time to consider the unique, and often vulnerable, position that unrepresented tenants settling UD cases find themselves in. Given that UD-155 has the Judicial Council name attached to it and the Council's implied stamp of approval, tenants may have greater trust in using such a form to settle their cases, making it imperative that the form sufficiently address their unique legal interests. Conversely, a Judicial Council form that has not adequately considered their perspectives will necessarily favor landlords' legal interests and may lead to worse outcomes for unrepresented tenants. While we commend the Judicial Council for its use of plain language on the form, which will undoubtedly help tenants make more informed choices in the settlement process, **it is our position after reviewing the form that UD-155, in its current state, does not adequately address the legal rights and interests of tenants, particularly unrepresented tenants.** We hope that our suggestions for improving the form detailed below support the Judicial Council in beginning to conceptualize the perspectives of unrepresented tenants in settlement, although we encourage the Judicial Council to continue to seek out additional tenant perspectives. **Second, the proposed UD-155 form demonstrably favors and protects landlords' interests over the interests of tenants, and as such, we strongly oppose its adoption in its current form.** We have detailed below some examples of the one-sided nature of UD-155, although this list is not exhaustive. Where possible, we have offered solutions, although some suggestions realistically require rethinking the structure and substance of the form altogether. It is our hope that the Judicial Council incorporates this feedback in drafting a revised version of the form.	committee's responses to specific comments, below.
			Third, we have observed that UD-155 is generally geared towards nonpayment UD cases as opposed to other types of UDs, such as actions based on alleged nuisance or alleged breach of the lease agreement. If the Judicial Council hopes to promote settlement in UD actions broadly, it might consider either (1) adapting UD-155 to incorporate terms and conditions that are often stipulated to in nuisance/breach of lease UD cases, or (2) creating two forms—one for nonpayment UDs and one for nuisance/breach of lease UDs. Otherwise, we recommend explicitly stating somewhere on the form that UD-155 should be used in nonpayment UD cases because it does not	The committee disagrees. Form UD-155 is reasonably comprehensive. Terms for nuisance cases may be addressed in the existing "Other" options at the end of items 6, 8, and 10. The committee, however, will consider development of a form

	Commenter	Position	Comment	Committee Response
			adequately address the options that tenants have in settling nuisance UD cases. For example, nuisance cases often include terms for: • Type of conduct agreed to (e.g., "Defendant shall not … on the property. / Plaintiff shall … ") • The length of the probationary period agreed to, during which the plaintiff may file for *ex parte* judgment to evict the tenant if the tenant breaches the conduct terms agreed to (e.g., "for 180 days") • Whether parties are agreeing to an evidentiary hearing if the plaintiffs allege breach of the conduct stipulation, and if so… o How much notice must be given to the defendant before filing for an evidentiary hearing o How that notice should be given o Who has the burden of proof o What the burden of proof is (beyond a reasonable doubt or preponderance of the evidence) o Who bears attorneys' fees (prevailing party, or each party bears their own costs)	for nuisance cases as time and resources permit.
			RECOMMENDATIONS - SPECIFICS: Paragraphs 1 and 2: The form is called a "Stipulation". To mitigate the inherently hegemonic position of one of the parties over the other, we urge the form to begin with language more closely resembling a stipulation or agreement. Something like: "The people who are making the agreement are identified as follows: Plaintiff or landlord or landlord's representative and Defendant or tenant:"	The committee disagrees. The form clearly identifies the parties in a manner similar to other Judicial Council forms.
			Paragraph 4: "Type of Stipulation": Obviously, concepts such as those included in this paragraph "Stipulation and Order", "Stipulated Judgment", "Conditional Judgment", and the others are extremely complicated, confounding law students, lawyers, and we dare say, some mediators, alike. While it is essential that parties understand legal ramifications of what they sign,	The committee modified the proposal in light of this and other comments and recirculated it for further comments.

	Commenter	Position	Comment	Committee Response
			what their obligations are, what they are to do and refrain from doing, it may be we do more harm than good trying to explain these in such a short paragraph.	
			Para. 5.b.: As an example of bias implicit in the form, compare language of para. 5.a., with 5.b. We recommend adding language to 5.b.: Defendant will move out of (vacate) the rental property [**add: if plaintiff does everything agreed to in this stipulation**].”	The committee modified the proposal in light of this and other comments by adding language similar to what was suggested and recirculated it for further comments.
			Para. 6.: Inclusion of a variety of items the tenant “agrees” to pay plaintiff, whether or not plaintiff is legally entitled to the payments reveals further bias. We offer one example: <u>*Attorneys’ Fees*</u>. The form as it’s currently structured suggests that only defendants are required to pay attorneys’ fees. (See para. 6(a)’s field inviting plaintiffs to sum the attorney’s fees owed by defendants, with no analogous field in Item 8 for defendants to recover attorneys’ fees.) While this omission obviously favors landlords and must be addressed for that reason alone, it is also important to note there are numerous occasions in which plaintiffs bear the burden of paying attorneys’ fees, including situations where they are required to pay *by law*. As one example among several that exist, Cal. Code of Civ. Pro. § 1174.21 states that: “A landlord who institutes an unlawful detainer proceeding based upon a tenant's nonpayment of rent, and who is liable for a violation of Section 1942.4 of the Civil Code, shall be liable to the tenant or lessee for reasonable attorneys' fees and costs of the suit, in an amount to be fixed by the court.” Cal. Code Civ. Pro. § 1174.21. In addition to the statutory obligation to pay attorneys’ fees in the above circumstance, parties often negotiate settlement terms whereby the prevailing party at an evidentiary hearing, for example, pays attorneys’ fees. In this example, if the plaintiff loses at an	The committee modified the proposal in light of this and other comments by adding an option for plaintiff to agree to pay attorney fees and recirculated it for further comments.

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			evidentiary hearing, they would be required to pay attorneys' fees. In sum, not having a field whereby plaintiffs are liable to pay attorneys' fees, and only having a field whereby defendants are liable, is both unequal and in conflict with California unlawful detainer law.	
			Para. 6.d. prohibits the defendant from requesting a stay of execution of the judgment or filing a motion for relief against forfeiture as permitted by Code Civ. Proc. sec. 1179. As all practitioners know, unforeseen events happen. Suppose, perhaps, a tenant agrees to move, and is making all efforts to do so by the agreed date, and in making such efforts he/she/they injury his/her/their back and is hospitalized. By the overbearing lawyer's insistence upon the tenant waiving all post Stipulation relief, the court is powerless to engage its inherent equitable powers, even assuming the tenant could properly request the court do so. *Stays of Execution*. Para. 6.d. reads, "[Defendant agrees t]o move out of (vacate) the rental property no later than midnight _____ and not to request any further delays (or stays of execution)." Foreclosing any opportunity to request stays of execution should not be the standard practice encouraged on an official Judicial Council form. This plainly benefits landlords to the detriment of tenants. Furthermore, tenants' attorneys often structure agreements such that tenants receive extra time to move out whenever the plaintiff is in breach of their agreed-upon duties. Structuring the form so that the only field for filling in the "move-out date" necessarily includes a penalty from which tenants cannot opt out is both unfair and unbalanced. Suppose as another example, the plaintiff intentionally interferes with the tenant performing obligations required pursuant to the terms of the Stipulation. The proposed terms of Form UD-155 must affirmatively account for these events to give them equal importance with the other terms. Allowing parties to write in additional terms in para. 10 is not sufficient because of the difficulty in the negotiating process.	The committee modified the proposal in light of this and other comments and recirculated it for further comments.
			Para. 7: "If defendant does not do everything agreed to":	The committee modified the proposal in light of this and other comments and

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			Para. 7.a.(1) "Plaintiff is not required to give additional notice to defendant." We believe this authorizes illegal *ex parte* communications with the court. See for example, Cal. Rules of Court 3.1200, *et seq*. Specifically, *Notice for Filing Ex Parte Application for Judgment*. Para. 7 of UD-155 gives plaintiffs' two options for providing notice to defendants prior to applying for judgment *ex parte*: (1) no requirement to give notice at all, or (2) providing "_____ hours' notice." By contrast, defendants are given only one fixed option on UD-155: "2 days' notice." This is clearly asymmetrical and favors landlords. An official Judicial Council form should not endorse such a preference. It should be standard that defendants are given notice before plaintiffs file for judgment against them—that is, it should not be an option to not provide notice—and the field should be expressed in days rather than hours, as it is in the analogous field for defendants.	recirculated it for further comments, and in light of comments received on the second invitation to comment, the committee is recommending that item 7 provide more general information about notice and hearing, including a reference to Cal. Rules of Court, rule 3.1200 et seq.
			Para. 8.: 8.a.: Are there consequences if plaintiff fails to dismiss the case as promised in para. 8.a.?	The committee modified the proposal in light of this and other comments and recirculated it for further comments.
			8.b.: This is confusing and difficult to understand and to explain.	The committee modified the proposal in light of this and other comments and recirculated it for further comments.
			8.c.: "Waive all fees" is ambiguous. Specifically, *Plaintiffs' Terms*. In contrast with the various terms that can be selected for defendants to comply with on UD-155, the menu of options for plaintiffs' terms is smaller and generally of lesser consequence. This again shows that the form favors landlords over tenants. Other terms that may be included on the form in the way of plaintiffs' duties are:	The committee modified the proposal in light of this and other comments and recirculated it for further comments.

	Commenter	Position	Comment	Committee Response
			o To pay defendant $_____ (including fields for customizable payment plans, as in para. 5.b.) o To waive $_____ of rent owed o Award of attorneys' fees in addition to damages	
			Para. 9.: *Consequences for Plaintiffs' Failure to Uphold Negotiated Agreement*. Neither the instructions at the top of the form nor para. 5 make any mention of what will happen if the plaintiff fails to comply with the terms of the agreement, despite the many mentions of the consequences should a defendant fail to uphold their end of the bargain. As tenants' attorneys, we strongly believe that any standardized settlement form promoted by the Judicial Council must explicitly name the consequences should plaintiffs fail to abide by the agreed-upon terms. In the absence of such language, it appears as though only tenants have consequences for failing to perform, which is obviously untrue and unfair of the Judicial Council to imply. Simply put, a mechanism must be included to immediately negate the defendant's obligation to move, or pay, or engage in any conduct in the event plaintiff fails to perform his/her/or their obligations. The proposed language: "Plaintiff agrees that defendant can tell the court … " and the court will "quickly act as follows … " is in a word, feckless. How, exactly, does the defendant "ask the court" to do anything, especially without violating the prohibition against *ex parte* communications.	The committee modified the proposal in light of this and other comments and recirculated it for further comments, and in light of comments received on the second invitation to comment, the committee is recommending that item 9 provide more general information about notice and hearing.
			Fair and humane stipulations for settlement that we routinely negotiate, obviously with agreement of plaintiff's bar, include opportunities for the tenant to cure an alleged breach. *Opportunities to Cure*. There is no field included in UD-155 that gives the parties an opportunity to draft terms for either party to "cure" any breaches of the settlement agreement. Mistakes happen, and given that unlawful detainer settlement agreements tend to place a heavier burden on tenants and come with greater consequences for tenants, it is imperative that UD-155 include a field detailing opportunities to cure any	The committee modified the proposal in light of this and other comments to include an opportunity to cure a violation of the agreement and recirculated it for further comments.

	Commenter	Position	Comment	Committee Response
			breach of the defendant's agreed-upon duties, including a timeframe for curing. Not providing such opportunity is against industry practice and unfairly benefits landlords.	
			As a closing note we add, if increasing access to justice is the Judicial Council's aim, we *strongly* recommend reviewing the standard UD-105 answer form with an eye toward making it easier for unrepresented tenants without advanced legal knowledge to comprehend and use the form. These forms are notoriously complex, especially for unrepresented tenants; even the second- and third-year law students who work in our office often require additional training to be able to support clients in completing these forms. Given that completing and filing an official answer is critical to protecting tenants from default and thus losing their housing, we believe that using plain language in UD-105, explaining the legal terms used on the form, and including clear instructions is essential to increasing access to justice and fairness in the UD process.	This comment is beyond the scope of the invitation to comment. The committee will consider the suggestion for form UD-105 as time and resources permit.
			UD-155, as currently proposed, will be a facile tool for plaintiff/landlords who want to paint the illusion of striking a fair settlement agreement, using an official Judicial Council, while using the form to draw up manipulative terms that are purposefully difficult to comply with so as to increase the chances of the defendant's noncompliance and eviction. For example, a landlord who brings a UD action against a tenant for nonpayment of rent can use UD-155 to request a stipulation that the tenant stays in the property so long as they comply with all the terms in the stipulation (para. 5.a.). Most tenants who are facing eviction—and the many devastating consequences that come with it—would breathe a sigh of relief that they have an opportunity to stay. Taking advantage of such a situation, the landlord/landlord's attorney may draft a complicated payment plan in para. 6.b.2. whereby the tenant is required to pay varying amounts of money on various dates with no logical pattern so as to trick/deceive a tenant who is desperate to keep their housing. If the tenant misses a payment date or pays the incorrect amount, and if the parties agreed that (1) the Plaintiff is not required to give notice to the tenant before filing *ex parte* for judgment, per para. 7.a.1. and 2., that the court can issue judgment without holding another hearing, then the tenant may be swiftly evicted. Furthermore, if the parties agree in para. 7.c.2. that the defendant be	The committee modified the proposal in light of this and other comments and recirculated it for further comments, and in light of comments received on the second invitation to comment, the committee is recommending a more visual payment schedule with options for both a grace period term and an opportunity to cure a violation. With respect to noncompliance, the committee is now recommending that items 7 and 9 provide more general information about notice and hearing.

	Commenter	Position	Comment	Committee Response
			ordered to pay any amount of money still unpaid, the tenant may be evicted and still be liable for paying the landlord.	
			CONCLUSIONS: The proposed form UD-155 is biased in favor of plaintiffs/landlords to the extreme detriment of the defendants/tenants in these actions. We have provided examples on which our conclusions are based. Notwithstanding pains taken by the Committee to write the form in comprehensible English, the proposed Form UD-155 is still extremely difficult to understand, and, we believe, near impossible for the pro per tenant to engage with. We assume a judge or mediator will not be able to explain the myriad of legal concepts the form asks the parties to agree to because their position prohibits them from giving a party legal advice. Even if the judicial officer were to attempt to explain terminology, we do not believe such attempts would be adequate to ensure complete comprehension of all ramifications of agreeing to the terms. We therefore assume if it were used at all it would result in agreements the parties would not understand. That, of course, is an unacceptable outcome. We thank the Judicial Council for its consideration of these important matters, and attempts to address them.	The committee modified the proposal in light of this and other comments and recirculated it for further comments. To the extent East Bay Community Law Center is advocating against adoption of a form entirely, the committee disagrees. The committee believes that an optional, plain language form for use in eviction cases is preferable to no form at all.
5.	Hannah Flanery Attorney Berkeley	N	I am a tenant attorney in the Bay Area practicing in unlawful detainer defense. I write in opposition to the proposed form. I will note a few things:	No response required.
			1. UD-155 appears to be written from the plaintiff/landlord's point of view and does sufficiently protect the defendant/tenant's interests. Examples include: Stays of Execution. Item 6(d) reads, "[Defendant agrees t]o move out of (vacate) the rental property no later than midnight _____ and not to request any further delays (or stays of execution)." Foreclosing any opportunity to request stays of execution should not be the standard practice encouraged on an official Judicial Council form. This is a harsh term for tenants and clearly favors landlords' interests.	The committee substantially modified proposed form UD-155 in light of this and other comments and recirculated it for further comments.

	Commenter	Position	Comment	Committee Response
			Notice for Filing Ex Parte Application for Judgment. Item 7 of UD-155 gives plaintiffs' two options for providing notice to defendants prior to applying for judgment ex parte: (1) no requirement to give notice at all, or (2) providing "_____ hours' notice." By contrast, defendants are given only one fixed option on UD-155: "2 days' notice." This is clearly asymmetrical and favors landlords. An official Judicial Council form should not endorse such a preference.	See the committee's response to the comment of ACCE Institute concerning item 7, above.
			Attorneys' Fees. The form as it's currently structured suggests that only defendants are required to pay attorneys' fees. There are many times in which landlords must pay attorneys' fees, including times when it's required by law. (See Cal. Code Civ. Pro. § 1174.21.)	See the committee's response to the comment of ACCE Institute and East Bay Community Law Center concerning item 8, above.
			2. UD-155, in its current state, does not adequately address the legal rights and interests of tenants, particularly unrepresented tenants. Because tenants' attorneys would almost always prefer to draft their own settlement agreements, unrepresented tenants are the parties most likely to use this form. It is imperative that the Judicial Council reexamine the form from the perspective of the unrepresented tenant.	The committee modified the proposal in light of this and other comments and recirculated it for further comments.
			3. UD-155 does not adequately protect the tenant in the event the landlord fails to uphold their end of the agreement. In contrast to the form's enumeration of specific and dire consequences for the non-performing tenant, the form is silent on the consequences should the landlord default.	The committee modified the proposal in light of this and other comments and recirculated it for further comments, and in light of comments received on the second invitation to comment, the committee is recommending that items 7 and 9 provide more general information about notice and hearing.
			4. There is no field included in UD-155 that gives the parties an opportunity to draft terms for either party to "cure" any breaches of the settlement agreement. No tenants' attorney would draft a settlement agreement without opportunities to cure a breach of the agreement; mistakes happen, and tenants' housing is on the line.	The committee modified the proposal in light of this and other comments by adding an opportunity to cure to item 7

	Commenter	Position	Comment	Committee Response
				and recirculated it for further comments.
			If increasing access to justice is the Judicial Council's aim, we strongly recommend reviewing the standard UD-105 answer form with an eye toward making it easier for unrepresented tenants without advanced legal knowledge to comprehend and use the form. These forms are notoriously complex, and given that completing and filing an official answer is critical to protecting tenants from default and thus losing their housing, UD-105 should be revisited. We suggest redrafting the form with plain language, including explanations of the legal terms used on the form, and including clear instructions for completing and filing the form.	This comment is beyond the scope of the invitation to comment. The committee will consider the suggestion for form UD-105 as time and resources permit.
6.	Sophia Fenn Berkeley	N	UD-155 appears to be written from the plaintiff/landlord's point of view and does sufficiently protect the defendant/tenant's interests. Examples include: Stays of Execution. Item 6(d) reads, "[Defendant agrees to move out of (vacate) the rental property no later than midnight _____ and not to request any further delays (or stays of execution)." Foreclosing any opportunity to request stays of execution should not be the standard practice encouraged on an official Judicial Council form. This is a harsh term for tenants and clearly favors landlords' interests.	See the committee's response to a similar comment of Hannah Flanery, above.
			Notice for Filing Ex Parte Application for Judgment. Item 7 of UD-155 gives plaintiffs' two options for providing notice to defendants prior to applying for judgment ex parte: (1) no requirement to give notice at all, or (2) providing "_____ hours' notice." By contrast, defendants are given only one fixed option on UD-155: "2 days' notice." This is clearly asymmetrical and favors landlords. An official Judicial Council form should not endorse such a preference.	See the committee's response to a similar comment of Hannah Flanery, above.
			Attorneys' Fees. The form as it's currently structured suggests that only defendants are required to pay attorneys' fees. There are many times in which landlords must pay attorneys' fees, including times when it's required by law. (See Cal. Code Civ. Pro. § 1174.21.)	See the committee's response to a similar comment of Hannah Flanery, above.
			UD-155, in its current state, does not adequately address the legal rights and interests of tenants, particularly unrepresented tenants. Because tenants' attorneys would almost always prefer to draft their own settlement agreements, unrepresented tenants are the	See the committee's response to the comment of Hannah Flanery, above.

	Commenter	Position	Comment	Committee Response
			parties most likely to use this form. It is imperative that the Judicial Council reexamine the form from the perspective of the unrepresented tenant.	
			UD-155 does not adequately protect the tenant in the event the landlord fails to uphold their end of the agreement. In contrast to the form's enumeration of specific and dire consequences for the non-performing tenant, the form is silent on the consequences should the landlord default.	See the committee's response to the comment of Hannah Flanery, above.
			There is no field included in UD-155 that gives the parties an opportunity to draft terms for either party to "cure" any breaches of the settlement agreement. No tenants' attorney would draft a settlement agreement without opportunities to cure a breach of the agreement; mistakes happen, and tenants' housing is on the line.	See the committee's response to the comment of Hannah Flanery, above.
			If increasing access to justice is the Judicial Council's aim, we strongly recommend reviewing the standard UD-105 answer form with an eye toward making it easier for unrepresented tenants without advanced legal knowledge to comprehend and use the form. These forms are notoriously complex, and given that completing and filing an official answer is critical to protecting tenants from default and thus losing their housing, UD-105 should be revisited. We suggest redrafting the form with plain language, including explanations of the legal terms used on the form, and including clear instructions for completing and filing the form.	See the committee's response to the comment of Hannah Flanery, above.
7.	Charity C. Juker Court Attorney Ventura	AM	If possible, please make the spaces larger for the amounts and dates. Most stipulations are written in court and can be difficult to read. Making the spaces larger may be helpful.	The committee modified the proposal in light of this and other comments as suggested and recirculated it for further comments.
8.	Legal Aid Society of San Diego, Inc. by Gregory E. Knoll CEO/Executive Director/Chief Counsel	NI	The Legal Aid Society of San Diego ("LASSD") writes in response to the Judicial Council's Invitation to Comment W23-03, *Unlawful Detainer: Opportunities for Settlement Before Trial*. LASSD, which began as the "Office of the Public Attorney" and was later incorporated under its current name, provides free legal services to indigent people throughout San Diego County. LASSD has been assisting clients in the fight against poverty and injustice for more than 100 years. We are the largest poverty law firm in the county, with teams specializing in a number of priority areas including housing and fair housing law. LASSD's mission is to improve lives by advancing	The committee thanks LASSD for its input.

	Commenter	Position	Comment	Committee Response
			justice through effective, efficient, and vigorous legal advocacy, outreach, and education. We strive to redress our clients' rights and empower them to effectively participate in our legal, governmental, and social systems. LASSD provides free legal representation to thousands of households each year facing rent increases, evictions, and imminent homelessness in San Diego County. We are often the last line of defense before homelessness for many indigent households in San Diego County. We appreciate that the Judicial Council is attempting to address the challenge of meaningful settlement opportunities in unlawful detainer cases, especially as we stand on the brink of a tsunami-sized wave of evictions once essential COVID-19 eviction protections begin to expire statewide. As discussed below in this letter, we have concerns regarding the substance of the proposed form as well as the accompanying proposed change to the California Rules of Courts. We raise these concerns because the unfortunate reality is that tenants are on unequal footing when it comes to dispute resolution because they do not have the benefit of legal counsel, especially in jurisdictions where free and low-cost legal services are not readily available. Thus, it is especially important to ensure that the forms are clear, easy to use, and allow tenants a meaningful opportunity to engage in meaningful settlement negotiations. Below we address the Council's specific inquiries and offer additional suggestions.	

			I. Does the proposal appropriately address the stated purpose? The changes address the stated purpose in part by allowing the parties to enter into a stipulated settlement agreement that does not result in an entry of judgment against a defendant(s) in an unlawful detainer case. However, Proposed Rule 3.2005 has the potential to place defendants in a precarious situation if they are mandated to engage in formal dispute resolution, such as mandatory settlement conferences or mandatory mediation, before they have had an opportunity to seek legal advice or assistance. Unlawful detainers are summary proceedings and move exceptionally quickly. Tenants who are low-income, disabled, elderly, or of limited English proficiency already have a difficult time seeking and obtaining legal assistance and representation on such a shortened timeline. They will now face the added barrier of competing for limited legal services much earlier in the process, which places tenants in danger of engaging in settlement negotiations without comprehension of their legal rights, what they may request as part of a settlement, and the ramifications of certain provisions. Tenants in unlawful detainer actions are facing the loss of their housing and stability and are more likely to enter negotiations in a heightened state of stress and duress. The unequal power dynamic in landlord-tenant relationships only heightens this stress. Therefore, we suggest the following changes (in bold) to proposed Rule 3.2005: **Rule 3.2005. Settlement opportunities** (a) Policy favoring an opportunity for resolution without trial. The intent of this rule is to promote opportunities for resolution of unlawful detainer cases before trial. **In cases where neither the plaintiff and defendant are represented by counsel, or both parties are represented by counsel,** Courts **may** encourage participation, to the extent feasible, in at least one opportunity for resolution before trial, including but not limited to a settlement conference, mediation, or another alternative dispute resolution process **at no-cost to the litigants**. The changes in subsection (a) are consistent with many alternative dispute resolution programs that already exist in some jurisdictions, where those programs are prioritized	The committee modified the proposal in light of this and other comments to include an advisory committee comment that recognizes that the rule does not authorize courts to mandate participation in for-cost mediation or ADR, and recirculated it for further comments. The committee disagrees with the comment to the extent it suggests limiting participation in ADR. The rule is intended to apply regardless of whether a party has or does not have representation. With respect to cost, the committee is concerned that the proposed policy would be less effective if the rule did not allow parties to choose to participate in for-cost mediation or ADR.

			for cases in which neither litigant (landlord or tenant) has the benefit of counsel. This ensures that both parties are on equal footing as they enter the dispute resolution process. Further, in recognition of limited judicial resources and limited access to free alternative dispute resolution options in some jurisdictions, the rule should encourage but not mandate any form of dispute resolution that will raise financial barriers to low-income litigants. The changes to subsection (b) are necessary since there are a limited number of Courts that require mandatory settlement conferences for unlawful detainer cases. For clarity, it is important that the rule is not seen as a blanket requirement for all Courts. Further, to avoid any negative repercussions for pro per litigants who fail to file a settlement conference statement, it should be clear that the Court is not authorized to issue sanctions, whether financial or procedural, for failing to comply with Rule 3.1380(c).	

	Commenter	Position	Comment	Committee Response
			II. Are there other terms common to stipulated agreements in eviction cases that ought to be considered for inclusion on the form? Yes, there are several commonly used terms in settlement agreements that should be added to the form. Below we will detail the necessary additions by section. These terms have been carefully crafted over time by tenant advocates and should be familiar to most counsel involved in these types of negotiations.	See the committee's responses to LASSD's specific comments, below.
			A. Additions and revisions to Section 8 Section 8(c) should be rewritten to provide an option whereby the landlord waives all rent amounts if the defendant agrees to move out. As it currently reads, section 8 c only waives fees and interests for "the amount owed" which leaves a tenant with the only option to pay and move when in most jurisdictions, tenants with attorneys more commonly only enter into agreements to vacate their home in exchange for waiver of all rent amounts. We propose the following revision: "c. For any rent demanded in the complaint: (1) □ To waive all rent, late fees, and holdover damages associated with defendant's tenancy that were demanded in the complaint. (2) □ To waive any and all fees and interest, if any, for the amount owed in 6."	See the committee's response to a similar comment of Bay Area Legal Aid, above.
			Section 8(d) should also include a term whereby the plaintiff agrees to temporarily relocate defendant if necessary to complete the repairs. In some instances, the needed repairs may be so extensive or of a type that require the defendant to vacate the unit for a prolonged length of time. Examples of this include but are not exclusive to mold remediation, lead paint hazards, structural defects, and pest control work to name a few. We propose that Section 8(d) instead read as "To make the following repairs (describe all repairs to the property). If the defendant must leave the rental property in order for plaintiff to complete the repairs, Plaintiff agrees to temporarily relocate defendant at plaintiff's expense:"	See the committee's response to a similar comment of Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			Section 8(e) should be revised to state "all future rent payments." As currently drafted, the agreement can create ambiguity as to whether it is referring to the payments listed in the stipulation rather than "future rent payments." This is consistent with current law requiring that a payment designated for a certain obligation must first be applied to that obligation.	See the committee's response to a similar comment of Bay Area Legal Aid, above.
			A subsection should be inserted to account for when a plaintiff agrees to pay a tenant a sum of money to vacate the rental property by a certain date. These are commonly known as "cash for keys" agreements. The subsection should outline the amount to be paid to the tenant, the method of payment, date of payment and the penalty for failing to make payment. A proposed term would read: "Plaintiff agrees to pay defendant $_____ in certified funds, in exchange for moving out as agreed to in 6(d). Payment to made payable to _____, and delivered to _____ on or by [DATE]. If plaintiff fails to make payment as agreed, then the defendant's vacate date will be extended by ____ days for each day that the payment is late. If plaintiff fails to make the payment within 5 calendar days of the payment due date, this shall be deemed a material breach of this stipulation by Plaintiff. If the Plaintiff materially breaches this stipulation, the Defendant may appear before the Court in an ex parte hearing, at which the Court will set aside this stipulation and enter judgment for possession in favor of Defendant."	See the committee's response to a similar comment of Bay Area Legal Aid, above.
			B. Additions and Revisions to Section 10 Subsection (d) should be removed from the general provisions section. An order barring access to the court record should be automatic rather than an option for the parties to agree to seal the record. We recommend that this provision be moved to the order section as an automatic order. This is consistent with C.C.P. § 1161.2 subsections (a)(1)(E), (F) and (a)(1)(G) which provide that an unlawful detainer action only becomes public if judgment is entered in favor of the plaintiff within 60 days of filing of the complaint or after trial if more than 60 days since filing of the complaint. Any policy encouraging early resolution of unlawful detainer cases should also be consistent	See the committee's response to a similar comment of Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			with current public policy favoring sealing of court records to incentivize defendant participation in early dispute resolution and to reduce the harm of an unlawful detainer judgment to a defendant especially during the current housing crisis in California.	
			Subsection (c) should be revised to conform to current law and minimize disputes regarding the condition of the property as a material breach of a settlement agreement. The following revision aligns with a commonly used settlement term in unlawful detainer settlements: "Defendant agrees to leave the rental property free of garbage and debris and all personal belongings. Any personal items left in the rental property after [DATE] are deemed abandoned. This means the items will no longer be considered defendant's personal belongings and Plaintiff will have the right to dispose of these items without further notice, or cost, to Defendant. Defendant's abandonment of personal property shall not be considered a breach of the stipulation."	See the committee's response to a similar comment of Bay Area Legal Aid, above.
			We recommend adding Subsection h to include a term allowing parties to agree only to the matter of possession and reserve all monetary claims arising from the tenancy. Possession is generally the most important issue between parties in an unlawful detainer. At times, parties agree as to possession, but disagree as to the amount of damages owed or lesser important terms. Allowing parties to settle the matter of possession, and reserve claims as to monetary damages, would facilitate settlement when parties agree as to possession but not damages. Parties could informally handle the issue of damages outside of the unlawful detainer or in small claims court. We suggest adding the following Subsections: h. □ "Each party in this action reserves all rights he has or may have against the other for claims arising from the subject tenancy (including, but not limited to, claims regarding rent, damages, wrongful conduct, tort claims, breach of contract, etc.)" i. □ "Plaintiff to provide a neutral, or better, rental reference of defendant to any prospective landlord. Plaintiff has not, and will not, report this action to any credit and/or landlord reporting agencies."	The committee modified the proposal in light of this and other comments by adding an option in item 10 for the parties to agree to reserve issues other than possession as suggested and recirculated it for further comments.

	Commenter	Position	Comment	Committee Response
			III. Are there other terms common to orders in eviction cases that might be considered for inclusion on the form? For example, does the form need to state when the case is to be calendared for dismissal? Yes. As drafted, the Stipulation form does not include an option for the parties to lodge the stipulation and provide for dismissal once the terms of the stipulations have been satisfied. There should be an additional checkbox under Section 4 stating that "The above-named parties agree to abide the terms of the stipulation which is approved by the court. The case is calendared for dismissal or entry of judgment on [DATE] at [TIME] in Department [_____]."	The committee modified the proposal in light of this and other comments by adding an option in the Order for the court to schedule the case for dismissal and recirculated it for further comments.
			There should also be an additional checkbox allowing the Court to retain jurisdiction such as "the Court shall retain jurisdiction to enforce the terms of this agreement pursuant to C.C.P. § 664.6." Currently this is only found in Section 10(e). This should be included in the order to ensure that the court's jurisdiction to enforce is easily located in the event of a dispute over compliance with the agreement.	See the committee's response to a similar comment of Bay Area Legal Aid, above.
			Lastly, as set forth in II(B) above the Order should include automatic sealing of the court record rather than an option for the parties to agree to seal the record. Again, we believe this is consistent with C.C.P. § 1161.2 current public policy favoring sealing of court records in unlawful detainer actions.	See the committee's response to a similar comment of Bay Area Legal Aid, above.
			IV. Additional issues and proposed revisions. A. Revision of Section 6 The parenthetical under Section 6(a) should be deleted. If a judgment were to issue after trial an unlawful detainer action, only holdover damages and attorney's fees and costs would be awarded to the landlord. It is a misstatement to include "(Damages may include an amount based on daily rental value or any harm to the property.)" While the parties may negotiate their own terms in a settlement, it would be improper to suggest	See the committee's response to a similar comment of Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			that property damages could be recouped as part of a settlement when such damages could not be awarded if the defendant was found guilty of unlawful detainer after a trial on the merits. The "Damages" category in the table should be replaced by "Holdover Damages." The "Other" box should be deleted as well. This is consistent with existing local forms, such as LACIV-136 (Unlawful Detainer Stipulation and Judgment) currently used in Los Angeles Superior Court.	
			Section 6(b) of the proposed Stipulation should be revised. In the first sentence the checkbox for "received" should be accompanied by a parenthetical indicating that it applies "for in-person payments." Section 6(b)(2) should be deleted while replacing it with the "Other payment schedule" in Section 6(b)(3) along with additional blank lines followed by "until paid in full" to allow the parties to set out an alternative and potentially longer payment schedule without the limitation of the 5 blank spaces in (b)(2).	See the committee's response to a similar comment of Bay Area Legal Aid, above.
			Section 6(c) should be more specific, we propose: Payment shall be made payable to: _____, and delivered to _____ □ via mail □ hand-delivery (during business days and hours: _____). This provides clarity for payments that may be payable to a person or entity that is not the named plaintiff but are received by an authorized agent or property manager who is named in the unlawful detainer action.	See the committee's response to a similar comment of Bay Area Legal Aid, above.
			Section 6(d) should be amended to delete "and not request any further delays (or stays of execution)." Again, while parties are free to negotiate the terms of a settlement, there should not be an automatic conditioning of the move out date with a waiver of critical rights. While we agree that settlement should be final, the COVID-19 pandemic has shown us that unforeseen events may necessitate a stay of execution. Moreover, an individual with disabilities has the legal right to request a reasonable accommodation at any point in a proceeding; it would be inappropriate to suggest otherwise. If this is a material term for some parties, it can be added in the "other" section.	See the committee's response to a similar comment of Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			Also, "midnight" should be changed to 11:59 p.m. on [DATE] to avoid ambiguity as to whether the defendant is agreeing to move out the morning of the vacate date rather than at the end of the day on the vacate date.	See the committee's response to a similar comment of Bay Area Legal Aid, above.
			Lastly, we recommend language allowing the tenant to vacate sooner and get credit for vacating sooner if they are agreeing to pay rent through the moveout date. Without this revision, Section 8 Housing Choice Voucher Tenants would not be able to move with publicly funded rental assistance unless their new tenancy aligned precisely with their move date, which is a virtual impossibility. We would recommend Section 6(d) be reworded as follows: d. □ To move out of (vacate) the rental property no later than 11:59 PM on _____. Defendant shall be credited $_____ daily rental value, per day if Defendant vacates prior to the Move out date. Plaintiff waives any right to a notice if the tenant vacates before the Move out date. The tenancy shall be terminated on the Move out date or when the tenant vacates, whichever occurs earlier.	The committee disagrees and is not recommending including the language proposed. The item is a generally applicable item to move out by a certain date. The suggestion would complicate the provision and would not apply in many cases. The committee notes that the "Other" option at the end of item 6 may be used to address any terms required for Section 8 housing.
			B. Revision of Section 7 We object to Section 7 as drafted to the extent that it includes various provisions allowing the plaintiff to request an entry of judgment without notice to the defendant or an opportunity for hearing. It is common practice by unlawful detainer defense attorneys to include terms that require advanced notice of a breach of a settlement agreement as well as an opportunity for hearing in the event of an alleged breach. This is an important safeguard in any agreement with a payment plan or agreements to move out, where disputes often arise as to whether a payment was properly made or whether a tenant "properly" vacated the subject property. It also ensures that a tenant has advanced notice of any judgment and any writ of possession that may be issued should they be found in breach of the settlement agreement. Below are the proposed revisions:	The committee modified the proposal in light of this and other comments and recirculated it for further comments, and in light of comments received on the second invitation to comment, the committee is recommending that items 7 and 9 provide more general information about notice and hearing and omit the list of potential results.

	Commenter	Position	Comment	Committee Response
			7. □ If defendant does not do everything agreed to, the parties agree that plaintiff can return the court to state that defendant has not complied with the Stipulation and ask the court to make a judgment as follows: a. In the event of a breach, Plaintiff may request an ex parte hearing with ___ business days' notice ("Notice Period"). During the Notice Period, Defendant has the opportunity to cure the alleged breach. b. After the notice in (a.) above expires, plaintiff may request an ex parte hearing to enforce the agreement within _____ business days. This does not waive any notice required by court rules for an ex parte hearing. c. Result (check all that apply): (1) □ That defendant be ordered to move out (evicted) and locked out (immediate possession) of the rental property identified in 3. (2) □ That judgment be entered for any amount of money that remains unpaid pursuant to the terms of this agreement. (3) □ Cancellation of the rental agreement/lease. (4) □ Other:	
			C. Revision of Section 9 For consistency, Section 9 which provides the terms regarding the plaintiff's breach of the agreement should also be revised so they reflect similar provisions in Section 7. Below are the proposed revisions: 9. □ If plaintiff does not do everything agreed to, the parties agree that defendant can return the court to state that defendant has not complied with the Stipulation and ask the court to make an order as follows: a. In the event of a breach, Defendant may request an ex parte hearing with ___ business days' notice ("Notice Period"). b.	The committee modified the proposal in light of this and other comments and recirculated it for further comments, and in light of comments received on the second invitation to comment, the committee is recommending that items 7 and 9 provide more general information about notice and hearing.

	Commenter	Position	Comment	Committee Response
			c. After the notice in (a.) above expires, defendant may request an ex parte hearing to enforce the agreement within _____ business days. This does not waive any notice required by court rules for an ex parte hearing. d. Result (check all that apply): (1) □ Plaintiff be ordered to do what was promised by [DATE]. (2) □ Plaintiff pays defendant the amount of $_____ by [DATE]. (3) □ Defendant's move out date is now [DATE] due to plaintiff's failure to pay the amounts in 8(¶).	
			D. Revise Section 11 As drafted, Section 11 conflicts and can create confusion with the agreements as set forth in Sections 6 through 10. Additionally, it is problematic as it only allows for a conditional judgment against defendant and not a conditional dismissal. It should be rewritten as: "Plaintiff shall dismiss permanently (with prejudice) the eviction case that is currently pending as soon as defendant has done everything agreed to in this Stipulation. If the agreement provides that the defendant will stay in the rental property if all conditions are met, then the defendant's tenancy will be reinstated without further conditions once the case is dismissed. But plaintiff may seek eviction and lockout (immediate possession of the rental property), subject to Section 7, if defendant does not do everything agreed to in this Stipulation."	The committee modified the proposal in light of this and other comments and recirculated it for further comments, and in light of comments received on the second invitation to comment, the committee is recommending that item 11 provide additional information.
			E. Add a declaration attesting to translation of the stipulation. As currently drafted, the stipulation form does not include any attestation as to whether the parties received translation assistance. It is important that litigants with limited English proficiency receive interpretation (verbal) and translation (written) services during settlement negotiations, drafting of the agreement, and prior to signing. The form should include a notice in all major languages spoken in California notifying litigants	See the committee's response to the same comment from Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			that they should secure an interpreter/translator to assist in the preparation of the settlement agreement. In addition, the form should include an attestation for litigants requiring translation services that they have received those services in the preparation and execution of the stipulation. If available, there should also be an attestation for an interpreter to sign as well to certify that the document was translated.	
			Conclusion While intended to facilitate early resolution of unlawful detainer cases, it is necessary to adopt additions and revisions to these forms that maintain some parity in a proceeding where tenants too often start out at a massive disadvantage. We are deeply concerned about access to justice for people who receive an unlawful detainer and cannot access legal assistance. These are people who are likely to head into any type of early dispute resolution unprepared, unaware of their legal rights and under extreme stress. To ensure that any settlement process is fair for all litigants involved, it is important to create forms that set the parties on equal footing and that are easy to navigate. We appreciate your efforts to make the proposed forms as accessible and comprehensive as possible.	No further response required.
9.	National Housing Law Project by Lila Gitesatani Staff Attorney	NI	The National Housing Law Project writes in response to the Judicial Council's Invitation to Comment W23-03, *Unlawful Detainer: Opportunities for Settlement Before Trial*. We appreciate that the Judicial Council is attempting to address the challenge of meaningful settlement opportunities in unlawful detainer cases, especially as we stand on the brink of a wave of evictions once the remaining COVID- 19 eviction protections expire. NHLP advances housing justice for poor people and communities by strengthening and enforcing the rights of tenants, increasing housing opportunities for underserved communities, including tenants with publicly funded housing subsidies, and preserving and expanding the nation's supply of safe and affordable homes. NHLP is a support center for California legal services programs and provides technical assistance and training to advocates that represent tenants throughout the state. It is the work of eviction defense and other attorneys on the ground that informs all of our policy advocacy.	The committee thanks the commenter for their input. See the committee's responses to the comments of Western Center on Law & Poverty (WCLP), below.

	Commenter	Position	Comment	Committee Response
			We are generally in favor of early dispute resolution in unlawful detainer cases, but we have concerns regarding the substance of the proposed form as well as the accompanying proposed change to the California Rules of Courts. We raise these concerns because the unfortunate reality is that tenants are on unequal footing when it comes to dispute resolution because they do not always have the benefit of legal counsel, especially in jurisdictions where free and low-cost legal services are not readily available. Thus, it is especially important to ensure that the forms make it easy for tenants and landlords to make agreements that preserve tenants' housing and avoid unfairly burdening tenants with costs and fees that would not be included in a court judgment. It is also important that the forms be clear, easy to use, and allow tenants an opportunity to engage in meaningful settlement negotiations. We reviewed the forms and by way of cross-reference, incorporate WCLP's detailed comments as outlined in their letter dated January 19, 2023.	
10.	Orange County Bar Association by Michael A. Gregg, President Newport Beach	AM	Yes, the proposal adequately addresses the stated purpose.	The committee thanks the Orange County Bar Association for its input.
			The Council should consider including the additional terms contained in Form UD-115 "Stipulation for Entry of Judgment", Form UD-110 "Judgment-Unlawful Detainer", and the additional terms referenced in the "California Courts Self-Help Guide for Unlawful Detainer Proceedings" (effective January 1, 2003). Such forms reference stipulations about credit reporting and disparagement, return/removal/repair of personal properties or the rental property itself, return of keys, garage openers, and HOA access cards, utilities, and removal/entry related to all unknown occupants who have been served with a Prejudgment Claim of Right to Possession (Form CP-10.5). Council should reference and consider the terms set forth in Form UD-110 "Judgment – Unlawful Detainer", in addition to the terms referenced below. It is unclear why every case should be calendared for dismissal especially since a judgment may be subsequently entered by stipulation or otherwise and since writs of possession/execution may be further required. Additional terms, such as the date the case is calendared for dismissal, would likely undercut the "plain language" intent of the form and could create unnecessary confusion for any self-represented parties.	The committee modified the proposal in light of this and other comments and recirculated it for further comments. To the extent there are additional terms in forms UD-110 and UD-115, the "Other" options at the end of items 6, 8, and 10 allow parties to include any terms necessary to an agreement, including any contained in the other materials referenced by the commenter. Because form UD-155 is meant to be plain language and to

	Commenter	Position	Comment	Committee Response
				cover the most common terms of an agreement between parties in an unlawful detainer proceeding, the committee prefers to find a balance between comprehensive and all inclusive, rather than trying to include all potential components (e.g., keys, garage openers, HOA access cards, utilities, etc.).
			The OCBA has several specific recommendations for modifications to the proposed form. First, the OCBA recommends modifying the proposed form to replace the phrase "rental property" with "property." Although the majority of the unlawful detainer cases involve rental properties, some involve mortgages that have been foreclosed but where the former homeowner refuses to vacate the premises. The foreclosing party must then initiate an unlawful detainer action to remove the former homeowner. In these circumstances, the form could still be helpful if the parties are able to come to a pretrial settlement. But, the phrase "rental property" may cause unnecessary confusion and create the belief that the form cannot be used in circumstances involving a foreclosed mortgage.	The committee modified the proposal as suggested and recirculated it for further comments.
			The OCBA also recommends the following, additional modifications: (1) Proposed Rule 3.2005(a) be modified to include referencing that the parties and counsel should be encouraged to participate in some form of voluntary ADR to the extent feasible before trial, provided that the expedited trial proceedings are not unreasonably delayed and provided that voluntary participation is emphasized by the court;	The committee appreciates the commenter's concerns about delay and voluntary participation. With respect to "unreasonable delay," the committee believes the concern is addressed by the "to the extent feasible" language already included in subdivision

	Commenter	Position	Comment	Committee Response
				(a). To the extent the commenter is requesting inclusion of "voluntary" participation in an ADR process, the committee agrees that voluntary participation is generally preferable, but the committee is concerned that adding the suggested language may be inconsistent with a court's setting a mandatory settlement conference on its own motion or at the request of any party, as provided in rule 3.1380. Because of the potential for conflict, the committee does not believe that voluntary participation should be added.
			(2) Proposed Rule 3.2005(b) be modified to reference that unlawful detainer settlement conferences may be deemed mandatory in accordance with Rule 3.1380 only if, after discussion with the parties or counsel, the court believes that such a conference would not unreasonably delay final resolution of the case and that the parties would benefit from such a mandatory conference;	This comment is beyond the scope of the invitation to comment. Subdivision (b) authorizes a court to exempt parties from an existing deadline under the mandatory settlement conference rule (rule 3.1380). The proposal does not address the conditions for setting a mandatory settlement conference; that is the subject of rule 3.1380.
			(3) Proposed Optional Form UD-155 be modified to make its terms more equally applicable to both plaintiffs and defendants, such as at section 4 ("If the Stipulation and	The committee substantially modified proposed form UD-

	Commenter	Position	Comment	Committee Response
			Judgment is approved, the court will enter judgment against the defendant immediately") and at section 5 ("Defendant will stay in the rental property.." and "Defendant will move out of…") and at section 11 ("Conditional Judgment: Defendant will stay…But plaintiff may seek eviction and lockout ..");	155 in light of this and other comments and recirculated it for further comments.
			(4) Proposed Optional Form UD-155 be modified and clarified to explain or make equal at sections 7a/b and 9a/b why plaintiff is required to give only (blank) hours' notice to defendant, but defendant must give 2 days' notice to plaintiff; and also why the court is authorized to give an immediate judgment to plaintiff after defendant's default "without holding another hearing", but defendant is required to "ask the court for a hearing in 6-10 days" after the plaintiff's default?	The committee modified the proposal in light of this and other comments and recirculated it for further comments, and in light of comments received on the second invitation to comment, the committee is recommending that items 7 and 9 provide more general information about notice and hearing.
			(5) Proposed Optional Form UD-155 be modified at section 9 to add a new subsection - "d. Other: (describe any other order the defendant may request)."	The committee modified the proposal in light of the comments and recirculated it for further comment, but in light of the comments received, the committee is recommending that items 7 and 9 omit terms that are not necessary or potentially in conflict with local practices. The committee is also recommending that these items include a citation to the California Rules of Court and note that ex parte hearings and schedules differ by court.

	Commenter	Position	Comment	Committee Response
11.	Public Law Center by Jonathan Bremen Impact Litigation Staff Attorney	NI	Public Law Center (PLC) is a 501(c)(3) not-for-profit organization that provides free civil legal services to low-income individuals and families across Orange County. The civil legal services that we provide include consumer, family, immigration, housing, veterans, community organizations, and health law. PLC appreciates the opportunity to comment on Invitation W23-03, regarding: (1) the adoption of California Rules of Court, rule 3.2005; and (2) a new form (UD-155) for optional use in unlawful detainer cases.	The committee thanks Public Law Center for their input. See the committee's responses to the specific comments, below.
			I. Proposed Rule 3.2005 PLC supports the use of alternative dispute resolution processes in unlawful detainer actions, as it helps our clients reach a mutually satisfactory resolution more quickly and efficiently than going through the traditional legal process. However, PLC recommends the following revisions to proposed Rule 3.2005: Rule 3.2005. Settlement opportunities (a) Policy favoring an opportunity for resolution without trial The intent of this rule is to promote opportunities for resolution of unlawful detainer cases before trial. Courts **may** encourage participation, to the extent feasible, in at least one opportunity for resolution before trial, including but not limited to a settlement conference, mediation, or another alternative dispute resolution process **at no-cost to the litigants**. (b) Exemption for mandatory settlement conference statement deadline **For Courts with local mandatory settlement conference rules in unlawful detainer cases**, the court may **exempt the parties** from the five-court-day deadline for submitting a settlement conference statement set out in rule 3.1380(c). **A party who fails to timely submit a settlement conference statement shall not be subject to sanctions, monetary or otherwise.** The recommended changes in subdivision (a) are consistent with many alternative dispute resolution programs that already exist in some jurisdictions, where those programs are provided at no cost to litigants. This ensures that both parties can engage	See the committee's response to a similar comment from Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			in the dispute resolution process regardless of financial means. Further, in recognition of limited judicial resources and limited access to free alternative dispute resolution options in some jurisdictions, the rule should encourage but not mandate any form of dispute resolution that will raise financial barriers to low-income litigants. The recommended changes to subdivision (b) are necessary because, as the Judicial Council has acknowledged, some Courts require mandatory settlement conferences for unlawful detainer cases. For clarity, it is important that the rule is not seen as a blanket requirement for all Courts. Further, to avoid any negative repercussions for pro per litigants who fail to file a settlement conference statement, it should be clear that the Court is not authorized to issue sanctions, whether financial or procedural, for failing to comply with Rule 3.1380, subdivision (c).	
			II. Proposed Form UD-155 (*Eviction Case Stipulation*) In general, PLC supports the adoption of form UD-155, as its plain language would assist our pro per unlawful detainer clients in reaching settlements with their landlords. However, PLC recommends several minor modifications to the form to better protect the rights of our clients.	The committee appreciates PLC's support for a plain language form.
			A. Section 6 PLC urges the Judicial Council to remove the language in parentheses under Section 6(a). If a judgment is issued in an unlawful detainer action, the only damages that would be awarded to the landlord would be holdover damages, attorney fees, and costs. It is incorrect to include the statement "(Damages may include an amount based on daily rental value or any harm to the property.)" in the form. Although the parties may agree to their own terms in a settlement, it would be inappropriate to suggest that property damages could be recovered as part of a settlement when such damages could not be awarded if the defendant is found guilty of unlawful detainer after a trial. The "Damages" category in the table should be changed to "Holdover Damages." In addition, the "Other" category should be deleted completely. There is no definition of the term "other" and, like "damages," it leaves room for including amounts that could	See the committee's response to a similar comment of Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			not be recovered as part of a judgment in an unlawful detainer action. This is consistent with existing local forms, such as LACIV-136 (Unlawful Detainer Stipulation and Judgment) currently used in Los Angeles Superior Court. A statement should be added that the amounts listed in the table are the only amounts owed to the plaintiff as of the date of the agreement and that the plaintiff may not demand additional amounts once the settlement is approved by the court.	
			Section 6(d) should be amended to delete "and not request any further delays (or stays of execution)." Again, while parties are free to negotiate the terms of a settlement, there should not be an automatic conditioning of the move out date with a waiver of critical rights. While we agree that settlement should be final, the COVID-19 pandemic has shown us that unforeseen events may necessitate a stay of execution. Moreover, a tenant may unwittingly waive their rights under the American Disabilities Act, the Fair Housing Act, or other civil rights laws. If this is a material term for some parties, it can be added in the "other" section.	The committee modified the proposal as suggested in light of this and other comments and recirculated it for further comment.
			Finally, "midnight" should be changed to 11:59 p.m. on [DATE] to avoid ambiguity as to whether the defendant is agreeing to move out the morning of the vacate date rather than at the end of the day on the vacate date.	The committee modified the proposal as suggested in light of this and other comments and recirculated it for further comment.
			B. Section 7 PLC recommends that the Judicial Council remove Section 7(a)(1) from UD-155. Section 7(a)(1) provides an option for a tenant to agree to no additional notice before an ex parte hearing, if the tenant does not comply with the Stipulation. Generally, California law requires a party to give reasonable notice of an ex parte application in an unlawful detainer proceeding. [FN1: (See Cal. Rules of Court, rule 3.1203, subd. (b).)] Thus, Section 7(a)(1) allows a defendant to waive the right to notice, and it presents such a waiver as a conventional term in an unlawful detainer settlement. Notably, UD-115, the standard form for Stipulation for Entry of Judgment in unlawful detainer cases, does not include an analogous term. Although UD-115 provides space	The committee modified the proposal in light of this and other comments and recirculated it for further comment, but in light of comments received on the second invitation to comment, the committee is recommending that item 7 provide more general information about notice and hearing.

	Commenter	Position	Comment	Committee Response
			for parties to add negotiated terms (see UD-115, § 7), PLC's experience is that represented tenants in unlawful detainer cases do not typically waive notice requirements for ex parte hearings. Because UD-155 is designed for tenants without legal representation, an option to waive notice requirements could result in an unknowing waiver of rights. This is especially true given that landlords have unequal bargaining power and are more likely to be represented by counsel. [FN2: A recent report by the American Civil Liberties Union (ACLU) found that just 3% of tenants are represented in eviction cases, compared to over 80% of landlords. (See ACLU Research Brief, "No Eviction Without Representation," (May 11, 2022) <https://www.aclu.org/sites/default/files/field_document/no_eviction_without_representation_research_brief_0.pdf> (as of January 12, 2023).)] Furthermore, if a landlord successfully obtained ex parte relief without notice, it would have a detrimental effect on the tenant. Regarding notice, PLC further recommends that the Judicial Council add the following language under the notice sections (Sections 7 and 9): > All notices related to this Stipulation must be in writing and sent by mail (firstclass mail, certified, or registered with a return receipt) or given in person (acknowledged in writing by an authorized recipient). If the notice is sent by mail, it will be considered received three (3) days after it was sent. If the notice is given in person, it will be considered received immediately. The notice must be sent or given to the following: [*plaintiff's name/attorney/representative*] [*defendant's name/attorney/representative*]. Section 7(b)(2) provides an option for a tenant to waive a hearing before the court issues a judgment. PLC urges the Judicial Council to remove this option from the form for several reasons. First, providing an option for a tenant to waive a hearing before the court issues a judgment undermines the importance of due process in the legal system. The right to a hearing is a fundamental principle in our legal system and is essential for ensuring that a fair and just outcome is reached. Allowing a tenant to waive this right without fully understanding the consequences of such a decision could lead to an unjust outcome.	

	Commenter	Position	Comment	Committee Response
			Second, the option for a tenant to waive a hearing before the court issues a judgment would disproportionately affect low-income and vulnerable tenants who are more likely to be unrepresented in court. These tenants may not fully understand the implications of waiving their right to a hearing. Indeed, a waiver of hearing would eliminate the tenant's opportunity to present their case or any evidence to contest the landlord's actions. Lastly, like the waiver of notice, PLC's experience is that represented tenants in unlawful detainer cases do not typically waive hearings before the court issues a judgment. Accordingly, UD-155, which is specifically designed for unrepresented parties, should not present a waiver of hearing as if it were a conventional term in settlement agreements. Section 7(a)(2) includes a blank space for the number of hours of notice that the landlord must give the tenant before seeking ex parte relief. The parties are able to fill in this blank space with the agreed upon number of hours. Section 7(a)(2) should not count time in hours, but rather in days, because counting time in hours may not provide enough notice for a tenant to respond to the landlord's request for ex parte relief, especially given the short time frame in which unlawful detainer cases are typically resolved. Counting notice time in days would provide a more reasonable amount of time for the tenant to respond. This would also align with the parallel tenant option in Section 9(a) and (b) of the form, which counts notice time in days. This consistency would make it easier for tenants and landlords to understand the notice requirements and would help ensure that the rights of tenants are protected throughout the process. Additionally, counting notice time in hours might be particularly difficult for tenants who have limited knowledge of the legal system, or who have other obligations, such as work or childcare, that might make it difficult for them to respond to an ex parte request within a short period of hours. Counting notice time in days would provide more flexibility for tenants and would ensure that they have adequate time to respond to the landlord's request.	

	Commenter	Position	Comment	Committee Response
			C. Section 8 Section 8(c) should be rewritten to provide an option whereby the landlord waives all rent amounts if the tenant agrees to move out. As it currently reads, section 8(c) only waives fees and interests for "the amount owed," which leaves a tenant with the only option to pay and move when in most jurisdictions, tenants with attorneys more commonly only enter into agreements to vacate their home in exchange for waiver of all rent amounts. We propose the following revision: c. For any rent demanded in the complaint: (1) ☐ To waive all rent, late fees, and holdover damages associated with defendant's tenancy that were demanded in the complaint. (2) ☐ To waive any and all fees and interest, if any, for the amount owed in 6	The committee modified the proposal in light of this and other comments by adding an option to waive all rent, late fees, and damages that were requested in the case and recirculated it for further comment.
			Section 8(d) should also include a term whereby the plaintiff agrees to temporarily relocate defendant if necessary to complete the repairs. In some instances, the needed repairs may be so extensive or of a type that require the tenant to vacate the unit for a prolonged length of time. Examples of this include but are not exclusive to mold remediation, lead paint hazards, structural defects, and pest control work to name a few. We propose that Section 8(d) instead read as "To make the following repairs (describe all repairs to the property). If the defendant must leave the rental property in order for the plaintiff to complete the repairs, the plaintiff agrees to temporarily relocate defendant at plaintiff's expense:' Additionally, if a tenant is able to remain in a unit while repairs are completed, Section 8(d) should account for a reduction in rent to a reasonable value until the completion of repairs, consistent with the relief a tenant could obtain under Code of Civil Procedure section 1174.2.	See the committee's response to a similar comment of Bay Area Legal Aid, above.
			Section 8(e) should be revised to "all future rent payments." As currently drafted, the agreement can create ambiguity as to whether it is referring to the payments listed in the stipulation rather than "future rent payments." This is consistent with current law requiring that a payment designated for a certain obligation must first be applied to that obligation.	See the committee's response to a similar comment of Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			A subsection should be inserted to account for when a plaintiff agrees to pay a tenant a sum of money to vacate the rental property by a certain date. These are commonly known as "cash for keys" agreements. The subsection should outline the amount to be paid to the tenant, the method of payment, date of payment and the penalty for failing to make payment. A proposed term would read: "Plaintiff agrees to pay defendant $_____ in certified funds, in exchange for moving out as agreed to in 6(d). Payment to made payable to _____, and delivered to _____ on or by [DATE]. If plaintiff fails to make payment as agreed, then the defendant' s vacate date will be extended by _____ days for each day that the payment is late."	See the committee's response to a similar comment of Bay Area Legal Aid, above.
			Section 8 should also include a provision whereby both parties agree to waive all attorney fees and costs associated with the unlawful detainer action and an additional option whereby plaintiff agrees to pay an amount to cover the defendant's attorney fees and costs.	See the committee's response to a similar comment of Bay Area Legal Aid, above.
			D. Section 9 For consistency, Section 9, which provides the terms regarding the plaintiff's breach of the agreement should also be revised so they reflect similar provisions in Section 7. Below are the proposed revisions: 9. ☐ If plaintiff does not do everything agreed to, the parties agree that defendant can return the court to state that plaintiff has not complied with the Stipulation and ask the court to make an order as follows: a. Defendant agrees to give _____ business days' notice to plaintiff(s). b. After the notice in (a.) above expires, defendant may request an ex parte hearing to enforce the agreement within _____ business days. This does not waive any notice required by court rules for an ex parte hearing. c. Result (check all that apply): (1) ☐ Plaintiff be ordered to do what was promised by [DATE]. (2) ☐ Plaintiff pays defendant damages in the amount of $_____ by [DATE]. (3) ☐ Defendant's move out date is now [DATE] due to plaintiff's failure to pay the amounts in 8(¶).	The committee modified the proposal in light of this and other comments by modifying item 9 to more closely resemble item 7 and recirculated it for further comment, but in light of comments received on the second invitation to comment, the committee is recommending that item 9 provide more general information about notice and hearing and to omit the list of potential results.

	Commenter	Position	Comment	Committee Response
			E. Section 10 Section 10(d) includes an option for the parties to stipulate that the record will be sealed. The "Order" section of the proposed form also provides the option for the Court to order the record sealed. Code of Civil Procedure section 1161.2 ("Section 1161.2") restricts public access to the record in an unlawful detainer for 60 days from the date the complaint is filed. The records are only accessible to the public if judgment is entered in favor of the plaintiff within 60 days of filing of the complaint or after trial more than 60 days since filing of the complaint. Because Section 1161.2 does not provide for public access to records in the case of settlement, it is unnecessary to provide an option for the parties to stipulate to record sealing. In other words, if the parties settle, then the records must be sealed. Thus, PLC recommends that the Judicial Council remove Section 10(d) and remove the check box from the "Order" section of UD-155, instead stating that the records are automatically sealed pursuant to Section 1161.2.	See the committee's response to a similar comment of Bay Area Legal Aid, above.
			Subsection (c) should be revised to conform to current law and to minimize disputes regarding the condition of the property as a material breach of a settlement agreement. The following revision aligns with a commonly used settlement term: "Defendant agrees to leave the rental property free of garbage and debris and all personal belongings. Any personal items left in the rental property after [DATE] are deemed abandoned. This means the items will no longer be considered defendant's personal belongings and Plaintiff will have the right to dispose of these items without further notice or cost to defendant(s). Any personal belongings deemed abandoned will not be considered a breach of this agreement."	See the committee's response to the same comment of Bay Area Legal Aid, above.
			F. Dismissal In its Invitation to Comment, the Judicial Council specifically requested comment on whether UD-155 needs to state when the case is to be calendared for dismissal. PLC recommends that the Judicial Council amends UD-155 to include such a term in the "Order" section. This would provide clarity and transparency for all parties involved in	See the committee's response to a similar comment of Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			the case and would help to ensure that the dismissal process is completed in a timely manner. Having a specific date for dismissal calendared in the form would also provide a clear deadline for both the landlord and tenant to comply with the dismissal agreement. This would prevent any confusion or misunderstandings regarding when the case is to be officially dismissed, as well as ensuring that the parties have a clear understanding of their obligations related to the dismissal. Additionally, including a section for the dismissal date would align with the Judicial Council's goal to provide a clear and easy to understand form for both the parties and the court.	
			G. Language Access According to the Judicial Council's website, "[m]ore than 200 languages and dialects are spoken in California" and "[n]early 7 million (19%) Californians report speaking English 'less than very well.' " [FN3: https://www.courts.ca.gov/languageaccess.htm.] As the Judicial Council has acknowledged, "[w]ithout proper language assistance, limited English proficient (LEP) court users may be excluded from meaningful participation in the judicial process. Many LEP litigants appear without an attorney, and friends and family members who act as interpreters often do not understand legal terminology or court procedures. [¶] Further, LEP court users' language needs are not limited to the courtroom; the need for language assistance extends to all points of contact for the public." To this end, many forms provided by the Judicial Council are available in languages other than English. This is particularly important for the UD-155 form, which is specifically designed to be used by individuals who do not have legal representation. By making this form available in multiple languages, the Judicial Council would ensure that unrepresented parties are not hindered by language barriers when settling unlawful detainer actions.	The committee appreciates the concerns raised by these comments. The committee agrees that language access is critical. The committee will consider the suggestion for translated forms as time and resources permit.

	Commenter	Position	Comment	Committee Response
			The Judicial Council's data [FN4: See Judicial Council, Court Language Support Program, "Strategic Plan for Language Access in the California Courts," (Jan. 22, 2015) Appendix E <https://www.courts.ca.gov/documents/CLASP_report_060514.pdf> (as of Jan. 18, 2023).] and PLC's internal statistics suggest that at a minimum, UD-155 should be available in Spanish and Vietnamese.	
			III. Conclusion While proposed form UD-155 aims to facilitate the early resolution of unlawful detainer cases, it is crucial that additional revisions and adjustments are made to ensure fairness for all parties. At Public Law Center, we are concerned about the lack of access to justice for individuals who are facing an unlawful detainer and do not have access to legal assistance. These individuals are at a disadvantage and are likely to be unprepared, uninformed of their legal rights, and under stress during any form of early dispute resolution. To ensure that the settlement process is fair for all parties, it is essential to create forms that are easy to understand and that provide a level playing field for all litigants. PLC appreciates the efforts made by the Judicial Council Civil and Small Claims Advisory Committee to make this form as accessible and comprehensive as possible.	The committee understands the commenter's concerns and is recommending changes to form UD-155 that are intended to make it clearer and more accessible to parties.
12.	Superior Court of California County of San Diego by Michael Roddy	A	Does the proposal appropriately address the stated purpose? **Yes.**	The committee thanks the Superior Court of California County of San Diego for the information provided.
			Are there other terms common to orders in eviction cases that might be considered for inclusion on the form? For example, does the form need to state when the case is to be calendared for dismissal? **No, the proposed form appears to capture the common terms included in stipulated agreements.**	The committee thanks the Superior Court of California County of San Diego for the information provided.
			Would the proposal provide cost savings? If so, please quantify. **No.**	The committee thanks the Superior Court of California County of San Diego for the information provided.

	Commenter	Position	Comment	Committee Response
			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? **If the form remains optional, implementation requirements would be minimal and consist of informing affected staff that this form may be used by parties. If the form is made mandatory, in addition to notifying staff, it would require updating internal procedures and updates to the court's case management system.**	The committee thanks the Superior Court of California County of San Diego for the information provided.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.**	The committee thanks the Superior Court of California County of San Diego for the information provided.
			How well would this proposal work in courts of different sizes? **It appears the proposal would work for courts of various sizes.**	The committee thanks the Superior Court of California County of San Diego for the information provided.
13.	Western Center on Law & Poverty by Lorraine A. Lopez, Attorney	NI	Western Center on Law & Poverty writes in response to the Judicial Council's Invitation to Comment W23-03, *Unlawful Detainer: Opportunities for Settlement Before Trial*. We appreciate that the Judicial Council is attempting to address the challenge of meaningful settlement opportunities in unlawful detainer cases, especially as we stand on the brink of a wave of evictions once the remaining COVID-19 eviction protections expire. We are generally in favor of early dispute resolution in unlawful detainer cases, but as outlined in this letter, we have concerns regarding the substance of the proposed form as well as the accompanying proposed change to the California Rules of Courts. We raise these concerns because the unfortunate reality is that tenants are on unequal footing when it comes to dispute resolution because they do not always have the benefit of legal counsel, especially in jurisdictions where free and low-cost legal services are not readily available. Thus, it is especially important to ensure that the forms make it easy for tenants and landlords to make agreements that preserve tenants' housing and avoid unfairly burdening tenants with costs and fees that would not be included in a court	The committee thanks WCLP for its input. See the committee's responses to specific comments, below.

	Commenter	Position	Comment	Committee Response
			judgment. It is also important that the forms be clear, easy to use, and allow tenants an opportunity to engage in meaningful settlement negotiations. Below we address the Council's specific inquiries and offer additional suggestions.	
			I. Does the proposal appropriately address the stated purpose? The changes address the stated purpose in part by encouraging early resolution of cases and creating a framework that allows the parties to enter into a stipulated settlement agreement that does not necessarily result in an entry of judgment against a defendant(s) in an unlawful detainer case. However, as drafted, Form UD-155 favors the plaintiff in terms of settlement outcomes. Many of the terms included in the form are not common in unlawful detainer settlements and are one-sided. Advocates and attorneys who regularly engage in the settlement of unlawful detainer cases would be glad to provide additional input and work with the Judicial Council to revise the current proposed form. Unlawful detainers are summary proceedings and move exceptionally quickly. Tenants who are low-income, disabled, elderly, or of limited English proficiency already have a difficult time seeking and obtaining legal assistance and representation on such a shortened timeline. Tenants are more vulnerable earlier in the process and they are more likely to engage in settlement negotiations without understanding their legal rights or what they may request as part of a settlement. Tenants in unlawful detainer actions face the loss of their housing and stability and are more likely to enter negotiations in a heightened state of stress and duress. The unequal power dynamic in landlord-tenant relationships only heightens this stress. To facilitate genuine and fair dispute resolution, the form needs extensive revisions and additions so there is not an imbalance of justice. Proposed Rule 3.2005 has the potential to place defendants in a precarious situation if they are mandated to engage in formal dispute resolution, such as mandatory settlement conferences or mandatory mediation if these options are not provided at no-cost to the parties. Therefore, we suggest the following changes (in bold) to proposed Rule	See the committee's response to a similar comment from Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			3.2005: Rule 3.2005. Settlement opportunities (a) Policy favoring an opportunity for resolution without trial The intent of this rule is to promote opportunities for resolution of unlawful detainer cases before trial. Courts **may** encourage participation, to the extent feasible, in at least one opportunity for resolution before trial, including but not limited to a settlement conference, mediation, or another alternative dispute resolution process **at no-cost to the litigants**. (b) Exemption for mandatory settlement conference statement deadline **For Courts with local mandatory settlement conference rules in unlawful detainer cases**, the court may **exempt the parties** from the five-court-day deadline for submitting a settlement conference statement set out in rule 3.1380(c). **A party who fails to timely submit a settlement conference statement shall not be subject to sanctions, monetary or otherwise.** The changes in subsection (a) are consistent with many alternative dispute resolution programs that already exist in some jurisdictions, where those programs are provided at no cost to litigants. This ensures that both parties can engage in the dispute resolution process regardless of financial means. Further, in recognition of limited judicial resources and limited access to free alternative dispute resolution options in some jurisdictions, the rule should encourage but not mandate any form of dispute resolution that will raise financial barriers to low-income litigants. The changes to subsection (b) are necessary since there are a limited number of Courts that require mandatory settlement conferences for unlawful detainer cases. For clarity, it is important that the rule is not seen as a blanket requirement for all Courts. Further, to avoid any negative repercussions for pro per litigants who fail to file a settlement conference statement, it should be clear that the Court is not authorized to issue sanctions, whether financial or procedural, for failing to comply with Rule 3.1380(c).	

	Commenter	Position	Comment	Committee Response
			II. Are there other terms common to stipulated agreements in eviction cases that ought to be considered for inclusion on the form? Yes, there are several commonly used terms that should be added to the form as well as terms that are not common to stipulated agreements that should be deleted. Below we will detail the necessary additions and revisions by section. These common settlement terms have been carefully crafted over time by tenant advocates and should be familiar to most counsel involved in these types of negotiations.	See the committee's responses to the specific suggestions, below.
			A. Additions and revisions to Section 8 Section 8(c) should be rewritten to provide an option whereby the landlord waives all rent amounts if the defendant agrees to move out. As it currently reads, section 8(c) only waives fees and interests for "the amount owed" which leaves a tenant with the only option to pay and move when in most jurisdictions, tenants with attorneys more commonly only enter into agreements to vacate their home in exchange for waiver of all rent amounts. We propose the following revision: "c. For any rent demanded in the complaint: (1) □ To waive all rent, late fees, and holdover damages associated with defendant's tenancy that were demanded in the complaint. (2) □ To waive any and all fees and interest, if any, for the amount owed in 6"	See the committee's response to a similar comment from Bay Area Legal Aid, above.
			Section 8(d) should also include a term whereby the plaintiff agrees to temporarily relocate defendant if necessary to complete the repairs. In some instances, the needed repairs may be so extensive or of a type that require the defendant to vacate the unit for a prolonged length of time. Examples of this include but are not exclusive to mold remediation, lead paint hazards, structural defects, and pest control work to name a few. We propose that Section 8(d) instead read as "To make the following repairs (describe all repairs to the property). If the defendant must leave the rental property in order for plaintiff to complete the repairs, plaintiff agrees to temporarily relocate defendant at plaintiff's expense:"	See the committee's response to a similar comment of Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			Section 8(e) should be revised to "all future rent payments." As currently drafted, the agreement can create ambiguity as to whether it is referring to the payments listed in the stipulation rather than "future rent payments." This is consistent with current law requiring that a payment designated for a certain obligation must first be applied to that obligation.	See the committee's response to a similar comment of Bay Area Legal Aid, above.
			A subsection should be inserted to account for when a plaintiff agrees to pay a tenant a sum of money to vacate the rental property by a certain date. These are commonly known as "cash for keys" agreements. The subsection should outline the amount to be paid to the tenant, the method of payment, date of payment and the penalty for failing to make payment. A proposed term would read: "Plaintiff agrees to pay defendant $_____ in certified funds, in exchange for moving out as agreed to in 6(d). Payment to made payable to _____, and delivered to _____ on or by [DATE]. If plaintiff fails to make payment as agreed, then the defendant's vacate date will be extended by _____ days for each day that the payment is late."	See the committee's response to a similar comment of Bay Area Legal Aid, above.
			Section 8 should also include a provision whereby both parties agree to waive all attorneys' fees and costs associated with the unlawful detainer action.	See the committee's response to a similar comment from Bay Area Legal Aid, above.
			B. Additions and Revisions to Section 10 Subsection (d) should be qualified to only apply when the parties agree to a stipulated judgment. An order barring access to the court record should be automatic when the parties agree to a stipulated order rather than a stipulated judgment. We recommend that this provision be moved to the order section as an automatic order when the parties agree to a stipulated order. This is consistent with C.C.P. § 1161.2 subsections (a)(1)(E), (F) and (a)(1)(G) which provide that an unlawful detainer action only becomes public if judgment is entered in favor of the plaintiff within 60 days of filing of the complaint or after trial more than 60 days since filing of the complaint. Any policy encouraging early resolution of unlawful detainer cases should also be consistent with current public policy favoring sealing of court records to incentivize defendant participation in early	See the committee's response to a similar comment from Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			dispute resolution and to reduce the harm of an unlawful detainer judgment to a defendant especially during the current housing crisis in California.	
			Subsection (c) should be revised to conform to current law and to minimize disputes regarding the condition of the property as a material breach of a settlement agreement. The following revision aligns with a commonly used settlement term: "Defendant agrees to leave the rental property free of garbage and debris and all personal belongings. Any personal items left in the rental property after [DATE] are deemed abandoned. This means the items will no longer be considered defendant's personal belongings and Plaintiff will have the right to dispose of these items without further notice or cost to defendant(s). Any personal belongings deemed abandoned will not be considered a breach of this agreement."	See the committee's response to a similar comment from Bay Area Legal Aid, above.
			III. Are there other terms common to orders in eviction cases that might be considered for inclusion on the form? For example, does the form need to state when the case is to be calendared for dismissal? Yes. As drafted, the Stipulation form does not include an option for the parties to lodge the stipulation and provide for dismissal once the terms of the stipulation have been satisfied. There should be an additional checkbox stating that "The above-named parties agree to abide the terms of the stipulation which is approved by the court. The case is calendared for dismissal or entry of judgment on [DATE] at [TIME] in Department [_____]." There should also be an additional checkbox allowing the Court to retain jurisdiction such as "the Court shall retain jurisdiction to enforce the terms of this agreement pursuant to C.C.P. § 664.6." Currently this is only found in Section 10(e). This should be included in the order section to ensure that the court's jurisdiction to enforce is easily located in the event of a dispute over compliance with the agreement.	See the committee's response to a similar comment from Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			Lastly, as set forth in II(B) above the Order should include automatic sealing of the court record if the parties agree to a stipulated order rather than a stipulated judgment. Again, we believe this is consistent with C.C.P. § 1161.2 and current public policy favoring sealing of court records in unlawful detainer actions.	See the committee's response to a similar comment from Bay Area Legal Aid, above.
			IV. Additional issues and proposed revisions. **A. Revision of Section 4** As drafted this section does not adequately describe the exact consequences of a stipulated judgment for either party. The second bullet should be revised to provide concise information as to the result of entering a stipulated judgment: "A Stipulated Judgment will end the case once the Court signs the Stipulation. If the Stipulation and Judgment is approved, the Court will enter a judgment in favor of the plaintiff and against the defendant. The Court will issue a "writ of possession" immediately which orders the lockout and eviction of the defendant on a specified date."	See the committee's response to a similar comment from Bay Area Legal Aid, above.
			B. Revision of Section 5 As drafted subsection (a) is written in non-neutral language which implies that all of the terms of the Stipulation are material, and that the defendant will be automatically evicted for any alleged breach of the stipulation. Subsection (a) should be revised with more neutral language such as: "Defendant will stay in the rental property pursuant to the conditions stated in this agreement." This revision is consistent with the wording of subsection (b) and eliminates any conflict with the settlement terms the parties negotiate under Sections 7 through 10.	See the committee's response to a similar comment from Bay Area Legal Aid, above.
			C. Revision of Section 6 The parenthetical under Section 6(a) should be deleted. If a judgment were to issue after trial in an unlawful detainer action, only holdover damages and attorneys fees and costs would be awarded to the landlord. It is a misstatement to include "(Damages may	See the committee's response to a similar comment of Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			include an amount based on daily rental value or any harm to the property.)" While the parties may negotiate their own terms in a settlement, it would be improper to suggest that property damages could be recouped as part of a settlement when such damages could not be awarded if the defendant was found guilty of unlawful detainer after a trial on the merits. The "Damages" category in the table should be replaced by "Holdover Damages." The "Other" box should be deleted entirely. There is no definition of the term "other" and as with "damages" leaves room for including amounts that could not be recovered as part of judgment in unlawful detainer. This is consistent with existing local forms, such as LACIV-136 (Unlawful Detainer Stipulation and Judgment) currently used in Los Angeles Superior Court. A statement should be added that the amounts listed in the table are the only amounts owed to the plaintiff as of the date of the agreement and that plaintiff may not demand additional amounts once the settlement is approved by the Court. Section 6(b) of the proposed Stipulation should be revised. In the first sentence the checkbox for "received" should be accompanied by a parenthetical indicating that it applies "for in-person payments." Section 6(b)(2) should be deleted while replacing it with the "Other payment schedule" in Section 6(b)(3) along with additional blank lines followed by "until paid in full" to allow the parties to set out an alternative and potentially longer payment schedule without the limitation of the five blank spaces in (b)(2). Section 6(c) should be more specific, we propose: "Payment shall be made payable to: _____ and delivered to _____ □ via mail □ hand-delivery (during business days and hours: _____)." This provides clarity for payments that may be payable to a person or entity that is not the named plaintiff but are received by an authorized agent or property manager who is named in the unlawful detainer action.	
			Section 6(d) should be amended to delete "and not request any further delays (or stays of execution)." Again, while parties are free to negotiate the terms of a settlement, there should not be an automatic conditioning of the move out date with a waiver of critical rights. While we agree that settlements should be final, the COVID-19 pandemic has	See the committee's response to a similar comment from Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			shown us that unforeseen events may necessitate a stay of execution. If this is a material term for some parties, it can be added in the "other" section.	
			Lastly, "midnight" should be changed to "11:59 p.m. on [DATE]" to avoid ambiguity as to whether the defendant is agreeing to move out the morning of the vacate date rather than at the end of the day on the vacate date.	See the committee's response to a similar comment from Bay Area Legal Aid, above.
			An additional checkbox should be added to Section 6 to acknowledge receipt of the amounts agreed to under this paragraph if they are tendered to the plaintiff at the time of settlement in open court.	See the committee's response to a similar comment from Bay Area Legal Aid, above.
			D. Revision of Section 7 We object to Section 7 as drafted to the extent that it includes various provisions allowing the plaintiff to request an entry of judgment without notice to the defendant nor an opportunity for hearing. It is common practice by unlawful detainer defense attorneys to include terms that require advanced notice of a breach of a settlement agreement as well as an opportunity for hearing in the event of a breach. This is an important due process safeguard in any agreement where disputes may arise as to what is "compliance" with a settlement term. It also ensures that a tenant has reasonable advanced notice of any judgment and any writ of possession that may be issued should they be found in breach of a material term of the settlement agreement. Below are the proposed revisions: 7. □ If defendant does not do everything agreed to, the parties agree that plaintiff can return the court to state that defendant has not complied with the material terms Stipulation and ask the court to make a judgment as follows: a. Plaintiff agrees to give _____ business days' notice to defendant(s) with an opportunity to cure the alleged breach. b. After the notice in (a.) above expires, plaintiff may request an ex parte hearing to enforce the agreement within _____ business days. This does not waive any notice required by court rules for an ex parte hearing. c. Result (check all that apply):	The committee modified the proposal in light of this and other comments by modifying item 7 largely as suggested and recirculated it for further comment, but in light of comments received on the second invitation to comment, the committee is recommending that item 7 provide more general information about notice and hearing and to omit the list of potential results.

	Commenter	Position	Comment	Committee Response
			(1) □ That defendant be ordered to comply with the terms of the Stipulation in Section(s):_____ by [DATE]. (2) That defendant be ordered to move out (evicted) and locked out (immediate possession) of the rental property identified in 3. (3) □ That judgment be entered for any amount of money that remains unpaid pursuant to the terms of this agreement. (4) □ Cancellation of the rental agreement/lease. (5) □ Plaintiff to provide a neutral reference of defendant to any new landlord. (6) □ Other:	
			E. Revision of Section 9 For consistency, Section 9 which provides the terms regarding the plaintiff's breach of the agreement should also be revised so they reflect similar provisions in Section 7. Below are the proposed revisions: 9. □ If plaintiff does not do everything agreed to, the parties agree that defendant can return the court to state that plaintiff has not complied with the Stipulation and ask the court to make an order as follows: a. Defendant agrees to give _____ business days' notice to plaintiff(s). b. After the notice in (a.) above expires, defendant may request an ex parte hearing to enforce the agreement within _____ business days. This does not waive any notice required by court rules for an ex parte hearing. c. Result (check all that apply): (1) □ Plaintiff be ordered to do what was promised by [DATE]. (2) □ Plaintiff pays defendant damages in the amount of $_____ by [DATE]. (3) □ Defendant's move out date is now [DATE] due to plaintiff's failure to pay the amounts in 8(¶).	The committee modified the proposal in light of this and other comments by modifying item 9 to have similar provisions to item 7 and recirculated it for further comment, but in light of comments received on the second invitation to comment, the committee is recommending that item 9 provide more general information about notice and hearing and omit the list of potential results.
			F. Revise Section 11 As drafted, Section 11 may create confusion with the agreements as set forth in Sections 6 through 10. It should be rewritten as:	See the committee's response to a similar comment from Bay Area Legal Aid, above.

	Commenter	Position	Comment	Committee Response
			"Plaintiff shall dismiss permanently (with prejudice) the eviction case that is currently pending as soon as defendant has done everything agreed to in this Stipulation. If the agreement provides that the defendant will stay in the rental property if all conditions are met, then the defendant's tenancy will be reinstated without further conditions once the case is dismissed. But plaintiff may seek eviction and lockout (immediate possession of the rental property), subject to Section 7, if defendant does not comply with the material terms in this Stipulation."	
			G. Add a declaration attesting to translation of the stipulation. As currently drafted, the stipulation form does not include any attestation as to whether the parties received translation assistance. It is important that litigants with limited English proficiency receive interpretation (verbal) and translation (written) services during settlement negotiations, drafting of the agreement, and prior to signing. The form should include a notice in all major languages spoken in California notifying litigants that they should secure an interpreter/translator to assist in the preparation of the settlement agreement. In addition, the form should include an attestation for litigants requiring translation services that they have received those services in the preparation and execution of the stipulation. If available, there should also be an attestation for an interpreter to sign as well to certify that the document was translated.	See the committee's response to the same comment from Bay Area Legal Aid, above.
			H. Retire Form UD-115 If the goal of the Judicial Council is to create a form that will act as either a stipulated order or a stipulated judgment, then form UD-115 – Stipulation for Entry of Judgment (Unlawful Detainer), should be eliminated and replaced by form UD-155. Form UD-115 has not been substantially revised since 2003 and is not used by advocates in a large majority of the State. For example, advocates in Los Angeles County have long utilized a local court form (LACIV-136) or draft their own settlement agreement pleadings. Most advocates around the State have long phased-out the use of UD-115 for settlement purposes. Further, retaining UD-115 will create conflict with the framework envisioned by UD-155.	The committee disagrees with the comment because form UD-115 is optional and used for stipulated entry of judgment. Both forms are optional so there is no conflict between them. Based on input from another commenter in the second invitation to comment, the committee is aware that form UD-115 is used regularly in at least one court.

	Commenter	Position	Comment	Committee Response
			Conclusion While intended to facilitate early resolution of unlawful detainer cases, it is necessary to adopt extensive additions and revisions to these forms to maintain some parity in a judicial proceeding where tenants too often start out at a massive disadvantage. We are deeply concerned about access to justice for people who receive an unlawful detainer and cannot access legal assistance. These are people who are likely to head into any type of early dispute resolution unprepared, unaware of their legal rights and under extreme stress. To ensure that any settlement process is fair for all litigants involved, it is important to create forms that set the parties on equal footing and that are easy to navigate. We appreciate your efforts to make the proposed forms as accessible and comprehensive as possible.	No further response required.

Item number: 07

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/22/2023

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

Title of proposal: Civil Practice and Procedure: Form Revisions to Implement Senate Bill 1200

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Revise forms EJ-190, EJ-195, JUD-100, MC 012, MC-013-INFO, SC-130, SC-200, SC-220, SC-223, SC-224; revoke SC-220 INFO

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

*Staff contact (*name, phone and e-mail*): Jenny Grantz (jenny.grantz@jud.ca.gov, 415-865-4394)*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): Nov. 1, 2022
Project description from annual agenda: Item 8: 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.

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

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

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

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

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

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

Judicial Council *of* California

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on September 18–19, 2021

Title
Civil Practice and Procedure: Form Revisions to Implement Senate Bill 1200

Rules, Forms, Standards, or Statutes Affected
Revise forms EJ-190, EJ-195, JUD-100, MC-012, MC-013-INFO, SC-130, SC-200, SC-220, SC-223, SC-224; revoke form SC-220-INFO

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 13, 2023

Contact
Jenny Grantz, 415-865-4394
jenny.grantz@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends revising ten Judicial Council forms, and revocation of one form, to implement statutory changes made by Senate Bill 1200 (Stats. 2022, ch. 883), enacted September 30, 2022. SB 1200 limits the ability of a judgment creditor to renew or bring an action on a money judgment and lowers the applicable rate of postjudgment interest where the judgment and unsatisfied principal amount of the judgment meet certain criteria. The recommended revisions to the forms implement these statutory changes.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2024:

1. Revise the following forms to add information about the applicable postjudgment interest rates and renewal terms for money judgments that meet criteria specified by SB 1200, and to revise information about the deadline for judgment debtors to file a motion to vacate or modify a renewal of judgment:

- *Application for and Renewal of Judgment* (form EJ-190)
- *Notice of Renewal of Judgment* (form EJ-195)
- *Judgment* (form JUD-100)
- *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (form MC-012)
- *Information Sheet for Calculating Interest and Amount Owed on a Judgment* (form MC-013-INFO)
- *Notice of Entry of Judgment* (form SC-130)
- *Notice of Entry of Judgment* (form SC-200)
- *Request to Make Payments* (form SC-220)
- *Declaration of Default in Payment of Judgment* (form SC-223)
- *Response to Declaration of Default in Payment of Judgment* (form SC-224)

2. Revoke *Payments in Small Claims Cases* (form SC-220-INFO) because it is identical to the second page of form SC-220.

The proposed revised forms are attached at pages 10–32.

Relevant Previous Council Action

The Judicial Council revised *Application for and Renewal of Judgment* (form EJ-190) and *Notice of Renewal of Judgment* (form EJ-195)[1] effective January 1, 2023, the date SB 1200 became effective. The council determined that prompt revision was warranted because without revision, the forms would have provided incorrect information about judgments renewed on or after January 1, 2023. The council therefore approved the revisions before they were circulated for public comment.

Forms JUD-100, MC-013-INFO, SC-200, SC-223, and SC-224 have not been revised previously. Form JUD-100 was approved in 2002, form MC-013-INFO was approved in 2018, form SC-200 was adopted in 2010, and forms SC-223 and SC-224 were approved in 2018. Forms MC-012, SC-130, and SC-220 have been revised several times since they were adopted, and the most recent revisions to each were minor technical revisions.

Analysis/Rationale

Senate Bill 1200

Effective January 1, 2023, SB 1200[2] changed the law relating to the renewal of, and postjudgment interest rates applicable to, monetary judgments where the judgment debtor is a natural person, the judgment is on a claim related to personal debt or medical expenses, and the unsatisfied principal amount of the judgment falls below $50,000 for personal debt claims and

[1] Judicial Council of Cal., Advisory Com. Rep., *Civil Practice and Procedure: Enforcement of Judgment Form Revisions* (Nov. 9, 2022), https://jcc.legistar.com/View.ashx?M=F&ID=11459946&GUID=2A84B3BF-17EE-4159-9FA0-E2BEE43AD611.

[2] See Link A.

$200,000 for medical expense claims.[3] The statute exempts "debts incurred due to, or obtained by tortious or fraudulent conduct or judgments for unpaid wages, damages, or penalties owed to an employee" from the new terms.[4]

For money judgments that fit within these provisions, judgment creditors may now renew the period of enforceability only once, and only for a period of five years, rather than unlimited renewals for ten years each time.[5] These money judgments accrue interest at a rate of 5 percent per year, rather than 10 percent, if the judgment was entered or renewed on or after January 1, 2023.[6]

In addition, for all judgments, a judgment debtor may now file a motion to vacate or modify the renewal within 60 days after service of the notice of renewal, rather than 30 days.[7]

Revisions to *Application for and Renewal of Judgment* (form EJ-190) and *Notice of Renewal of Judgment* (form EJ-195)

As discussed above, the Judicial Council previously approved revisions to forms EJ-190 and EJ-195, effective January 1, 2023, before the forms were circulated for public comment. In addition to the revisions that have already taken effect, the committee recommends further revisions to both forms.

Form EJ-190

Previously approved revisions: A new subitem 5j was added to the information required in the form for renewal of money judgments. This subitem requires the judgment creditor to indicate whether the money judgment meets the SB 1200 criteria. Also added was an advisement regarding SB 1200's renewal limitations for certain money judgments.

Recommended further revisions: In light of comments received, and as discussed in more detail in the Comments section below, the committee recommends further revisions to subitem 5j to account for SB 1200's exemption of judgments on certain types of claims from the new law's provisions regarding lower interest rates and fewer renewals. The committee also recommends other minor changes to make the form conform with other enforcement of judgment forms.

Form EJ-195

Previously approved revisions: Item 3 was revised to reflect that judgment debtors now have 60 days to file a motion to vacate or modify the renewal of a judgment. Item 1 was also revised, but those revisions were superseded by those that were circulated for comment, discussed below.

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[3] Code Civ. Proc., §§ 683.110(c), 685.010(a)(2)(A).

[4] *Id.*, §§ 683.110(d)(2), 685.010(a)(2)(C)(ii).

[5] *Id.*, §§ 683.110(c), 683.120(c).

[6] *Id.*, § 685.010(a)(2).

[7] *Id.*, § 683.170(b).

Recommended further revisions: The committee recommends revising item 1 to add subitems 1a and 1b by which the judgment creditor will indicate whether the renewal is for 10 years or 5 years.

More importantly, the committee recommends eliminating the requirement that the clerk issue the form. The revised form would be signed by the judgment creditor or attorney for the judgment creditor, rather than the court clerk.

The committee notes that there is no statutory requirement that the clerk issue the notice of renewal of judgment. Instead, the statute governing notices of renewal of judgment simply requires that a notice of renewal be served by the judgment creditor on the judgment debtor and that the judgment creditor file a proof of service with the court clerk. The statute also requires that the notice of renewal "be in a form prescribed by the Judicial Council and shall inform the judgment debtor that the judgment debtor has 60 days within which to make a motion to vacate or modify the renewal."[8]

The committee believes that removing the requirement for the court clerk to issue the notice of renewal will remove unnecessary work from court staff, streamline the renewal process for judgment creditors (who must serve the notice form in any event), and allow the form to include more information for judgment debtors. As detailed above, judgments can be renewed for either 10 years or 5 years, depending on, among other things, the nature of the claims underlying the judgment. Indicating which renewal term applies on the notice form would be outside the clerk's ministerial role. Consequently, a notice form issued by the clerk could not provide judgment debtors with information about the length of renewal being claimed by the judgment creditor. A notice form signed by the judgment creditor, by contrast, could give judgment debtors this information and assist them in determining whether a motion to vacate or modify the renewal is appropriate.

The committee considered continuing to have the clerk issue the form. The committee contemplated whether having the clerk's signature and seal on the form might help convey to the judgment debtor that filing the judgment renewal had a legal effect, and that the judgment debtor needs to take action if they disagree. Ultimately, however, the committee believes these potential benefits are outweighed by the benefits to the parties of streamlining the renewal process and giving the judgment debtor more information about the length of the renewal.

In light of comments received, and as discussed in more detail in the Comments section below, the committee also recommends other minor changes to make the form conform with other enforcement of judgment forms.

[8] Code Civ. Proc., § 683.160(a); compare Code Civ. Proc., § 412.20 (providing that a summons shall be "signed by the clerk and issued under the seal of the court in which the action is pending").

Revisions to forms referring to postjudgment interest rates

The committee recommends revising five forms to implement SB 1200's changes to the postjudgment interest rate applicable to certain monetary judgments. In reviewing these forms, the committee also concluded that one form was unnecessary and recommends revoking it. The recommended changes to these forms are described below.

Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest (form MC-012): The committee recommends revising item 3 to include a blank in which the judgment creditor indicates which interest rate was used to calculate the remaining amount of unpaid interest and the amount of unpaid principal to which the interest rate applies. Users are directed to form MC-013-INFO for more information about the applicable rate of interest and calculating the amount of interest.

Information Sheet for Calculating Interest and Amount Owed on a Judgment (MC-013-INFO): The committee recommends revising the "Accrued Interest" section to include information about when each statutory interest rate applies, to more clearly advise that unpaid interest is added into the unpaid principal when a judgment is renewed, and to add examples showing application of a 5 percent interest rate.

Request to Make Payments (form SC-220), *Declaration of Default in Payment of Judgment* (form SC-223), and *Response to Declaration of Default in Payment of Judgment* (form SC-224): The committee recommends removing references to interest accruing at 10 percent per year and, instead, directing users to form MC-013-INFO. The committee also recommends revising several instances of the phrase "plaintiff or defendant" to "party."

Payments in Small Claims Cases (form SC-220-INFO): Because this form is identical to the second page of form SC-220, the committee recommends revoking the form.

Revisions to judgment forms

To aid the court and the parties in determining what interest rate and term of renewal apply to a particular judgment, the committee recommends adding a new item to three judgment forms: item 7 on *Judgment* (form JUD-100), item 10 on *Notice of Entry of Judgment* (form SC-130), and item 9 on *Notice of Entry of Judgment* (form SC-200).

The court can use this item to indicate whether the judgment involves a claim against a judgment debtor, is on a claim related to medical expenses or personal debt as provided in Code of Civil Procedure sections 683.110 and 685.010, and if so, how much of the money judgment is on such a claim. These revisions will allow the court to provide, at the time the judgment is entered, information that will be needed to determine the applicable postjudgment interest rate and term of renewal.

The committee considered adding language to these new items to convey SB 1200's exemption for "debts incurred due to, or obtained by tortious or fraudulent conduct or judgments for unpaid wages, damages, or penalties owed to an employee." However, because space on the form is

limited, and because these forms will be filled out by courts, the committee determined that it was sufficient to include the phrase "as provided in Code Civ. Proc., §§ 683.110, 685.010" at the end of the items to ensure they were properly applied.

Policy implications

The revisions to the forms recommended by the committee will implement an amended statute that limits the ability of a judgment creditor to renew or bring an action on certain money judgments and lowers the applicable rate of postjudgment interest for money judgments meeting certain criteria. Accordingly, the key policy implications are ensuring that council forms correctly reflect the law. These revisions are therefore consistent with the *Strategic Plan for California's Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

Comments

The revisions to form EJ-190 and EJ-195 approved by the Judicial Council effective January 1, 2023, and the further proposed revisions to forms EJ-195, JUD-100, MC-012, MC-013-INFO, SC-130, SC-200, SC-220, SC-223, SC-224 and proposed revocation of form SC-220-INFO were circulated for comment from March 31 to May 12, 2023, as part of the regular spring invitation-to-comment cycle. Six comments were received on the proposal: three from superior courts; one from the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee; one from the California Association of Judgment Professionals; and one from a county bar association. Five commenters approved the proposal if amended and one did not indicate a position.

A chart with the full text of the comments received and the committee's responses is attached beginning at page 33. The principal comments and the committee's responses are summarized below. In response to the comments, the committee also made a number of non-substantive revisions to the forms for clarity and to correct typographical errors.

Form EJ-190

Functionality of item 5j: Item 5j was added to form EJ-190 as part of the revisions adopted by the Judicial Council effective January 1, 2023. To implement SB 1200, it asks judgment creditors to indicate whether the unpaid principal in a money judgment is for claims relating to medical debt or personal debt and falls below the SB 1200 thresholds. It also allows judgment creditors to indicate that a portion of the judgment meets the SB 1200 criteria but another portion does not, by selecting check box 5j(3) (judgment based on claims other than personal or medical debt) in addition to 5j(1) (judgment based on claims for medical debt) or 5j(2) (judgments based on claims for personal debt) and instructs judgment creditors to "check all that apply."

One commenter suggested that the three check boxes in item 5j be made exclusive, so that judgment creditors can indicate either that the principal amount remaining in the judgment is personal or medical debt under the SB 1200 threshold, or that it relates to other claims, but not both.

The committee is not recommending any changes to form EJ-190 in response to this comment. The statute is ambiguous about how to handle renewal of mixed judgments, that is, those judgments based on multiple claims, not all of which meet the SB 1200 criteria.[9] Because the new statute does not expressly limit its protections to judgments based solely on the types of claims described in that section, the committee believes the form should allow judgment creditors to select any or all of the boxes in item 5j. Requiring the judgment creditor to indicate all types of claims in the judgment will provide information the judgment debtor may need to challenge a renewal.

Explanatory note in item 5j: The invitation to comment specifically asked for comments on whether item 5j should be further revised to account for SB 1200's exemption for "debts incurred due to, or obtained by tortious or fraudulent conduct or judgments for unpaid wages, damages, or penalties owed to an employee." Most commenters were in favor of this revision, with some noting that it advances the goal of making the form accessible for self-represented litigants. Two commenters were opposed, with one noting that many other types of judgments are also exempt but are not listed in the statute.

On balance, the committee agreed that adding language about the exception will increase understanding of how to fill out the form and therefore recommends revising the note in item 5j to add information about this exemption.

Consistency with form EJ-130: A commenter suggested revising form EJ-190 to make some of the language more consistent with *Writ of Execution* (form EJ-130), since that form can be used for execution of money judgments. Accordingly, the committee recommends revising the caption to refer to the "Original Judgment Creditor," "Plaintiff/Petitioner," and "Defendant/Respondent," revising the first line to "Original Judgment Creditor," and adding explanatory parentheticals to some of the subitems of item 5.

Accommodating multiple judgment creditors or debtors: A commenter suggested adding check boxes to items 1–3 of form EJ-190 to indicate that there is more than one judgment creditor or judgment debtor, and that the judgment has been recorded in more than one county. The committee recommends revising form EJ-190 accordingly.

Form EJ-195

Issuance: The invitation to comment specifically asked for comments on whether to have form EJ-195 signed by the judgment creditor or their attorney rather than issued by the court clerk. All of the commenters were in favor of making this change. The committee recommends revising form EJ-195 accordingly.

Addressing instructions: A commenter noted that the version of form EJ-195 circulated for comment is unclear about whether the Notice of Renewal of Judgment should be addressed to all judgment debtors or whether a separate notice should be addressed to each separately, and

[9] Code Civ. Proc., §§ 683.110(c), 683.120(c), 685.010(a)(2).

suggested revising form EJ-195 to explicitly state that separate notices must be used for each judgment debtor.

The committee considered this suggestion and its alternative—explicitly stating that all judgment debtors should be listed on the same notice—but does not recommend any changes to the form on this point. The committee believes there are situations where sending the same notice to all judgment debtors could be beneficial, and others where sending the same notice could be confusing, for example if the provisions of SB 1200 apply to one judgment debtor but not the others. For this reason, the committee concluded that judgment creditors should be given the option to choose the form of address that works best for their situation.

Consistency with form EJ-130: As with form EJ-190, a commenter suggested revising EJ-195 to make some of the language more consistent with *Writ of Execution* (form EJ-130), since that form can be used for execution of money judgments. Accordingly, the committee recommends revising the caption to refer to the "Plaintiff/Petitioner" and "Defendant/Respondent."

Form MC-012

Item 3 on form MC-012 provides space for filers to indicate the amount of accrued interest remaining due. The proposed revisions to this form circulated for comment would have allowed filers to state that multiple interest rates apply to the unpaid balance. Commenters differed on these proposed revisions: some supported leaving this item as is, while others proposed further revisions.

The California Association of Judgment Professionals argued that the circulated revision could be confusing and suggested keeping the language on the current form, which does not have a fillable field for the interest rate. The Joint Rules Subcommittee also felt the circulated revision could be confusing but suggested including spaces for the different principal amounts to which different interest rates apply.

The committee recommends revising form MC-012 as suggested by the Joint Rules Subcommittee. It will be helpful to judgment debtors if judgment creditors provide all the information used to calculate the amount of interest remaining due. Stating only the amount of interest due, but not the interest rates or the unpaid principal amounts to which it was applied, could create confusion for judgment debtors and make it more difficult for them to respond.

Form MC-013-INFO

In response to a comment, the committee recommends revising the note in the "Accrued Interest" section on page 1 of form MC-013-INFO to explain that for judgments renewed after January 1, 2023, the 5 percent interest rate applies only to unpaid principal remaining after renewal. The version of the form circulated for comment was unclear on this point and could have led readers to believe that at the time of renewal, previously accrued interest should be recalculated using the 5 percent rate.

Forms SC-220, SC-223, and SC-224
In response to a comment, the committee recommends revising the definition of judgment creditor used in some sections of these forms from "person to whom the money is owed" to "party to whom the money is owed" because judgment creditors can be businesses and public entities. This change is also consistent with language in use elsewhere on these forms, and on other related forms.

Form SC-224
In response to a comment, the committee recommends adding language to item 7 on form SC-224 to make it easier for the judgment debtor to challenge the judgment creditor's characterization of the type of debt and corresponding interest rate.

Alternatives Considered

The committee did not consider the alternative of taking no action to the extent revisions were needed to ensure the forms complied with SB 1200. To the extent a given revision was not required by the terms of SB 1200, the committee considered taking no action but ultimately determined the revision was warranted in light of the benefits it would provide to parties.

In addition, as discussed above, the committee considered several alternatives to the recommended revisions and considered the alternatives suggested by the commenters.

Fiscal and Operational Impacts

The committee anticipates that this proposal would require courts to train court staff and judicial officers on the revised forms. Court procedures and case management systems will also need to be updated, for example because some of the forms revised by the proposal are currently generated by the case management system rather than filed by the parties. Because the requirements are mandated by statute, these operational impacts cannot be avoided.

Attachments and Links

1. Forms EJ-190, EJ-195, JUD-100, MC-012, MC-013-INFO, SC-130, SC-200, SC-220, SC-220-INFO, SC-223, and SC-224, at pages 10–32
2. Chart of comments, at pages 33–69
3. Link A: Sen. Bill 1200, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1200

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, address, and State Bar number):*
After recording, return to:

TEL NO.: FAX NO. (optional):

EMAIL ADDRESS:

☐ ATTORNEY FOR ☐ ORIGINAL JUDGMENT CREDITOR ☐ ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

DRAFT 07.10.2023 Not approved by Judicial Council

FOR RECORDER'S USE ONLY

PLAINTIFF/PETITIONER:

DEFENDANT/RESPONDENT:

CASE NUMBER:

APPLICATION FOR AND RENEWAL OF JUDGMENT

FOR COURT USE ONLY

☐ Original judgment creditor

☐ Assignee of record

applies for renewal of the judgment as follows:

1. Applicant *(name and address):*

   ☐ Additional judgment creditors listed in Attachment 1.

2. Judgment debtor *(name and last known address):*

   ☐ Additional judgment debtors listed in Attachment 2.

3. Original judgment
   a. Case number *(specify):*
   b. Entered on *(date):*
   c. Recorded: Date: County: Instrument No.:
      ☐ This judgment has been recorded in additional counties, listed in Attachment 3.

4. ☐ Judgment previously renewed *(specify each case number and date):*

5. ☐ Renewal of money judgment
   a. Total judgment *(as entered or last renewed)* . . . . . $
   b. Costs after judgment *(CCP 685.090)* . . . . . $
   c. Subtotal *(add a and b)* . . . . . $
   d. Credits to principal *(after credit to interest)* . . . . . $
   e. Subtotal *(subtract d from c)* . . . . . $
   f. Accrued interest remaining due per CCP 695.210(b) $
   g. Fee for filing renewal application . . . . . $
   h. **Total renewed judgment** *(add e, f, and g)* . . . . . $
   i. ☐ The amounts called for in a–h are different for each debtor. These amounts are stated for each debtor on Attachment 5.

SHORT TITLE:	CASE NUMBER:

5. j. The money judgment (*check all that apply*)

(1) ☐ has a principal amount remaining unsatisfied of under $50,000 and is for a claim related to personal debt.

(2) ☐ has a principal amount remaining unsatisfied of under $200,000 and is for a claim related to medical expenses.

(3) ☐ relates to any other claims, including claims for personal debt or medical expenses that do not otherwise fit within (1) or (2).

Note: A judgment against a natural person may be renewed only once, for five years from the date an application is filed, if the unsatisfied principal amount at the time of renewal is below $50,000 for personal debt claims or $200,000 for medical expense claims. This exception does not apply to debts incurred due to, or obtained by, tortious or fraudulent conduct, or judgments for unpaid wages, damages, or penalties owed to an employee. (Code Civ. Proc., §§ 683.110–683.120.)

6. ☐ Renewal of judgment for ☐ possession. ☐ sale.

a. ☐ If judgment was not previously renewed, terms of judgment as entered:

b. ☐ If judgment was previously renewed, terms of judgment as last renewed:

c. ☐ Terms of judgment remaining unsatisfied:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

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ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR *(name):*		**DRAFT 07.10.2023 Not approved by Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:		
NOTICE OF RENEWAL OF JUDGMENT		CASE NUMBER:

TO JUDGMENT DEBTOR *(name):*

1. **This renewal extends** the period of enforceability of the judgment until
   a. ☐ 10 years from the date the application for renewal was filed.
   b. ☐ 5 years from the date the application for renewal was filed.

   (The judgment creditor should check 1b if the judgment is a money judgment; is not based on tortious or fraudulent conduct or for unpaid wages, damages, or penalties owed to an employee; and, as of the date of the application of renewal, the judgment:
   - has an unsatisfied principal amount under $50,000 and relates to a claim for personal debt; or
   - has an unsatisfied principal amount under $200,000 and relates to a claim for medical expenses.)

   (Code Civ. Proc., §§ 683.110–683.120.)
2. **If you object** to this renewal, you may make a motion to vacate or modify the renewal with the court.
3. You must make this motion within **60 days** after service of this notice on you.
4. A copy of the *Application for and Renewal of Judgment* is attached *(Cal. Rules of Court, rule 3.1900).*

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF JUDGMENT CREDITOR OR ATTORNEY)

See Code of Civil Procedure section 683.160 for information on method of service

Form Adopted for Mandatory Use
Judicial Council of California
EJ-195 [Rev. January 1, 2024]

NOTICE OF RENEWAL OF JUDGMENT

Code of Civil Procedure, § 683.160
www.courts.ca.gov

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ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* EMAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	**DRAFT 07.10.2023 Not approved by Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
JUDGMENT ☐ **By Clerk** ☐ **By Default** ☐ **After Court Trial** ☐ **By Court** ☐ **On Stipulation** ☐ **Defendant Did Not Appear at Trial**	CASE NUMBER:

JUDGMENT

1. ☐ **BY DEFAULT**
   a. Defendant was properly served with a copy of the summons and complaint.
   b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
   c. Defendant's default was entered by the clerk upon plaintiff's application.
   d. ☐ **Clerk's Judgment** (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
   e. ☐ **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
      (1) ☐ plaintiff's testimony and other evidence.
      (2) ☐ plaintiff's written declaration (Code Civ. Proc., § 585(d)).
2. ☐ **ON STIPULATION**
   a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
   b. ☐ the signed written stipulation was filed in the case.
   c. ☐ the stipulation was stated in open court ☐ the stipulation was stated on the record.
3. ☐ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
   a. The case was tried on *(date and time):*
      before *(name of judicial officer):*
   b. Appearances by:
      ☐ Plaintiff *(name each):*
      (1)
      (2)
      ☐ Continued on Attachment 3b.
      ☐ Plaintiff's attorney *(name each):*
      (1)
      (2)
      ☐ Defendant *(name each):*
      (1)
      (2)
      ☐ Continued on Attachment 3b.
      ☐ Defendant 's attorney *(name each):*
      (1)
      (2)
   c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
   d. ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

PLAINTIFF: DEFENDANT:	CASE NUMBER:

JUDGMENT IS ENTERED AS FOLLOWS BY: ☐ **THE COURT** ☐ **THE CLERK**

4. ☐ **Stipulated Judgment.** Judgment is entered according to the stipulation of the parties.
5. **Parties.** Judgment is
   a. ☐ for plaintiff *(name each):*

      and against defendant *(names):*

      ☐ Continued on Attachment 5a.

   b. ☐ for defendant *(name each):*

   c. ☐ for cross-complainant *(name each):*

      and against cross-defendant *(name each):*

      ☐ Continued on Attachment 5c.

   d. ☐ for cross-defendant *(name each):*

6. **Amount.**
   a. ☐ Defendant named in item 5a above must pay plaintiff on the complaint:

(1) ☐ Damages	$
(2) ☐ Prejudgment interest at the annual rate of %	$
(3) ☐ Attorney fees	$
(4) ☐ Costs	$
(5) ☐ Other *(specify):*	$
(6) **TOTAL**	$

   b. ☐ Plaintiff to receive nothing from defendant named in item 5b.
      ☐ Defendant named in item 5b to recover costs $
      ☐ and attorney fees $

   c. ☐ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) ☐ Damages	$
(2) ☐ Prejudgment interest at the annual rate of %	$
(3) ☐ Attorney fees	$
(4) ☐ Costs	$
(5) ☐ Other *(specify):*	$
(6) **TOTAL**	$

   d. ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.
      ☐ Cross-defendant named in item 5d to recover costs $
      ☐ and attorney fees $

7. ☐ Judgment debtor is a natural person, and as provided in Code Civ. Proc., §§ 683.110, 685.010:
   $ of this judgment is on a claim related to medical expenses
   $ of this judgment is on a claim related to personal debt
8. ☐ Other *(specify):*

Date: ☐ _____
JUDICIAL OFFICER

Date: ☐ Clerk, by _____ , Deputy

(SEAL)

CLERK'S CERTIFICATE *(Optional)*
I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by _____ , Deputy

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ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		**DRAFT 07.10.2023 Not approved by Judicial Council**
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PLAINTIFF:		
DEFENDANT:		
MEMORANDUM OF COSTS AFTER JUDGMENT, ACKNOWLEDGMENT OF CREDIT, AND DECLARATION OF ACCRUED INTEREST		CASE NUMBER:

1. ☐ **Postjudgment costs**
   a. I claim the following costs after judgment incurred within the last two years *(indicate if there are multiple items in any category):*

		Dates Incurred	Amount
(1)	Preparing and issuing abstract of judgment		$
(2)	Recording and indexing abstract of judgment		$
(3)	Filing notice of judgment lien on personal property		$
(4)	Issuing writ of execution, to extent not satisfied by Code Civ. Proc., § 685.050 *(specify county):*		$
(5)	Levying officers fees, to extent not satisfied by Code Civ. Proc., § 685.050 or wage garnishment		$
(6)	Approved fee on application for order for appearance of judgment debtor, or other approved costs under Code Civ. Proc., § 708.110 et seq.		$
(7)	Attorney fees, if allowed by Code Civ. Proc., § 685.040		$
(8)	Other: _____ *(Statute authorizing cost):* _____		$
(9)	Total of claimed costs for current memorandum of costs *(add (1)–(8))*		$
b.	All previously allowed postjudgment costs		$
c.	**Total** of all postjudgment costs *(add a and b)*		$

2. ☐ **Credits to interest and principal**
   a. I acknowledge total payments to date in the amount of: $_____ (including returns on levy process and direct payments). The payments received are applied first to the amount of accrued interest, and then to the judgment principal (including postjudgment costs allowed) as follows: credit to accrued interest: $_____ ; credit to judgment principal $_____ .
   b. **Principal remaining due.** The amount of judgment principal remaining due is $_____. *(See Code Civ. Proc., § 680.300)*
3. ☐ **Accrued interest remaining due.** I declare interest accruing at the legal rate of _____ % on the unpaid principal amount of $_____ and _____ % on the unpaid principal amount of $_____ (*see Information Sheet for Calculating Interest and Amount Owed on a Judgment* (form MC-013-INFO)) from the date of entry or renewal and on balances from the date of any partial satisfactions (or other credits reducing the principal), remaining due in the amount of $_____.
4. I am the: ☐ judgment creditor ☐ agent for the judgment creditor ☐ attorney for the judgment creditor. I have knowledge of the facts concerning the costs claimed above. To the best of my knowledge and belief, the costs claimed are correct, reasonable, and necessary, and have not been satisfied.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

NOTICE TO THE JUDGMENT DEBTOR

If this memorandum of costs is filed at the same time as an application for a writ of execution, any statutory costs, not exceeding $100 in aggregate and not already allowed by the court, may be included in the writ of execution. The fees sought under this memorandum may be disallowed by the court upon a motion to tax filed by the debtor, notwithstanding the fees having been included in the writ of execution. (Code Civ. Proc., § 685.070(e).) A motion to tax costs claimed in this memorandum must be filed within 10 days after service of the memorandum. (Code Civ. Proc., § 685.070(c).)

Form Adopted for Mandatory Use
Judicial Council of California
MC-012 [Rev. January 1, 2024]

Code of Civil Procedure,
§§ 685.040, 685.070, 695.220
www.courts.ca.gov

Short Title:	CASE NUMBER:

PROOF OF SERVICE

☐ **Mail** ☐ **Personal Service**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My residence or business address is:

3. ☐ I mailed or personally delivered a copy of the *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* as follows *(complete either a or b):*

   a. ☐ **Mail.** I am a resident of or employed in the county where the mail occurred.
      (1) I enclosed a copy in an envelope AND
         (a) ☐ **deposited** the sealed envelope with the United States Postal Service with the postage fully prepaid.
         (b) ☐ **placed** the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

      (2) The envelope was addressed and mailed as follows:

         (a) Name of person served:
         (b) Address on envelope:
         (c) Date of mailing:
         (d) Place of mailing *(city and state)*:

   b. ☐ **Personal delivery.** I personally delivered a copy as follows.
      (1) Name of person served:
      (2) Address where delivered:
      (3) Date delivered:
      (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

INFORMATION SHEET FOR CALCULATING INTEREST AND AMOUNT OWED ON A JUDGMENT

What can the judgment creditor recover?

Under California law, the amount recoverable by a judgment creditor (the party to whom money is owed) includes:

- The total amount of the judgment entered by the court (principal), plus costs;
- Costs after judgment under Code of Civil Procedure section 685.070; and
- Accrued interest on the total amount.

Costs After Judgment

A judgment creditor is entitled to reimbursement for the "reasonable and necessary" costs of enforcing a judgment. These costs must be reported to the court within two years of the date incurred. The judgment amount includes costs ordered by the court after the judgment. (For information on recovering costs and a detailed list of costs that can be recovered, see Code of Civil Procedure sections 685.040, 685.050 et seq., 685.070(b), and 685.090; see also "Requesting Costs and Interest" below).

Accrued Interest (*See Code Civ. Proc., §§ 685.010, 685.020(a), and Cal. Const., art. XV, § 1.)*

Interest accrues on the unpaid principal of a judgment at the following legal rates:

- The rate of interest is 10% per year unless one of the following lower interest rates applies.
- The rate of interest is 7% per year if the judgment debtor (the party who owes the money) is a state or local government entity.
- The rate of interest is 5% per year if the judgment debtor is a natural person and the judgment meets all of the following requirements:
  - The judgment was entered or renewed after January 1, 2023.
  - The judgment is on a claim related either to personal debt (and the unpaid principal amount is under $50,000) or medical expenses (and the unpaid principal amount is under $200,000).
  - The judgment is not based on tortious or fraudulent conduct or for unpaid wages, damages, or penalties owed to an employee.

  For judgments renewed after January 1, 2023, the 5% interest rate applies only to unpaid principal remaining after renewal. Note, for judgments that otherwise meet the above requirements and are renewed after January 1, 2023, the interest rate will change from 10% to 5% for any remaining unpaid principal if the unpaid principal has fallen below the above amounts.

Interest generally accrues from the date the judgment is entered. Interest begins to accrue on the amount of costs added to a judgment from the date ordered by the court or from the date costs are allowed following expiration of the time to object. If the judgment is payable in installments, interest accrues from the date each installment is due. On renewal of a judgment, unpaid interest that has accrued is added to the principal of the judgment and interest begins to accrue on the total renewed amount on the day the renewed judgment is entered.

Requesting Costs and Interest

To have costs and interest added to the enforceable amount owed, the judgment creditor must file and serve *Memorandum of Costs After Judgment* (form MC-012). On that form, the judgment creditor must include the exact amount of all costs and accrued interest. This means the judgment creditor is responsible for calculating the amount of interest that accrues on the judgment. It is useful to update this calculation after receiving payments.

Crediting Payments Received

Any payments received by the judgment creditor must be "credited" in a specific order. (Code Civ. Proc., § 695.220.) After specific costs go directly to the levying officer and to the court for fees, the judgment creditor is required to credit payments received first toward *accrued interest* and then toward the *judgment principal* (including costs approved by the court after entry of the judgment).

Calculation of Interest on Judgment and Amount Due

The following are various formulas and examples to assist with the calculation of interest on a judgment using both a 5% and a 10% interest rate.

- **Calculating the *Total Amount Due, Including Interest*, on the date of payment, if there have been no prior payments or credits**

Step 1: Calculate the daily interest on a judgment. This is the amount of interest earned per day on a judgment. To calculate the daily interest, use the following formula:

Formula: (Total amount of judgment owed) × (applicable interest rate) = interest earned per year. That number divided by 365 = amount of daily interest.

Example: Judgment debtor owes the judgment creditor $5,000 (the "judgment principal").

5% Interest Rate	10% Interest Rate
$5,000 × 0.05 = $250 $250/365 = $0.69 daily interest The amount of interest earned will be $0.69 per day as long as the unpaid amount remains $5,000.	$5,000 × 0.10 = $500 $500/365 = $1.37 daily interest The amount of interest earned will be $1.37 per day as long as the unpaid amount remains $5,000.

Step 2: Count the total number of days that have passed since the court entered the final judgment up to the day of payment. Then calculate the amount of interest owed on the date of payment using the following formula.

Formula: (Total number of days since judgment was entered) × (amount of interest per day, calculated in Step 1) = amount of interest owed on the date of payment.

Example: A $5,000 judgment was entered on June 1 and the judgment debtor paid the judgment on September 8; 100 days from the entry of the judgment have passed.

5% Interest Rate	10% Interest Rate
The daily interest is $0.69 (see above). $0.69 per day × 100 days = $69 interest owed on the date of payment The judgment debtor owes $69 in interest on the principal of $5,000 on the date of payment.	The daily interest is $1.37 (see above). $1.37 per day × 100 days = $137 interest owed on the date of payment. The judgment debtor owes $137 in interest on the principal of $5,000 on the date of payment.

Step 3: Add the amount of interest that has accrued to the amount of the judgment.

5% Interest Rate	10% Interest Rate
$5,000 judgment + $69 interest = $5,069 The judgment debtor owes a total of $5,069 on the 100th day after the court entered judgment.	$5,000 judgment amount + $137 interest = $5,137 The judgment debtor owes a total of $5,137 on the 100th day after the court entered judgment.

- **Crediting partial payments and recalculating the amount due**

  If the judgment debtor does not pay all that is owed at one time, the partial payments the debtor makes are credited to the interest *first* and then to the judgment amount (the principal) owed.

  Example: The judgment principal is $5,000. After 200 days, the judgment debtor pays $1,000.

  Step 1: Calculate the amount of interest owed on the date of payment

5% Interest Rate	10% Interest Rate
The daily interest is $0.69 (see above). $0.69 per day × 200 days = $138 interest owed on the date of payment	The daily interest is $1.37 (see above). $1.37 per day × 200 days = $274 interest owed on the date of payment.

  Step 2: Apply payment to interest

5% Interest Rate	10% Interest Rate
The judgment debtor paid $1,000, which first must be used to credit the $138 of accrued interest. That leaves a balance of $862 ($1,000 - $138 = $862) to be credited toward the $5,000 principal.	The judgment debtor paid $1,000, which first must be used to credit the $274 of accrued interest. That leaves a balance of $726 ($1,000 - $138 = $726) to be credited toward the $5,000 principal.

  Step 3: Apply remainder to principal

5% Interest Rate	10% Interest Rate
The remaining credit of $862 is applied to the judgment principal. The judgment debtor now owes $4,138 on the judgment principal ($5,000 - $862 = $4,138).	The remaining credit of $726 is applied to the judgment principal. The judgment debtor now owes $4,274 on the judgment principal ($5,000 - $726 = $4,274).

  Step 4: Calculate the new daily interest rate

5% Interest Rate	10% Interest Rate
$4,138 (new principal) × 5% = $206.90 interest per year $206.90/365 days = $0.57 interest earned per day	$4,274 (new principal) × 10% = $427.40 interest per year $427.40/365 days = $1.17 interest earned per day

  Example: After 100 days, the judgment debtor makes a second payment of $500. (Recalculate using steps 1-4.)

5% Interest Rate	10% Interest Rate
Amount of accrued interest over 100 days: 100 days × $0.57 daily interest = $57 total interest **$500 payment credited to interest first:** $500 payment - $57 interest = $443 remaining **Remainder credited to principal:** $4,138 principal - $443 remainder = $3,695 new principal **Calculate new daily interest:** $3,695 × 5% = $184.75/365 = $0.51 interest per day	**Amount of accrued interest over 100 days:** 100 days × $1.17 daily interest = $117 total interest **$500 payment credited to interest first:** $500 payment - $117 interest = $383 remaining **Remainder credited to principal:** $4,274 principal - $383 remaining = $3891 new principal **Calculate new daily interest:** $3,891 × 10% = $389.10/365 = $1.07 interest per day

Name and Address of Court:

DRAFT
05.23.2023
Not approved by Judicial Council

SC-130

SMALL CLAIMS CASE NO.:

NOTICE TO ALL PLAINTIFFS AND DEFENDANTS: **Your small claims case has been decided. If you lost the case, and the court ordered you to pay money, your wages, money, and property may be taken without further warning from the court. Read the back of this sheet for important information about your rights.**	***AVISO A TODOS LOS DEMANDANTES Y DEMANDADOS:*** **Su caso ha sido resuelto por la corte para reclarnos judiciales menores. Si la corte ha decidido en su contra y ha ordenado quo usted pague dinero, le pueden quitar su salario, su dinero, y otras cosas de su propiedad, sin aviso adicional por parte de esta corte. Lea el reverso de este formulario para obtener informacion de importancia acerca de sus derechos.**

PLAINTIFF/DEMANDANTE *(Name, street address, and telephone number of each):*

Telephone No.:

Telephone No.:

DEFENDANT/DEMANDADO *-(Name, street address, and telephone number of each):*

Telephone No.:

Telephone No.:

☐ See attached sheet for additional plaintiffs and defendants.

NOTICE OF ENTRY OF JUDGMENT

Judgment was entered as checked below on *(date):*

1. ☐ Defendant *(name, if more than one):*
   shall pay plaintiff *(name, if more than one):*
   $ principal and: $ costs on plaintiffs claim.
2. ☐ Defendant does not owe plaintiff any money on plaintiff's claim.
3. ☐ Plaintiff *(name, if more than one):*
   shall pay defendant *(name, if more than one):*
   $ principal and $ costs on defendant's claim.
4. ☐ Plaintiff does not owe defendant any money on defendants claim.
5. ☐ Possession of the following property is awarded to plaintiff *(describe property):*
6. ☐ Payments are to be made at the rate of: $ per *(specify period):* , beginning on *(date):*
   and on the *(specify day):* day of each month thereafter until paid in full. If any payment is missed, the entire balance may become due immediately.
7. ☐ Dismissed in court ☐ with prejudice. ☐ without prejudice.
8. ☐ *Attorney-Client Fee Dispute (Attachment to Notice of Entry of Judgment)* (form SC-132) is attached.
9. ☐ Other *(specify):*
10. ☐ Judgment debtor is a natural person, and as provided in Code Civ. Proc., §§ 683.110, 685.010:
    $ of this judgment is on a claim related to medical expenses
    $ of this judgment is on a claim related to personal debt.
11. ☐ This judgment results from a motor vehicle accident on a California highway and was caused by the judgment debtor's operation of a motor vehicle. If the judgment is not paid, the judgment creditor may apply to have the judgment debtor's drivers license suspended.
12. Enforcement of the judgment is automatically postponed for 30 days or, if an appeal is filed, until the appeal is decided.
13. ☐ This notice was personally delivered to *(insert name and date):*
14. CLERK'S CERTIFICATE OF MAILING I certify that I am not a party to this action. This *Notice of Entry of Judgment* was mailed first class, postage prepaid, in a sealed envelope to the parties at the addresses shown above. The mailing and this certification occurred at the place and on the date shown below.

Place of mailing: , California

Date of mailing:

Clerk, by _____, Deputy

The county provides small claims advisor services free of charge. Read the information sheet on the reverse.

Form Adopted for Alternative Mandatory Use
Judicial Council of California
SC-130 [Rev. January 1, 2024]

NOTICE OF ENTRY OF JUDGMENT
(Small Claims)

Code of Civil Procedure, § 116.610
www.courts.ca.gov

INFORMATION AFTER JUDGMENT | *INFORMACION DESPUES DEL FALLO DE LA CORTE*

Your small claims case has been decided. The **judgment** or decision of the court appears on the front of this sheet. The court may have ordered one party to pay money to the other party. The person (or business) who won the case and who can collect the money is called the **judgment creditor.** The person (or business) who lost the case and who owes the money is called the **judgment debtor.**

Enforcement of the judgment is postponed until the time for appeal ends or until the appeal is decided. This means that the judgment creditor cannot collect any money or take any action until this period is over. Generally, both parties may be represented by lawyers after judgment.

IF YOU LOST THE CASE . . .

1. If you lost the case on your own claim and the court did not award you any money, the court's decision on your claim is **FINAL.** You may not appeal your own claim.
2. . If you lost the case and the court ordered you to pay money, your money and property may be taken to pay the claim unless you do one of the following things:

   a. **PAY THE JUDGMENT**
   The law requires you to pay the amount of the judgment. You may pay the judgment creditor directly, or pay the judgment to the court for an additional fee. You may also ask the court to order monthly payments you can afford.
   Ask the clerk for information about these procedures.

   b. **APPEAL**
   If you disagree with the court's decision, you may appeal the decision *on the other party's claim. You* may not appeal the decision on your own claim. However, if any party appeals, there will be a new trial on *all* the claims. If you appeared at the trial, you *must* begin your appeal by filing a form called a *Notice of Appeal* (form SC-140) and pay the required fees within 30 *days* after the date this *Notice of Entry of Judgment* was mailed or handed to you. Your appeal will be in the superior court. You will have a **new trial** and you must present your evidence again. You may be represented by a lawyer.

   c. **VACATE OR CANCEL THE JUDGMENT**
   If you did not go to the trial, you may ask the court to vacate or cancel the judgment. To make this request, you must file a *Motion to Vacate the Judgment* (form SC-135) and pay the required fee *within 30 days* after the date this *Notice of Entry of Judgment* was mailed. If your request is denied, you then have 10 *days* from the date the notice of denial was mailed to file an appeal. The period to file the *Motion to Vacate the Judgment is 180 days* if you were *not properly served* with the claim. The 180-day period begins on the date you found out or should have found out about the judgment against you.

IF YOU WON THE CASE . . .

1. If you were sued by the other party and you won the case, then the other party may not appeal the court's decision.

   If you won the case and the court awarded you money, here are some steps you may take to collect your money or get possession of your property:

   a. **COLLECTING FEES AND INTEREST**
   Sometimes fees are charged for filing court papers or for serving the judgment debtor. These extra costs can become part of your original judgment. To claim these fees, ask the clerk for a *Memorandum of Costs.*

   b. **VOLUNTARY PAYMENT**
   Ask the judgment debtor to pay the money. If your claim was for possession of property, ask the judgment debtor to return the property to you. **THE COURT WILL NOT COLLECT THE MONEY OR ENFORCE THE JUDGMENT FOR YOU.**

   c. **STATEMENT OF ASSETS**
   If the judgment debtor does not pay the money, the law requires the debtor to fill out a form called the *Judgment Debtor's Statement of Assets* (form SC-133). This form will tell you what property the judgment debtor has that may be available to pay your claim. If the judgment debtor willfully fails to send you the completed form, you may file an *Application and Order to Produce Statement of Assets and to Appear for Examination* (form SC-134) and ask the court to give you your attorney's fees and expenses and other appropriate relief, after proper notice, under Code of Civil Procedure section 708.170.

   d. **ORDER OF EXAMINATION**
   You may also make the debtor come to court to answer questions about income and property. To do this, ask the clerk for an *Application and Order for Appearance and Examination (Enforcement of Judgment)* (form EJ-125) and pay the required fee. There is a fee if a law officer serves the order on the judgment debtor. You may also obtain the judgment debtor's financial records. Ask the clerk for the *Small Claims Subpoena and Declaration* (form SC-107) or *Civil Subpoena Duces Tecum* (form SUBP-002).

   e. **WRIT OF EXECUTION**
   After you find out about the judgment debtor's property, you may ask the court for a *Writ of Execution* (form EJ-130) and pay the required fee. A writ of execution is a court paper that tells a law officer to take property of the judgment debtor to pay your claim. Here are some examples of the kinds of property the officer may be able to take: **wages, bank account, automobile, business property, or rental income.** For some kinds of property, you may need to file other forms. See the law officer for information.

   f. **ABSTRACT OF JUDGMENT**
   The judgment debtor may own land or a house or other buildings. You may want to put a lien on the property so that you will be paid if the property is sold. You can get a lien by filing an *Abstract of Judgment* (form EJ-001) with the county recorder in the county where the property is located. The recorder will charge a fee for the *Abstract of Judgment.*

NOTICE TO THE PARTY WHO WON: As soon as you have been paid in full, you *must* fill out the form below and mail it to the court *immediately* or you may be fined. If an *Abstract of Judgment has* been recorded, you must use another form; see the clerk for the proper form.

SMALL CLAIMS CASE NO.:

ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT *(Do not use this form if an Abstract of Judgment has been recorded.)*

To the Clerk of the Court:

I am the ☐ judgment creditor ☐ assignee of record.

I agree that the judgment in this action has been paid in full or otherwise satisfied.

Date: _____

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

SC-200 Notice of Entry of Judgment

Clerk stamps here when form is filed.

DRAFT

07/12/2023

Not approved by the Judicial Council

This form tells you the court's decision (judgment) in this small claims case. The date the small claims clerk handed or mailed you this form is very important. That date sets the deadline for the parties to take legal steps to protect or enforce their rights.

If the court ordered you to pay money, your wages, money, or property can be taken, if you do not pay the judgment within 30 days. You may also have to pay interest. If the court decided that you owe money because of an auto accident, the Department of Motor Vehicles (DMV) can suspend your driver's license.

If you disagree with the judgment, you may have the right to appeal or to ask the court to cancel or correct the judgment. To protect these rights, you must file papers with the court within 30 days after this notice was mailed or handed to you.

Read pages 3 and 4. They explain your rights and responsibilities, whether you won or lost the case.

Fill in the court name and street address:

Superior Court of California, County of

Fill in your case number and case name:

Case Number:

Case Name:

1 The judgment (decision) in this small claims case was entered on *(date):* _____

2 The judgment cannot be enforced until after the 30-day right to appeal or file a motion to vacate (cancel) or correct the judgment has ended. If an appeal or a motion to cancel or correct the judgment is properly filed, the judgment cannot be enforced until the appeal or motion is decided.

3 Judgment on the Plaintiff's Claim

Plaintiff's name, if more than one: _____

Defendant's name, if more than one: _____

a. ☐ The plaintiff's claim against *(check one)*: ☐ all parties ☐ *(name)*: _____ is dismissed and
   (1) ☐ may not be filed again. (The claim is dismissed with prejudice.)
   (2) ☐ may be filed again, if filed by the legal deadline. (The claim is dismissed without prejudice.)

b. ☐ The defendant *(name)*: _____ does not have to pay the plaintiff anything.

c. ☐ The defendant *(name)*: _____ must pay the plaintiff *(name)*: _____
   (total amount): $ _____ , which includes:
   principal: $ _____ + interest: $ _____ + court costs: $ _____ - offset: $ _____
   Reason for offset, if any: _____

d. ☐ More than one person owes money on this claim. The liability of each person is:
   (1) ☐ Joint and several. (The judgment creditor may collect the entire judgment from any judgment debtor.)
   (2) ☐ Other *(specify)*: _____

e. ☐ The defendant *(name):* _____ must give the plaintiff *(name):* _____
   (specify property): _____ by *(date):* _____
   ☐ The property is specified on Attachment 3e.

4 Judgment on the Defendant's Claim

Defendant's name, if more than one: _____

Plaintiff's name, if more than one: _____

Case Name: _____ Case Number:

4 a. ☐ The defendant's claim against *(check one)*: ☐ all parties ☐ *(name)*: _____ is dismissed and
(1) ☐ may not be filed again. (The claim is dismissed with prejudice.)
(2) ☐ may be filed again, if filed by the legal deadline. (The claim is dismissed without prejudice.)
b. ☐ The plaintiff *(name)*: _____ does not owe any money on this claim.
c. ☐ The plaintiff *(name)*: _____ must pay the defendant *(name)*: _____
(total amount): $ _____, which includes:
principal: $ _____ + interest: $ _____ + court costs: $ _____ - offset: $ _____
Reason for offset, if any: _____
d. ☐ More than one person owes money on this claim. The liability of each person is:
(1) ☐ Joint and several. (The judgment creditor may collect the entire judgment from any judgment debtor.)
(2) ☐ Other *(specify)*: _____
e. ☐ The plaintiff *(name)*: _____ must give the defendant *(name)*: _____
(specify property): _____ by *(date)*: _____
☐ The property is specified on Attachment 4e.

5 ☐ Payments *(Name)*: _____
may pay the judgment to *(name)*: _____ as follows:
a. ☐ Payments of $ _____ on the _____ day of each *(month, week, other)* _____
starting *(date)*: _____ and a final payment of: $ _____ on *(date)*: _____
b. ☐ Other payment schedule *(specify)*: _____
c. ☐ The total amount of payments is $ _____, which includes interest on the unpaid balance of the judgment. The actual amount of that interest may be different if payments are made late or early.
d. ☐ The total amount of the payments is the same as the judgment. If all payments are made in full and on time, no interest will be owed on the judgment and the judgment will have been paid in full.
e. If any payment is not made in full and on time, the judgment creditor may notify the court to cancel the payment plan, and the entire unpaid balance will become due and collectible.

Other Orders

6 ☐ Decisions on other claims or parties are stated in Attachment 6.

7 ☐ After offsetting the judgments on the claims, *(name)*: _____
owes *(name)*: _____ $ _____

8 ☐ This judgment against *(name)*: _____
is for damage or injury because of an automobile vehicle accident on a California highway caused by the judgment debtor or by another party for whose conduct the judgment debtor is liable (other than liability because the party signed a minor's driver's license application).

9 ☐ Judgment debtor is a natural person, and as provided in Code Civ. Proc., §§ 683.110, 685.010:
$ _____ of this judgment is on a claim related to medical expenses
$ _____ of this judgment is on a claim related to personal debt.

10 ☐ The court finds that the defendant's rights under the Servicemembers Civil Relief Act were not prejudiced by the entering of a judgment against the defendant because the defendant was not a servicemember or had notice and was available to defend this action.

11 ☐ Form SC-202A, *Decision on Attorney-Client Fee Dispute*, is attached.

12 ☐ Other *(specify)*: _____
☐ Continued on Attachment 11.

Date: _____ Clerk, by _____, Deputy

What to Do After the Court Decides Your Small Claims Case

First, read the court's decisions on pages 1 and 2. They will tell you the court's judgment in this case.
Then read this form. It will help you protect or enforce your rights, whether you won or lost the case.

> ***Warning!*** You may lose important rights if you do not act within 30 days after the court handed or mailed you this *Notice of Entry of Judgment*. If the court mailed the *Notice of Entry of Judgment,* the date of mailing is on the *Clerk's Certificate of Mailing* that came with the notice.

If the court did not award you any money on a claim that you filed… The court's decision on your claim is *normally* final. You cannot appeal the decision on your own claim, but you may be allowed to ask the court to correct a mistake in the judgment.

If the court ordered you to pay money…

You are the *judgment debtor*. The law requires you to pay the judgment. You **can:**

- Pay the judgment creditor directly.
- Pay the court. (To do this, file form SC-145, *Request to Pay Judgment to Court.) Or*
- Ask the court to let you make payments. (To do this, file form SC-220, *Request to Make Payments*.*)*

If any payment is not made in full and on time, the judgment creditor may notify the court to cancel the payment plan and the entire unpaid balance will become due and collectible.

Warning! **If you do not pay the judgment or file** an appeal or a motion to vacate (cancel) or correct the judgment **within 30 days** after the *Notice of Entry of Judgment* was handed or mailed to you, your wages, money, and property can be taken to pay the claim. You may also have to pay interest. If your case involves an auto accident on a California highway, the Department of Motor Vehicles (DMV) can suspend your driver's license.

After you pay the judgment in full, you can ask the judgment creditor to file a form saying the judgment is paid. (See form SC-290, *Acknowledgment of Satisfaction of Judgment*.) If the judgment creditor does not do this, he or she may have to pay you damages and a penalty.

If you disagree with the judgment ordering you to pay money and you went to your small claims trial, you can appeal that decision. (You cannot appeal the decision on your own claim.) To do this, file form SC-140, *Notice of Appeal*, within 30 days after the *Notice of Entry of Judgment* was handed or mailed to you. There will be a new trial in the superior court on all claims in the case. Each side will present evidence again. This time, each side can have a lawyer at the trial.

(Continued on page 4)

If the court ordered the other side to pay *you*...

You are the *judgment creditor*. **You** must collect your judgment. The court will not collect it for you. Some steps you can take to collect your money are summarized below. For more information, go to *https://selfhelp.courts.ca.gov/small-claims/after-trial/if-you-win.*

Important! The judgment debtor has **30 days** after the *Notice of Entry of Judgment* was handed or mailed to him or her to appeal or pay or ask the court to cancel or correct the judgment. You cannot take legal steps to collect the judgment during this time.

Ask the judgment debtor to pay you the money. If the judgment debtor cannot afford to pay the judgment all at once, consider offering to take payments. If your claim was for possession of property, ask the judgment debtor to return the property to you.

If the judgment debtor does not pay, you can find out about the debtor's income or property that the sheriff can take to satisfy the judgment.

- If the debtor does not pay within 30 days after the court clerk delivered or mailed the *Notice of Entry of Judgment,* the debtor must send you form SC-133, *Judgment Debtor's Statement of Assets*. This form will tell you what property the debtor has that may be used to pay the judgment.
- **If the debtor does not send you the completed form SC-133,** you can file form SC-134, *Application and Order to Produce Statement of Assets and to Appear for Examination*. In this form, you can also ask the court to award you your attorney fees, expenses, and other appropriate relief.
- **If the debtor *does* send you form SC-133, you can still have the debtor come to court to answer questions** about income and property. To do this, file form EJ-125, *Application and Order for Appearance and Examination*.

(Continued on page 4)

If the court ordered you to pay money…
(continued)

If you disagree with the judgment ordering you to pay money, and you did not go to your trial, you can ask the court to vacate (cancel) the judgment. To do this, file form SC-135, *Notice of Motion to Vacate Judgment and Declaration*, **within 30 days*** after the *Notice of Entry of Judgment* was handed or mailed to you. If the court denies your request, you have until 10 days from the date the notice of denial is mailed to file an appeal.

Exception:* If the claim against you was not properly served, you have **180 days from the date that you found out (or should have found out) about the judgment against you to file a request to cancel the judgment.

Unless you pay the judgment or file an appeal or a motion as discussed above, you must complete form SC-133, *Judgment Debtor's Statement of Assets,* and deliver it to the judgment creditor within 30 days after the clerk delivered or mailed the *Notice of Entry of Judgment.*

Warning! If you do not deliver the completed form SC-133, the court can order you to pay attorney fees and impose other penalties.

If the court ordered the other side to pay *you*...
(continued)

- To obtain the judgment debtor's financial records from another person or a company at a hearing, fill out form SC-107, *Small Claims Subpoena and Declaration*, take it to the small claims court clerk to be issued, and then have it served.

Once you know about the judgment debtor's income and property, you can ask the sheriff to take that property to pay you. (Property that may be taken includes wages, bank accounts, automobiles, business property, and rental income.) To do this, fill out and ask the court clerk to issue form EJ-130, *Writ of Execution*. Then, take the form to the sheriff's office with a description of the debtor's property.

You can also put a lien on the judgment debtor's house or other real estate. To do this, fill out and ask the court clerk to issue form EJ-001, *Abstract of Judgment—Civil and Small Claims*. Then, take or mail the *Abstract* to the county recorder's office in the county where you think the debtor owns real property. If the judgment debtor sells, refinances, or buys real property in that county, your judgment should be paid from the debtor's funds.

After the judgment has been paid in full, you must fill out an *Acknowledgment of Satisfaction of Judgment* and file it with the court clerk. If an *Abstract of Judgment* has not been recorded, you may use form SC-290. If an abstract has been recorded, use form EJ-100.

Warning! If you do not file an *Acknowledgment of Satisfaction of Judgment*, you may have to pay the judgment debtor damages and a penalty.

You may need to pay fees to the court, the county recorder's office, or the sheriff for filing, issuing, and recording papers and doing the other things discussed above. Sometimes, you can ask the court to order the other side to repay you for these expenses.

Need help?
For free help, contact your county's small claims advisor:
[local info here]

Or go to *https://selfhelp.courts.ca.gov/small-claims-advisor*

SC-220 Request to Make Payments

Clerk stamps here when form is filed.

DRAFT 07.10.2023 Not approved by Judicial Council

Read page 2 before you fill out this form.

1 I am asking for permission to pay my **small claims** judgment in payments.

My name is: _____

Mailing address: _____

_____

Phone: _____ Email *(optional)*: _____

2 On *(date)*: _____, the court made the decision (judgment) that:

I owe *(total amount)*: $ _____

To *(name of party you must pay)*: _____

Mailing address: _____

_____

Phone: _____ Email *(optional)*: _____

Fill in the court name and street address:

Superior Court of California, County of

Fill in your case number and case name:

Case Number:

Case Name:

3 I am asking for permission to make payments, instead of paying the full amount all at once, because *(explain)*:

☐ *If your answer will not fit in the space below, check this box and attach your answer on a separate sheet of paper. Write "SC-220, Item 3" at the top.*

_____

_____

4 I ask the court to allow me to make payments on the following terms *(check and complete all that apply)*:

a. ☐ Payments of $ _____, on the _____ day of each (month, week, other): _____
Starting *(date)*: _____, until *(date of final payment)*: _____; amount of final payment: $ _____

b. ☐ Other payment schedule *(specify)*: _____

_____

c. ☐ The total amount of payments is $ _____, which includes interest on the unpaid balance of the judgment. The actual amount of that interest may be different if the payments are made late or early. (*Attach a page that shows how you calculated the interest and write "SC-220, Item 4c" at the top.*)

d. ☐ The total amount of payments is the same as the judgment. If all payments are made in full and on time, no interest will be owed on the judgment, and the judgment will be paid in full.

e. ☐ Other *(specify)*: _____

_____

Warning! If any payment is not made in full and on time, the judgment creditor may notify the court to cancel the payment plan and the entire unpaid balance will become due and collectible.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____
Type or print your name

▶ _____
Sign here

Payments in Small Claims Cases
General Information

If the court ordered you to pay money, you can ask the court for permission to make payments. Here's how:

- Fill out form SC-220, *Request to Make Payments*. Fill out one form for each plaintiff or defendant (judgment creditor) you want to make payments to.
- Fill out form EJ-165, *Financial Statement*.
- File your completed forms with the small claims court clerk.

The court will mail all other plaintiffs and defendants in the case copies of your *Request to Make Payments* and *Financial Statement,* and a blank form SC-221, *Response to Request to Make Payment*s.

The other parties will have 10 days to file a *Response*. Then, the court will mail all plaintiffs and defendants in the case:

- A decision on the *Request to Make Payments* or
- A notice to go to a hearing.

If the court ordered someone to pay you money, and that person has filed a *Request to Make Payments:*

- If, after reading the *Request*, you agree with the *Request*, you do not need to do anything.
- **If you do not agree** with the *Request* or you want to be paid interest, fill out and file form SC-221, *Response to Request to Make Payments,* within 10 days after the court clerk mailed the *Request* to you. (This date is on the *Clerk's Certificate of Mailing*.) If you do not do this, the court may allow the person who owes you money to make payments. And, you may lose your rights to collect interest on the judgment.

To file your Response:

- Have your *Response* served on all other plaintiffs and defendants in your case. (See form SC-112A, *Proof of Service By Mail*.)
- File your *Response* and *Proof of Service* with the small claims court clerk.

Answers to Common Questions

When is the judgment due?
Unless the court orders otherwise, small claims judgments are due immediately. If the judgment is not paid in full within 30 days, the judgment creditor (party to whom the money is owed) can take legal steps to collect any unpaid amount. (Collection may be postponed if an appeal or a request to vacate (cancel) or correct the judgment is filed.)

When can the judgment debtor make payments?
A party who was ordered to pay a small claims judgment (judgment debtor) can ask the court for permission to make payments. If the court agrees, the party who is owed money (judgment creditor) cannot take any other steps to collect the money as long as the payments are made on time. If payments are not made on time, the judgment creditor can ask the court to order that the remaining balance of the judgment is due and collectible.

Is interest added after the judgment?
Interest is usually added to the unpaid amount of the judgment from the date the judgment is entered until it is paid in full. Interest can only be charged on the unpaid amount of the judgment (the principal); interest cannot be charged on any unpaid interest. If a partial payment is received, the money is applied first to unpaid interest and then to unpaid principal.

When the court allows payments, the court often does not order any interest, as long as all payments are made in full and on time. Unless the judgment creditor asks for interest to be included in the order allowing payments, the judgment creditor may lose any claims for interest. But if the judgment debtor does not make full payments on time, interest can be ordered on the missed payment or the entire unpaid principal.

How do I calculate interest?
If you are asking for interest or disagreeing with a request for interest, you need to explain your interest calculation. Interest may be added to the full unpaid balance of the judgment or only to payments that were not made on time. To calculate interest, show the unpaid principal balance, the dates and number of days you want the court to allow interest on that amount, and the total interest for that period. If payments were made, you will need to make separate calculations for the reduced principal balance after each payment. For more information on the applicable rate of interest and calculating the amount of interest, see *Information Sheet for Calculating Interest and Amount Owed on a Judgment* (form MC-013-INFO).

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[local info here]
Or go to *https://selfhelp.courts.ca.gov/small-claims-advisor*

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SC-220-INFO Payments in Small Claims Cases

General Information

If the court ordered you to pay money, you can ask the court for permission to make payments. Here's how:

- Read this form.
- Fill out Form SC-220, *Request to Make Payments* Fill out one form for each plaintiff or defendant (judgment creditor) you want to make payments to.
- Fill out Form EJ-165, *Financial Statement*
- File your completed forms with the small claims court clerk.

The court will mail all other plaintiffs and defendants in the case copies of your *Request to Make Payments* and *Financial Statement*, this information form, and a blank Form SC-221, *Response to Request to Make Payments* .

The other parties will have 10 days to file a *Response.* Then, the court will mail all plaintiffs and defendants in the case:

- A decision on the *Request to Make Payments* or
- A notice to go to a hearing.

If the court ordered someone to pay you money, and that person has filed a *Request to Make Payments*…

- Read this form and the *Request* .
- If you agree with the *Request*, you do not need to do anything.
- **If you do not agree with the *Request* or you want to be paid interest, file a *Response* within 10 days after the court clerk mailed the *Request* to you.** (This date is on the *Clerk's Certificate of Mailing*.) If you do not do this, the court may allow the person who owes you money to make payments. And, you may lose your rights to collect interest on the judgment.

To file your Response:

- Fill out Form SC-221, *Response to Request to Make Payments*.
- Have your *Response* served on all other plaintiffs and defendants in your case. (See Form SC-112A, *Proof of Service By Mail* .)
- File your *Response* and *Proof of Service* with the small claims court clerk.

Answers to Common Questions

When is the judgment due?
Unless the court orders otherwise, small claims judgments are due immediately. If the judgment is not paid in full within 30 days, the judgment creditor (person to whom the money is owed) can take legal steps to collect any unpaid amount. (Collection may be postponed if an appeal or a request to vacate (cancel) or correct the judgment is filed.)

Can the judgment debtor make payments?
A party who was ordered to pay a small claims judgment (the judgment debtor) can ask the court for permission to make payments. If the court agrees, the party who is owed money (the judgment creditor) cannot take any other steps to collect the money as long as the payments are made on time.

Is interest added after the judgment?
Interest (10 percent per year) is usually added to the unpaid amount of the judgment from the date the judgment is entered until it is paid in full. Interest can only be charged on the unpaid amount of the judgment (the principal); interest cannot be charged on any unpaid interest, If a partial payment is received, the money is applied first to unpaid interest and then to unpaid principal.

When the court allows payments, the court often does not order any interest, as long as all payments are made in full and on time. Unless the creditor asks for interest to be included in the order allowing payments, the creditor may lose any claims for interest. But, if the debtor does not make full payments on time, interest on the missed payment or the entire unpaid balance might become due and collectible.

How do I calculate interest?
If you are proposing a payment schedule that includes interest, you need to itemize the principal and interest for each payment. To do this, you can search on the Internet for "free amortization calculator." Enter the total amount of the judgment as the principal, the interest rate of 10 percent per year, the frequency of payments (monthly, weekly, etc.), and the number or length of payments. Print the results showing the payment amount and how each payment is divided between principal and interest. Attach this to your *Request* or *Response.*

Need help? For free help, contact your county's small claims advisor:
[local info here]

Or go to "County-Specific Court Information" at www.courts.ca.gov/selfhelp-smallclaims

SC-223 Declaration of Default in Payment of Judgment

Clerk stamps here when form is filed.

DRAFT 06.06.2023 Not approved by Judicial Council

Important: Read page 2 if this form was mailed to you or before you fill out this form. If you are the judgment debtor named in (2) and you disagree with this *Declaration of Default in Payment of Judgment*, you may file form SC-224, *Response to Declaration of Default in Payment of Judgment*, within 10 days after the declaration was mailed to you.

(1) I am asking the court to order that the remaining balance of a small claims judgment is now due and collectible because payments were not made as the court ordered.

My name is: _____

Mailing address: _____

_____

Phone: _____ Email *(optional)*: _____

(2) The judgment debtor who has not made payments as the court ordered is *(complete a separate form for each judgment debtor who has not paid as ordered)*:

Name: _____

Mailing address: _____

_____

Phone: _____ Email *(optional)*: _____

Fill in the court name and street address:

Superior Court of California, County of

Fill in your case number and case name:

Case Number:

Case Name:

(3) On *(date)*: _____ the court ordered that the judgment debtor named in (2) must pay me, or someone who assigned the judgment to me, principal, prejudgment interest, and costs in the total amount of $ _____.

(4) On *(date)*: _____ the court ordered that the judgment debtor named in (2) may pay the judgment described in (3) as follows:

a. ☐ Payments of $ _____, on the _____ day of each (month, week, other): _____
starting *(date)*: _____, until *(date of final payment)*: _____ ; amount of final payment: $ _____

b. ☐ Other payment schedule *(specify)*: _____

_____

(5) The payments listed below, and no others, have been made on the judgment described in (3).

☐ Check here if there is not enough space below. List the date and amount of each payment on a separate page and write "SC-223, Item 5" at the top.

Date	Amount	Date	Amount	Date	Amount	Date	Amount

(6) The total amount of the payments that have been made on the judgment described in (3) is $ _____, and the balance due, without adding any interest after the judgment, is $ _____.

(7) I request interest on the judgment, in the amount of $ _____, calculated as follows:

☐ *Check here if there is not enough space below. Explain how you calculated interest on a separate page and write "SC-223, Item 7" at the top.*

_____

_____

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign here*

Default in Payments on Small Claims Judgment

General Information

If the court ordered that another plaintiff or defendant (judgment debtor) may pay a small claims judgment in payments, and that judgment debtor has not made the payments as ordered, you can ask the court to order that the full balance of the judgment is due and collectible. Here's how:

- Fill out page 1 of form SC-223, *Declaration of Default in Payment of Judgment*. Fill out a separate form for each judgment debtor who did not make payments as ordered.
- File your completed form(s) with the small claims court clerk.

The court will mail all other plaintiffs and defendants in the case copies of the *Declaration* and a blank form SC-224, *Response to Declaration of Default in Payment of Judgment.*

The judgment debtor will have 10 days to file a *Response*. Then the court will mail all plaintiffs and defendants in the case:

- A decision, or
- A notice to go to a hearing.

If the court ordered that you may make payments on a judgment, and another plaintiff, defendant, or person to whom the judgment has been assigned (judgment creditor) has filed form SC-223, *Declaration of Default in Payment of Judgment*, asking the court to order that the full balance is now due and collectible because you did not make the payments:

- If, after reading the *Declaration*, you agree with the court ordering that the amounts claimed in the *Declaration* are now due in full, you do not need to do anything.
- **If you do not agree** with the *Declaration* or with the court ordering that the amounts it claims are now due in full, fill out and file form SC-224, *Response to Declaration of Default in Payment of Judgment*, within 10 days after the court clerk mailed the *Declaration* to you. (This date is on the *Clerk's Certificate of Mailing*.)

To file your *Response*:

- Have your *Response* served on the judgment creditor and all other plaintiffs and defendants in your case. (See form SC-112A, *Proof of Service by Mail*.)
- File your *Response* and *Proof of Service* with the small claims court clerk.

Answers to Common Questions

When is the judgment due?
Unless the court orders otherwise, small claims judgments are due immediately. If the judgment is not paid in full within 30 days, the judgment creditor (party to whom the money is owed) can take legal steps to collect any unpaid amount. (Collection may be postponed if an appeal or a request to vacate (cancel) or correct the judgment is filed.)

When can the judgment debtor make payments?
A party who was ordered to pay a small claims judgment (judgment debtor) can ask the court for permission to make payments. If the court agrees, the party who is owed money (the judgment creditor) cannot take any other steps to collect the money as long as the payments are made on time. If payments are not made on time, the judgment creditor can ask the court to order that the remaining balance of the judgment is due and collectible.

Is interest added after the judgment?
Interest is usually added to the unpaid amount of the judgment from the date the judgment is entered until it is paid in full. Interest can only be charged on the unpaid amount of the judgment (the principal); interest cannot be charged on any unpaid interest. If a partial payment is received, the money is applied first to unpaid interest and then to unpaid principal.

When the court allows payments, the court often does not order any interest, as long as all payments are made in full and on time. Unless the judgment creditor asks for interest to be included in the order allowing payments, the judgment creditor may lose any claims for interest. But if the judgment debtor does not make full payments on time, interest on the missed payment or the entire unpaid principal.

How do I calculate interest?
If you are asking for interest or disagreeing with a request for interest, you need to explain your interest calculation. Interest may be added to the full unpaid balance of the judgment or only to payments that were not made on time. To calculate interest, show the unpaid principal balance, the dates and number of days you want the court to allow interest on that amount, and the total interest for that period. If payments were made, you will need to make separate calculations for the reduced principal balance after each payment. For more information on the applicable rate of interest and calculating the amount of interest, see *Information Sheet for Calculating Interest and Amount Owed on a Judgment* (form MC-013-INFO).

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[local info here]

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SC-224 Response to Declaration of Default in Payment of Judgment

Clerk stamps here when form is filed.

DRAFT 07.10.2023 Not approved by Judicial Council

Important: If you disagree with a judgment creditor's *Declaration of Default in Payment of Judgment* (form SC-223), you may file *Response to Declaration of Default in Payment of Judgment* (form SC-224) within 10 days after form SC-223 was mailed to you. Read page 2 before you fill out this form.

1 I am responding to *Declaration of Default in Payment of Judgment* (form SC-223).

My name is: _____

Mailing address: _____

_____

Phone: _____ Email *(optional)*: _____

2 The plaintiff or defendant (judgment creditor) who filed the *Declaration of Default* is:

Name: _____

Mailing address: _____

_____

Phone: _____ Email *(optional)*: _____

Fill in the court name and street address:

Superior Court of California, County of

Fill in your case number and case name:

Case Number:

Case Name:

3 ☐ I agree with the information in the *Declaration of Default*.

4 ☐ I do not agree that the court ordered the payment schedule stated in item 4 of the *Declaration of Default*. *(Describe your disagreement.)*

_____

_____

5 ☐ I do not agree with the dates or amounts of the payments listed in item 5 of the *Declaration of Default*. The payments listed below have been made on the judgment.

☐ *Check here if there is not enough space below. List the date and amount of each payment on a separate page and write "SC-224, Item 5" at the top.*

Date	Amount	Date	Amount	Date	Amount	Date	Amount

6 The total amount of the payments that have been made on the judgment is $ _____, and the balance due, without adding any interest after the judgment, is $ _____ .

7 ☐ I agree that interest in the amount of $ _____ (the amount listed in item 7 of the *Declaration of Default*) may be added to the balance of the judgment.

☐ I do not agree with the interest amount listed in item 7 of the *Declaration of Default*. I believe the correct amount of interest is $ _____, which I calculated as follows:

☐ *Check here if there is not enough space below. Explain how you calculated interest on a separate page and write "SC-224, Item 7" at the top.*

_____

_____

_____

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign here*

Default in Payments on Small Claims Judgment

General Information

If the court ordered that you may make payments on a judgment, and another plaintiff, defendant, or person to whom the judgment was assigned (judgment creditor) has filed form SC-223, *Declaration of Default in Payment of Judgment*, asking the court to order that the full balance is now due and collectible because you did not make the payments:

- Read this form and the *Declaration.*
- If you agree with the court ordering that the amounts claimed in the *Declaration* are now due in full, you do not need to do anything.
- **If you do not agree with the *Declaration* or with the court ordering that the amounts it claims are now due in full, file a *Response* within 10 days after the court clerk mailed the *Declaration* to you.** (This date is on the *Clerk's Certificate of Mailing*.) If you do not do so, the court may order that the balance of the judgment is now due and collectible in full and may also order interest on the unpaid amount of the judgment.

To file your *Response*:

- Fill out form SC-224, *Response to Declaration of Default in Payment of Judgment*.
- Have your *Response* served on all other plaintiffs and defendants in your case. (See form SC-112A, *Proof of Service by Mail*.)
- File your *Response* and *Proof of Service* with the small claims court clerk.

The court will mail all plaintiffs and defendants in the case

- A decision, or
- A notice to go to a hearing.

Answers to Common Questions

When is the judgment due?
Unless the court orders otherwise, small claims judgments are due immediately. If the judgment is not paid in full within 30 days, the judgment creditor (party to whom the money is owed) can take legal steps to collect any unpaid amount. (Collection may be postponed if an appeal or a request to vacate (cancel) or correct the judgment is filed.)

When can the judgment debtor make payments?
A party who was ordered to pay a small claims judgment (judgment debtor) can ask the court for permission to make payments. If the court agrees, the party who is owed money (the judgment creditor) cannot take any other steps to collect the money as long as the payments are made on time. If payments are not made on time, the judgment creditor can ask the court to order that the remaining balance of the judgment is due and collectible.

Is interest added after the judgment?
Interest is usually added to the unpaid amount of the judgment from the date the judgment is entered until it is paid in full. Interest can only be charged on the unpaid amount of the judgment (the principal); interest cannot be charged on any unpaid interest. If a partial payment is received, the money is applied first to unpaid interest and then to unpaid principal.

When the court allows payments, the court often does not order any interest, as long as all payments are made in full and on time. Unless the judgment creditor asks for interest to be included in the order allowing payments, the judgment creditor may lose any claims for interest. But if the judgment debtor does not make full payments on time, interest on the missed payment or the entire unpaid principal.

How do I calculate interest?
If you are asking for interest or disagreeing with a request for interest, you need to explain your interest calculation. Interest may be added to the full unpaid balance of the judgment or only to payments that were not made on time. To calculate interest, show the unpaid principal balance, the dates and number of days you want the court to allow interest on that amount, and the total interest for that period. If payments were made, you will need to make separate calculations for the reduced principal balance after each payment. For more information on the applicable rate of interest and calculating the amount of interest, see *Information Sheet for Calculating Interest and Amount Owed on a Judgment* (form MC-013-INFO).

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SPR23-09
Civil Practice and Procedure: Form Revisions to Implement Senate Bill 1200 (Revise forms EJ-190, EJ-195, JUD-100, MC-012, MC-013-INFO, SC-130, SC-200, SC-220, SC-223, SC-224; revoke SC-220-INFO)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
1.	California Association of Judgment Professionals by Gretchen D. Lichtenberger, Legislative Chairperson	NI	**Suggestions for the revised *Notice of Renewal of Judgment (EJ-195)*:**	
			1) In the Caption area, please add the word "Petitioner" after the word "Plaintiff" and please add the word "Respondent" after the word "Defendant", like on the EJ-130 *Writ of Execution* form. This form is also used in Probate and in Family Cases.	The committee agrees and has added this revision to its recommendations for form EJ-195.
			2) As we suggested in December 2022, we strongly support the removal of the Clerk's signature and the "seal" box in the lower left corner. Renewing a judgment is a ministerial act continuing the Court's jurisdiction by merely extending the period of enforcement of the judgment. Notice should be provided by the judgment creditor. **This form does not require "issuance"**.	The committee agrees, and notes that the version of form EJ-195 included in the circulated proposal reflects this change.
			Statutory History: Code of Civil Procedure sections 683.110-683.220 were created and added in 1982. Prior to 1982, a creditor could only enforce a judgment beyond 10 years from entry by noticed motion. With the enactment of sections 683.110-683.220 in 1982, the renewal process became a ministerial act, not a judicial one. The Legislature *fashioned*	The committee appreciates the information.

	Commenter	Position	Comment	Committee Response
			sections 683.110 et seq. after the Sister State judgment chapter, section 1710.10 et seq. The Sister State process requirements are not ministerial by nature and require that the debtor to be served "*in the manner provided for service of Summons*". Though sections 683.110 et seq. were drawn from sections 1710.10 et seq, **the processes are not analogous**. The EJ-110 *Notice of Entry of Judgment on Sister-State Judgment* form has the "seal" box in the lower left corner because, like a *Summons* forms, service of the EJ-110 gives the court jurisdiction over the served person. The box and the Clerk's signature on the EJ-195 were just improperly carried over from the EJ-110 form. The EJ-195 is not a jurisdictional form and, unlike the EJ-110 or the *Summons*', service of the EJ-195 does not give the court any new jurisdiction over the served Judgment Debtor because the court's jurisdiction is continuing for renewal of judgments. [*Goldman v. Simpson* (2008) 160 Cal. App. 4th 255, 72 Cal. Rptr. 3d 729] Therefore, the box in the lower left corner for the placement of a Court Seal and the Clerk's signature line on the EJ-195 are completely unnecessary. Having that box and signature line there causes a lot of confusion with the Clerks.	

	Commenter	Position	Comment	Committee Response
			3) Regarding the line above item 1: There is always confusion when there is more than one judgment debtor because this form currently indicates "JUDGMENT DEBTOR (name):" in the singular. Our Members debate whether it is correct to add more than one name here or to generate a separate *Notice of Renewal of Judgment* addressed to each Judgment Debtor. We favor a separate *Notice* for each Judgment Debtor for clarity. We suggest the Council amend the form here to indicate its preference. Either the form should state "TO JUDGMENT DEBTOR(S) (*list all names*):" or the form should state "TO JUDGMENT DEBTOR (*name – use one Notice per judgment debtor*):"	The committee is not recommending changes in response to this suggestion because it believes there are situations where sending the same notice to all judgment debtors may be preferable and where sending separate notices to each judgment debtor may be preferable. For example, a judgment creditor might prefer that all judgment debtors receive the same notice so all are aware each debtor received identical notices. In other situations, however, it might not be possible to send each judgment debtor the same notice, for example if the provisions of SB 1200 apply to one judgment debtor but not another. Accordingly, this part of the form has been left unchanged to allow judgment creditors to decide which method best suits their needs.
			Suggestions for the revised *Application for and Renewal of Judgment* (form EJ-190): 1) In the Caption area, please add the word "Original" above/before "Judgment Creditor" next to the check box under the filers name and address information in the upper left corner, like on the EJ-130 *Writ of Execution* form. Also, add the word "Original" before "Judgment Creditor" in the first check box under the title of the	The committee agrees and has added this revision to its recommendations for form EJ-190.

	Commenter	Position	Comment	Committee Response
			form.	
			2) In the Caption area, please add the word "Petitioner" after the word "Plaintiff" and please add the word "Respondent" after the word "Defendant", like in the EJ-130 *Writ of Execution* form. This form is also used in Probate and in Family Cases.	The committee agrees and has added this revision to its recommendations for form EJ-190.
			3) In item 2, please add an area to indicate more than one Judgment Debtor by adding a check box at the lower portion of item 2 for "*Additional judgment debtors on next page*", like presently in item 4 on the EJ-130 *Writ of Execution* form. Then, on page 2, please add two boxes for identifying additional judgment debtors, like presently in item 21 on the EJ-130 *Writ of Execution* form. To make room for this additional judgment debtors' information, there are two possibilities: a) Page 1 can be rearranged slightly by putting the check boxes for "Judgment Creditor" and "Assignee of Record", which are above item 1, onto the same line, like in the upper left corner. In both items 1 & 2, the current EJ-190 form only accommodates two lines of text however the space below those two lines is wasted because it has not been formatted to	The committee agrees and has modified its recommended revisions to form EJ-190 to add a checkbox to item 2 to allow filers to indicate that additional judgment debtors are listed in an attachment.

	Commenter	Position	Comment	Committee Response
			be able to type there. Thus, that extra space could be removed, or in the alternative, the form re-formatted to accommodate three lines of text.	
			In item 3c, the "Recorded" line is wasted. It has a fillable area after that word but what is supposed to go there? 95% or more of renewed judgment with a recorded Abstract only have one such Abstract. However, there are occasions where Abstracts are recorded in more than one County. So, item 3 could be reworked to something like: c. Recorded: (1) Date_ (2) County___ (3) Instrument No.: _____ (4) Date_____ (5) County___ (6) Instrument No.: _____	The committee agrees and has modified its recommended revisions to form EJ-190 to add a checkbox to item 3 to allow filers to indicate that the judgment has been recorded in additional counties, listed in an attachment.
			In Item 4, the space available could accommodate 4 lines of text but currently is formatted for only 3 lines of text. The information for this item does not require more than one line in reality. The space for item 4 could easily be made smaller. All of the above changes should provide about 8 extra lines of text on page 1 so your new item 5j should be able to move to page 1 or the two new areas for additional judgment	The committee is not recommending changes in response to this suggestion because it has modified its recommended revisions to form EJ-190 to add a checkbox to item 2 to allow an attachment listing additional judgment debtors, and thus it is unnecessary to create more space on the form by making the proposed changes.

	Commenter	Position	Comment	Committee Response
			debtors could just be added to item 2 in the newly created space by the above rearranging; b) alternatively, the spaces under items 6a-c could be reduced in size and a check box added under each for an attachment, like page 2 of the SUBP-002 form [ie. " *Continued on Attachment 6a*", " *Continued on Attachment 6b*" and " *Continued on Attachment 6c*". Also, in item 6, the two check boxes for "possession" and for "sale" could be put on the same line.	
			4) There also should be a place to identify additional judgment creditors for judgments where there is *more than one* judgment creditor. It is perfectly legal for just one judgment creditor to renew the judgment for the benefit of *all* judgment creditors. [*Altizer v. Highsmith, et al* (2020) 52 Cal. App. 5th 331]	The committee agrees and has modified its recommended revisions to form EJ-190 to add a checkbox to item 1 allowing the filer to indicate that additional judgment creditors are listed in an attachment.
			5) In item 5, please make items 5a, 5b, 5d and 5f match the similar language on the EJ- 130 *Writ of Execution* form for its items 11, 12, 14, and 16. In item 5a, add "*(as entered or last renewed)*" after "Total judgment". In item 5b, add "*(CCP §685.090)*" after "Costs after judgment". In item 5d, replace the words "*after judgment*" with "*to principal*" after the word "Credit" and add "*(after credit to interest)*" after	The committee agrees and has modified the recommended revisions to form EJ-190 to give items that parallel those on *Writ of Execution* (form EJ-130) the same labels.

	Commenter	Position	Comment	Committee Response
			"Credits after judgment". So, item 5d will read "Credits to principal, *(after credit to interest)*". In item 5f, it should read "*Accrued interest remaining due per CCP §695.210(b)*". The lines to enter the dollar amounts could be moved to the right to accommodate our suggested extra text on each line.	
			6) Regarding your item 5.j: We think having the wording "*check all that apply*" after the words "The money judgment" may cause people to check both boxes (1) and (3) if they are confused, which will cause the Clerk of the Court to be unable to determine whether the renewal is governed by the SB 1200 restrictions. We suggest removing those words. Though very unlikely, if a judgment was based upon BOTH personal debt and medical expenses, it qualifies for the SB 1200 restrictions if *either* box (1) or box (2) is checked.	The committee is not recommending changes in response to this suggestion. The statute does not state that the new provisions do not apply to mixed judgments, *i.e.*, those in which only a portion of the judgment meets the criteria of Code of Civil Procedure section 683.110(c). Because the statute does not limit the provisions of sections 683.110(c) or 683.120(c) to only those judgments based *solely* on claims that meet the criteria, the committee believes the form should allow a filer to identify all the pertinent types of claims on which a judgment is based.
			We suggest the wording be changed as follows for the check boxes: (1) has a principal amount remaining unsatisfied of under $50,000 and ~~is for~~ *was based upon* a claim related to personal debt.	The committee is not recommending changes in response to this suggestion because it believes the current wording more closely tracks the language in the statute and is sufficiently clear as drafted.

	Commenter	Position	Comment	Committee Response
			(2) has a principal amount remaining unsatisfied of under $200,000 and ~~is for~~ *was based upon* a claim related to medical expenses. *(3) is not either of the above.* {Or alternatively:} ~~relates~~ *related* to any other *type of* claims, including *those based upon* claims for personal debt or medical expenses that do not otherwise fit within items (1) or (2).	Regarding the suggested addition of subpart 3, please see previous response.
			We suggest the wording in the box be changed as follows: Note: From the point when the unsatisfied principal amount is below $50,000 for *judgments based upon* personal debt claims or $200,000 for *judgments based upon* medical expense claims, a judgment against a natural person may only be renewed once, for five years from the date an application is filed. (Code Civ. Proc., §§ 683.110 – 683.120.)	Please see previous response.
			Suggestions for the revised *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (form MC-012):	

	Commenter	Position	Comment	Committee Response
			Statutory postjudgment interest is calculated, then declared by the judgment creditor by affidavit. [CCP §685.050(a)(2)] The judgment creditor may use the MC-012 form or a pleading/form declaration to declare the accrued interest, as calculated by the creditor. The judgment creditor signs the MC-012 or pleading/form under penalty of perjury. Then, if the judgment debtor believes the interest calculation is incorrect, it is incumbent upon the judgment debtor to file a motion to vacate/correct the dollar amount of the renewal. [CCP §683.170(a)] The Clerk of the Court has no standing to question the amount of the interest stated by the creditor.	The committee agrees that it is the judgment debtor who has the right to challenge the interest amount claimed. In light of the new statute that provides for differing interest rates, however, the committee continues to recommend that the form identify which rates were applied along with the total interest claimed. Please see response below.
			Regarding item 3: We implore you to not include the words "*at the legal rate or rates of ____%*" because a judgment falling under the restrictions of SB 1200 entered *prior* to January 1, 2023, still accrues 10% interest *prior* to January 1, 2023 and then, due to SB 1200, accrues 5% interest *after* January 1, 2023, so it would be confusing to have this fillable space for those situations. "A basic canon of statutory interpretation is that statutes do not operate retrospectively	The committee appreciates the response. However, in light of all of the comments received on this issue, the committee is recommending that item 3 on form MC-012 be revised to include blanks for specifying the interest rate or rates applied, and to what amounts. The statute is not clear on how to handle mixed judgments, *i.e.*, those in which only a portion of the judgment meets the criteria of Code of Civil Procedure section 683.110(c),

	Commenter	Position	Comment	Committee Response
			unless the Legislature plainly intended them to do so." (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243 [62 Cal. Rptr. 2d 243, 933 P.2d 507].) "Chapter 424 is also, however, a change in a statutory interest rate. It has been settled law in this state for well over 100 years that, although a change in a statutory interest rate applies to a case pending on the effective date of the change, the new rate applies only to interest accruing on and after that date; the former rate applies to interest accruing before that date." (*City of Clovis v. County of Fresno* (2014) 222 Cal. App. 4th 1469) We are already having a problem with the Clerks of the Court thinking the new 5% applies all the way back to the date of entry or of the last renewal. Instead, we suggest you merely add "*(see Information Sheet for Calculating Interest and Amount Owed on a Judgment (form MC-013-INFO))*" to the end of the existing wording.	and creates the possibility that the 5% interest rate will apply to some but not all of the unpaid principal at the time of renewal. Accordingly, the committee believes the form should account for this possibility and allow the filer to indicate that different interest rates have been applied to portions of the unpaid principal. Providing this additional information will allow the judgment debtor to understand how the amount of unpaid interest remaining due has been calculated~~,~~ and enable them to determine whether to challenge the amounts. These revisions do not change the clerk's duties with respect to this form, which remain ministerial only.
			On the top of Page 2, we would also like to request that you add the words *"(Only required when claiming new costs in item*	This suggestion is outside the scope of the current proposal and will be considered by the committee in the future as time and resources

	Commenter	Position	Comment	Committee Response
			1)" just under the words "Proof of Service". CCP §685.070 requires service of the MC-012 upon the judgment debtor when new statutory costs are being claimed, which are claimed in item 1. However, there is no statutory requirement to serve the MC-012 when using the form only to acknowledge credit and/or only to declare interest. This form is a multipurpose form and can be used for just one purpose or can be used for more than one purpose. The Proof of Service page goes ONLY with item 1. There are several Judicial Council forms which are multipurpose, like the CIV-100.	allow.
			Suggestions for the revised *Information Sheet for Calculating Interest and Amount Owed on a Judgment (form MC-013-INFO*: We suggest the following changes: Page 1: Accrued Interest (See Code Civ. Proc., §§ 685.010, 685.020(a), *685.050(a)(2)* and Cal. Const., art. XV, § 1.)	The committee is not recommending changes in response to this suggestion because Code of Civil Procedure section 685.050(a)(2) concerns writs of execution, rather than the interest rate and when it begins accruing.
			Interest accrues on ~~an~~ *the* unpaid *principal of a* judgment at the following legal rates:	The committee agrees and has modified the recommended revisions to form MC-013-INFO accordingly.

	Commenter	Position	Comment	Committee Response
			• The rate of interest is 10% per year unless one of the following lower interest rates apply. • The rate of interest is 7% per year if the judgment debtor (the party who owes the money) is a state or local government entity. • The rate of interest is 5% per year if the judgment debtor is a natural person and the judgment meets all of the following requirements: The judgment was entered or renewed after January 1, 2023.	
			• The judgment ~~is for~~ *was based upon* a claim related either to personal debt (and the unpaid principal amount is under $50,000) or medical expenses (and the unpaid principal amount is under $200,000). • The judgment is not based on tortious or fraudulent conduct or for unpaid wages, damages, or penalties owed to an employee.	The committee has modified the recommended revisions to this bullet point to read, "The judgment is <u>on</u> a claim related either to personal debt . . ." to track the statutory language.
			Note that for judgments that otherwise meet these requirements, the interest	The committee agrees that this section of form MC-013-INFO could be clearer about

	Commenter	Position	Comment	Committee Response
			rate will change from 10% to 5% once the unpaid principal falls below the above amounts. *Additionally, for judgments that otherwise meet these requirements and were entered prior to January 1, 2023, interest accrues at 10% per year prior to January 1, 2023 and accrues at 5% per year after January 1, 2023*.	when to apply the 5% interest rate and has modified the recommended revisions to this section of the form so that it more closely tracks the statutory language.
			Interest generally accrues from the date the judgment is entered. Interest begins to accrue on the amount of costs added to a judgment from the date ordered by the court or from the date costs are allowed following expiration of the time to object. *(Code Civ. Proc., §685.070(d).)*	The committee is not recommending changes in response to this suggestion because it is not possible to add citations within the text to all applicable code sections. Instead, citations to the applicable sections of the California Code of Civil Procedure have been added to the form's footer, for consistency with similar forms.
			If the judgment is payable in installments, interest accrues from the date each installment is due. ~~On~~ *For* renewal of a judgment, unpaid interest that has accrued is added to the principal of the judgment and interest begins to accrue *on the total renewed amount* on the day the renewed judgment is entered.	The committee agrees and has modified the recommended revisions to form MC-013-INFO accordingly.
			Requesting Costs and Interest To have costs and interest added to the	This suggestion is outside the scope of the current proposal and will be considered by the committee in the future as time and resources

	Commenter	Position	Comment	Committee Response
			enforceable amount owed, the judgment creditor must file and serve a *Memorandum of Costs After Judgment* (form MC-012). On that form, the judgment creditor must include the exact amount of all costs and accrued interest. This means the judgment creditor is responsible for calculating the amount of interest that accrues on the judgment. It is useful to update this calculation after receiving payments. *To declare interest only, or acknowledging credits, without claiming new costs, the judgment creditor may use either the Memorandum of Costs After Judgment (form MC-012) or a pleading declaration signed under penalty of perjury.*	allow.
			Suggestions for the revised *Request to Make Payments (SC-220)*: Page 1: We are not sure why the words "small claims" are highlighted in item 1 because the existing form has those words already?	The committee is highlighting the words because it is recommending changing the font to make them bold.
			Page 2: We suggest the following slight changes: **When can the judgment debtor make payments?**	The committee is not recommending changes in response to this suggestion because the current wording is consistent with other forms, such as form SC-223. The word "the" has also been deleted from "(the judgment

	Commenter	Position	Comment	Committee Response
				creditor)".
			A party who was ordered to pay a small claims judgment (*the* judgment debtor) can ask the court for permission to make payments. If the court agrees, the party who is owed money (the judgment creditor) cannot take any other steps to collect the money as long as the payments are made on time. If payments are not made on time, the judgment creditor can ask the court to order that the remaining balance of the judgment is due and collectible.	
			Is interest added after the judgment? Interest*, at the applicable statutory rate,* is usually added to the unpaid amount of the judgment from the date the judgment is entered until it is paid in full. Interest can only be charged on the unpaid amount of the judgment (the principal); interest cannot be charged on any unpaid interest. If a partial payment is received, the money is applied first to unpaid interest and then to unpaid principal.	The committee is not recommending changes in response to this suggestion. The committee believes the "How do I calculate interest?" section of the form is sufficient to let filers know that interest must be calculated in a specific way, and that form MC-013-INFO, which is cross-referenced on this form, gives the necessary information about statutory interest rates.
			Suggestions for the revised *Payments in Small Claims Cases (SC-220-INFO)*: It makes perfect sense to revoke this form due to duplicity with page 2 of SC-220.	The committee acknowledges the commenter's support for revoking form SC-

	Commenter	Position	Comment	Committee Response
				220-INFO.
			Suggestions for the revised *Declaration of Default in Payment of Judgment (SC-223)*: Page 2: We suggest the following slight change: **How do I calculate interest?** If you are asking for interest or disagreeing with a request for interest, you need to explain your interest calculation. Interest*, at the applicable statutory rate,* may be added to the full unpaid balance of the judgment or only to payments that were not made on time. To calculate interest, show the unpaid principal balance, the dates and number of days you want the court to allow interest on that amount, and the total interest for that period. If payments were made, you will need to make separate calculations for the reduced principal balance after each payment. For more information on the applicable rate of interest and calculating the amount of interest, see *Information Sheet for Calculating Interest and Amount Owed on a Judgment* (form MC-013-INFO).	Please see response to a similar proposed change to form SC-220, above.
			Suggestions for the revised *Response to*	

	Commenter	Position	Comment	Committee Response
			***Declaration of Default in Payment of Judgment (form SC-224)*:** Page 2: We suggest the following slight change: **How do I calculate interest?** If you are asking for interest or disagreeing with a request for interest, you need to explain your interest calculation. Interest*, at the applicable statutory rate,* may be added to the full unpaid balance of the judgment or only to payments that were not made on time. To calculate interest, show the unpaid principal balance, the dates and number of days you want the court to allow interest on that amount, and the total interest for that period. If payments were made, you will need to make separate calculations for the reduced principal balance after each payment. For more information on the applicable rate of interest and calculating the amount of interest, see *Information Sheet for Calculating Interest and Amount Owed on a Judgment* (form MC-013-INFO).	Please see previous response.
			Suggestions for the revised *Judgment (form JUD-100)*:	

SPR23-09
Civil Practice and Procedure: Form Revisions to Implement Senate Bill 1200 (Revise forms EJ-190, EJ-195, JUD-100, MC-012, MC-013-INFO, SC-130, SC-200, SC-220, SC-223, SC-224; revoke SC-220-INFO)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			Page 1, item 1: We suggest the following slight changes: a. Defendant was properly served with a copy of the *operative* summons and *operative* complaint. b. Defendant failed to answer the *operative* complaint or appear and defend the action within the time allowed by law.	The committee is not recommending changes in response to this suggestion. The word "operative" is not plain language and could be difficult for some users to understand. Additionally, in some situations it might be incorrect or confusing to refer to the operative complaint on form JUD-100, for example where a judgment is entered and then the complaint is amended, such that the operative complaint in the proceeding is not the complaint on which judgment is entered.
			Page 2, item 6e: We suggest the following change: *As provided in Code Civ. Proc., §§ 683.110, 685.010,* ~~Judgment debtor~~ *the person against whom judgment is entered (judgment debtor)* is a natural person, and ~~$ of this judgment is on a claim related to medical expenses or personal debt as provided in Code Civ. Proc., §§ 683.110, 685.010~~. $_____of this judgment is on a claim related to medical expenses $_____of this judgment is on a claim related to personal debt. Though we don't anticipate any judgment	The committee agrees and has modified the recommended revisions to form JUD-100 accordingly.

	Commenter	Position	Comment	Committee Response
			would be for both types of claims in the same case, just for clarity it is important to differentiate because the way you currently propose the language, if the amount entered is, say for example $60,000, that amount would be within the statutory range for medical expenses but outside the statutory range for personal debt. Thus, it would still be unclear if SB 1200 statutory language changes would apply to that particular judgment.	
			Thank you so much for revising the judgment forms to accommodate SB 1200's changes. Last year, we fought hard in an effort to have Senator Skinner make her Bill prospective, however, she steadfastly refused. We wanted all judgments moving forward to so state that the judgment was for personal debt or medical expenses. Though it is not codified yet, at least your judgment forms will contain the information beginning January 1, 2024. Thank you. Unfortunately, should AB 1119 pass in any iteration related to "consumer debt", this form may need to be further revised again next year to include its definition of "consumer debt". We are again urging Assemblymember Wicks to make her Bill	The committee appreciates the information.

	Commenter	Position	Comment	Committee Response
			prospective and to codify that all judgment will so state the required information.	
			Suggestions for the revised *Notice of Entry of Judgment (form SC-130)*: Page 1, item 10: We suggest the following change: *As provided in Code Civ. Proc., §§ 683.110, 685.010,* ~~Judgment debtor~~ *the person against whom judgment is entered (judgment debtor)* is a natural person, and ~~$ of this judgment is on a claim related to medical expenses or personal debt as provided in Code Civ. Proc., §§ 683.110, 685.010~~. $ _____of this judgment is on a claim related to medical expenses $_____of this judgment is on a claim related to personal debt. Though we don't anticipate any judgment would be for both types of claims in the same case, just for clarity it is important to differentiate because the way you currently	The committee agrees and has modified the recommended revisions to form SC-130 accordingly. This change has also been made to the recommended revisions in form SC-200.

	Commenter	Position	Comment	Committee Response
			propose the language, if the amount entered is, say for example $60,000, that amount would be within the statutory range for medical expenses but outside the statutory range for personal debt. Thus, it would still be unclear if SB 1200 statutory language changes would apply to that particular judgment.	
			Request for Specific Comments Regarding further revision to item 5j on the EJ-190 form: We do not see the need to include the exemption language of CCP §§683.110(d)(2)/685.010(a)(2)(C)(ii) because that language was only included in the statutes to placate a particular stakeholder to move their opposition to neutral. The statutory language defines what types of judgments are included in the statutory restrictions; thus, all other types are excluded by law, regardless of any stated exemptions. There are so many other types of judgments that are also "exempt", though not listed particularly in those statutes.	The committee appreciates the response, but in light of all of the comments received on this issue, has modified the recommended revisions to form EJ-190 to add the exemption language of Code of Civil Procedure section 683.110(d)(2) to the note under item 5j. The committee believes including this information will help self-represented litigants fill out the form.
			Regarding the removal of the Clerk's signature on the EJ-195 form: Because a renewal of a judgment is ministerial and is simply an act of continuing jurisdiction, the	The committee acknowledges the commenter's support for removing the clerk's signature from form EJ-195.

	Commenter	Position	Comment	Committee Response
			Notice of Renewal of Judgment is no different than any other "notice" provided to a party.	
			Regarding further revision to the proposed new items added to JUD-100, SC-130, and SC-200 (items 6c, 10, and 9, respectively): See Specific Comments above for EJ-190 form.	See responses to previous comments.
			Yes, we believe your Proposal appropriately addresses the stated purpose. Thank you for your consideration of our current suggestions. Should you need any further clarification or have any questions, please do not hesitate to contact me.	The committee appreciates the response.
2.	Orange County Bar Association by Michael A. Gregg, President	AM	1. The proposal appropriately addresses the stated purpose.	The committee appreciates the response.
			2. Question 5j on the form EJ-190 should be further expanded to account for the exception in SB 1200 for "debts incurred due to, or obtained by tortious or fraudulent conduct or judgments for unpaid wages, damages, or penalties owed to an employee." The purpose of these forms is, in part, for lay persons to complete the forms properly without legal training. Referring to numerous sections of	The committee agrees, and in light of all of the comments received on this issue, has modified the recommended revisions to form EJ-190 to add the exemption language of Code of Civil Procedure section 683.110(d)(2) to the note under item 5j. The committee believes including this information will help self-represented litigants fill out the form.

	Commenter	Position	Comment	Committee Response
			the Code of Civil Procedure is antithetical to the goal of the form.	
			3. The committee does not believe the form needs to be modified to require a signature from the court clerk, and believes the attorney's signature is appropriate.	The committee acknowledges the commenter's support for removing the clerk's signature from form EJ-195.
3.	Superior Court of California, County of Los Angeles by Bryan Borys, Director of Research and Data Management	AM	The following comments are submitted on behalf of the Los Angeles Superior Court. Regarding EJ-190, Application for and Renewal of Judgment form: o Section 5j(3) should further describe the criteria for exemptions regarding "debts incurred due to, or obtained by tortious or fraudulent conduct or judgments for unpaid wages, damages, or penalties owed to an employee."	The committee appreciates the response, and in light of all of the comments received on this issue, has modified the recommended revisions to form EJ-190 to add the exemption language of Code of Civil Procedure section 683.110(d)(2) to the note under item 5j. The committee believes including this information will help self-represented litigants fill out the form.
			Regarding EJ-195 Notice of Renewal of Judgment form: o EJ-195 should be signed by the judgment creditor.	The committee acknowledges the commenter's support for removing the clerk's signature from form EJ-195.
			o Item 1b: The phrase "(The judgment creditor should check 1b if the judgment is a money judgment...)" is unclear and should be revised if it remains on the form.	The committee is not recommending changes in response to this suggestion. "Money judgment" is a term of art referring to a judgment requiring the payment of money and is used to distinguish such judgments

	Commenter	Position	Comment	Committee Response
				from those requiring a party to take other action. The language in item 1b mirrors the language in the applicable Code of Civil Procedure sections, including 683.050, 683.110, 683.120, and 685.010.
			Regarding MC-012 Memorandum of Costs after Judgment, Acknowledgement of Credit and Declaration of Accrued Interest form: o Item 3: To clarify that the interest rate used should be applicable to the cause of action, suggest replacing "I declare interest accruing at the legal rate..." with "I declare interest accruing under the rate or rates of..."	The committee appreciates the response, and in light of all of the comments received on this issue, has modified the recommended revisions to item 3 on form MC-012 to include items for specifying the interest rate or rates and the amount of principal to which they are being applied.
			Regarding MC-013-INFO Information Sheet for Calculating Interest and Amount Owed on a Judgment form: o Page 2, line 1: A typo exists in the sentence "...to assist with the calculation of interest on a judgments..."	Page 2, line 1 of form MC-013-INFO has been revised to make this correction.
			Regarding SC-130 Notice of Entry of Judgment (Small Claims) form: o Page 2, Section e. WRIT OF EXECUTION:	Page 2, section e of form SC-130 has been revised to make these corrections.

	Commenter	Position	Comment	Committee Response
			Missing a parenthesis before "form" There exists an extra space between the "3" and "0"	
			Suggest changing "Law Officer" to "levying officer" for clarity to litigants	The committee is not recommending changes in response to this suggestion. The committee believes the current language will be less confusing for self-represented litigants, and that directing filers to form EJ-130 for more information is sufficient to help them understand what "law officer" means in this context. Additionally, this section of form SC-130 was not modified as part of the current proposal.
			o Page 2, section f. ABSTRACT OF JUDGMENT: Suggest adding language about having an Abstract of Judgment issued by the court before the sentence "You can get a lien by filing an Abstract..."	The committee is not recommending changes in response to this suggestion. The committee believes the current language is sufficient to help filers understand what steps they need to take to have an abstract issued.
			Regarding SC-145 Request to Pay Judgment to Court form: o Will the Judicial Council provide guidance on how to assess interest (per Code of Civil Procedure 116.840) for judgments entered between 01/01/2023 and the effective date for the new forms? Clerks	Changes to form SC-145 are beyond the scope of this proposal, but the committee will consider this suggestion as time and resources allow. As to calculating interest, the statute provides that for judgments entered after January 1, 2023, judgments under certain monetary

	Commenter	Position	Comment	Committee Response
			will not know what rate to use when calculating interest on this form for judgments entered prior to the proposed modification.	thresholds (which the small claims jurisdictional limits fall under) on claims for personal debt or medical expenses accrue interest at 5% per annum. Interest generally accrues at 10% on judgments on other claims. See Code of Civil Procedure section 685.010.
			Regarding SC-220 Request to Make Payments form: o Page 1, Section 1 & 2: Add optional email address fields (to conform with SC-223 and SC-224)	The committee agrees and has added this change to the recommended revisions to form SC-220.
			o Page 2: Add "(judgment debtor)" to the phrase "If the court ordered someone to pay you money..." to be consistent throughout the form.	The committee is not recommending changes in response to this suggestion. Typically, explanatory parentheticals with formal legal terms for a person or party, such as "judgment debtor," are included when the person or party is referred to in the third person ("a party," "a person") but not in when the person or party is referred to in the second person ("you").
			o Page 2, Answers to Common Questions, When is the judgment due?: "...the judgment creditor (person to whom the money is owed)" should be replaced with "(party to whom the money is owed," as creditors may be a business/organization or public entity.	The committee agrees and has added this change to the recommended revisions to forms SC-220, SC-223, and SC-224.
			o Page 2, Answers to Common	The committee has added the following

	Commenter	Position	Comment	Committee Response
			Questions, Is interest added after the judgment?: The last sentence in this section "But if the judgment debtor does not make full payments on time, interest on the missed payment or the entire unpaid principle" is an incomplete sentence.	change to the recommended revisions to page 2 of form SC-220: "But if the judgment debtor does not make full payments on time, interest <u>can be ordered</u> on the missed payment or the entire unpaid principal."
			o Page 2, Answers to Common Questions, How do I calculate Interest?: Suggest consistency when referring to amounts (eg: "unpaid amount of judgment," "full unpaid balance," "unpaid principle balance," (as seen in SC-223), versus "full balance of the judgment is due and collectible," "full balance is now due," "amounts claimed," "amounts it claims are now due in full" (as seen in SC-223 and SC-224)).	The committee is not recommending changes in response to this suggestion. The context of the "How do I calculate interest?" section of form SC-223 is different from the context of the "General Information" section, and the committee believes it makes sense to use different terms in these different contexts. However, the committee will review these suggestions next time these forms are revised and consider whether different terms should be used in either context.
			Regarding SC-223 Declaration of Default in Payment of Judgment form: o Page 1, Important: Suggest providing a definition of "judgement debtor" in this section for consistency, as it is defined in other forms.	The committee is not recommending changes in response to this suggestion. Although the forms do typically provide a definition of "judgment debtor," here the form is directing the user to another section of the form that defines the term. The committee believes this is sufficient to help readers who are unfamiliar with the term figure out what it means and understand the instruction provided at the top of the form.
			Replace "Read the other side..." with "Read page 2 of this form..."	The committee agrees and has added this change to the recommended revisions to

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

	Commenter	Position	Comment	Committee Response
				forms SC-220, SC-223, and SC-224.
			o Page 1, Section 3: Suggest replacing "...principle, prejudgment interest, and costs in the total amount of $" with "...total judgment in the amount of $," as prejudgment interest should already be included in the principle amount	The committee is not recommending changes in response to this suggestion. Judgments can list prejudgment interest separately from the principal, so the committee believes that including prejudgment interest in the list of items to be added together on this line will help ensure that filers do not leave prejudgment interest out of the total amount.
			o Page 1, Section 4: Increase the width of the $ amount line, and decrease the "day of the month" line	The committee agrees and has added this change to the recommended revisions to form SC-223.
			o Page 2, General Information, The Judgment debtor will have 10 days to file a Response: Suggest replacing it with "...10 calendar days..."	The committee is not recommending changes in response to this suggestion. Judicial Council forms generally use "days" to mean "calendar days," so saying "10 days" in the General Information section of form SC-223 is consistent with the rest of form SC-223 and the other forms related to judgment, such as form SC-224. Where the term "calendar days" appears on forms SC-223 and SC-224, it has been changed to "days" for consistency.
4.	Superior Court of California, County of Orange	AM	***Civil Practice and Procedure: Form Revisions to Implement Senate Bill 1200 – SPR23-09*** **Form EJ190**	The committee is not recommending changes in response to this suggestion. The committee believes the section just above item 1, where the filer indicates who is applying for the renewal, is sufficient to explain whose name

	Commenter	Position	Comment	Committee Response
			• Section 1, add an instruction in parenthesis to guide user as who the Applicant is (attorney, judgment creditor, or assignee of record and if the applicant's name must match the judgment).	and information should be listed in item 1. It is not necessary for the applicant's name to match the judgment because an assignee can file a renewal but will not necessarily be named on the original judgment.
			• Section 3c Recorded, add an instruction in parenthesis to indicate that information is (required if previously recorded).	The committee is not recommending changes in response to this suggestion. The committee believes the instruction is implicit in the wording of the item, similar to item 4 on this form.
			• Section 5f, add an instruction in parenthesis stating (interest accrues at the rate of 5% per year for judgments entered on or after January 1, 2023).	The committee is not recommending changes in response to this suggestion. The rate of interest will be different in different situations, and the filer will need to determine the appropriate interest.
			Specific Comments *Does the proposal appropriately address the stated purpose?* Yes, the proposal addresses the reasons why modifications to forms EJ190 and EJ195 must be revised according to legislation.	The committee appreciates the response.
			Should item 5j on form EJ-190 be further revised to account for SB 1200's exemption for "debts incurred due to, or obtained by tortious or fraudulent conduct or judgments for unpaid wages, damages, or penalties	The committee appreciates the response. However, in light of all the comments received on this issue, the committee has modified the recommended revisions to form EJ-190 to add the exemption language of

	Commenter	Position	Comment	Committee Response
			owed to an employee"? No. If fraud or tortious is the cause of the debt, the debtor may file a motion and present evidence for the court to consider and rule.	Code of Civil Procedure section 683.110(d)(2) to the note under item 5j. The committee believes including this information will help self-represented litigants fill out the form.
			Should form EJ-195 be further revised to be signed by the judgment creditor (or the creditor's attorney) rather than issued by the court clerk? No. Section 4 states a copy of the *Application for and Renewal of Judgment* is attached which bears the applicant's date and signature.	The committee appreciates the response. However, in light of the comments received, the committee has kept the recommendation to revise the form to indicate that it can be signed by the judgment creditor rather than issued by the clerk.
			Would the proposal provide cost savings? If so, please quantify. No. *What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?*	The committee appreciates the information.

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

	Commenter	Position	Comment	Committee Response
			A revision of the current procedure will be required. An e-Learning video on how to process the forms may be helpful, but not required. *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes. *How well would this proposal work in courts of different sizes?* Our court is a large court, and this could work for Orange County.	
5.	Superior Court of California, County of San Diego by Mike Roddy, Executive Officer	AM	**Request for Specific Comments** Does the proposal appropriately address the stated purpose? **Yes.**	The committee appreciates the response.
			Should item 5j on form EJ-190 be further revised to account for SB 1200's exemption for "debts incurred due to, or obtained by tortious or fraudulent conduct or judgments for unpaid wages, damages, or penalties owed to an employee"?	The committee appreciates the response, and in light of all of the comments received on this issue, has modified the recommended revisions to form EJ-190 to add the exemption language of Code of Civil Procedure section 683.110(d)(2) to the note under item 5j. The committee believes including this information

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

	Commenter	Position	Comment	Committee Response
			Yes, further revisions to item 5j to account for SB 1200's exemptions would be useful.	will help self-represented litigants fill out the form.
			Should form EJ-195 be further revised to be signed by the judgment creditor (or the creditor's attorney) rather than issued by the court clerk? **Yes. There is no statutory requirement that the clerk issue the notice of renewal of judgment. Eliminating the clerk issuance would streamline the renewal process for litigants and would reduce workload for court staff.**	The committee acknowledges the commenter's support for removing the clerk's signature from form EJ-195.
			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? **If the proposal to change who signs the Notice of Renewal of Judgment is adopted, our court's internal procedures will need to be revised.** Would three months from Judicial Council	The committee appreciates the information.

	Commenter	Position	Comment	Committee Response
			approval of this proposal until its effective date provide sufficient time for implementation? **Yes, provided the final versions of the forms are provided to the court at that time. This will ensure that the court is able to provide training to staff and update its internal procedures.** How well would this proposal work in courts of different sizes? **It appears the proposal would work for courts of various sizes.**	
			General Comments **EJ-190:** Propose that a clerk's certificate be added to the bottom of page two of the form. Litigants regularly request a certified copy to provide to the County Recorder's Office.	This suggestion is beyond the scope of this proposal, but the committee will consider it as time and resources allow.
			EJ-195, Item 2: Propose changing "this court" to "the court" to reflect that the notice is being provided by the judgment debtor and not the court clerk. No additional Comments.	The committee agrees and has added this change to the recommended revisions to form EJ-195.

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

	Commenter	Position	Comment	Committee Response
6.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) (TCPJAC/CEAC Joint Rules Subcommittee)	AM	The JRS notes the following impact to court operations: • *Impact on existing automated systems:* Case management system will need to be updated – e.g., EJ-195 (Notice of Renewal) is currently generated by the case management system and not filed by a party, and SC-130 (Notice of Entry of Judgment) is generated from the case management system as well. • *Results in additional training*: Updated procedures will need to be provided to processing employees, but suggested changes should have minimal impact. Strongly support the party/attorney signing EJ-195 (Notice of Renewal of Judgment), as it will remove unnecessary work and prevent non-ministerial work from the clerk's process, streamline the renewal process for the judgment creditor and provide more information to the judgment debtor. • *Increases court staff workload*: Unless the court simply relies on	The committee appreciates the information.

	Commenter	Position	Comment	Committee Response
			creditor representations and calculations, workload will be increased for either judicial officers or research attorneys to confirm accuracy before renewal order is issued. The JRS also notes that the proposal is required to conform to a change of law.	
			<u>Suggested Modifications</u> 1. EJ-190 (Application for and Renewal of Judgment), para. 5 and EJ-195 (Notice of Renewal of Judgment), para. 1 a. & b. Recommend referencing applicable code sections.	The committee agrees and a note listing the applicable code sections is already among the recommended revisions to form EJ-190 item 5. The committee has also modified the recommended revisions to form EJ-195 by adding a citation to the applicable code sections at the end of item 1.
			2. JUD –100 (Judgment), para. 6e. Recommend modifying to: "<u>and</u>/or personal debt…."	The committee has modified the recommended revisions to item 6(e) of form JUD-100 in response to another comment, and it now has one field for medical expense claims and another for personal debt claims.
			3. MC-012 (Memorandum of Costs), para. 3, allows for multiple interest rates. Recommend also including spaces for the different principle amounts i.e., "for principal amount of ___, interest rate is __% and for	The committee agrees, and in light of all of the comments received on this issue, is recommending a modified item 3 on form MC-012 that includes items in which to specify the rate or rates of interest being charged and the amount of principal to which

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

	Commenter	Position	Comment	Committee Response
			principal amount of ___, interest rate is __%.	it is being applied.
			4. Recommend a new response form similar to MC-224 (Response to Declaration of Default in Payment of Judgement) for a judgment debtor responding to EJ-190. A form would be especially helpful for litigants responding to judgments for consumer debt instead of having to self-draft a motion or objection.	Creating a new form is beyond the scope of this proposal, but the committee will consider this suggestion as time and resources allow.
			5. SC-224 (Response to Declaration of Default in Payment of Judgment). Recommend adding language that allows the judgment debtor to challenge the judgment creditor's characterization of the type of debt and corresponding interest rate.	The committee agrees and has added a revision of item 7 of form SC-224 to its recommendation. It now has two checkboxes, one for "I agree that interest in the amount of $___ (the interest amount listed in item 7 of the Declaration of Default) may be added" and one for "I do not agree with the interest amount listed in item 7 of the Declaration of Default. I believe the correct amount of interest is $___, which I calculated as follows:".
			Response to request for specific comments: 1. Yes, the proposal appropriately addresses the stated purpose.	The committee appreciates the response.
			2. Yes, recommend that EJ-190, para 5j be further revised to account for SB 1200's exemptions.	The committee appreciates the response, and in light of all of the comments received on this issue, has modified the recommended

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	Commenter	Position	Comment	Committee Response
				revisions of form EJ-190 to add the exemption language of Code of Civil Procedure section 683.110(d)(2) to the note under item 5j. The committee believes including this information will help self-represented litigants fill out the form.
			3. Yes, EJ-190 should be further revised to be signed by the judgment creditor/attorney rather than issued by the clerk.	The committee acknowledges the commenter's support for removing the clerk's signature from form EJ-195.
			Response to request for courts' comments: 1. No, the proposal will likely not provide cost savings. 2. As stated above, the proposal will require some updating of procedures and case management systems – not anticipated that there will be significant impact. 3. 3 months should be sufficient time for implementation but may depend on CMS vendor. 4. Do not anticipate that court size will be a factor in how well the proposal works.	The committee appreciates the information.

Item number: 08

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Unlawful Detainer: Forms to Reflect Existing Law and Implement Senate Bill 1017 and Assembly Bill 1726

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Approve form UD 110P; revise forms SUM 130, UD 101, UD 105, UD 110, and UD 110S

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

*Staff contact (*name, phone and e-mail*): James Barolo, 415-865-8928, james.barolo@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): November 1, 2022
Project description from annual agenda: Item 5: 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.

Item 6: 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.

Item 7: 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.

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

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

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

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

- **Form Descriptions** (for any proposal with new or revised forms)
  ☒ The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is

checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

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

Judicial Council *of* California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-
For business meeting on September 18–19, 2021

Title
Unlawful Detainer: Forms to Reflect Existing Law and Implement Senate Bill 1017 and Assembly Bill 1726

Rules, Forms, Standards, or Statutes Affected
Approve form UD-110P; revise forms SUM-130, UD-101, UD-105, UD-110, and UD-110S

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 14, 2023

Contact
James Barolo, 415-865-8928
james.barolo@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends the approval of one and revision of five unlawful detainer forms. These new and revised forms (1) implement a new law creating a new procedure for partial evictions, (2) implement a new law providing additional time for certain defendants to respond to a summons for unlawful detainer, and (3) update the forms to reflect current law regarding COVID-19 rental protections.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2024:

1. Approve *Judgment—Unlawful Detainer Partial Eviction Attachment* (form UD-110P) for use when a partial eviction is ordered under new Code of Civil Procedure section 1174.27;

2. Revise *Summons—Eviction* (form SUM-130) to reference the additional time that somebody served through the Secretary of State's address confidentiality program has to respond to a summons;

3. Revise *Plaintiff's Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) and *Answer—Unlawful Detainer* (form UD-105) to remove COVID-19 tenant protections that no longer apply, update other defenses, and make non-substantive formatting changes; and

4. Revise *Judgment—Unlawful Detainer* (form UD-110) and revise, retitle, and renumber *Judgment—Unlawful Detainer Attachment* (form UD-110S) to *Judgment—Unlawful Detainer Habitable Premises Attachment* (form UD-110H) to reflect the new partial eviction procedure and new form UD-110P and to make non-substantive formatting changes.

The new form and revised forms, with all changes highlighted, are attached at pages 10–22.

Relevant Previous Council Action

Summons—Unlawful Detainer—Eviction (form SUM-130) was initially adopted by the Judicial Council as *Summons—Unlawful Detainer* (form 982(a)(11)) and renumbered in 2004. The form has been revised several times, most recently effective January 1, 2023, to expand use of the mandatory form to expressly include forcible entry and forcible detainer proceedings.

Plaintiff's Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer (form UD-101) was adopted by the council effective October 5, 2020, for courts to determine whether judgments may issue on unlawful detainer cases in light of COVID-19 tenant protections provided by Assembly Bill 3088 (Stats. 2020, ch. 37). At the same time, the council also revised *Answer—Unlawful Detainer* (form UD-105) to aid defendants in responding to the allegations in new form UD-101 and raising new defenses available under AB 3088. The council further revised these forms in December 2020; May, July, and October 2021; and April and July 2022 to reflect further changes to the law regarding COVID-19 tenant protections.

Judgment—Unlawful Detainer (form UD-110) and *Judgment—Unlawful Detainer Attachment* (form UD-110S) were adopted effective January 1, 2003, and have not been revised since.

Analysis/Rationale

This recommendation to revise the council's unlawful detainer forms implements Senate Bill 1017 and Assembly Bill 1726, and reflects changes in the law on COVID-19 rental protections. These new and revised laws are summarized below, followed by an explanation of the form revisions that the committee recommends in response.

Senate Bill 1017

In September 2022, Governor Gavin Newsom signed Senate Bill 1017 (Stats. 2022, ch. 558),[1] which, effective January 1, 2023, made several changes to unlawful detainer actions based on an act of abuse or violence against a tenant.

[1] SB 1017 is available at *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB1017*.

Code of Civil Procedure section 1161.3[2] provides that a landlord cannot terminate a tenancy (or fail to renew a tenancy) based on documented abuse or violence against a tenant unless certain conditions apply. SB 1017 expanded this protection against eviction in several ways. First, the protection now applies to documented abuse against a tenant's immediate family member. (§ 1161.3(b).) Second, SB 1017 provides that a tenant may not be evicted because of acts that are "against a tenant, a tenant's immediate family member, or a tenant's household member" and that constitute certain crimes. (§ 1161.3(b); Civ. Code, § 1946.7(a)(6)–(8).) Third, SB 1017 broadened the definition of "documentation evidencing abuse or violence" in section 1161.3 to allow that "[a]ny other form of documentation or evidence that reasonably verifies that the abuse or violence occurred" is also sufficient. (§ 1161.3(a)(2)(D).)

In addition, SB 1017 created a new partial eviction procedure that applies when the perpetrator and the victim are both tenants in residence of the same unit. In such situations, the court is directed to proceed with a new process laid out in section 1174.27.[3] Importantly, the complaint must include a cause of action based on an act of abuse or violence against a tenant, a tenant's immediate family member, or a tenant's household member, and the tenant must invoke section 1161.3(d)(2) as an affirmative defense in order for the court to grant a partial eviction.

If those prerequisites are met and the court determines that there is documentation evidencing abuse and there is no other basis for the unlawful detainer, then the defendant raising the affirmative defense cannot be found guilty of an unlawful detainer, cannot be named in a judgment in favor of the landlord, and cannot be held liable to the landlord for any amount related to the unlawful detainer.

If there is a showing that another defendant was the perpetrator and is guilty of an unlawful detainer, the court is required to issue a partial eviction and order the removal of the perpetrator from the dwelling unit and the changing of the locks. The court also has the option to permanently bar the perpetrator from entering the residential premises or order that the remaining occupants not permit or invite the perpetrator to live in the dwelling unit.

Assembly Bill 1726

In September 2022, the Governor also signed Senate Bill 1726 (Stats. 2022, ch. 686),[4] which, effective January 1, 2023, provides additional time for certain defendants to respond to a summons for unlawful detainer and other summary proceedings for obtaining possession of real

[2] All further statutory references are to the Code of Civil Procedure unless stated otherwise.

[3] When enacting SB 1017, the Legislature inadvertently created an internal inconsistency in statute. Briefly, section 1161.3(d)(2) requires the court to follow the partial eviction procedure if the perpetrator is a tenant in residence of the same dwelling unit as the victim. However, one can only get to section 1161.3(d)(2) if the landlord *violates* section 1161.3(b), and section 1161.3(b)(2)(A) expressly permits a landlord to terminate a tenancy because the perpetrator is a tenant in residence in the same dwelling unit as the victim. Thus, as the statute is currently written, it is not possible for all the section 1174.27 prerequisites to occur. However, because the committee understands that the Legislature will further amend the statutes to address this issue, the committee recommends adopting and revising forms to implement the new procedure.

[4] AB 1726 is available at *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1726*.

property. Specifically, "[i]f service is completed by mail or in person through the Secretary of State's address confidentiality program . . . the defendant shall have an additional five court days to file a response." (§ 1167(b).)

COVID-19 tenant protections

In response to the COVID-19 pandemic, the Legislature enacted numerous tenant protections and changed court processes for unlawful detainer actions. Those tenant protections, however, are almost exclusively limited to certain time periods when the rent became due, all of which ended before January 1, 2023. Accordingly, nearly all the tenant protections enumerated on two unlawful detainer forms are inapplicable to any unlawful detainer actions filed on or after January 1, 2024, because paragraph (2) of section 1161 prohibits a landlord from serving notice, and consequently bringing an unlawful detainer action, for unpaid rent more than one year after the rent becomes due.

Implementation of SB 1017

The committee recommends the following actions to implement SB 1017:

- Revise item 3k on *Answer—Unlawful Detainer* (form UD-105), in which the tenant indicates which defenses and objections the tenant believes apply to the unlawful detainer action, to include the new applicable provisions of SB 1017, except for the new partial eviction procedure.

- To implement the new partial eviction procedure:

    - Add new subitems to item 3k on form UD-105 to provide an option for the defendant to raise the new affirmative defense in section 1161.3(d) to trigger the partial eviction procedure.

    - Approve new form *Judgment—Unlawful Detainer Partial Eviction Attachment* (form UD-110P), which is an attachment to *Judgment—Unlawful Detainer* (form UD-110). The proposed form closely follows section 1174.27, listing the required findings and orders and providing check boxes to issue optional orders.

    - Revise form UD-110 so the court can check a box for a judgment for partial eviction (item 8) and attach new form UD-110P.

    - Change the title of form UD-110S (renumbered as form UD-110H) from *Judgment—Unlawful Detainer Attachment* to *Judgment—Unlawful Detainer Habitable Premises Attachment* because it would no longer be the only attachment to the unlawful detainer judgment form.

Implementation of AB 1726

To reflect AB 1726's provision of additional time for certain defendants to respond to a summons for unlawful detainer and other summary proceedings for obtaining possession of real property, the committee recommends revising the first page of *Summons—Eviction* (form

SUM-130) to include the following statement in both English and Spanish: "If this summons was served through the Secretary of State's Safe at Home address confidentiality program, you have 10 days from the date of service, not counting Saturdays and Sundays and other judicial holidays, to respond."

Updating forms to reflect current law on COVID-19 rental protections

To reflect the inapplicability of many COVID-19 rental protections to unlawful detainer actions filed on or after January 1, 2024—the date the recommended form revisions will become effective if approved by the council—the committee recommends the following revisions:

- On *Plaintiff's Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101):
    - Remove items 3 through 10, which concern provisions of the Code of Civil Procedure regarding unpaid rent or other financial obligations due on or before March 31, 2022.
    - Remove item 11, which exists only to confirm that the demand for rent or other financial obligations on which the unlawful detainer complaint is based is a demand for payment of rent due after March 31, 2022—i.e., that none of the provisions covered by items 3 through 10 apply.
    - Retain item 12, "Statements regarding rental assistance," and renumber it as item 3. This item was added to form UD-101 to implement Health and Safety Code section 50897.3(e), which is not limited to any particular time period and could therefore apply to unlawful detainer actions filed on or after January 1, 2024. In addition, the committee has been informed that at least one county in the state is still accepting applications for rental assistance.[5]
- On *Answer—Unlawful Detainer* (form UD-105):
    - Delete item 3*l*, which alleges retaliation for nonpayment of rent between March 1, 2020, and September 30, 2021. A broader retaliation defense is covered by item 3e in the version of form UD-105 currently in use (renumbered to item 3f by this proposal).
    - Delete items 3m, 3n, and 3o, which list defenses and objections that pertain only to unlawful detainer actions based on rent due during specific time periods, all of which ended more than a year before January 1, 2024.
    - Add new item 3d allowing the defendant to allege that the plaintiff's demand for possession is based on nonpayment of rent due more than a year ago, to reflect the section 1161, paragraph (2) prohibition against serving notice, and consequently

[5] For the same reasons, the committee recommends retention of item 3p in form UD-105 and no revision of *Verification by Landlord Regarding Rental Assistance—Unlawful Detainer* (form UD-120).

bringing an unlawful detainer action, for unpaid rent more than one year after the rent becomes due.

Policy implications

The form revisions recommended in this report implement new laws (1) creating a new procedure for partial evictions in situations involving abuse or violence against a tenant and (2) providing additional time for certain defendants to respond to a summons for unlawful detainer. The recommended revisions also update unlawful detainer forms to reflect current law regarding COVID-19 rental protections. Accordingly, the key policy implications are to ensure that council forms reflect the law correctly and are not misleading to parties.

Comments

The new and revised forms were circulated for comments from March 30 to May 12, 2023 as part of the regular spring invitation-to-comment cycle. Ten comments were received: two from superior courts (in Los Angeles and San Diego counties); six from legal aid organizations that advocate for tenants;[6] one from a bar association (in Orange County); and one from the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. Two commenters agreed with the proposal, two others agreed if modified, and the remaining six commenters did not indicate a position. All commenters agreed that the revisions made by the council were needed and most requested further revisions to the forms.

A chart with the full text of the comments received and the committee's responses is attached beginning at page 23. The principal comments and the committee's responses are summarized below.

Form UD-101

Federal CARES Act Notification: Multiple comments suggested adding a landlord verification that the property is not covered by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act or that the landlord complied with the provisions of that act. The CARES Act provides that for certain covered properties, a 30-day notice to vacate must be provided to the tenant before a landlord can file an eviction lawsuit based on nonpayment of rent. Although the CARES Act was enacted to address the COVID-19 pandemic, the 30-day notice provision of the act continues indefinitely.

Although the commenters suggested adding this verification to form UD-101,[7] the committee believes that such information may be best suited for *Complaint—Unlawful Detainer* (form

[6] The legal aid organizations that provided comment are Family Violence Appellate Project, Legal Services of Northern California, National Housing Law Project, Neighborhood Services of Los Angeles County, Public Advocates, and Western Center on Law & Poverty.

[7] Form UD-101 implements section 1179.01.5, which provides that "[a] plaintiff in an unlawful detainer action shall file a cover sheet" and that the council "may develop a form for mandatory use that includes the information." Section 1179.01.5 is automatically repealed as of October 1, 2025. (§ 1179.07.) The committee, therefore, does not recommend adding a CARES Act verification to the cover sheet (form UD-101).

UD-100). Specifically, an additional subitem tailored to the federal CARES Act could be added to item 9a, where the plaintiff indicates whether any notices to pay rent or quit were served on the defendant. The committee is unable recommend such a substantive revision postcomment but will consider making such a revision in the future, as time and resources permit.

Rental assistance programs: One commenter also suggested renaming proposed item 3 on form UD-101 from "Statements regarding rental assistance" to "Statements regarding rental assistance, such as COVID rental assistance programs." The committee does not recommend revisions based on this suggestion because item 3 implements Health and Safety Code section 50897.3(e), which refers to "rental assistance or other financial compensation from any other source," and is not limited to COVID-19 rental assistance programs.[8] Including a reference to "COVID rental assistance programs" may inadvertently imply that the item applies only to COVID-19 programs.

Form UD-105

Documentation: Commenters made two suggestions regarding SB 1017's revised definition of documentation required to assert a defense against eviction due to abuse or violence.

First, commenters suggested that form UD-105 provide examples of "any other form of documentation or evidence that reasonably verifies that the abuse or violence occurred." (§ 1161.3(a)(2)(D).) The committee is not recommending revisions to the form in response to this suggestion. Section 1161.3(a)(2)(D) provides no examples or other guidance for how it should be interpreted. Revising the form to include examples that are not statutorily authorized has the dual problem of potentially implying that certain types of documentation are sufficient when a court may find otherwise and, conversely, that any types of documentation not included are insufficient. The examples currently included in proposed item 3k on form UD-105 are expressly provided for in the statute.

Second, commenters suggested that form UD-105 clarify that the requisite documentation can be provided even after the unlawful detainer case is initiated, because defendants could incorrectly believe that documentation cannot be offered in an unlawful detainer case unless it was provided to the landlord before the case is filed. Based on this suggestion, the committee recommends modifying item 3k to add "which may be included with this form" directly after the language stating that documentation of the defense is required.

Just cause: One commenter suggested revising proposed item 3i on form UD-105, which lists the elements of a defense under the Tenant Protection Act of 2019, to explain the meaning of "just cause" in "plaintiff failed to state a just cause for termination of tenancy." The committee does not recommend revisions in response to this suggestion because the definition of "just cause" is too broad to provide on this form. Such information is best left to external resources or

[8] There is a similar suggestion to include a reference to COVID for item 3d on proposed form UD-105. The committee similarly does not recommend revising that form in response to this suggestion as item 3d is not limited to tenants who have received rental assistance due to COVID.

an information sheet to accompany the form, which the committee will work on as time and resources permit.

Form UD-110

Several commenters asserted that items 3 through 7 on form UD-110 are inapplicable to partial eviction orders and should include an instruction to that effect. The committee recommends modifying item 4 on form UD-110 for use in partial eviction cases but does not believe the other suggested modifications are necessary.

Item 4 of form UD-110 provides which party is entitled to possession of the premises. The version of the form circulated for comment listed "plaintiff" and "defendant" as options, which is insufficient for a partial eviction case. The committee recommends adding a third option for the party retaining possession, "Defendant listed on attached form UD-110P in item 8b1 (Code Civ. Proc., § 1174.27)." Form UD-110P is the partial eviction attachment to form UD-110.

Items 3, 6, and 7 can be used in partial eviction cases without modification. Item 3 indicates whether judgment is for the plaintiff or defendant, and if for the plaintiff, which defendant it is against. This item can be used in a partial eviction case because only the abuser-tenant would be listed as the defendant against whom judgment is entered. Item 6 states the amount and terms of judgment, and although many parts of item 6 would not apply to a partial eviction, the damages portion could apply to a partial eviction if the abuser-defendant is required to pay damages to the plaintiff. Item 7, which indicates whether the plaintiff has breached the agreement to provide habitable premises, could also apply to a partial eviction.

Item 5, which states that the judgment applies to all occupants of the premises, would not apply to a partial eviction, but that is obvious on the face of the item and does not require further instruction.

Another commenter suggested adding definitions of "conditional judgment" and "partial eviction" to items 7 and 8, but the committee does not recommend revisions based on this suggestion because form UD-110 is executed by the court, which will not need a definition. If a partial eviction is ordered, form UD-110P will be attached to explain the specifics.

Forms UD-110P and UD-110S

Several commenters suggested revising form UD-110P to include an item indicating the amount of damages (if any) for which the abuser-tenant is liable to the plaintiff. The committee does not recommend revisions based on this suggestion because the amount of damages is already covered by item 6 on form UD-110, to which form UD-110P is attached. Similarly, a commenter suggested providing a definition of "partial eviction" on form UD-110P, but the committee has not included such information in its recommended revisions because the definition is made clear by the existing items on the form, which set out the terms of the partial eviction order.

Finally, a commenter suggested using a different letter suffix on form UD-110S because the letter "S" at the end of a form usually designates a Spanish-language version of the form. The committee agrees with the suggestion and recommends renumbering the form UD-110H.

Form SUM-130

In response to a comment, the committee recommends including the name Safe at Home on form SUM-130. The committee also recommends revising the language on form SUM-130 to specify that the time by which a defendant must respond under AB 1726 is *from the date of service.*

Alternatives Considered

In addition to the alternatives suggested by the commenters and discussed above, the committee considered not recommending any further revisions to these forms. However, because SB 1017 and AB 1726 made significant and substantial changes to the procedures in unlawful detainer actions, the committee determined that taking no action would be inappropriate. The committee also determined it would be inappropriate not to update the forms to remove references to COVID-19 rental protections that no longer apply.

Fiscal and Operational Impacts

The committee anticipates that the new legislation, plus the ending of the COVID-19 related protections will require courts to train court staff and judicial officers on the new law. The new form and form revisions recommended by the committee will also need to be addressed in that training, and may require changes to courts' internal procedures, including case management systems. Courts will also incur costs to incorporate the new and revised forms into their paper or electronic processes.

Attachments and Links

1. Forms SUM-130, UD-101, UD-105, UD-110, UD-110P, and UD-110H, at pages 10–22
2. Chart of comments, at pages 23–69
3. Link A: Senate Bill 1017, *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB1017*
4. Link B: Assembly Bill 1726, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1726*

SUMMONS—EVICTION
(CITACIÓN JUDICIAL—DESALOJO)

UNLAWFUL DETAINER / FORCIBLE DETAINER / FORCIBLE ENTRY
(RETENCIÓN ILÍCITA DE UN INMUEBLE / RETENCIÓN FORZOSA / ENTRADA FORZOSA)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

DRAFT
5.26.2023
NOT APPROVED BY THE JUDICIAL COUNCIL

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 5 days. You have 5 DAYS, not counting Saturdays and Sundays and other judicial holidays, after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. If this summons was served through the Secretary of State's Safe at Home address confidentiality program, you have 10 days from the date of service, not counting Saturdays and Sundays and other judicial holidays, to respond. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courts.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services website (*www.lawhelpca.org*), the California Courts Online Self-Help Center (*www.courts.ca.gov/selfhelp*), or by contacting your local court or county bar association.	*¡AVISO! Usted ha sido demandado. Si no responde dentro de 5 días, el tribunal puede emitir un fallo en su contra sin una audiencia. Una vez que le entreguen esta citación y papeles legales, solo tiene 5 DÍAS, sin contar sábado y domingo y otros días feriados del tribunal, para presentar una respuesta por escrito en este tribunal y hacer que se entregue una copia al demandante. Si la presente citación le ha sido entregado a través del programa de dirección confidencial del Secretario del Estado Seguro en Casa, tiene 10 días después de la fecha de entrega, sin contar sábado y domingo y otros días feriados del tribunal, para responder.* *Una carta o una llamada telefónica no lo protege. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no presenta su respuesta a tiempo, puede perder el caso por falta de comparecencia y se le podrá quitar su sueldo, dinero y bienes sin más advertencia.* *Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpca.org/es), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados local.*
FEE WAIVER: If you cannot pay the filing fee, ask the clerk for a fee waiver form. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.	***EXENCIÓN DE CUOTAS:*** *Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas.* ***AVISO:*** *Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos con un gravamen sobre cualquier monto de $10,000 ó más recibido mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desestimar el caso.*

1. The name and address of the court is:
   (El nombre y dirección de la corte es):

CASE NUMBER *(número de caso):*

2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: *(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-130 [Rev. January 1, 2024]

Code of Civil Procedure, §§ 412.20, 415.45, 1167
www.courts.ca.gov

PLAINTIFF *(Name)*:	CASE NUMBER:
DEFENDANT *(Name)*:	

3. *(Must be answered in all cases)* An **unlawful detainer assistant (Bus. & Prof. Code, §§ 6400–6415)** ☐ did **not** ☐ did for compensation give advice or assistance with this form. *(If plaintiff has received **any** help or advice for pay from an unlawful detainer assistant, complete item 4 below.)*

4. **Unlawful detainer assistant** *(complete if plaintiff has received any help or advice for pay from an unlawful detainer assistant):*

   a. Assistant's name:

   b. Telephone no.:

   c. Street address, city, and zip:

   d. County of registration:

   e. Registration no.:

   f. Registration expires on *(date)* :

Date: *(Fecha)* | Clerk, by *(Secretario)* | , Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons *(form POS-010).)*

[SEAL]

5. **NOTICE TO THE PERSON SERVED:** You are served
   a. ☐ as an individual defendant.
   b. ☐ as the person sued under the fictitious name of *(specify):*
   c. ☐ as an occupant.
   d. ☐ on behalf of *(specify):*
   under ☐ CCP 416.10 (corporation). ☐ CCP 416.60 (minor).
   ☐ CCP 416.20 (defunct corporation). ☐ CCP 416.70 (conservatee).
   ☐ CCP 416.40 (association or partnership). ☐ CCP 416.90 (authorized person).
   ☐ CCP 415.46 (occupant). ☐ other *(specify):*
   e. ☐ by personal delivery on *(date):*

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form **Save this form** **Clear this form**

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		DRAFT
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	7/11/2023
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR *(name):*		NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PLAINTIFF:		
DEFENDANT:		
PLAINTIFF'S MANDATORY COVER SHEET AND SUPPLEMENTAL ALLEGATIONS—UNLAWFUL DETAINER		CASE NUMBER:

All plaintiffs in unlawful detainer proceedings must file and serve this form. Filing this form complies with the requirement in Code of Civil Procedure section 1179.01.5(c).

- *Serve this form and any attachments to it with the summons.*
- *If a summons has already been served without this form, then serve it by mail or any other means of service authorized by law.*
- *If defendant has answered prior to service of this form, there is no requirement for defendant to respond to the supplemental allegations before trial.*

To obtain a judgment in an unlawful detainer action for nonpayment of rent on a residential property, a plaintiff must verify that no rental assistance or other financial compensation has been received for the amount demanded in the notice or accruing afterward, and that no application is pending for such assistance. To obtain a default judgment, plaintiff must use Verification by Landlord Regarding Rental Assistance—Unlawful Detainer *(form UD-120) to make this verification and provide other information required by statute.*

1. PLAINTIFF *(name each)*:

   alleges causes of action in the complaint filed in this action against DEFENDANT *(name each):*

2. **Statutory cover sheet allegations** (Code Civ. Proc., § 1179.01.5(c))
   a. This action seeks possession of real property that is *(check all that apply)* ☐ residential ☐ commercial.
      (If "residential" is checked, complete all remaining items that apply to this action. If only "commercial" is checked, no further items need to be completed except the signature and verification on page 2.)
   b. This action is based, in whole or in part, on an alleged default in payment of rent or other charges. ☐ Yes ☐ No

3. ☐ **Statements regarding rental assistance** (*Required in all actions based on nonpayment of rent or any other financial obligation. Plaintiff must answer all the questions in this item and, if later seeking a default judgment, will also need to file* Verification Regarding Rental Assistance—Unlawful Detainer *(form UD-120).)*
   a. Has plaintiff received rental assistance or other financial compensation from any other source corresponding to the amount demanded in the notice underlying the complaint? ☐ Yes ☐ No
   b. Has plaintiff received rental assistance or other financial compensation from any other source for rent accruing *after* the date of the notice underlying the complaint? ☐ Yes ☐ No
   c. Does plaintiff have any pending application for rental assistance or other financial compensation from any other source corresponding to the amount demanded in the notice underlying the complaint? ☐ Yes ☐ No
   d. Does plaintiff have any pending application for rental assistance or other financial compensation from any other source for rent accruing *after* the date on the notice underlying the complaint? ☐ Yes ☐ No

PLAINTIFF: DEFENDANT:	CASE NUMBER:

4. ☐ **Other allegations** Plaintiff makes the following additional allegations: *(State any additional allegations below, with each allegation lettered in order, starting with (a), (b), (c), etc. If there is not enough space below, check the box below and use form MC-025, title it Attachment 4, and letter each allegation in order.)* ☐ Other allegations are on form MC-025.

5. ☐ Number of pages attached *(specify):*

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PLAINTIFF OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the plaintiff in this proceeding and have read this complaint. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		DRAFT
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	5/17/2023
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		NOT APPROVED BY THE JUDICIAL COUNCIL
ATTORNEY FOR *(name):*		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PLAINTIFF:		
DEFENDANT:		
ANSWER—UNLAWFUL DETAINER		CASE NUMBER:

1. Defendant *(all defendants for whom this answer is filed must be named and must sign this answer unless their attorney signs):*

answers the complaint as follows.

2. **DENIALS** ***(Check ONLY ONE of the next two boxes.)***

a. ☐ **General Denial** *(Do not check this box if the complaint demands more than $1,000.)*
Defendant generally denies each statement of the complaint and of *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101).

b. ☐ **Specific Denials** *(Check this box and complete (1) and (2) below if complaint demands more than $1,000.)*
Defendant admits that all the statements of the complaint and of *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are true EXCEPT:

(1) **Denial of Allegations in Complaint (form UD-100 or other complaint for unlawful detainer)**

(a) Defendant claims the following statements of the complaint are false *(state paragraph numbers from the complaint or explain below or, if more room needed, on form MC-025)*:

☐ Explanation is on form MC-025, titled as Attachment 2b(1)(a).

(b) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them *(state paragraph numbers from the complaint or explain below or, if more room needed, on form MC-025)*:

☐ Explanation is on form MC-025, titled as Attachment 2b(1)(b).

(2) **Denial of Allegations in *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101)**

(a) ☐ Defendant did not receive plaintiff's *Mandatory Cover Sheet and Supplemental Allegations* (form UD-101). *(If not checked, complete (b) and (c), as appropriate.)*

(b) Defendant claims the following statements on *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are false *(state paragraph numbers from form UD-101 or explain below or, if more room needed, on form MC-025):* ☐ Explanation is on form MC-025, titled as Attachment 2b(2)(b).

Form Approved for Optional Use
Judicial Council of California
UD-105 [Rev. January 1, 2024]

Civil Code, § 1940 et seq.;
Code of Civil Procedure, §§ 425.12, 1161 et seq., 1179.01 et seq.
www.courts.ca.gov

PLAINTIFF: DEFENDANT:	CASE NUMBER:

2. b. (2) (c) Defendant has no information or belief that the following statements on *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are true, so defendant denies them *(state paragraph numbers from form UD-101 or explain below or, if more room needed, on form MC-025):*
☐ Explanation is on form MC-025, titled as Attachment 2b(2)(c).

3. **DEFENSES AND OBJECTIONS** (*NOTE: For each box checked, you must state brief facts to support it in item 3t (on page 3) or, if more room is needed, on form MC-025. You can learn more about defenses and objections at www.courts.ca.gov/selfhelp-eviction.htm.*)

a. ☐ *(Nonpayment of rent only)* Plaintiff has breached the warranty to provide habitable premises.

b. ☐ *(Nonpayment of rent only)* Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.

c. ☐ *(Nonpayment of rent only)* On *(date):* before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.

d. ☐ *(Nonpayment of rent only)* Plaintiff's demand for possession is based on nonpayment of rent due more than one year ago.

e. ☐ Plaintiff waived, changed, or canceled the notice to quit.

f. ☐ Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.

g. ☐ By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.

h. ☐ Plaintiff's demand for possession violates the local rent control or eviction control ordinance of *(city or county, title of ordinance, and date of passage)*:
(Also, briefly state in item 3t the facts showing violation of the ordinance.)

i. ☐ Plaintiff's demand for possession is subject to the Tenant Protection Act of 2019, Civil Code section 1946.2 or 1947.12, and is not in compliance with the act. *(Check all that apply and briefly state in item 3t the facts that support each.)*

(1) ☐ Plaintiff failed to state a just cause for termination of tenancy in the written notice to terminate.

(2) ☐ Plaintiff failed to provide an opportunity to cure any alleged violations of terms and conditions of the lease (other than payment of rent) as required under Civil Code section 1946.2(c).

(3) ☐ Plaintiff failed to comply with the relocation assistance requirements of Civil Code section 1946.2(d).

(4) ☐ Plaintiff has raised the rent more than the amount allowed under Civil Code section 1947.12, and the only unpaid rent is the unauthorized amount.

(5) ☐ Plaintiff violated the Tenant Protection Act in another manner that defeats the complaint.

j. ☐ Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.

k. ☐ Plaintiff seeks to evict defendant based on an act—against defendant, defendant's immediate family member, or a member of defendant's household—that constitutes domestic violence, sexual assault, stalking, human trafficking, abuse of an elder or a dependent adult, or a crime that caused bodily injury, involved a deadly weapon, or used force or threat of force. *(This defense requires one of the following, which may be included with this form: (1)* ***a temporary restraining order, protective order, or police report*** *that is not more than 180 days old; (2)* ***a signed statement from a qualified third party*** *(e.g., a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, psychologist, or a victim of violent crime advocate concerning the injuries or abuse resulting from these acts); or (3) another form of documentation or evidence that verifies that the abuse or violence occurred.)*

(1) ☐ The abuse or violence was committed by a person who does not live in the dwelling unit.

(2) ☐ The abuse or violence was committed by a person who lives in the dwelling unit and defendant claims protection from eviction under Code of Civil Procedure section 1161.3(d)(2).

l. ☐ Plaintiff seeks to evict defendant based on defendant or another person calling the police or emergency assistance (e.g., ambulance) by or on behalf of a victim of abuse, a victim of crime, or an individual in an emergency when defendant or the other person believed that assistance was necessary.

m. ☐ Plaintiff's demand for possession of a residential property is based on nonpayment of rent or other financial obligations and *(check all that apply)*

(1) ☐ plaintiff received or has a pending application for rental assistance from a governmental rental assistance program or some other source relating to the amount claimed in the notice to pay rent or quit. (Health & Saf. Code, §§ 50897.1(d)(2)(B) and 50897.3(e)(2).)

PLAINTIFF: DEFENDANT:	CASE NUMBER:

3. m. (2) ☐ plaintiff received or has a pending application for rental assistance from a governmental rental assistance program or some other source for rent accruing since the notice to pay rent or quit. (Health & Saf. Code, §§ 50897.1(d)(2)(B) and 50897.3(e)(2).)

(3) ☐ plaintiff's demand for possession is based only on late fees for defendant's failure to provide landlord payment within 15 days of receiving governmental rental assistance. (Health & Saf. Code, § 50897.1(e)(2)(B).)

n. ☐ Plaintiff violated the COVID-19 Tenant Relief Act (Code Civ. Proc., § 1179.01 et seq.) or a local COVID-19–related ordinance regarding evictions in some other way *(briefly state facts describing this in item 3t)*.

o. ☐ The property is covered by the federal CARES Act and the plaintiff did not provide 30 days' notice to vacate.
(Property covered by the CARES Act means property where the landlord
- *is participating in a covered housing program as defined by the Violence Against Women Act;*
- *is participating in the rural housing voucher program under section 542 of the Housing Act of 1949; or*
- *has a federally backed mortgage loan or a federally backed multifamily mortgage loan.)*

p. ☐ Plaintiff improperly applied payments made by defendant in a tenancy that was in existence between March 1, 2020, and September 30, 2021 (Code Civ. Proc., § 1179.04.5), as follows *(check all that apply):*

(1) ☐ Plaintiff applied a security deposit to rent, or other financial obligations due, without tenant's written agreement.

(2) ☐ Plaintiff applied a monthly rental payment to rent or other financial obligations that were due between March 1, 2020, and September 30, 2021, other than to the prospective month's rent, without tenant's written agreement.

q. ☐ Plaintiff refused to accept payment from a third party for rent due. (Civ. Code, § 1947.3; Gov. Code, § 12955.)

r. ☐ Defendant has a disability and plaintiff refused to provide a reasonable accommodation that was requested. (Cal. Code Regs., tit. 2, § 12176(c).)

s. ☐ Other defenses and objections are stated in item 3t.

t. *(Provide facts for each item checked above, either below or, if more room needed, on form MC-025)*:
☐ Description of facts or defenses are on form MC-025, titled as Attachment 3t.

4. OTHER STATEMENTS

a. ☐ Defendant vacated the premises on *(date)*:

b. ☐ The fair rental value of the premises alleged in the complaint is excessive *(explain below or, if more room needed, on form MC-025).*
☐ Explanation is on form MC-025, titled as Attachment 4b.

c. ☐ Other *(specify below or, if more room needed, on form MC-025):*
☐ Other statements are on form MC-025, titled as Attachment 4c.

5. DEFENDANT REQUESTS

a. that plaintiff take nothing requested in the complaint.

b. costs incurred in this proceeding.

c. ☐ reasonable attorney fees.

PLAINTIFF: DEFENDANT:	CASE NUMBER:

5. d. ☐ that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.

e. ☐ Other *(specify below or on form MC-025):*

☐ All other requests are stated on form MC-025, titled as Attachment 5e.

6. Number of pages attached: _____

UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 6400–6415)

7. *(Must be completed in all cases.)* An **unlawful detainer assistant** ☐ did not ☐ did for compensation give advice or assistance with this form. If defendant has received **any** help or advice for pay from an unlawful detainer assistant, state

a. assistant's name:

b. telephone number:

c. street address, city, and zip code:

d. county of registration:

e. registration number:

f. expiration date:

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless defendant's attorney signs.)

_____ (TYPE OR PRINT NAME)

▶ _____ (SIGNATURE OF DEFENDANT OR ATTORNEY)

_____ (TYPE OR PRINT NAME)

▶ _____ (SIGNATURE OF DEFENDANT OR ATTORNEY)

_____ (TYPE OR PRINT NAME)

▶ _____ (SIGNATURE OF DEFENDANT OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ (TYPE OR PRINT NAME)

▶ _____ (SIGNATURE OF DEFENDANT)

Date:

_____ (TYPE OR PRINT NAME)

▶ _____ (SIGNATURE OF DEFENDANT)

Date:

_____ (TYPE OR PRINT NAME)

▶ _____ (SIGNATURE OF DEFENDANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, state bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(optional):* EMAIL ADDRESS: ATTORNEY FOR *(name):*	DRAFT 5/26/2023 NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
JUDGMENT—UNLAWFUL DETAINER ☐ **By Clerk** ☐ **By Default** ☐ **After Court Trial** ☐ **By Court** ☐ **Possession Only** ☐ **Defendant Did Not Appear at Trial**	CASE NUMBER:

JUDGMENT

1. ☐ **BY DEFAULT**
   a. Defendant was properly served with a copy of the summons and complaint.
   b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
   c. Defendant's default was entered by the clerk upon plaintiff's application.
   d. ☐ **Clerk's Judgment** (Code Civ. Proc., § 1169). For possession only of the premises described on page 2 (item 4).
   e. ☐ **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
      (1) ☐ plaintiff's testimony and other evidence.
      (2) ☐ plaintiff's or others' written declaration and evidence (Code Civ. Proc., § 585(d)).
2. ☐ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
   a. The case was tried on *(date and time):*
      before *(name of judicial officer):*
   b. Appearances by
      ☐ plaintiff *(name each):*
      ☐ plaintiff's attorney *(name each):*
      (1)
      (2)
      ☐ Continued on *Attachment* 2b (form MC-025).
      ☐ defendant *(name each):*
      ☐ defendant 's attorney *(name each):*
      (1)
      (2)
      ☐ Continued on *Attachment* 2b (form MC-025).
   c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
   d. ☐ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☐ was requested.

Form Approved for Optional Use
Judicial Council of California
UD-110 [Rev. January 1, 2024]

Code of Civil Procedure, §§ 415.46, 585(d), 664.6, 1169

PLAINTIFF: DEFENDANT:	CASE NUMBER:

JUDGMENT IS ENTERED AS FOLLOWS BY: ☐ **THE COURT** ☐ **THE CLERK**

3. **Parties.** Judgment is

a. ☐ for plaintiff *(name each):*

and against defendant *(name each):*

☐ Continued on *Attachment* 3a (form MC-025).

b. ☐ for defendant *(name each):*

4. The party entitled to possession of the premises located at *(street address, apartment, city, and county):*

is

☐ plaintiff named in item 3a ☐ defendant named in item 3b ☐ defendant listed on attached form UD-110P in item 8b1 (Code Civ. Proc. § 1174.27).

5. ☐ Judgment applies to all occupants of the premises including tenants, subtenants if any, and named claimants if any (Code Civ. Proc., §§ 715.010, 1169, and 1174.3).

6. **Amount and terms of judgment**

a. ☐ Defendant named in item 3a above must pay plaintiff on the complaint

(1) ☐ Past-due rent	$
(2) ☐ Holdover damages	$
(3) ☐ Attorney fees	$
(4) ☐ Costs	$
(5) ☐ Other *(specify):*	$
(6) **TOTAL JUDGMENT**	$

b. ☐ Plaintiff is to receive nothing from defendant named in item 3b.

☐ Defendant named in item 3b is to recover costs: $

☐ and attorney fees: $

c. ☐ The rental agreement is canceled. ☐ The lease is forfeited.

7. ☐ **Conditional judgment.** Plaintiff has breached the agreement to provide habitable premises to defendant as stated in *Judgment—Unlawful Detainer Habitable Premises Attachment* (form UD-110H), which is attached.

8. ☐ **Judgment for partial eviction.** A partial eviction is issued as stated in *Judgment—Unlawful Detainer Partial Eviction Attachment* (form UD-110P), which is attached.

9. ☐ Other *(specify):*

☐ Continued on *Attachment* 9 (form MC-025).

Date: ☐ _____
JUDICIAL OFFICER

Date: ☐ Clerk, by _____ , Deputy

(SEAL)

CLERK'S CERTIFICATE *(Optional)*

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by _____ , Deputy

PLAINTIFF: DEFENDANT:	CASE NUMBER:

JUDGMENT—UNLAWFUL DETAINER HABITABLE PREMISES ATTACHMENT

7. ☐ **Conditional judgment.** Plaintiff breached the covenant to provide habitable premises to defendant.

a. ☐ Defendant must pay plaintiff a reduced rent because of the breach in the amount and for the period shown below. *(Specify each defect on a separate line, the month or months (or other period) that the defect existed, and the percentage or amount of the reduced rent as a result of the defect to arrive at the reasonable value of the premises for the period that the defect or defects existed.)*

Month and year defect existed	Defect	Reasonable rental value is reduced by *(specify percentage)* or *(specify amount)*	Reduced monthly rent due
(1)		% $	$
(2)		% $	$
(3)		% $	$
(4)		% $	$
(5)		% $	$
☐ Continued on *Attachment* 7a (form MC-025).			
		Total rent due in the 3-day notice is now *(specify):*	$

b. ☐ Defendant is entitled to attorney fees *(specify):* $ and costs *(specify):* $.

c. ☐ Defendant is the prevailing party if defendant pays plaintiff *(specify total rent in item 7a, less any attorney fees and costs in item 7b):* $ by p.m. on *(date):* at *(address):*

d. ☐ Judgment will be entered for defendant when defendant has complied with item 7c shown ☐ by defendant's filing of a declaration under penalty of perjury (see form MC-030), with proof of service on the plaintiff, OR ☐ at a hearing that has been set in this court as follows:

Date:	Time:	Dept.:	Room:

(1) ☐ Defendant must continue to pay rent after expiration of the 3-day notice if the defendant continues in possession of the premises in the amount of: $ per month. The total rent at item 7a is the corrected amount under the 3-day notice.

(2) ☐ Plaintiff must repair the defects described in item 7a. The court retains jurisdiction over the case until those repairs are made. Rent remains reduced in the amount of *(specify monthly rent):* $ until the repairs are made.

(3) ☐ Rent will increase to *(specify monthly rent):* $ the day after ☐ plaintiff files a declaration under penalty of perjury (see form MC-030), with proof of service on the defendant, stating that all the repairs have been made OR ☐ it is established that all the repairs have been made at a hearing set in this court as follows:

Date:	Time:	Dept.:	Room:

PLAINTIFF: DEFENDANT:	CASE NUMBER:

7. e. ☐ Plaintiff is the prevailing party if defendant fails to comply with items 7c and 7d.

f. ☐ Judgment will be entered for plaintiff ☐ when plaintiff files a declaration under penalty of perjury (see form MC-030), with proof of service on the defendant, that the amount in item 7c has not been paid, OR ☐ at a hearing that has been set in the court as follows:

Date:	Time:	Dept.:	Room:

(1) ☐ Past-due rent *(item 7a)*	$
(2) ☐ Holdover damages*	$
(3) ☐ Attorney fees *(item 7b)*	$
(4) ☐ Costs *(item 7b)*	$
(5) ☐ Other *(specify):*	$
(6) **TOTAL JUDGMENT**	$

*Use one of the following formulas: From expiration of the 3-day notice to ☐ today's date ☐ date the premises were vacated *(specify number of days)* times

☐ *(specify reduced monthly rent: $* *times 0.03228 (12 months divided by 365 days).)*

☐ *(specify reduced rent per month divided by 30): $*

= Total holdover damages

g. ☐ Plaintiff is awarded possession of the premises located at *(street address, apartment, city, and county):*

h. ☐ The rental agreement is canceled. ☐ The lease is forfeited.

8. ☐ **Other** *(specify):*

DRAFT

6/22/2023

NOT APPROVED BY THE
JUDICIAL COUNCIL

PLAINTIFF: DEFENDANT:	CASE NUMBER:

JUDGMENT—UNLAWFUL DETAINER PARTIAL EVICTION ATTACHMENT

8. ☐ **Partial eviction.** A partial eviction is issued.

a. ☐ The court finds the following:

(1) The proceeding involves a residential premises.

(2) The complaint includes a cause of action based on an act of abuse or violence against a tenant, a tenant's immediate family member, or a tenant's household member.

(3) Defendant *(name each):*

has invoked Code of Civil Procedure section 1161.3(d)(2) as an affirmative defense.

(4) There is documentation evidencing abuse or violence against defendant *(name each):*

or a member of their immediate family or household perpetrated by defendant *(name each):*

Based on the above findings, the court orders as follows:

b. (1) Defendant *(name each):*

is not guilty of an unlawful detainer and is not liable to landlord for any amount related to the unlawful detainer.

(2) ☐ To remain in the tenancy, the defendants must not permit or invite the perpetrator of abuse or violence to live in the dwelling unit.

c. ☐ Defendant *(name each):*

is guilty of an unlawful detainer and is

(1) ordered to be immediately removed and barred from the dwelling unit.

(2) ☐ liable for damages, including holdover damages, court costs, lease termination fees, or attorney's fees, as provided in item 6.

(3) ☐ permanently barred from entering any portion of the residential premises.

d. The plaintiff is ordered to change the locks and to provide the remaining occupants with the new key.

DRAFT
5/17/2023

NOT APPROVED BY THE
JUDICIAL COUNCIL

Form Approved for Optional Use
Judicial Council of California
UD-110P [New January 1, 2024]

Code of Civil Procedure, §§ 1161.3, 1174.27

Unlawful Detainer: Forms to Reflect Existing Law and Implement Senate Bill 1017 and Assembly Bill 1726 (Approve form UD-110P; revise forms SUM-130, UD-101, UD-105, UD-110, and UD-110S (renumbered UD-110H))
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
1.	Family Violence Appellate Project by Taylor Campion, Senior Managing Attorney Housing and Employment Justice Program	NI	The following comments are submitted by Family Violence Appellate Project (FVAP) regarding the Judicial Council's (Council) Invitation to Comment concerning proposed changes to forms UD-105 and UD-110 and approval of form UD-110P to implement Senate Bill 1017 (SB 1017). Family Violence Appellate Project ("FVAP") is the only nonprofit organization in California dedicated to representing domestic violence survivors in civil appeals for free. FVAP's goal is to empower abuse survivors through the court system and ensure that they and their children can live in safe and healthy environments, free from abuse. This includes a commitment to increasing survivors' access to secure and safe housing. Our connection to the domestic violence community and position as a Co-Sponsor of SB 1017 makes FVAP uniquely situated to assess the impact of the Judicial Council's proposed form changes on survivors, including its accessibility to survivors. We greatly appreciate the Council's work to update these important forms. We submit the following comments to ensure these forms serve their crucial function of accurately conveying information that court users – particularly tenants who lack legal representation – can understand.	The committee appreciates the information provided.
			<u>Form UD-105</u> **A. Comments Regarding Items 3k and 3s** ***1. Item 3k comments*** The Council should revise the language of Item 3k, so that court users, particularly those who are not	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			represented by counsel, can better understand the defense as well as the documentation options and when to present them. We include recommended revisions to Item 3k in the next section.	
			Statute also includes acts of violence. California law, per SB 1017, now protects tenants from being evicted or not having their tenancies renewed based upon an act or acts against a tenant, a tenant's immediate family member, or a tenant's household member that constitute "[a] crime that caused bodily injury or death", "[a] crime that included the exhibition, drawing, brandishing or use of a firearm or other deadly weapon or instrument", or "[a] crime that included the use of force against the victim or a threat of force against the victim." (Code Civ. Proc. § 1161.3 (a), Civ. Code § 1946.7(a)(6)-(8).) Currently, Item 3k only references acts of "domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a defendant adult." Thus, Item 3k should be amended to include the acts of violence as now stated in Code of Civil Procedure section 1161.3(a).	In light of this comment and others, the committee is recommending adding language to item 3k on form UD-105 to include the criminal acts of violence listed in Civil Code section 1946.7(a)(6)-(8).
			Clarification regarding additional form of documentation or evidence. Many users of Form UD-105 are individuals who lack legal representation, so proposed use of the term "another form of documentation or evidence that verifies that the abuse or violence occurred," while reflective of the statutory language, is not a commonly used term that would be familiar to those unrepresented litigants. Therefore, it is important for Item 3k to, at minimum, provide examples of what these other forms of	The committee does not recommend revisions in response to this suggestion as the statute does not specify examples of such documentation and including certain examples on the form may imply that other types of documentation are not sufficient or that the court must accept certain types of documentation even if they do not "reasonably verify that the abuse or violence occurred." (Code Civ. Proc.,

	Commenter	Position	Comment	Committee Response
			documentation or evidence may include. In the recommended text below, we include examples of the additional documentation or evidence to reference in Form UD-105. *Clarification regarding when documentation of abuse or violence can be presented*. Currently the language of item 3k does not clarify that a defendant can present the required documentation of abuse or violence to avail themselves of this defense either before or after the start of the unlawful detainer. To remove the ambiguity of the current language in 3k, we suggest the addition of language that clarifies a defendant may provide the necessary documentation before or after the commencement of the unlawful detainer. The statute's text, legislative history and intent together make clear that a tenant may provide documentation evidencing abuse or violence after the filing of the unlawful detainer. Code of Civil Procedure sections 1161.3 and 1174.27 do not require a tenant to give their landlord documentation evidencing abuse or violence before the landlord files an unlawful detainer in order to receive the survivors' affirmative defense. Additionally, Code of Civil Procedure Section § 1174.27(c) notes that "[t]he *court* shall determine whether there is documentation evidencing abuse or violence…" (italics added). Thus, Code of Civil Procedure section 1174.27(c) makes it clear that the court, and not the plaintiff landlord, makes the determination of whether proper documentation exists to assert this affirmative defense.	§ 1161.3(a)(2)(D).) In light of this comment and others, the committee recommends adding the clause "which may be included with this form" to the form directly after the language stating that documentation of the defense is required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			Further, legislative history confirms tenants can provide their documentation evidencing abuse or violence after an unlawful detainer is filed. When enacting Code of Civil Procedure section 1161.3, the legislature specifically stated that the tenant would "most likely in his or her answer to the unlawful detainer [present the] evidence that he or she is a victim." (Assemb. Comm. On Judiciary, Analysis of Sen. Bill No. 782 (2009-2010 Reg. Sess.) as amended June 10, 2010, p.4.) Lastly, by detailing that survivors can provide evidence of abuse or violence after the unlawful detainer is filed, the Court upholds the legislature's intent to provide survivors' access to the survivors' affirmative defense. The survivors' affirmative defense became law to "protect [survivors] from being evicted from their housing based on crimes committed against them." (Sen. Comm. on Judiciary, Analysis of Sen. Bill No. 782 (2009-2010 Reg. Sess.) as amended March 31, 2010, p.4.) The survivors' affirmative defense is meant to *"provide…survivors of abuse and violence protection against being evicted on account of the very abuse or violence which they endured."* (Sen. Com. On Judiciary, Analysis of Sen. Bill No. 1017 (2021-2022 Reg. Sess.) as amended Mar. 31, 2022, p.7.) Many survivors are not aware of this eviction defense until after an unlawful detainer is filed and likely will not disclose the abuse until they become aware of the requirement to provide documentation to avail themselves of this defense. Thus, clarifying when the documentation can be provided is	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			necessary to uphold the legislative intent of the eviction defense. Therefore, the inclusion of language clarifying when a survivor can provide this documentation will greatly support the purpose and intent of this eviction defense.	
			2. Item 3s comments Item 3s highlights that a defendant may claim protection from eviction under Code of Civil Procedure section 1161.3(d) if they, a member of their household or family, is a victim of abuse or violence. However, the placement of Item 3s makes the use of this defense confusing. Although Item 3k and Item 3s are related to the same unlawful detainer defense through Code of Civil Procedure sections 1161.3 and 1174.27, they appear separate from one another on form UD-105, and on completely different pages. We suggest that Item 3s be moved as subsection parts (1)(a) and (1)(b) of item 3k in order to make the defense more clear in general, and specifically for tenants not represented by counsel. Each subsection would detail the following scenarios under Code of Civil Procedure section 1161.3(d): (1) when the perpetrator of abuse or violence is *not* a tenant in residence and (2) when the perpetrator of abuse or violence *is* a tenant in residence. In the recommended text below, we detail the language of these two subsections. **B. Recommended Language** Based on the reasons outlined in section A, we	In light of this comment and others, in lieu of item 3s the committee recommends adding the following to item 3k: (1) The abuse or violence was committed by a person who does not live in the dwelling unit. (2) The abuse or violence was committed by a person who lives in the dwelling unit and defendant claims protection from eviction under Code of Civil Procedure section 1161.3(d)(2).

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			recommend the following text for the combination of Items 3k and 3s. For the ease of the reader, we also recommend the use of simple language, bolded text, italics and breaking up larger blocks of text. k.) ☐ **Eviction because of abuse or violence**: Plaintiff seeks to evict defendant based on an act against defendant, defendant's family member or a member of their household that constitutes domestic violence, sexual assault, stalking, human trafficking, abuse of an elder or a dependent adult, or a crime that caused bodily injury, involved a deadly weapon or used force or threat of force. This defense requires one of the following forms of documentation: (1) **a temporary restraining order, protective order, or police report that is not more than 180 days old**; (2**) a signed statement from a qualified third party** (e.g., a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, psychologist, or a victim of violent crime advocate concerning the injuries or abuse resulting from these acts); or (3) **another form of documentation or evidence that verifies that the abuse or violence occurred** (e.g., texts, emails or videos showing threats from the abuser.) *Tenants can turn in this documentation before or after the unlawful detainer case is filed.* **(1) Who committed the abuse or violence?** (Code Civ. Proc., § 1161.3(d))**:** (a) ☐ A person who **does not** live in the dwelling	

	Commenter	Position	Comment	Committee Response
			unit. (b) ☐ A person who **does** live in the dwelling unit.	
			<u>Form UD-110</u> **A. Comments Regarding Items 3 through 7** The Council should further revise form UD-110 to prevent confusion and ensure partial evictions are properly executed. The current language of Items 3, 4 and 6 do not allow for valid interpretation of partial eviction judgments outlined in Code of Civil Procedure section 1174.27. A partial eviction is a judgment entered against one or more defendant(s) and for plaintiff and the other defendant(s). The defendant(s) who have judgment entered for them retain possession of the dwelling unit. For courts to order a partial eviction they must modify the proposed UD-110 form. Because the proposed UD-110 form must be modified to order a partial eviction correctly, the court may be more likely to inadvertently issue judgements that are contrary to law or difficult to implement. To ensure UD-110 is, without modifications, usable for partial evictions we make the below recommendations. First, we recommend updating Item 3. Parties to reflect that judgment is entered for the plaintiff and some defendants in partial evictions. We further recommend that Item 3 direct the court to not fill out items 4-7 in the case of a partial eviction. We believe that directing the court to skip items 4-7 will help ensure the judgment is easily understood	In light of this comment and others, the committee recommends revising item 4 on form UD-110 to include the option of possession being awarded to "defendant listed on attached form UD-110P in item 8b1 (Code Civ. Proc. § 1174.27)." The committee does not recommend revisions based on the suggestions regarding the other items on form UD-110. Item 3 can properly be used in a partial eviction case. The abuser-tenant would be listed in item 3a and the abusee-tenant would not be listed in that item pursuant to Code of Civil Procedure section 1174.27(e)(1). Similarly, item 6 on this form can be used to order damages from the abuser-tenant to the landlord. It is not clear to the committee that item 7 would never apply to a partial eviction case. While item 5 would not apply to a partial eviction case, this seems apparent within the item and an instruction to not check it for such a case seems unnecessary.

	Commenter	Position	Comment	Committee Response
			and compliant with Civil Code of Procedure section 1174.27. Item 4 must be left blank because it does not correctly capture possession after a partial eviction order. Also, possession of the premises is addressed in UD-110P. Item 5 must be left blank because partial evictions prohibit the judgment from applying to all occupants. Item 6 should be left blank and the damage liabilities from this item should be included on form UD-110P. We believe including the damage liabilities in UD-110P will ensure that only the defendant found guilty of unlawful detainer is responsible for damages, costs and fees. We also believe instructing the court to skip Item 6 will ensure the plaintiff is not mistakenly marked as liable to the defendant(s) not found guilty of unlawful detainer and that the defendant's lease is not mistakenly canceled or forfeited. Item 7 must be left blank because it is not applicable to partial evictions. We recommend these changes to UD-110 because we feel they are necessary for assuring compliance with SB 1017.	
			B. Recommended Language Based on the reasons outlined above, we recommend the following text for Item 3. 3. Parties. Judgment is a. ☐ for plaintiff (name each): and against defendant (name each): ☐ Continued on Attachment 3a	The committee does not recommend revisions based on this suggestion as no modification is needed to item 3 in order for it to be used in a partial eviction case.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			(form MC-025). b. ☐ for defendant (name each): c. ☐ a partial eviction for plaintiff and defendant (name each then **Skip to 8**):	
			Form UD- 110P **A. Comments Regarding Item 8(c)(2)** We appreciate the creation of the UD-110P form and recommend changes that we believe will further increase its effectiveness. Specifically, as explained above, we recommend giving space on UD-110P to include the financial liabilities for the defendant(s) found guilty of unlawful detainer. We believe including the liabilities in UD-110P will ensure that only the defendant found guilty of unlawful detainer is liable for damages, costs and fees. Also, by moving the liabilities to the UD-110P form, the listed liabilities can be tailored to those applicable to partial evictions. This will help guild the court in entering judgements consistent with Code of Civil Procedure section 1174.27.	The committee does not recommend revisions based on this suggestion. Code of Civil Procedure section 1174.27(e)(1) prohibits an abusee-tenant from being named in an unlawful detainer judgment, thus existing item 6 on form UD-110 can be used to order an abuser-tenant to pay damages to landlord.
			B. Recommended Language Based on the reasons outlined above, we recommend the following text for Item 8c. c. ☐ Defendant (name each): is guilty of an unlawful detainer and is: // (2) □ Liable to plaintiff on the complaint for:	The committee does not recommend revisions based on this suggestion for the reasons explained above.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			(2) □ Liable to plaintiff on the complaint for: (1) ☐ Holdover damages (2) ☐ Costs (3) ☐ Lease termination fees (4) ☐ Attorney's fees (5) ☐ Other (specify): (6) TOTAL JUDGMENT $ $ $ $ $ $	
			Form UD-101 **A. Comments Regarding CARES Act Certification Requirements** As you are aware, subsection (c) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act requires landlords of covered properties to provide 30 days' notice to tenants in eviction cases. See 15 U.S.C. § 9058(c). There is no sunset for this 30-day notice requirement. This ongoing 30-day notice requirement is reflected in the UD-105 form, section 3(o), which allows the tenant to assert the CARES Act as a defense to eviction. We recommend that the CARES Act requirement be added to the UD-101 form to address the unfairness	The committee does not recommend revisions based on this suggestion as the council's authority to require form UD-101 is repealed as of October 1, 2025. Instead, the committee will consider recommending the addition of a new item in item 9a of form UD-100, to cover the required notice under the federal CARES Act as time and resources permit.

	Commenter	Position	Comment	Committee Response
			of the current scheme, which burdens the tenant with the responsibility of filing an answer based on information that is largely outside of their knowledge. Today, when a landlord files an unlawful detainer, they do not have to aver whether the unit at issue is a covered property under the CARES Act. It is left up to the tenant to discover whether the property is covered, something they cannot know from the eviction filing alone (and, in some cases, may only be able to find out from the landlord). While tenants living in HUD-subsidized properties or multifamily housing with a federally-backed mortgage may be able to find out that their unit is covered on their own, tenants living in 1-4 unit, unsubsidized properties with a federally-backed mortgage have no way of learning this information without the last four digits of their landlord's social security number. If the landlord refuses to provide information about the mortgage, the tenant would have a difficult time determining whether the property is covered, and may be unfairly deprived of the opportunity to plead this vital affirmative defense, especially if proceeding as a self-represented litigant, which the vast majority of tenants are doing in eviction courts across the state. Landlords are in a much better position to know whether the unit is in a covered property, and certification to that end would not create a significant burden. In fact, it is in the interest of landlords, especially unrepresented landlords, to ensure that they have given the tenant the correct notice before filing the complaint. To address this imbalance, we	

	Commenter	Position	Comment	Committee Response
			request that the Judicial Council add a CARES Act certification requirement to form UD-101.	
			General Changes to All Forms We also recommend making some further changes to all three forms to increase their readability and accessibility for litigants with limited English proficiency and limited literacy skills. We recommend the following: Avoid long sentences with many clauses separated by commas. Although this type of sentence structure is common in legal writing, it often leads to confusion and misunderstanding for people without a legal background. These sentences should be broken down into separate, shorter sentences. Break up long paragraphs of dense text into smaller sections. Individuals with limited English proficiency and limited literacy skills often struggle to read and comprehend long sections of prolix text. Use a variety of text formatting options throughout the forms. Individuals with limited English proficiency or limited literacy skills would be able to understand and appropriately utilize the forms if the key words/phrases and instructions stood out from the rest of the text using *italics*, **bold font**, underlining, larger font size, ALL CAPS, and creative combinations thereof. We also encourage the Council to entirely revise UD-105 to make it more accessible in form and content to pro per litigants. UD-105 should be drafted in a	The committee appreciates the information provided and will work to increase the readability and accessibility of the unlawful detainer forms as time and resources permit.

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	Commenter	Position	Comment	Committee Response
			manner similar to the forms used in Small Claims cases and petitions for Restraining Orders. Those forms use simple language that a party with limited formal education is likely to understand. The language should be accessible for a party with a 7th or 8th grade reading level to understand. Visually, UD-105 should be structured to support reading comprehension for those with limited literacy skills. It should contain ample blank spaces for parties to fill in facts necessary to support their defenses. Nationwide and California-specific statistics show that landlord/tenant matters are one of the most common legal substantive areas to have self-represented litigants. (The Self-Help Center Census: A National Survey, American Bar Association Standing Committee on the Delivery of Legal Services (August 2014); California Courts Self-Help Centers Report to the California Legislature (June 2007) (available at: www.courts.ca.gov/documents/rpt_leg_self_help.pdf).) While self-help centers and legal services are able to assist some of these litigants, lack of resources and capacity (and the expedited timeline of eviction proceedings) leave many tenants in the position of preparing answers to unlawful detainers on their own. This leaves these litigants vulnerable to making procedural mistakes that could unnecessarily lead to the loss of a place to live. Accordingly, we strongly urge the Council to create an information sheet as a companion to UD-105, in order to assist tenants in the preparation, filing, and service of unlawful detainer answers. Similar information sheets are already available for other substantive areas with	

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			large volumes of pro se litigants such as family law matters. (*See e.g.,* DV-505-INFO; DV-520-INFO; FL-300-INFO). It is our hope that this is the beginning of a longer dialogue about ways the California courts can be more accessible to tenants, particularly survivors of domestic violence and tenants representing themselves.	
			In conclusion, we express our appreciation for the Judicial Council's work on updating these important forms to reflect new protections for tenants under state law, and for the Council's consideration of these comments. Should you wish to discuss these comments further, please contact Taylor Campion [].	The committee appreciates the information provided.
2.	Legal Services of Northern California by Karen Kontz Regional Counsel – Housing	NI	The following comments are submitted by Legal Services of Northern California (LSNC) regarding the Judicial Council's Invitation to Comment SPR23-10, which concerns revisions to the unlawful detainer forms. LSNC is the federally-funded civil legal aid organization for most of the counties in California north of the San Francisco Bay. In 2022, LSNC provided legal advice, advocacy, and representation for nearly 10,000 low-income Californians. Eviction defense is the single greatest need of LSNC's clients, representing 63% of the total client cases from 2022.	The committee appreciates the information provided.
			Implementation of Senate Bill 1017 **1. Form UD-105**	In light of this comment and others, the committee recommends that item 3k on form UD-105 be modified to contain subparts, including one where defendants may claim

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			a) Combine all SB 1017 defenses into one Item under Section 3 Item 3s highlights that a defendant may claim protection from eviction under Code of Civil Procedure section 1161.3(d) if they, a member of their household or family, is a victim of abuse or violence. However, the placement of Item 3s makes the use of this defense confusing, because it is related to 3k but is separated on the form and is on an entirely different page. The placement of Item 3s makes it very unlikely that pro per defendants will locate it and raise it when appropriate. We suggest that Item 3s be moved so that it is a subpart of Item 3k in order to make the defense easier to assert and less confusing.	protections under Code of Civil Procedure section 1161.3(d)(2). Item 3s has been removed from the form.
			b) Language to cover tenants impacts by all criminal acts of violence listed in CCP §1161.3(a) SB 1017 protects tenants from being evicted based upon an act or acts against a tenant, a tenant's immediate family member, or a tenant's household member that constitute "[a] crime that caused bodily injury or death", "[a] crime that included the exhibition, drawing, brandishing or use of a firearm or other deadly weapon or instrument", or "[a] crime that included the use of force against the victim or a threat of force against the victim". [FN 1 Code Civ. Proc. § 1161.3 (a), Civ. Code § 1946.7(a)(6)-(8).] On the proposed forms, Item 3k has not been updated to reflect the new statutory language, and only references acts of "domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a	In light of this comment and others, the committee recommends adding language to item 3k on form UD-105 to include the criminal acts of violence listed in Civil Code section 1946.7(a)(6)-(8).

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			defendant adult." Item 3k should be amended to include all of the acts of violence as now covered by Code of Civil Procedure section 1161.3(a).	
			c) Clarifications regarding documentation The proposed language in Item 3k describing the expanded types of documents tenants can use to prove the abuse mirrors the statutory language, but this language may be hard for unrepresented tenants to understand. Many tenants may not know what "another form of documentation or evidence that verifies that the abuse or violence occurred" refers to. We suggest the addition of a parenthetical stating "for example, texts, emails or videos showing threats from the abuser." In addition, to ensure that survivors are able to use these new defenses, the form should make clear that they can provide the required documentation with the Answer form and need not have provided it the landlord or their agent at an earlier time.	The committee does not recommend revisions based on this suggestion as the statute does not specify examples of such documentation and including certain examples on the form may imply that other types of documentation are not sufficient or that the court must accept certain types of documentation even if they do not "reasonably verify that the abuse or violence occurred." (Code Civ. Proc., § 1161.3(a)(2)(D).) In light of this comment and others, the committee recommends including the clause, "which may be included with this form" on the form directly after the language stating that documentation of the defense is required.
			2. Form UD-110 As drafted, proposed Form UD-110 could lead to judgments where a survivor claiming protection is evicted or ordered to pay damages when the Court intends to order a partial eviction. The current language of Items 3, 4 and 6 does not allow the Court to make for the orders associated with partial eviction judgments outlined in Code of Civil Procedure	The committee does not recommend revisions based on this suggestion with respect to items 3 and 6 on form UD-110. In a partial eviction the court could still use form UD-110 to issue a judgment in favor of plaintiff and against defendant who perpetrated the abuse or violence by listing only that defendant in item 3a. Similarly item 6 could be used to order damages paid by the

	Commenter	Position	Comment	Committee Response
			section 1174.27, and the form language does not alert the Court that these items should not be completed in a partial eviction. To address this issue, we recommend amending Item 3 "Parties" to add an option (c) to allow the Court to order judgment for the plaintiff and *some* defendants in partial evictions. We further recommend that Item 3 direct the court to not fill out items 4-7 in the case of a partial eviction, because as written these items do not allow the Court to make the orders required in a partial eviction. In lieu of completing items 4-7 on the main judgment form, the damage liabilities table in item 6 should be added to the UD-110P form to ensure that only the defendant found guilty of unlawful detainer is responsible for damages, costs and fees. We recommend these changes to UD-110 and UD-110P because they are necessary to allow Courts to make the required orders for a partial eviction as set out in SB 1017.	abuser-defendant to plaintiff. In light of this comment and other, item 4 on form UD-110 has been modified to include the possibility of possession by a defendant listed on attached form UD-110P.
			The Judicial Council should add a CARES Act certification requirement to the UD - 101- Plaintiffs' Mandatory Cover Sheet In addition to removing reference to COVID eviction protections that no longer apply and adding Item 3d, we suggest amending the UD-101 form to ensure compliance with existing federal law, the CARES Act. Subsection (c) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act requires landlords of covered properties to provide 30 days'	The committee does not recommend revisions based on this suggestion as the council's authority to require form UD-101 is repealed as of October 1, 2025. Instead, the committee will consider recommending the addition of a new item in item 9a of form UD-100, to cover the required notice under the federal CARES Act as time and resources permit.

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Unlawful Detainer: Forms to Reflect Existing Law and Implement Senate Bill 1017 and Assembly Bill 1726 (Approve form UD-110P; revise forms SUM-130, UD-101, UD-105, UD-110, and UD-110S (renumbered UD-110H))
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			notice to tenants in eviction cases. See 15 U.S.C. § 9058(c). This ongoing 30-day notice requirement is reflected in the UD-105 form, section 3(o), which allows the tenant to assert the CARES Act as a defense to eviction. While tenants living in federally subsidized housing may be able to determine whether they live in a covered property, most tenants living in 1-4 unit, unsubsidized properties with a federally-backed mortgage have no way of learning this information without the last four digits of their landlord's social security number. Landlords are in a much better position to know whether the unit is in a covered property, and certification to that end would not create a significant burden. In fact, it is in the interest of landlords, especially unrepresented landlords, to ensure that they have given the tenant the correct notice before filing the complaint. In order to address this imbalance, we request that the Judicial Council add a CARES Act certification requirement to form UD-101.	
			General changes to Form UD-105 LSNC encourages the Judicial Council to examine the readability of the UD-105 form and revise it completely to make it accessible to pro per litigants. Because of the short timelines and nature of evictions in California, defendants in unlawful detainer proceedings are often completing the UD-105 form in pro per and without the assistance of counsel. The	The committee appreciates the information provided and will work to increase the readability and accessibility of the unlawful detainer forms as time and resources permit.

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			form should include simple language to be accessible to individuals with a seventh grade reading level and individuals with limited English proficiency. LSNC hopes to open a conversation around larger changes to the form to ensure access to justice for all Californians facing eviction.	
			Conclusion Thank you for your work on the unlawful detainer forms and for considering these comments. If you wish to discuss this letter, please feel free to contact me [].	The committee appreciates the information provided.
3.	National Housing Law Project by Deborah Thrope Deputy Director	NI	National Housing Law Project (NHLP) submits the following comments regarding the Judicial Council's (Council) Invitation to Comment SPR23-10, which concerns revisions to the unlawful detainer forms. NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income residents and homeowners; and increasing housing opportunities for underserved communities. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. NHLP hosts the national Housing Justice Network (HJN), a vast field network of over 2,000 community-level housing advocates and resident leaders. HJN member organizations are committed to protecting affordable housing and residents' rights for low-income families. HJN has many members in California and NHLP plays a critical role in the state as an IOLTA-	The committee appreciates the information provided.

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			funded support center. NHLP's California advocacy reflects our national initiatives and focuses on tenants' rights, eviction prevention, and affordable housing preservation. We commend the Council's work updating these important forms. We submit our comments with the goal of ensuring that these forms further access to justice in housing court proceedings, particularly for low-income tenants who too often go unrepresented.	
			The Judicial Council should add a CARES Act certification requirement for landlord/plaintiffs Subsection (c) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act requires landlords of covered properties to provide 30 days' notice to tenants in eviction cases. *See* 15 U.S.C. § 9058(c). There is no sunset on this 30-day notice requirement. While the 30-day notice requirement is reflected on form UD-105, section 3r, as a defense to eviction, we recommend adding a certification requirement to the UD complaint and/or cover sheet. Having the CARES Act certification appear only on the answer form burdens the tenant/defendant with the responsibility of filing an answer with information that is largely outside of their knowledge. Today, when a landlord files an unlawful detainer, they do not have to aver whether the unit at issue is a covered property under the CARES Act. It is, unfairly, left up to the tenant to discover whether the property is covered, something they cannot know from the eviction filing alone (and, in some cases, may only be able to find out by asking the landlord).	The committee does not recommend revisions based on this suggestion as the council's authority to require form UD-101 is repealed as of October 1, 2025. Instead, the committee will consider recommending the addition of a new item in item 9a of form UD-100, to cover the required notice under the federal CARES Act as time and resources permit.

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			For example, covered properties under the CARES Act include housing with federally-backed mortgages. It can be challenging, let alone impossible, for a tenant to know whether they are living in such a property. Tenants living in HUD-subsidized properties or multifamily housing with a federally-backed mortgage may be able to find out that their unit is covered on their own through publicly-available databases, but this is not always a straightforward process. Even worse, tenants living in 1-4-unit, unsubsidized properties with federally-backed mortgages have no publicly-accessible means of identifying their unit's covered status without personal information about the property owner, typically the last four digits of their social security number. If the landlord refuses to provide information about the mortgage, the tenant cannot determine whether the property is covered, and may be deprived of the opportunity to plead this vital affirmative defense. All of these challenges are further exacerbated for self-represented litigants, who represent the vast majority of tenants in eviction courts across the state. Landlord/plaintiffs are in a much better position to know their status as a covered property, and certification to that end would not create a significant burden for them. In fact, it is in the interest of landlords, especially unrepresented landlords, to ensure that they have given the tenant the correct notice before filing the complaint. Other courts have amended their eviction process to reflect that the burden of certifying whether or not	

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			the CARES Act applies must be on the landlord. For example, Vermont courts adopted a court rule requiring every landlord filing an eviction to submit a declaration showing either compliance with the CARES Act 30-day notice provision or that their property is not covered under the CARES Act. [FN 1 Vt. R. Civ. P. 9.2(b).] This process provides greater transparency into the rights of both parties and helps to ensure fairness for tenants. In order to address California's imbalanced process, we ask that the Judicial Council add a certification requirement to forms UD 101, as well as UD 100. Please see below for suggested language for each form.	
			UD 101 We suggest restoring question 3 on the cover sheet of form UD 101 asking the landlord to confirm whether or not they provided 30 days' notice and certifying as to their CARES Act covered status if they did not. Our suggested language for the new question is: 3a. I gave the tenants notice to vacate at least 30 days before the termination date stated in the Notice to Vacate. *15 U.S.C. § 9058(c)* □ Yes □ No (*if checked, fill out 3b*) 3b. *fill out if checked "No" for part (a)* □ I certify that the dwelling unit involved in this matter is *not* located in a property that participates in any of the following programs, receives any of the following	The committee does not recommend revisions based on this suggestion as the council's authority to require form UD-101 is repealed as of October 1, 2025. Instead, the committee will consider recommending the addition of a new item in item 9a of form UD-100, to cover the required notice under the federal CARES Act as time and resources permit.

Unlawful Detainer: Forms to Reflect Existing Law and Implement Senate Bill 1017 and Assembly Bill 1726 (Approve form UD-110P; revise forms SUM-130, UD-101, UD-105, UD-110, and UD-110S (renumbered UD-110H))
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			government subsidies, or has received a mortgage backed by any of the following entities: o Public housing o Section 8 Housing Choice Voucher program o Project Based Section 8 housing o Section 202 supportive housing for the elderly o Section 202 Direct Loan program o Section 811 supportive housing for persons with disabilities o Section 236 multifamily rental housing o Section 221(d)(3) Below Market Interest Rate housing (BMIR) o HOME Investment Partnership program o Housing Opportunities for Persons with AIDS (HOPWA) Program o McKinney-Vento Act programs o Transitional Housing Assistance for Homeless Veterans o Grant programs for homeless veterans with special needs o Supportive Services for Veteran Families (SSVF) o Veterans Affairs Supportive Housing (VASH) o National Housing Trust Fund o Transitional Housing Assistance Grants for victims of domestic violence, dating violence, sexual assault, and stalking	

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			o Rural Development (RD) multifamily housing programs, including the Rural Development Voucher program (514, 515, 516, 533, 538, and 542 of the Housing Act of 1949 (42 U.S.C. §§ 1484, 1485, 1486, 1490p-2, 1490r) o Low-Income Housing Tax Credit program (LIHTC) o Federal Housing Administration (FHA) o Veterans Administration (VA) o United States Department of Agriculture (USDA) direct loan o USDA guaranteed loan o Government Sponsored Enterprises (GSE) such as Fannie Mae or Freddie Mac	
			UD 100 We also suggest adding an additional subpart on to question 9 in form UD 100, ideally as a new part (b), that requires landlords to certify as to their CARES Act covered status if they *did not* indicate that they provided 30 days' notice in 9(a). Our suggested language for that new subpart is: 9b. *fill out if checked any box other than 9a(2)* □ I certify that the dwelling unit involved in this matter is *not* located in a property that participates in any of the following programs, receives any of the following government subsidies, or has received a	In light of this comment and others, the committee will consider recommending the addition of a new item in item 9a of form UD-100, to cover the required notice under the federal CARES Act as time and resources permit. Such a revision is beyond the scope of this proposal and would benefit from public comment.

Unlawful Detainer: Forms to Reflect Existing Law and Implement Senate Bill 1017 and Assembly Bill 1726 (Approve form UD-110P; revise forms SUM-130, UD-101, UD-105, UD-110, and UD-110S (renumbered UD-110H))
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			mortgage backed by any of the following entities: o Public housing o Section 8 Housing Choice Voucher program o Project Based Section 8 housing o Section 202 supportive housing for the elderly o Section 202 Direct Loan program o Section 811 supportive housing for persons with disabilities o Section 236 multifamily rental housing o Section 221(d)(3) Below Market Interest Rate housing (BMIR) o HOME Investment Partnership program o Housing Opportunities for Persons with AIDS (HOPWA) Program o McKinney-Vento Act programs o Transitional Housing Assistance for Homeless Veterans o Grant programs for homeless veterans with special needs o Supportive Services for Veteran Families (SSVF) o Veterans Affairs Supportive Housing (VASH) o National Housing Trust Fund o Transitional Housing Assistance Grants for victims of domestic violence, dating violence, sexual assault, and stalking o Rural Development (RD)	

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			multifamily housing programs, including the Rural Development Voucher program (514, 515, 516, 533, 538, and 542 of the Housing Act of 1949 (42 U.S.C. §§ 1484, 1485, 1486, 1490p-2, 1490r) o Low-Income Housing Tax Credit program (LIHTC) o Federal Housing Administration (FHA) o Veterans Administration (VA) o United States Department of Agriculture (USDA) direct loan o USDA guaranteed loan o Government Sponsored Enterprises (GSE) such as Fannie Mae or Freddie Mac	
			NHLP also incorporates by reference the comments submitted by Family Violence Appellate Project, particularly their recommendations related to protections for survivors of domestic violence.	The committee appreciates the information provided. Responses to the comments of the Family and Violence Appellate Project are provided above.
			In conclusion, we express our appreciation for the Judicial Council's efforts updating these important forms, and for the Council's consideration of these comments. Should you have any questions or wish to discuss these comments further, please contact [us].	The committee appreciates the information provided.
4.	Neighborhood Legal Services of Los Angeles County by William Simonsick Registered Legal Services Attorney	NI	Neighborhood Legal Services of Los Angeles County (NLSLA) appreciates this opportunity to comment on the proposed form changes in SPR23-10. NLSLA is a 501(c)(3) Legal Services Corporation, providing	The committee appreciates the information provided.

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			free legal services to indigent individuals in the Antelope, San Fernando, and San Gabriel Valleys of Los Angeles County, California. Through a combination of direct client representation, self-help centers, and systemic advocacy, NLSLA assists hundreds of thousands of low-income and vulnerable individuals and families with their legal needs every year. Assisting in a variety of civil legal fields including family law, worker's rights, healthcare, and housing, NLSLA is uniquely positioned at the front lines of California's housing crisis. Like the proverbial 'canary in a coal mine', staff at NLSLA see the impediments that low-income self-represented litigants (SRLs) face when trying to fight an eviction, as well as the long-term consequences of subsequent housing insecurity. Considering the above experience, NLSLA is pleased to see the Judicial Council taking action to improve the clarity of court forms in the state of California.	
			Due to the legal needs crisis, a staggering number of litigants are unrepresented. Estimated from anywhere from 60-95% of all legal needs are unmet in the United States, forcing individuals – especially vulnerable or indigent – to rely on sparse resources to fight cases themselves. [FN 1 Legal Service Corporation Justice Gap 2022 Report. See also R. Sandefur, 'What We Know and Need to Know about the Legal Needs of the Public', 67(2) South Carolina Law Review (2016); Y. Cannon, 'Unmet Legal Needs as Health Injustice', 56 University of Richmond Law Review (2022) 801-877.] This is especially true in housing cases, despite radically improved outcomes when litigants are represented.	The committee appreciates the information provided.

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			[FN 2 See I. Ellen, K. O'Regan, S. House, R. Brenner, 'Do Lawyers Matter? Early Evidence on Eviction Patterns After the Rollout of Universal Access to Counsel in New York City', 31(3) Housing Policy Debate (2021). See also E. Petersen, 'Building a House for Gideon: The Right to Counsel in Evictions', 14 Stanford Journal of Civil Rights & Civil Liberties (2020) 63-112.] Housing cases are notorious for their complexity and short timeframes. [FN 3 3 Litigants may only have 5 days to respond to their case to risk a default judgment. Cal. Civ. 1167.3.] The stakes could not be higher; the long term health and financial consequences of homelessness and housing insecurity are severe. [FN 4 As of 2017, over two-thousand publications linked evictions to negative mental and physical health outcomes, see H. Vasquez-Vera, L. Palencia, I. Magna, C. Mena, J. Neira, C. Borrell, 'The threat of home eviction and its effects on health through the equity lens: A systematic review', 175 Social Science & Medicine (2017) .] These consequences are felt most heavily on the most vulnerable individuals, such as elderly or disabled individuals, and are negative for anyone subject to them. [FN 5 Cost-related moves in itself are statistically-proven to result in increased unmet medical needs, see K. Chen, L. Wisk, T. Nuckols, J. Elmore, W. Steers, F. Zimmerman, 'Unmet Medical Needs Among Adults Who Move due to Unaffordable Housing: California Health Interview Survey, 2011-2017', 36 Journal of General Internal Medicine 2259-2266 (2021).] Therefore, it is imperative to make the form-filing process as smooth and accessible as possible to reduce the number of improper evictions.	

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			Accessibility of the court process to SRLs begins with the court forms they file. Plain language and visual distinction is crucial for readability, [FN 6 See J. Griener, D. Jimenez, L. Lupica, 'Self-Help, Reimagined', 92 Indiana Law Journal 3 (2017).] especially for less sophisticated litigants. Best practices indicate that practices such as bolding terms of art, defining all terms of art subsequent to their usage, using text boxes to separate definitions, and ensuring a good mixture of terms of art and colloquial language results in improved readability for SRLs. [FN 7 Id at 1156-1160.] When done correctly, SRLs can successfully complete their forms and potentially avoid losing eviction cases based on a lack of legal sophistication alone. NLSLA has a number of textual suggestions that would increase readability and reduce confusion, especially for the most vulnerable SRLs who would be most at risk of the consequences of housing insecurity. Eviction notices know no limits of sophistication of defendants; among those who are evicted are the elderly, mentally and physically disabled, and individuals of limited English proficiency. These suggestions would help prevent misunderstanding of the forms by these individuals, and therefore assist in the alleviation of the disproportionate burden of evictions on those who simply struggle with the court process as opposed to being at fault for their eviction. As these edits are pointed and numerous, they are included in the table below. It is worth reiterating that the proposed forms represent a significant improvement over the current forms, and NLSLA is thankful of the Judicial	The committee appreciates the information provided and will work to increase the readability and accessibility of the unlawful detainer forms as time and resources permit.

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			Council's efforts so far. In general, NLSLA would suggest that all of these forms are ultimately made accessible for individuals with a screen reader, and plain language used throughout. [FN 8 Suffolk Law School recently released an automated tool called RateMyPDF that checks court forms for readability and provides suggestions for increasing accessibility (https://ratemypdf.com). The proposed forms were analyzed by this tool during the preparation for this comment letter.]	
			Outside of general language level suggestions, NLSLA has the following suggestions included in the table below:	The committee appreciates the information provided.
			SUM-130 The "address confidentiality program" needs to also be referred to as the 'Safe at Home' program, as not all program participants may be able to identify the program through the current description placing emphasis on the constitution of the program by the Secretary of State.	In light of this comment, the committee recommends adding the program's name, "Safe at Home," to form SUM-130.
			UD-101 Question 3 should explicitly mention COVID somewhere to make sure that SRLs understand that this rental assistance includes COVID programs. Something like "Statements regarding rental assistance, such as COVID rental assistance programs" would make sure that this box is not accidentally overlooked.	The subcommittee does not recommend revisions based on this suggestion as including a reference to "COVID rental assistance programs" may inadvertently imply that the item only applies to COVID programs, as opposed to "rental assistance or other financial compensation from any other source" as provided in Health and Safety Code section 50897.3(e).

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			UD-105 Question 3(d) should include some mention of COVID so SRLs who received rental assistance due to COVID programs know to check this box.	The subcommittee does not recommend revisions based on this suggestion as including a reference to "COVID" may inadvertently imply that the defense for this item is limited to those who received rental assistance due to COVID, when it is applicable to any unlawful detainer initiated more than a year after rent was due.
			Question 3(i)(1) should provide at least a cursory explanation for what "just cause" is (and subsequently use bolding). SRLs who come to our self-help centers rarely know what this is or what protections are granted.	Given the various reasons for eviction that amount to just cause, the committee does not recommend revisions based on this suggestion as it is infeasible to provide an explanation within the subitem. The committee will work on providing such information in a separate information sheet as time and resources permit.
			UD-110 Question 7 should provide a cursory explanation of what a conditional judgment is. This would not need to be lengthy as the text refers to the other form.	The committee does not recommend revisions based on this suggestion. Form UD-110 is executed by the court, who would know what a conditional judgment is, and if one is ordered, the other form will be attached.
			Question 8 should provide a cursory explanation of what a partial eviction (ie; "an eviction of less than all of the tenants") is. This does not need to be lengthy as the text refers to the applicable form.	The committee does not recommend revisions based on this suggestion. Form UD-110 is executed by the court, who would know what a partial eviction is, and if one is ordered, the other form will be attached.
			UD-110P Question 8 should define partial eviction at	The committee does not recommend

	Commenter	Position	Comment	Committee Response
			the onset. This definition should mention that only the specific household member is evicted, NOT the remaining tenant.	revisions based on this suggestion given that form UD-110P contains the orders that result from a partial eviction.
			UD-110S Ideally, there would be at least 5 spaces for defects before requiring form MC-025. Additionally, the 'month defect existed' should be changed to reflect month and years, as we see defects in this situation lasting for years.	In light of this comment, the committee recommends additional space and a reference to years on item 7a on form UD-110s, (renumbered UD-110H).
5.	Orange County Bar Association by Michael A. Gregg President	A		
6.	Public Advocates by Suzanne Dershowitz Staff Attorney	NI	The following comments are submitted by Public Advocates regarding the Judicial Council's Invitation to Comment SPR23-10, which concerns revisions to the unlawful detainer forms. Public Advocates is a nonprofit law firm and advocacy organization that challenges the systemic causes of poverty and racial discrimination by strengthening community voices in public policy and achieving tangible legal victories advancing education, housing, transportation equity, and climate justice. We have co-sponsored legislation to strengthen tenant protections and worked on implementation of those laws. Public Advocates also works closely with tenant counseling organizations throughout the state of California to provide trainings and technical assistance.	The committee appreciates the information provided.
			I. Implementation of Senate Bill 1017 **A. Form UD-105**	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			1) Language to cover tenants impacts by all criminal acts of violence listed in CCP §1161.3(a) SB 1017 protects tenants from being evicted based upon an act or acts against a tenant, a tenant's immediate family member, or a tenant's household member that constitute "[a] crime that caused bodily injury or death", "[a] crime that included the exhibition, drawing, brandishing or use of a firearm or other deadly weapon or instrument", or "[a] crime that included the use of force against the victim or a threat of force against the victim". [FN 1 Code Civ. Proc. § 1161.3 (a), Civ. Code § 1946.7(a)(6)-(8).] On the proposed forms, Item 3k only references acts of "domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a defendant adult." Item 3k should be amended to include all of the acts of violence as now covered by Code of Civil Procedure section 1161.3(a).	In light of this comment and others, the committee recommends adding language to item 3k on form UD-105 to include the criminal acts of violence listed in Civil Code section 1946.7(a)(6)-(8).
			2) Clarifications regarding documentation The proposed language in Item 3k describing the expanded types of documents tenants can use to prove the abuse mirrors the statutory language, but this language may be hard for unrepresented tenants to understand. Many tenants may not know what "another form of documentation or evidence that verifies that the abuse or violence occurred" refers to. We suggest the addition of a parenthetical stating "for example, texts, emails or videos showing threats from the abuser." In addition, to ensure that survivors are able to use	The committee does not recommend revisions based on this suggestion as the statute does not specify examples of such documentation and including certain examples on the form may imply that other types of documentation are not sufficient or that the court must accept certain types of documentation even if they do not "reasonably verify that the abuse or violence occurred." (Code Civ. Proc., § 1161.3(a)(2)(D).) In light of this comment and others, the

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	Commenter	Position	Comment	Committee Response
			these new defenses, the form should make clear that they can provide the required documentation with the Answer form and need not have provided it the landlord or their agent at an earlier time.	committee recommends adding the clause, "which may be included with this form" to the form directly after the language stating that documentation of the defense is required.
			3) Combine all SB 1017 defenses into one Item under Section 3 Items 3k and Item 3s are related to the same unlawful detainer defense under Code of Civil Procedure sections 1161.3 and 1174.27, so it is confusing to separate the defenses from one another on form UD-105, especially where they are appear on different pages. We suggest that Item 3s be moved so that it is a subpart of Item 3k in order to make the defense easier to assert and less confusing.	In light of this comment and others, the committee recommends adding the following to item 3k in lieu of item 3s: (1) The abuse or violence was committed by a person who does not live in the dwelling unit. (2) The abuse or violence was committed by a person who lives in the dwelling unit and defendant claims protection from eviction under Code of Civil Procedure section 1161.3(d)(2).
			B. Form UD-110 As drafted, proposed Form UD-110 could lead to confusing judgments where a survivor is evicted or ordered to pay damages even where the Court intends to order a partial eviction where the survivor retains housing. The current language of Items 3, 4 and 6 do not allow the Court to make for the orders associated with partial eviction judgments outlined in Code of Civil Procedure section 1174.27, and the form language does not alert the Court that these items should not be completed in a partial eviction. To address this issue, we recommend amending Item 3 "Parties" to add an option (c) to allow the Court to order judgment for the plaintiff and *some* defendants in partial evictions. We further recommend that Item 3 direct the court to not fill out items 4-7 in the case	In light of this comment and others, the committee recommends modification to item 4 on form UD-110 to include the option of possession being awarded to "defendant listed on attached form UD-110P in item 8b1 (Code Civ. Proc. § 1174.27)." The committee does not recommend revisions for the other items on form UD-110 based on this suggestion. Item 3 can properly be used in a partial eviction case. The abuser-tenant would be listed in item 3a and the abusee-tenant would not be listed in that item pursuant to Code of Civil Procedure section 1174.27(e)(1). Similarly, item 6 on this form can be used to order damages from the abuser-tenant to the landlord. It is not clear to the committee that item 7 would never apply

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	Commenter	Position	Comment	Committee Response
			of a partial eviction, because as written these items do not allow the Court to make the orders required in a partial eviction. In lieu of completing items 4-7 on the main judgment form, the damage liabilities table in item 6 should be added to the UD-110P form to ensure that only the defendant found guilty of unlawful detainer is responsible for damages, costs and fees. We recommend these changes to UD-110 and UD-110P because they are necessary for ensuring that Courts can make the required orders for a partial eviction as set out in SB 1017.	to a partial eviction case. While item 5 would not apply to a partial eviction case, this seems apparent within the item and an instruction to not check it for such a case seems unnecessary.
			II. The Judicial Council should add a CARES Act certification requirement to the UD -101- Plaintiffs' Mandatory Cover Sheet In addition to removing reference to COVID eviction protections that no longer apply, we suggest amending the UD-101 form to ensure compliance with existing federal law, the CARES Act. Subsection (c) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act requires landlords of covered properties to provide 30 days' notice to tenants in eviction cases. See 15 U.S.C. § 9058(c). There is no sunset for this 30-day notice requirement. This ongoing 30-day notice requirement is reflected in the UD-105 form, section 3(r), which allows the tenant to assert the CARES Act as a defense to eviction. While tenants living in HUD-subsidized properties or multifamily housing with a federally-backed	The committee does not recommend revisions based on this suggestion as the council's authority to require form UD-101 is repealed as of October 1, 2025. Instead, the committee will consider recommending the addition of a new item in item 9a of form UD-100, to cover the required notice under the federal CARES Act as time and resources permit.

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Unlawful Detainer: Forms to Reflect Existing Law and Implement Senate Bill 1017 and Assembly Bill 1726 (Approve form UD-110P; revise forms SUM-130, UD-101, UD-105, UD-110, and UD-110S (renumbered UD-110H))
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			mortgage may be able to find out that their unit is covered on their own, tenants living in 1-4 unit, unsubsidized properties with a federally-backed mortgage have no way of learning this information without the last four digits of their landlord's social security number. If the landlord refuses to provide information about the mortgage, the tenant would have a difficult time determining whether the property is covered, and may be unfairly deprived of the opportunity to plead this vital affirmative defense, especially if proceeding as a self-represented litigant, which the vast majority of tenants are doing in eviction courts across the state. Landlords are in a much better position to know whether the unit is in a covered property, and certification to that end would not create a significant burden. In fact, it is in the interest of landlords, especially unrepresented landlords, to ensure that they have given the tenant the correct notice before filing the complaint. In order to address this imbalance, we request that the Judicial Council add a CARES Act certification requirement to form UD-101.	
			III. Conclusion We appreciate your work on the unlawful detainer forms. Thank you for considering these comments. If you wish to discuss this letter, please feel free to contact me [].	The committee appreciates the information provided.
7.	Superior Court of California, County of Los Angeles by Bryan Borys	AM	The following comments are submitted on behalf of the Los Angeles Superior Court.	

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Unlawful Detainer: Forms to Reflect Existing Law and Implement Senate Bill 1017 and Assembly Bill 1726 (Approve form UD-110P; revise forms SUM-130, UD-101, UD-105, UD-110, and UD-110S (renumbered UD-110H))
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	Commenter	Position	Comment	Committee Response
	Director of Research and Data Management		Regarding SUM-130, Summons-Eviction form: o Page 1, 1st paragraph: "If this summons was provided to you through the Secretary of State's address confidentiality program..," it is unclear when the 10 days begin. Is additional time given if served by mail, per Code of Civil Procedure 1013?	The committee agrees and recommends that the sentence be revised to read, "If this summons was served through the Secretary of State's Safe at Home address confidentiality program, you have 10 days from the date of service, not counting Saturdays and Sundays and other judicial holidays, to respond." The committee notes that service for unlawful detainer cases is governed by Code of Civil Procedure section 1162 and 1167 and Code of Civil Procedure section 1013 do not apply.
			o Page 1, 3rd paragraph: The www.lawhelpca.org website is not listed in UD-105, Section 3 (although the www.courts.ca.gov/selfhelp website is)	The committee notes that forms UD-105 and SUM-130 provide different linked resources for litigants as the forms serve different purposes and are required at different stages of the unlawful detainer process. The committee further notes that the California Courts Self-Help Guide at https://selfhelp.courts.ca.gov/eviction-resources has a link to lawhelp.ca.org.
			o Page 2, Section 3: Spanish translation is not provided	The committee appreciates the information provided and will work to include a Spanish translation of item 3 on form SUM-130 as time and resources permit.
			Regarding UD-110, Judgment-Unlawful Detainer form: o In the header of the document, "Email Address" field is listed as optional, although it is not an optional field in UD-101 and UD-105	In light of this comment, the committee recommends that the parenthetical "optional" following "Email Address" on form UD-110 be removed.
			o Page 2, Section 7: Is the conditional	The committee notes that item 7 on form

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Unlawful Detainer: Forms to Reflect Existing Law and Implement Senate Bill 1017 and Assembly Bill 1726 (Approve form UD-110P; revise forms SUM-130, UD-101, UD-105, UD-110, and UD-110S (renumbered UD-110H))
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	Commenter	Position	Comment	Committee Response
			judgment per Code of Civil Procedure 664.6? If a hearing date is set, would the time be tolled per California Rules of Court 3.1385?	UD-110 is used when the court finds that plaintiff breached the warranty of habitability and is issuing a conditional judgment for defendant or plaintiff, which will become final depending on whether defendant makes required payments. Code of Civil Procedure section 664.6 applies when the parties have agreed to settle the case and wish for the court to retain jurisdiction. It is not contemplated that form UD-110S (renumbered UD-110H) would be used in such a scenario. The tolling in California Rules of Court, Rule 3.1385 would apply in the latter situation, but not the former.
			Regarding UD-110P, Judgment-Unlawful Detainer Partial Eviction Attachment form: o What is the suggested practice if named defendant does not answer and is not a perpetrator of abuse or violence?	The committee is not suggesting a practice in such a scenario but notes that Code of Civil Procedure section1174.27(a)(3) requires the tenant who is the victim of violence or abuse "invoke[] paragraph (2) of subdivision (d) of Section 1161.3 as an affirmative defense" in order for a partial eviction to be ordered.
			Regarding UD-110S, Judgment-Habitable form: o Suggest renaming the form to "UD-110H," as many Judicial Council forms use "S" to indicate the Spanish translation of the form	In light of this comment, the committee recommends that this form be renumbered UD-110H.
8.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	A	**Request for Specific Comments** Does the proposal appropriately address the stated purpose? **Yes.**	The committee appreciates the information provided.

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Unlawful Detainer: Forms to Reflect Existing Law and Implement Senate Bill 1017 and Assembly Bill 1726 (Approve form UD-110P; revise forms SUM-130, UD-101, UD-105, UD-110, and UD-110S (renumbered UD-110H))
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			Would the proposal provide cost savings? If so, please quantify. **No.**	The committee appreciates the information provided.
			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? **Updating the court's internal procedures and packets, notifying and training court staff.**	The committee appreciates the information provided.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes, provided the final versions of the forms are provided to the court at that time. This will ensure that the court is able to provide training to staff, update its internal procedures, modify local packets, and obtain printed stock.**	The committee appreciates the information provided.
			How well would this proposal work in courts of different sizes? **It appears the proposal would work for courts of various sizes.** No additional Comments.	The committee appreciates the information provided.
9.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) (TCPJAC/CEAC Joint Rules	AM	The JRS notes the following impact to court operations: • *Impact on existing automated systems*: Changes to	The committee appreciates the information provided.

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	Commenter	Position	Comment	Committee Response
	Subcommittee)		court's automated case management system, will require staff time. • *Increases staff workload*: Increase in staff workload will include processing the additional judgment form for partial eviction, UD-110P; time spent by self-help staff and attorneys advising public regarding new laws/forms; and time spent by judicial officers in examining documentary evidence and ensuring other components of partial eviction law are followed before entering judgment on that basis. • *Results in additional training, which requires the commitment of staff time and court resources*: Court staff and judiciary training will be required to implement the changes including, for example, training about the new partial eviction procedure and the parts of that law that are mandatory and those that are permissive, and the new attachment, UD-110P. The JRS also notes that the proposal is required to conform to a change of law.	
			Suggested modifications: (1) On existing form UD-105 (Answer – Unlawful Detainer): • Add the word "immediate" before "family" in items 3.k. and 3.s. (Reason: the term used in CCP section 1161.3(b) is "immediate family member," not just "family member." The term "immediate family member" is a specifically defined term-of-art in the statute, i.e., "[i]mmediate family	In light of this comment, the committee recommends that "immediate" be added before "family" on form UD-105.

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	Commenter	Position	Comment	Committee Response
			member" has "the same meaning as defined in Section 1946.7 of the Civil Code." (CCP § 1161.3(a)(4).) Civil Code section 1946.7(h)(3) defines "[i]mmediate family member" as "the parent, stepparent, spouse, child, child-in-law, stepchild, or sibling of the tenant, or any person living in the tenant's household at the time the crime or act listed in subdivision (a) [relating to domestic violence] occurred who has a relationship with the tenant that is substantially similar to that of a family member.") • Add reference to paragraph (2) of CCP § 1161.3(d) in item 3.s. (Reason: CCP § 1174.27(a)(3) specifically requires a tenant-defendant to "invoke[] paragraph (2) of subdivision (d) of Section 1161.3 as an affirmative defense to the cause of action" for UD based on an act of abuse or violence against a tenant, a tenant's immediate family member, or a tenant's household member as one of the requirements for a partial eviction. The currently proposed change on UD-105 item 3.s. does not include the reference to paragraph (2) as required by the statute.) (2) On new proposed form UD-110P (Judgment—Unlawful Detainer Partial Eviction Attachment): • add reference to paragraph (2) of CCP § 1161.3(d) in item 8.a.(3) (for the same reason explained in (1)b., above.)	In light of this comment, the committee recommends that a pin citation to paragraph 2 of Code of Civil Procedure section 1161.3(d) be added to form UD-105, in item 3k2. In light of this comment, the committee recommends that a pin citation to paragraph 2 of Code of Civil Procedure section 1161.3(d) be added to form UD-110P in item 8a3.
10.	Western Center on Law & Poverty by Madeline Howard Senior Attorney	NI	We write in response to the Judicial Council's Invitation to Comment SPR23-10, "Unlawful Detainer: Forms to Reflect Existing Law and Implement Senate Bill 1017 and Assembly Bill	The committee appreciates the information provided.

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Unlawful Detainer: Forms to Reflect Existing Law and Implement Senate Bill 1017 and Assembly Bill 1726 (Approve form UD-110P; revise forms SUM-130, UD-101, UD-105, UD-110, and UD-110S (renumbered UD-110H))
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	Commenter	Position	Comment	Committee Response
			1726." Thank you for the opportunity to provide comment on these forms. Western Center represents low-income Californians in securing housing, health care, public benefits and access to justice. We engage in all of our work with a racial justice lens, and our housing advocacy involves promoting affordable and equitable housing development, protecting tenants' rights, and preventing displacement of low-income communities and communities of color. We also work to ensure equal access to courts for people with disabilities, people with limited English proficiency, low-income people and other groups. Because Western Center is a statewide support center for legal services programs, attorneys representing tenants in unlawful detainers contact us for assistance when their clients experience barriers to court access or other harms. Western Center is therefore uniquely positioned to assess the impact of the Judicial Council's proposed changes to the court forms. The unlawful detainer forms are particularly important because most tenants are not represented by counsel, and rely on these forms to learn about their legal rights and defenses when they are facing eviction. As one of the co-sponsors of Senate Bill (SB) 1017, it is critically important to us that unrepresented tenants be able to use the new protections for survivors of abuse and violence and that the forms facilitate a clear understanding of the law. Thank you for considering our comments on this proposal.	

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Unlawful Detainer: Forms to Reflect Existing Law and Implement Senate Bill 1017 and Assembly Bill 1726 (Approve form UD-110P; revise forms SUM-130, UD-101, UD-105, UD-110, and UD-110S (renumbered UD-110H))
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			I. Implementation of Senate Bill 1017 Western Center supports the recommendations of Family Violence Appellate Project (FVAP), whose comments on these forms are submitted via separate letter. As explained in FVAP's comment letter, changes to the forms are necessary so that unrepresented tenants who are survivors of violence and abuse have a fair opportunity to use the new protections created by SB 1017. The current proposed language could lead to confusion for survivors, landlords, and for courts, and the amendments to the forms that FVAP proposes will provide clarity for all parties and better effectuate the new partial eviction procedure.	The committee appreciates the information provided.
			A. Form UD-105 **1) The Council should amend form language to cover tenants impacted by all criminal acts of violence listed in CCP §1161.3(a)** SB 1017 protects tenants from being evicted based upon an act or acts against a tenant, a tenant's immediate family member, or a tenant's household member that constitute "[a] crime that caused bodily injury or death", "[a] crime that included the exhibition, drawing, brandishing or use of a firearm or other deadly weapon or instrument", or "[a] crime that included the use of force against the victim or a threat of force against the victim". [FN 1 Code Civ. Proc. § 1161.3 (a), Civ. Code § 1946.7(a)(6)-(8).] Currently, Item 3k on the proposed form only references acts of "domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a	In light of this comment and others, the committee recommends that language be added to item 3k on form UD-105 to include the criminal acts of violence listed in Civil Code section 1946.7(a)(6)-(8).

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	Commenter	Position	Comment	Committee Response
			defendant adult." Thus, Item 3k should be amended to include all of the acts of violence now included under Civil Code section 1946.7(a).	
			2) The Council should add examples to clarify the documentation requirement The proposed language in Item 3k describing the expanded types of documents tenants can use to prove the abuse mirrors the statutory language, but this language will be difficult for unrepresented tenants to understand. Many tenants may not know what "another form of documentation or evidence that verifies that the abuse or violence occurred" refers to, so we support FVAP's suggestion to provide examples in the form to help tenants who are completing it without the assistance of an attorney. We suggest the addition of a parenthetical stating "for example, texts, emails or videos showing threats from the abuser."	The committee does not recommend revisions based on this suggestion as the statute does not specify examples of such documentation and including certain examples on the form may imply that other types of documentation are not sufficient or that the court must accept certain types of documentation even if they do not "reasonably verify that the abuse or violence occurred." (Code Civ. Proc., § 1161.3(a)(2)(D).)
			In addition, to ensure that survivors are able to use these new defenses, the form should make clear that they can provide the required documentation with the Answer form and need not have provided it the landlord or their agent at an earlier time.	In light of this comment and others, the committee recommends that the clause "which may be included with this form" be added to the form directly after the language stating that documentation of the defense is required.
			3) The Council should combine all SB 1017 defenses into one Item under Section 3 to avoid confusion Items 3k and Item 3s are related to the same unlawful detainer defense under Code of Civil Procedure sections 1161.3 and 1174.27, so it is confusing to list the defenses separately on form UD-105. We suggest	In light of this comment and others, the committee recommend that the following be added to item 3k in lieu of item 3s: (1) The abuse or violence was committed by a person who does not live in the dwelling unit. (2) The abuse or violence was committed by a person who lives in the dwelling unit and

	Commenter	Position	Comment	Committee Response
			moving Item 3s so that it is a subpart of Item 3k in order to make the defense easier to assert and less confusing. Western Center supports FVAP's recommended form language combining the defenses.	defendant claims protection from eviction under Code of Civil Procedure section 1161.3(d)(2).
			B. Form UD-110 We support FVAP's proposed revisions to Form UD-110, to ensure that partial eviction judgments will be correctly executed. As drafted, proposed Form UD-110 could lead to internally inconsistent judgments where a survivor ends up being evicted or ordered to pay damages even where the Court intends to order a partial eviction where the survivor retains housing. The current Items 3, 4 and 6 do not allow the Court to make the orders associated with partial eviction judgments outlined in Code of Civil Procedure section 1174.27, and the form language does not alert the Court that these items should not be completed in a partial eviction. To address this issue, we recommend amending Item 3 "Parties" to add an option (c) to allow the Court to order judgment for the plaintiff and *some* defendants in partial evictions. We further recommend that Item 3 direct the Court to not fill out items 4-7 in the case of a partial eviction, because as written these items do not allow the Court to make the orders required in a partial eviction. In lieu of completing items 4-7 on the main judgment form, the damage liabilities table in item 6 should be added to the UD-110P form to ensure that only the	In light of this comments and other, the committee recommends that item 4 on form UD-110 be modified to include the option of possession being awarded to "defendant listed on attached form UD-110P in item 8b1 (Code Civ. Proc. § 1174.27)." The committee does not recommend revisions based on the suggestions regarding the other items on form UD-110. Item 3 can properly be used in a partial eviction case. The abuser-tenant would be listed in item 3a and the abusee-tenant would not be listed in that item pursuant to Code of Civil Procedure section 1174.27(e)(1). Similarly, item 6 on this form can be used to order damages from the abuser-tenant to the landlord. It is not clear to the committee that item 7 would never apply to a partial eviction case. While item 5 would not apply to a partial eviction case, this seems apparent within the item and an instruction to not check it for such a case seems unnecessary.

	Commenter	Position	Comment	Committee Response
			defendant found guilty of unlawful detainer is responsible for damages, costs and fees. We recommend these changes to UD-110 and UD-110P because they are necessary for ensuring that Courts can make the required orders for a partial eviction as set out in SB 1017.	
			II. The Judicial Council should add a CARES Act certification requirement to the UD -101- Plaintiffs' Mandatory Cover Sheet In addition to removing reference to COVID eviction protections that no longer apply, we suggest amending the UD-101 form to ensure compliance with existing federal law. Subsection (c) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act requires landlords of covered properties to provide 30 days' notice to tenants in eviction cases. See 15 U.S.C. § 9058(c). There is no sunset for this 30-day notice requirement. This ongoing 30-day notice requirement is reflected in the UD-105 form, section 3(o), which allows the tenant to assert the CARES Act as a defense to eviction. We recommend that the CARES Act requirement be added to the UD-101 form to address the unfairness of the current scheme, which burdens the tenant with the responsibility of filing an answer based on information that is largely outside of their knowledge. Today, when a landlord files an unlawful detainer, they do not have to aver whether the unit at issue is a covered property under the CARES Act. It is left up to the tenant to discover whether the property is covered, something they cannot know from the eviction filing alone (and may only be able	The committee does not recommend revisions based on this suggestion as the council's authority to require form UD-101 is repealed as of October 1, 2025. Instead, the committee will consider recommending the addition of a new item in item 9a of form UD-100, to cover the required notice under the federal CARES Act as time and resources permit.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			to find out from the landlord). While tenants living in HUD-subsidized properties or multifamily housing with a federally-backed mortgage may be able to find out that their unit is covered on their own, tenants living in 1-4 unit, unsubsidized properties with a federally-backed mortgage have no way of learning this information without their landlord's cooperation. If the landlord refuses to provide information about the mortgage, the tenant would have a difficult time determining whether the property is covered, and may be unfairly deprived of the opportunity to plead this vital affirmative defense, especially if proceeding as a self-represented litigant, which the vast majority of tenants are forced to do. Landlords are in a much better position to know whether the unit is in a covered property, and certification to that end would not create a significant burden. In fact, it is in the interest of landlords to ensure that they have given the tenant the correct notice before filing the complaint. In order to address this imbalance, we request that the Judicial Council add a CARES Act certification requirement to form UD-101.	
			III. Conclusion Thank you for your work on these forms, and thank you for considering these comments. If you have any questions or wish to discuss these comments, please feel free to contact me [].	The committee appreciates the information provided.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Item number: 09

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Judicial Branch Education: Delivery Methods Defined

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend Cal. Rules of Court, rule 10.493

Committee or other entity submitting the proposal:
The Center for Judicial Education and Research (CJER) Advisory Committee

*Staff contact (*name, phone and e-mail*): Karene Alvarado, 415-865-7761, karene.alvarado@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): N/A
Project description from annual agenda: The CJER Advisory Committee's annual agenda is approved by the Executive and Planning Committee. The Executive and Planning Committee approved this project as part of the CJER Advisory Committee's 2023 annual agenda on March 27, 2023.

Project Summary: In response to two public comments received on last year's proposed revisions to education-related court rules, amend California Rules of Court, rule 10.493, to add definitions for "e-Learning" and "asynchronous" training.

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

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.)
N/A

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.: 23-129
For business meeting on September 18–19, 2023

Title
Judicial Branch Education: Delivery Methods Defined

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 10.493

Recommended by
Center for Judicial Education and Research Advisory Committee
Hon. Darrell S. Mavis, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 13, 2023

Contact
Karene Alvarado, 415-865-7761
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Executive Summary

The Center for Judicial Education and Research Advisory Committee recommends amending rule 10.493 of the California Rules of Court to provide extended definitions to terms used in a slate of education rule amendments adopted by the Judicial Council effective January 1, 2023. This proposal is based on public comments received in 2022 on that slate of amendments.

Recommendation

The Center for Judicial Education and Research Advisory Committee recommends that the Judicial Council amend rule 10.493 of the California Rules of Court, effective January 1, 2024, to include modified and additional definitions of the following available education delivery methods: instructor-led training, asynchronous education, e-Learning, and self-directed study.

The proposed amended rule is attached at pages 4–5.

Relevant Previous Council Action

The Judicial Council approved a comprehensive set of rule amendments on judicial branch education effective January 1, 2023. The amendments, among other things, updated and modernized the judicial branch education rules to reflect new education delivery methods and

terminology. During the public comment period, the Center for Judicial Education and Research (CJER) Advisory Committee received feedback indicating that extended definitions for certain terms in the amended rules would be helpful to judicial officers and judicial branch staff.

Analysis/Rationale

The CJER Advisory Committee recommends amending rule 10.493 to respond to suggestions raised during the public comment period for the slate of education rule amendments adopted by the Judicial Council effective January 1, 2023. The committee recognizes the need to provide clarification of adult education terms, used in the recently amended rules, that may not be self-explanatory or unambiguous to all judicial officers or judicial branch staff members. By clarifying the terms, the committee hopes to raise awareness of the broad array of convenient education options available to judicial officers and judicial branch staff to meet their continuing education obligations.

An amendment to a rule of court is necessary in this instance because the terms defined in the proposal are already in use in several other rules of court pertaining to the continuing education requirements of judicial officers and judicial branch personnel.

Policy implications

There are no direct policy implications. These definitions will help judicial officers and court staff better understand the rules adopted effective January 1, 2023. These amendments are therefore consistent with the *Strategic Plan for California's Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III).

Comments

This proposal circulated for public comment from April 6 through May 12, 2023, as part of the regular spring comment cycle. Two comments were received both of which agreed with the proposal. A chart with the full text of the comments and the committee responses is at page 6.

This proposal generated no significant points of discussion or divergence of opinion within the CJER Advisory Committee membership.

Alternatives considered

In deciding to make this proposed amendment, the CJER Advisory Committee considered alternatives, including repealing rule 10.493 in its entirety as no longer necessary. Alternatively, the committee considered leaving the rule as it currently stands, without modification. However, neither option addressed the public comment requests for additional clarification of the specific terms adopted by the Judicial Council in 2022.

The CJER Advisory Committee also considered adding the definitions to each rule that contained the terms. Doing so would have also allowed the removal of parenthetical examples given for certain delivery methods in several rules of court. The committee concluded, however, that removing the parenthetical examples in the current rules or adding language to each rule

would make the education requirements more difficult to understand and needlessly cumbersome.

The CJER Advisory Committee ultimately concluded that it should recommend amending rule 10.493 as requested during the 2022 public comment period.

Fiscal and Operational Impacts

This proposal will result in no fiscal or operational costs to the courts or the Judicial Council.

Attachments and Links

1. Proposed Cal. Rules of Court, rule 10.493, at pages 4–5
2. Chart of comments, at page 6

Rule 10.493 of the California Rules of Court would be amended, effective January 1, 2024, to read:

Rule 10.493. ~~Instructor-led training~~ Delivery methods defined

~~**(a) Definition**~~

(1) "Asynchronous education" refers to training that learners participate in at their own pace outside the presence of an instructor or other learners. Asynchronous education includes viewing or listening to videos or audio files or participating in self-paced online courses.

(2) "E-learning" refers to any kind of instruction that is delivered through an electronic device using electronic media. E-learning can be either synchronous or asynchronous and either live or prerecorded, such as participating in live webinars, viewing or listening to videos or audio files, or participating in online courses.

(3) "Instructor-led training" refers to synchronous education, guided by faculty, that allows for real-time communication between faculty and participants ~~and is offered by an approved provider under rule 10.481~~. Live, synchronous education facilitated by an instructor may be delivered remotely via e-learning or in person. Examples of instructor-led training include in-person trainings in a classroom setting~~,~~ and live webinars~~, and live videoconferences~~.

(4) "Self-directed study" refers to education in which learners engage in a process where they take primary responsibility for planning, executing, and evaluating a course of study with or without guidance from a manager, supervisor, or peer. In self-directed learning, the individual learner assumes responsibility for the design and completion of a course of study. Prior approval to engage in self-directed study may be required to qualify for continuing education credit.

~~**(b) Application**~~

~~Notwithstanding any other rule, instructor-led training may be used to satisfy all continuing education requirements specified in the California Rules of Court that require traditional (live, face-to-face) education. This provision applies whether the requirement relates to a specific course or to a certain percentage or number of hours of education.~~

~~**Advisory Committee Comment**~~

~~This rule is intended to eliminate within the California Rules of Court any restriction that requires that a specific course or a certain number or percentage of hours of education be taken in a traditional (live, face-to-face) learning environment. This rule applies whether the education is~~

~~described as "traditional (live, face-to-face)," "live (face-to-face)," "in person," or any combination of these terms.~~

SPR23-11

Judicial Branch Education: Delivery Methods Defined (Amend Cal. Rules of Court, rules 10.493)

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

	Commenter	Position	Comment	Committee Response
1.	Miguel Barraza Caregiver Sacramento	A	Adult education has helped me tremendously, not very engaged as a youth [*sic*]. Thanks to the nonprofits and faith[-]based community.	The committee thanks the commenter and notes their support for the proposal.
2.	Superior Court of Mono County by Lester Perpall, Executive Officer	A	The proposed changes address the stated purpose by making it easier to understand the types of training allowed. Judicial officers and staff will need to be informed about the types of training that are allowed. However, this will have little to no fiscal impact and work well in our two-judge court. Four months is ample time for implementation.	The committee thanks the commenter and notes their support for the proposal.

Item number: 10

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 08/22/23

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

Title of proposal: Jury Instructions: Criminal Jury Instructions (2023 Supplement)

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
1. Addition of CALCRIM Nos. 209 and 526; and
2. Revisions to CALCRIM Nos. 101, 318, 319, 334, 377, 401, 402, 403, 417, 521, 522, 540B, 540C, 563, 592, 600, 604, 703, 733, 763, 1801, and 1802.

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

*Staff contact (*name, phone and e-mail*): Kara Portnow, kara.portnow@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*): 11/1/22
Project description from annual agenda: Maintenance—Case Law and Legislation, Maintenance—Comments from Users, New Instructions and Expansion into New Areas, Technical Corrections.

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

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

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.

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-029
For business meeting on September 19, 2023

Title
Jury Instructions: Criminal Jury Instructions (2023 Supplement)

Rules, Forms, Standards, or Statutes Affected
Judicial Council of California Criminal Jury Instructions

Recommended by
Advisory Committee on Criminal Jury Instructions
Hon. Jeffrey S. Ross, Chair

Agenda Item Type
Action Required

Effective Date
September 19, 2023

Date of Report
July 14, 2023

Contact
Kara Portnow, 415-865-4961
kara.portnow@jud.ca.gov

Executive Summary

The Advisory Committee on Criminal Jury Instructions recommends approving for publication the revised criminal jury instructions prepared by the committee under rule 2.1050 of the California Rules of Court. These changes will keep the instructions current with statutory and case authority. Once approved, the revised instructions will be published in the 2023 supplement of *Judicial Council of California Criminal Jury Instructions (CALCRIM).*

Recommendation

The Advisory Committee on Criminal Jury Instructions recommends that the Judicial Council, effective September 19, 2023, approve the following changes to the criminal jury instructions prepared by the committee:

1. Addition of CALCRIM Nos. 209 and 526; and
2. Revisions to CALCRIM Nos. 101, 318, 319, 334, 377, 401, 402, 403, 417, 521, 522, 540B, 540C, 563, 592, 600, 604, 703, 733, 763, 1801, and 1802.

Relevant Previous Council Action

At its meeting on July 16, 2003, the Judicial Council adopted what is now rule 10.59 of the California Rules of Court, which established the Advisory Committee on Criminal Jury Instructions and its charge.[1] In August 2005, the council voted to approve the *CALCRIM* 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 *CALCRIM.* The council approved the last *CALCRIM* release at its March 2023 meeting.

Analysis/Rationale

The committee revised the instructions based on comments and suggestions from justices, judges, and attorneys; proposals by staff and committee members; and recent developments in the law.

Below is an overview of some of the proposed changes.

Proposed new CALCRIM No. 209, *Implicit or Unconscious Bias*

The California Judges' Association (CJA) submitted a proposed implicit bias jury instruction to both the Advisory Committee on Criminal Jury Instructions and the Advisory Committee on Civil Jury Instructions, which issues *Judicial Council of California Civil Jury Instructions* (*CACI*). The submission letter noted that CJA's Committee on the Elimination of Bias and Inequality in Our Courts spent more than a year researching and drafting the language. The letter urged both committees either to expand existing instructions to include language related to implicit bias, or to create a new standalone instruction to address the issues of implicit bias more substantively. Included in their submission was a packet of information containing sample implicit bias jury instructions from other jurisdictions.

The committee agreed that a new standalone instruction on implicit bias would be an important addition. A key consideration for the committee was to ensure that this new instruction would have the desired outcome of educating jurors about implicit bias and providing effective tools to help them avoid implicit bias impacting their deliberations. An overarching concern was that the instruction avoid any unintended backlash effect—by inadvertently causing jurors to feel defensive and resistant to the ideas and tools presented. The committee initially consulted with a behavioral scientist at Stanford SPARQ[2] who reviewed the instruction and offered edits designed to achieve these twin objectives. The draft then went through several iterations to fine-tune the

[1] Rule 10.59(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 criminal jury instructions."

[2] The acronym SPARQ stands for Social Psychological Answers to Real-World Questions. According to the mission statement on its website, "Stanford SPARQ is a behavioral science 'do tank' at Stanford University" that "build[s] research-driven partnerships with industry leaders and changemakers to combat bias, reduce disparities, and drive culture change."

language. The committee shared its final version with the chair of the *CACI* committee for review and consideration by that committee at its upcoming meeting. The committee also reviewed and considered suggested edits made by a *CACI* workgroup.[3]

In addition to the new proposed instruction, the committee incorporated two paragraphs from CALCRIM No. 209 into No. 101, *Cautionary Admonitions: Jury Conduct (Before, During, or After Jury Is Selected)*. In this way, jurors will be introduced to the concept of implicit bias during the pretrial phase, so that No. 209 (which could be given posttrial) would relate back to this introductory instruction.

Several commenters expressed enthusiastic support for the new instruction. One commenter, a judge from the Superior Court of Los Angeles County, requested that the committee modify the instructional duty section to clarify that the instruction could be given by the judge sua sponte, in the absence of a party's request. The committee agreed with this suggestion and changed the instructional duty to include this language. Another comment, from a judge of the Superior Court of San Francisco County, urged the *CACI* committee to recommend adoption of the identical instruction in the civil jury instructions.

CALCRIM No. 402, *Natural and Probable Consequences Doctrine (Target and Non-Target Offenses Charged)*; No. 403, *Natural and Probable Consequences Doctrine (Only Non-Target Offense Charged)*; No. 417, *Liability of Coconspirator's Acts*; and No. 600, *Attempted Murder*

Senate Bill 1437 (Stats. 2018, ch. 1015) amended Penal Code section 188 to prohibit the imputation of malice for murder liability,[4] amended Penal Code section 189 to limit felony murder liability, and added Penal Code section 1170.95 to authorize resentencing relief. After the enactment of SB 1437, the committee added a bench note to these four instructions that explained: "A verdict of murder may not be based on the natural and probable consequences doctrine." This note also raised the question whether the statutory amendment to Penal Code section 188 abolished the natural and probable consequences doctrine as to attempted murder.

A few years later, Senate Bill 775 (Stats. 2021, ch. 551) amended Penal Code section 1170.95 (now renumbered as Penal Code section 1172.6) to expressly provide resentencing relief for persons convicted of attempted murder and manslaughter under a theory of felony murder and the natural probable consequences doctrine. In *People v. Sanchez* (2022) 75 Cal.App.5th 191, 196 [290 Cal.Rptr.3d 390], the Fifth District Court of Appeal reviewed SB 1437 and SB 775 and concluded that "the natural and probable consequences doctrine cannot prove an accomplice committed attempted murder." In response, the committee updated the bench note about SB 1437 in these four instructions. The bench note now states: "A verdict of murder or attempted murder may not be based on the natural and probable consequences doctrine. (Pen. Code,

[3] This committee understands that the CACI committee is considering a similar civil jury instruction as part of its next set of proposed civil jury instructions.

[4] The legislation added subdivision (a)(3), which provides: "Except as stated in subdivision (e) of Section 189, in order to be convicted of murder, a principal in a crime shall act with malice aforethought. Malice shall not be imputed to a person based solely on his or her participation in a crime."

§ 188(a)(3); *People v. Gentile* (2020) 10 Cal.5th 830, 849 [272 Cal.Rptr.3d 814, 477 P.3d 539] [murder]; *People v. Sanchez* (2022) 75 Cal.App.5th 191, 196 [290 Cal.Rptr.3d 390] [attempted murder].)"

CALCRIM No. 521, *First Degree Murder*

In *People v. Brown* (2023) 14 Cal.5th 453, 455–456 [305 Cal.Rptr.3d 127, 524 P.3d 1088], the California Supreme Court addressed a first degree murder by poison case involving a newborn baby who died after nursing from a mother who had ingested heroin and methamphetamine. At the outset, the court recognized the need to define the required mental state and specifically to determine whether "it is enough for the prosecution to show the defendant's use of poison was a substantial factor in causing the victim's death, or whether instead the prosecution must show the defendant acted with a particular mental state when using the poison, separate from the showing of malice that would support a conviction of second degree murder." (*Id.* at p. 460.) After reviewing the language, context, and history of Penal Code section 189, the court held: "We now clarify that to prove a murder by poison is in the first degree, the prosecution must show that the defendant deliberately gave the victim poison with the intent to kill the victim or inflict injury likely to cause the victim's death." (*Id.* at p. 471.) The committee added these two elements to the murder-by-poison section of the instruction and cited *Brown* in the authority section. The committee also made technical word changes.

Proposed new CALCRIM No. 526, *Implied Malice Murder: Aiding and Abetting*

In *People v. Gentile* (2020) 10 Cal.5th 830, 839 [272 Cal.Rptr.3d 814, 477 P.3d 539], the California Supreme Court reviewed the changes to murder liability enacted by SB 1437 and held that the amendments to Penal Code section 188 prohibit a second degree murder conviction based on the natural and probable consequences theory. The court further explained that "notwithstanding Senate Bill 1437's elimination of natural and probable consequences liability for second degree murder, an aider and abettor who does not expressly intend to aid a killing can still be convicted of second degree murder if the person knows that his or her conduct endangers the life of another and acts with conscious disregard for life." (*Id.* at p. 850.) Following *Gentile*, several appellate cases upheld direct aiding and abetting liability for implied malice murder. (See, e.g., *People v. Vizcarra* (2022) 84 Cal.App.5th 377, 388–392 [300 Cal.Rptr.3d 371]; *People v. Schell* (2022) 84 Cal.App.5th 437, 442 [300 Cal.Rptr.3d 409]; *People v. Vargas* (2022) 84 Cal.App.5th 943, 953–955 [300 Cal.Rptr.3d 777]; *People v. Silva* (2023) 87 Cal.App.5th 632 [303 Cal.Rptr.3d 645].)

Meanwhile, in *People v. Powell* (2021) 63 Cal.App.5th 689, 710–714 [278 Cal.Rptr.3d 150], the Third District Court of Appeal examined the *CALCRIM* aiding and abetting instructions in the context of a second degree implied malice murder case and found—absent revisions to address aiding and abetting second degree implied malice murder—CALCRIM No. 401 lacked sufficient specificity. In particular, *Powell* noted that the instruction's use of the term "the crime" did not apply to aiding and abetting implied malice murder because "the aider and abettor of implied malice murder need not intend the commission of *the crime* of murder. Rather, relative to the aider and abettor's intent, he or she need only intend the commission of the perpetrator's *act*, the

natural and probable consequences of which are dangerous to human life, intentionally aid in the commission of that *act* and do so with conscious disregard for human life." (*Id.* at p. 714 [emphasis in original].) Likewise, in *People v. Langi* (2022) 73 Cal.App.5th 972, 982–983 [288 Cal.Rptr.3d 809], the First District Court of Appeal considered a *CalJIC*[5] aiding and abetting instruction, which was similar to CALCRIM No. 401, in an implied malice murder case. *Langi* concluded that the instruction "creates an ambiguity under which the jury may find the defendant guilty of aiding and abetting second degree murder without finding that he personally acted with malice." (*Id.* at p. 982.) In *People v. Maldonado* (2023) 87 Cal.App.5th 1257, 1266 [304 Cal.Rptr.3d 391], the First District Court of Appeal similarly concluded that CALCRIM No. 401 impermissibly permitted a conviction based on imputed malice in the context of a lying-in-wait murder.

Initially, the committee considered modifying No. 401 to address the concerns raised in *Powell*, *Langi*, and *Maldonado*. However, the committee was concerned that simply changing the existing instruction would not be sufficient and could be potentially confusing, given the complex legal concepts involved. As a result, the committee decided to draft a new instruction specifically for aiding and abetting implied malice murder. In addition to the instructional language suggested by *Powell*, the committee added a commentary that discusses aiding and abetting liability for implied malice murder, citing *Gentile* along with *Vizcarra*, *Schell*, *Vargas*, and *Silva*. For No. 401, the committee added a bench note to direct users to this new instruction.

During the comment period, the California Supreme Court issued a decision about aiding and abetting an implied malice murder in *People v. Reyes* (June 29, 2023, S270723). *Reyes* noted that since *Gentile*, "the Courts of Appeal have held a defendant may directly aid and abet an implied malice murder" and extensively quoted *Powell*'s explanation of the elements of this offense. Thus, *Reyes* confirmed the case law that the committee had already relied upon when drafting this new instruction. In response to this new case, the committee added *Reyes* to the bench notes and will update the citation as soon as it becomes available. The committee also removed the citations to *Powell*, *Langi*, and *Maldonado*, as well as *Vizcarra*, *Schell*, *Vargas*, and *Silva*, that had previously appeared in the bench notes of the draft, because a citation to *Reyes* is sufficient authority.

Based on *Reyes*, two commenters—the Orange County Public Defender's Office and the Office of the State Public Defender (OSPD)—requested that the committee further define terms. The committee agreed with some, but not all, of the proposed edits. The committee added "perpetrator's" to clarify "act[s]" in elements 4 and 5 and inserted "that (was/were) dangerous to human life" at the end of element 4. The committee also included the following definition: "An act is *dangerous to human life* if there is a high probability that the act will result in death" and provided a new entry in the authority section for this definition.

[5] *CALJIC* refers to *California Jury Instructions, Criminal*, a separate publication that was originally authored by the Committee on Standard Jury Instructions of the Superior Court of Los Angeles County.

CALCRIM No. 540B, *Felony Murder: First Degree—Coparticipant Allegedly Committed Fatal Act*; No. 540C, *Felony Murder: First Degree—Other Acts Allegedly Caused Death*; No. 703, *Special Circumstances: Intent Requirement for Accomplice After June 5, 1990—Felony Murder*

Recent case law has examined and further refined the standard for reckless indifference to human life. First, in *In re Scoggins* (2020) 9 Cal.5th 667, 677 [264 Cal.Rptr.3d 804, 467 P.3d 198], the California Supreme Court reviewed cases defining reckless indifference to human life and clarified that this concept has both "a subjective and an objective element." In response, the committee refined the instruction's definition of reckless indifference to better distinguish the subjective element from the objective element. The committee also added *Scoggins* to the authority section.

Second, several appellate cases have recently upheld youth as a relevant factor when determining whether a defendant acted with reckless indifference to human life. (See *People v. Keel* (2022) 84 Cal.App.5th 546, 558–559 [300 Cal.Rptr.3d 483]; *People v. Jones* (2022) 86 Cal.App.5th 1076 [302 Cal.Rptr.3d 847]; *In re Moore* (2021) 68 Cal.App.5th 434, 454 [283 Cal.Rptr.3d 584]; *People v. Ramirez* (2021) 71 Cal.App.5th 970, 987 [286 Cal.Rptr.3d 771].) Based on this developing case law, the committee added a new bullet point based on age ("How old was the defendant?") as an optional factor for the jury to consider when determining whether the defendant acted with reckless indifference to human life. The committee also added these cases to the authority section.

Separate from the reckless indifference standard, in *People v. Sifuentes* (2022) 83 Cal.App.5th 217, 229 [299 Cal.Rptr.3d 320], the First District Court of Appeal addressed the peace officer exception in Penal Code section 189(f).[6] The court held that the legal standard "knew or reasonably should have known" here "implicates an objective criminal negligence standard." (*Id.* at p. 230.) The committee added this case to the authority sections of Nos. 540B and 540C.

Two commenters—Appellate Defenders Inc. and OSPD—agreed with these proposed changes but requested additional language. Appellate Defenders Inc. proposed amending the age factor to state instead: "Did the defendant's youth and maturity level contribute to the commission of the offense?" The committee declined to make this change, noting that the questions in this section of the instruction are intentionally open-ended and neutral. Further, the authority section informs the parties about the significance of the defendant's age, which the parties can choose to argue at trial. Separately, OSPD proposed that these instructions include additional language to explain further the concept of reckless indifference to human life. The committee declined to add OSPD's proposed language, observing that the instruction already accurately reflects case law.

[6] Penal Code section 189(f) states: "Subdivision (e) does not apply to a defendant when the victim is a peace officer who was killed while in the course of the peace officer's duties, where the defendant knew or reasonably should have known that the victim was a peace officer engaged in the performance of the peace officer's duties."

CALCRIM No. 563, *Conspiracy to Commit Murder*

People v. Ware (2022) 14 Cal.5th 151 [301 Cal.Rptr.3d 511, 520 P.3d 601] involved an evidentiary challenge to a murder conspiracy conviction in the context of a long-standing gang rivalry. In this case, the California Supreme Court initially reviewed the requirements for a murder conspiracy conviction and noted that "[t]he type and volume of evidence necessary to establish the existence of a broad, nonspecific gang-related conspiracy of the sort alleged here poses challenges to a fact finder attempting to distinguish the guilt of one defendant from that of another." (*Id.* at p. 165.) Ultimately, the court found insufficient evidence of the defendant's intent to participate in a conspiracy to kill rival gang members. (*Id.* at p. 174.) In reaching this conclusion, the court warned:

> The risk of jury confusion makes it all the more vital for courts to carefully distinguish between evidence of mere membership in a gang embroiled in a violent rivalry, on the one hand, and evidence sufficient to support a conviction for conspiracy to commit murder, on the other.

(*Id.* at p. 175.)

CALCRIM No. 563 already contains optional language that explains: "[Someone who merely accompanies or associates with members of a conspiracy but who does not intend to commit the crime is not a member of the conspiracy]." The related bench note currently directs the trial court simply to give this bracketed language "upon request." In response to the concerns articulated in *Ware*, the committee added a use note stating "*<Give when evidence of group membership is used to prove the conspiracy>*" before the bracketed language. The committee also inserted a bench note that recommends "adding an admonition to distinguish evidence of gang rivalry violent conduct from evidence to support a conviction for conspiracy to commit murder" and provided suggested language. Finally, the committee added *Ware* to the authority section.

CALCRIM No. 592, *Gross Vehicular Manslaughter*

Senate Bill 1472 (Stats. 2022, ch. 626) amended Penal Code section 192 to clarify the definition of gross negligence as an element of vehicular manslaughter. Specifically, this legislation added the following types of conduct that could, based on the totality of the circumstances, constitute gross negligence: participating in a sideshow, an exhibition of speed, and speeding over 100 miles per hour. (Pen. Code, § 192(e).) The committee added these three types of conduct to the instruction, included relevant statutory definitions, and added references to the authority section.

CALCRIM No. 604, *Attempted Voluntary Manslaughter*

A trial judge pointed out that CALCRIM No. 571, *Voluntary Manslaughter*, includes the following bracketed sentence: "Imperfect self-defense does not apply when the defendant, through (his/her) own wrongful conduct, has created circumstances that justify (his/her) adversary's use of force." The judge noted that CALCRIM No. 604 does not contain this language and suggested that the same language would also be appropriate for this instruction on an attempt of that offense. The committee agreed with this suggestion and added the bracketed language to the instruction, along with the relevant authority section from No. 571.

CALCRIM No. 733, *Special Circumstances: Murder With Torture*

In *People v. Superior Court (Fernandez)* (2023) 88 Cal.App.5th 26, 32–39 [304 Cal.Rptr.3d 488], the Fourth District Court of Appeal discussed the torture-murder special circumstance in Penal Code section 190.2(a)(18) and specifically case law that explains the relationship between the acts of torture and the intent to kill. The court explained: "[I]f a person tortures another with the intent that the torture will eventually kill them, they do not escape the special circumstance if the victim dies during the abuse at an unexpected moment or in an unanticipated way—or if, as here, there is no evidence specifically showing intent at the precise moment of the death blow." (*Id.* at p. 38.)

In a footnote, the court made the following suggestion to the committee:

> We note that CALCRIM No. 733, the jury instruction applicable to the torture-murder special circumstance, includes the element that the defendant intended to kill, and the Bench Notes explain that causation is not required. We think this case suggests that it would be helpful for the commentary to the instruction to also refer to the authority discussed above establishing that the accused's intent to kill must be "when he tortured" the victim, and not necessarily at the moment of a particular fatal blow. (*Jennings, supra,* 50 Cal.4th at p. 647.)

(*Id.* at p. 39, fn.7.)

Pursuant to this suggestion, the committee expanded the discussion under "Causation Not Required for Special Circumstance" to include *Fernandez* as well as the cases discussed in the *Fernandez* opinion.

CALCRIM No. 1802, *Theft: As Part of Overall Plan*

Assembly Bill 2356 (Stats. 2022, ch. 22) added subdivision (e) to Penal Code section 487. This new subsection states: "If the value of the money, labor, real property, or personal property taken exceeds nine hundred fifty dollars ($950) over the course of distinct but related acts, the value of the money, labor, real property, or personal property taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan." The legislation notes that the amendment "is declaratory of existing law in *People v. Bailey* (1961) 55 Cal.2d 514." (Assem. Bill 2356; Stats. 2022, ch. 22, § 2.)

CALCRIM No. 1802 was modeled on the *Bailey* doctrine, which allowed aggregating multiple thefts when committed as part of an overall plan. In response to the legislation, the committee modified the instruction to track the new statutory language. The committee made additional changes to account for cases in which some, but not all, charged thefts are part of an overall plan. In the Related Issues section, the committee updated the "Combining Grand Thefts" paragraph to include a discussion of *People v. Whitmer* (2014) 59 Cal.4th 733 [174 Cal.Rptr.3d 594, 329 P.3d 154] and added this case to the authority section. The committee also removed the "Multiple Victims" discussion because the legislative counsel's digest in the introduction of AB 2356 specified that the aggregation would apply "whether committed against one or more victims." Finally, the committee removed the "Theft Enhancement" discussion because Penal Code section

12022.6 has previously sunsetted. For CALCRIM No. 1801, *Grand and Petty Theft*, the committee added a reference to CALCRIM No. 1802 as well as made conforming technical changes to the instructional text.

Policy implications

Rule 2.1050 of the California Rules of Court requires the Advisory Committee on Criminal Jury Instructions to regularly update, amend, and add topics to *CALCRIM* and to submit its recommendations to the council for approval. This proposal fulfills that requirement.

Comments

The proposed additions, revisions, and revocation to *CALCRIM* circulated for public comment from May 24 through June 30, 2023. The committee received responses from 10 commenters: 4 judicial officers, 1 superior court committee, 1 bar association, 1 public defender's office, 1 district attorney's office, and 2 appellate defender offices.

Six commenters expressed support for proposed new CALCRIM No. 209 as well as the added implicit bias language in CALCRIM No. 101. One commenter requested additional language from *People v. Thomas* added to the instructional duty section of No. 522. Two commenters agreed with the proposed changes to CALCRIM Nos. 540B, 540C, and 703, but requested additional modifications with which the committee did not agree, as discussed above. Two commenters submitted suggested changes for new CALCRIM No. 526, based on the California Supreme Court's recent opinion in *People v. Reyes*, as discussed above. Finally, one commenter agreed with a majority of the proposals and pointed out pincite corrections for *People v. Thomas*. This commenter disagreed with only two instructions: No. 526 (cautioning that it be deferred until *People v. Reyes* is decided) and No. 733 (on the grounds that the case arose out of a denial of a Penal Code section 995 motion and that a dissenting opinion disagreed with the majority's legal analysis).

The text of all comments received and the committee's responses are included in a chart of comments attached at pages 10–24.

Alternatives considered

The proposed changes are necessary to ensure that the instructions remain clear, accurate, and complete; therefore, the advisory committee considered no alternative actions.

Fiscal and Operational Impacts

No implementation costs are associated with this proposal.

Attachments and Links

1. Chart of comments, at pages 10–24
2. Full text of revised *CALCRIM* instructions, including table of contents, at pages 25–136

Instruction No.	Commenter	Position	Comment	Committee Response
101, 209, 377, 401, 402, 403, 417, 521, 540B, 540C, 563, 592, 600, 604, 703, 1801, 1802	Orange County Bar Association, by Michael A. Gregg, President.	A	The Orange County Bar Association agrees with the following proposals.	No response necessary.
101 and New 209	Judge Khymberli Apaloo, Superior Court of San Bernardino County	AM	I am writing to comment specifically on Proposed modification to Instruction 101 and the proposed addition of Instruction 209. These proposals are fantastic, and it is great to see such a robust instruction on the issue of bias making its way to the criminal jury instructions, which were previously lacking. The only suggestion for changes I would make is to include language in the Bench Notes, Instructional Duty that makes it clear the Court could give the instruction sua sponte. It could read "This instruction may be given on request, or by the Court, sua sponte."	The committee agrees with this suggestion and has changed the instructional duty section to read: "This instruction may be given on request or sua sponte."
101 and New 209	Judge Rebecca S. Riley, Ret., Temporary Assigned Judges Program	A	The new wording of 101 addressing bias and the new instruction, 209, are long needed instructions. As our brains are hard-wired to categorize, we really can't help it, it is extremely important to address this with potential jurors. I particularly like "2." in 209 as it actually sets out a way to approach addressing a person's implicit bias. When people understand that everyone has biases, that it isn't shameful but something to be aware of in assessing evidence.	No response necessary.
101 and New 209	Access and Fairness Committee, Superior Court of Los Angeles County, by Bryan Borys, Director of Research & Data Management	A	The Access and Fairness Committee of the Los Angeles County Superior Court supports the proposed changes to jury instructions on implicit bias. The proposed instructions provide substantial guidance for jurors to reflect on their own biases and to thoroughly examine their decision-making process to ensure the conclusions they draw are a fair reflection of the law and evidence. As the United States Supreme Court noted in	No response necessary.

Instruction No.	Commenter	Position	Comment	Committee Response
			Pena-Rodriguez v. Colorado, 580 U.S. 206, 224 (2017), racial bias is, "a familiar and recurring evil that, if left unaddressed, would risk systemic injury to the administration of justice. . . An effort to address the most grave and serious statements of racial bias is not an effort to perfect the jury but to ensure that our legal system remains capable of coming ever closer to the promise of equal treatment under the law that is so central to a functioning democracy." The proposed modification of CALCRIM 101 and the addition of 209 brings us closer to that promise.	
New 209	Judge Curtis Karnow, Superior Court of San Francisco County	A	I support this instruction, and suggest it be part of CACI as well. Indeed, to the extent practicable, all preliminary and general instructions equally applicable to civil and criminal cases should be the same in CalCrim and CACI.	No response necessary.
New 209	Judge Gary L. Paden, Ret., California Judges Association, executive board member	A	I see no problem with the instruction.	No response necessary.
318 and 319	Orange County Bar Association, by Michael A. Gregg, President.	AM	Appropriately adds *People v. Thomas* (2023) 14 Cal.5th 327, 369 under Authority section. Designated page 369 citation from *Thomas* is incorrect. Page cite should be changed to page 394.	The committee agrees and has corrected the pincite.
334	Orange County Bar Association, by Michael A. Gregg, President.	AM	Appropriately adds *People v. Thomas* (2023) 14 Cal.5th 327, 367-368 under Authority section. Designated pages 367-368 citation from Thomas is incorrect. Page cite should be changed to page 391-392.	The committee agrees and has corrected the pincite.
520	Office of the State Public Defenders, by Mary McComb, State Public Defender and Samuel Weiscovitz, Senior Deputy State Public Defender		*As set forth [below], the Supreme Court's opinion in *Reyes, supra*, 2023 Cal. LEXIS 3568, clarified (1) the meaning of "dangerous to human life" and (2) when an act does not proximately cause death. These statements apply equally to aiding and abetting implied malice murder and to directly committing implied malice murder. OSPD thus suggests that the Committee make two changes to CALCRIM No. 520 (First or Second Degree Murder With Malice Aforethought).	These comments raise issues about an instruction that are outside the scope of the current invitation to comment. The committee will consider them at its next meeting.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

Instruction No.	Commenter	Position	Comment	Committee Response
			First, the second element of implied malice should read as follows: The natural and probable consequences of the (act/[or] failure to act) were dangerous to human life <u>in that they involved a high degree of probability that they would result in death</u>. (Proposed modification underlined.) Second, the bracketed language on proximate causation should read as follows: (An act/[or] (A/a) failure to act) causes death if the death is the direct, natural, and probable consequence of the (act/[or] failure to act) and the death would not have happened without the (act/[or] failure to act). A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence. <u>An act that merely creates a dangerous situation in which death is possible depending on how circumstances unfold does not, without more, cause death.</u> (Proposed modification underlined.)	
522	Orange County Bar Association, by Michael A. Gregg, President.	AM	Bench Notes, Instructional Duty section for authority that this CALCRIM is a pinpoint instruction to be given upon request. Designated page 362 citation from *Thomas* is incorrect. Page cite should be changed to page 384.	The committee agrees and has corrected the pincite.
522	San Diego County District Attorney's Office by Shawn Tafreshi, Assistant Chief.	AM	Please accept the following comment from the San Diego County District Attorney's Office on proposed California Criminal Jury Instruction Number 522. Specifically, our office has discovered an incomplete point of law in the Bench Notes accompanying the latest proposed California Criminal Jury Instructions (CALCRIM 2023-01). In CALCRIM 522, as currently proposed, the first paragraph of the Bench Notes attempts to give guidance on whether this pinpoint instruction	The committee agrees with this suggestion and has added the phrase "where evidence supports the theory" at the end of the pinpoint instruction sentence.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

Instruction No.	Commenter	Position	Comment	Committee Response
			regarding provocation should be given sua sponte or upon request of any party. The relevant portion of the Bench Notes is located at the end of the first paragraph, and states: There is, however, no sua sponte duty to instruct the jury on this issue. (*People v. Rogers* (2006) 39 Cal.4th 826, 877-880 [48 Cal.Rptr.3d 1, 141 P.3d 135].) This is a pinpoint instruction, to be given on request. (*People v. Thomas* (2023) 14 Cal.5th 327, 362 [304 Cal.Rptr.3d 1, 523 P.3d 323].) The Bench Notes now cite to the California Supreme Court decision of *People v. Thomas* to support the statement that a pinpoint instruction is to be given on request. However, page 362 of the *Thomas* case does not support the narrow legal view that: "[t]his is a pinpoint instruction, to be given on request." Instead, *Thomas* provides much more guidance that should be included in the Bench Notes for a more full and accurate explanation of the law. On page 384, the *Thomas* decision completes the rule of law on this point, stating: "An instruction that provocation may be sufficient to raise reasonable doubt about premeditation or deliberation, such as ... CALCRIM No. 522, is a pinpoint instruction to which a defendant is entitled only upon request where evidence supports the theory. (*People v. Thomas* (2023) 14 Cal.5th 327, 384 (citing *People v. Rivera* (2019) 7 Cal.5th 306,328 (*Rivera*) [247 Cal.Rptr.3d 363]).)" This direct quote from *Thomas* and *Rivera* reminds courts in murder trials that instructions such as CALCRIM 522 must only be given where trial evidence supports the theory described in the pinpoint instruction. We respectfully recommend the inclusion of the above-quoted paragraph within the CALCRIM 522 Bench Notes to accurately assist courts	

Instruction No.	Commenter	Position	Comment	Committee Response
			tasked with the important duty of accurately instructing juries in important murder trials. Thank you so much for your tireless efforts in ensuring that juries are correctly apprised of the law. Your efforts are greatly appreciated by us in San Diego!	
New 526	Orange County Public Defender, by Adam Vining, Assistant Public Defender	AM	S.B. 1437 eliminated imputed malice for murder. The California Supreme Court in *People v. Gentile* (2020) 10 Cal.5th 830 stated: "Senate Bill 1437 as a whole and in the context of the Penal Code, bars a conviction for first or second degree murder under a natural and probable consequences theory." On June 29, 2023 the California Supreme Court published its opinion in ***People v. Reyes*** (S270723). This opinion must be incorporated. Also, terms should be further defined:	The committee agrees with adding *People v. Reyes* to the authority section.
			Element 4: Before or during the commission of the act[s] causing death, the defendant intended to aid and abet the perpetrator in committing the act[s] that [was/were] dangerous to human life. (*Reyes*)	The committee agrees to clarify element 4. Instead of adding the words "causing death," the committee inserted the word "perpetrator's" in front of "act[s]" in elements 4 and 5. The committee also added the phrase "that (was/were) dangerous to human life" at the end of element 4.
			Element 6: By words or conduct, the defendant did in fact aid and abet the perpetrator's commission of the act[s] that caused death. (*Reyes*)	Element 2 already states that "the perpetrator's acts caused the death."
			Add Element 7: The defendant's act was a substantial factor contributing to the death. (*Reyes*)	Neither *Reyes* nor any other published opinion that the committee is aware of provides authority for this proposed element.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

Instruction No.	Commenter	Position	Comment	Committee Response
			Dangerous to human life: An act is dangerous to human life if it carries a high probability that it will result in death. Acts that merely create a dangerous situation in which death is possible, alone, do not suffice. (*Reyes*).	The committee added the following definition to the instruction: "An act is *dangerous to human life* if there is a high degree of probability that the act will result in death."
			The following language should be added: "An aider and abettor's mental state must be at least that required of the direct perpetrator. An aider and abettor must know and share the murderous intent of the actual perpetrator." (*People v. Gentile* (2020) 10 Cal.5th 830, 845, 850.)	The elements in the instruction already convey this legal concept.
			Conscious disregard for human life is an extreme indifference to human life. (*People v. Summers* (1983) 147 Cal.App.3d 180, 184.)	The instruction does not need further amplification of this legal concept.
			Conscious disregard of the risk of serious bodily injury is insufficient to show conscious disregard for human life. (*People v. Knoller* (2007) 41 Cal.4th 139, 156.)	The instruction does not need further amplification of this legal concept.
New 526	Office of the State Public Defenders, by Mary McComb, State Public Defender, and Samuel Weiscovitz, Senior Deputy State Public Defender		The Office of the State Public Defender ("OSPD") is a statewide office with the mission of representing indigent persons in their appeals from criminal convictions in both capital and non-capital cases. The Legislature has instructed OSPD to "engage in related efforts for the purpose of improving the quality of indigent defense." (Govt. Code § 15420, subd. (b).) The jury instructions addressed in our comments are implicated repeatedly in our day-to-day practice. We hope that our experience with the application of these instructions and the problems they have sometimes engendered can provide a useful perspective to the Council as it attempts to ensure that jurors receive the most accurate information possible when undergoing the difficult task of applying the law to the facts	

Instruction No.	Commenter	Position	Comment	Committee Response
			before them. We appreciate the opportunity to participate in this process. Thank you for considering the following comments.	
			Last week, the Supreme Court issued its first opinion directly addressing the subject matter of proposed new instruction CALCRIM No. 526 – aiding and abetting implied malice murder. (*People v. Reyes* (June 29, 2023) _Cal.5th ___ [2023 Cal. LEXIS 3568] (*Reyes*).) As *Reyes* illustrates, the language of the current proposed instruction – while not itself inaccurate – is susceptible to interpretations that lead to the imposition of liability inconsistent with governing legal principles. The Court set forth in *Reyes* more precise definitions of the required elements of this theory of liability. The Office of the State Public Defender (OSPD) offers this comment to urge the Committee to incorporate the Supreme Court's very recent clarifications into the language of the proposed new instruction. (For the convenience of the Committee, a copy of the proposed instruction with OSPD's suggested additions is appended to this comment.)	
			First, *Reyes* makes clear that, absent further definition, the phrase "dangerous to human life" is susceptible to misunderstanding and misapplication. To the trial court in that case, for the 15-year-old defendant to join other gang members (one of whom was armed) riding bicycles into a rival gang's territory was, in the words adopted in the proposed instruction, "an act dangerous to human life." As that finding illustrates, after a murder has taken place virtually any unwise or unlawful act that led up to the killing can be viewed in hindsight as in some sense "dangerous to human life." The Supreme Court responded firmly: "we . . . take issue with the trial court's conclusion." (*Ibid.*) The Court explained that "[t]o suffice for implied malice murder, the defendant's act must not merely be	The committee agrees, in light of *Reyes*, that the definition of an act that is dangerous to human life should be further defined. However, instead of modifying the first element, the committee added the following definition after the elements: "An act is *dangerous to human life* if there is a high degree of probability that the act will result in death."

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

Instruction No.	Commenter	Position	Comment	Committee Response
			dangerous to life in some vague or speculative sense; it must ' "involve[] *a high degree of probability that it will result in death*." ' " (*Ibid.*, italics added, quoting *People v. Knoller* (2007) 41 Cal.4th 139, 152, alteration added by *Reyes*.) Accordingly, the Committee should modify the initial element in the proposed instruction to precisely state what is required in regard to the perpetrator's actus reus. If the trial court in *Reyes* misunderstood the danger required by the relevant act(s), then a jury interpreting the same phrase is likely to do the same. The committee can and should provide juries the same guidance the Supreme Court deemed necessary. The first element in the instruction should read: The perpetrator committed [an] act[s] that (was/were) dangerous to human life <u>in that (it/they) involved a high degree of probability that (it/they) would result in death</u>. (Proposed modification underlined.) And bracketed language should likewise read as follows: <u>[For an act to be dangerous to human life, the act must not merely be dangerous to life in some vague or speculative sense; it must involve a high degree of probability that it will result in death.]</u> (Proposed modification underlined.)	
			Second, the Court repeatedly emphasized that "to be liable for an implied malice murder, the direct aider and abettor must, by words or conduct, aid the commission of the life endangering act, not the result of that act." (*Reyes*, supra, 2023 Cal. LEXIS 3568 at *16, italics in original, quoting *People v. Powell* (2021) 63 Cal.App.5th 689, 713; see also *Reyes* at *18 ["implied malice murder requires attention to the aider and abettor's	The committee agrees with the suggestion to clarify element 4. Instead of "life-endangering**,**" the committee inserted the word "perpetrator's" in front of "act[s]" in elements 4 and 5. The committee also added "that

Instruction No.	Commenter	Position	Comment	Committee Response
			mental state concerning the life endangering act committed by the direct perpetrator, such as shooting at the victim"].) The Committee should ensure that all mens rea elements reflect this focus. Elements 3 through 5 of the proposed instruction pertain to the defendant's knowledge and intent. While elements 3 and 5 include the phase "dangerous to human life," element 4 includes no such qualifier. So, the fourth element in the instruction should read: Before or during the commission of the <u>life-endangering</u> act[s], the defendant intended to aid and abet the perpetrator in committing the act[s]. (Proposed modification underlined.)	(was/were) dangerous to human life" at the end of element 4.
			The Supreme Court's laser focus on this point similarly requires clarification that it is the life-endangering act which the defendant must aid. Element 6 of the proposed instruction currently states that "By words or conduct, the defendant did in fact aid and abet the perpetrator's commission of the act[s]." The instruction should properly reflect the nature of the act aided by stating the following: By words or conduct, the defendant did in fact aid and abet the perpetrator's commission of the <u>life-endangering</u> act[s]. (Proposed modification underlined.)	The suggested addition of "life-endangering" to element 6 is not necessary because elements 1, 3, and (now) 4 specify that the act[s] "(was/were) dangerous to human life."
			Finally, the instruction should incorporate *Reyes*'s critical clarification of proximate causation. The proposed instruction includes bracketed language on that subject which mirrors CALCRIM No. 240 (Causation). But in *Reyes*, after reviewing its prior holdings, the Supreme Court explained what does not qualify for proximate causation in a murder case: "acts that merely create a dangerous situation in which death is possible	The committee disagrees with adding this language. The instruction, as currently drafted, adequately states that the consequence of the act must be probable and not merely possible.

Instruction No.	Commenter	Position	Comment	Committee Response
			depending on how circumstances unfold do not, without more, satisfy [the proximate] causation requirement." (*Reyes, supra,* 2023 Cal. LEXIS 3568 at *12.) New bracketed language should guide jurors in the same way the Court did, with the instruction reading as follows: An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence. <u>An act that merely creates a dangerous situation in which death is possible depending on how circumstances unfold does not, without more, cause death</u>. (Proposed modification underlined.)	
New 526	Orange County Bar Association, by Michael A. Gregg, President.	D	S.B. 1437 eliminated imputed malice for murder. The issue of implied malice murder: aiding and abetting, is currently before the California Supreme Court in People v. Reyes (S270723). The case has been argued and submitted and an opinion is impending. Publication of any instruction on this issue should be delayed until the case is decided.	The California Supreme Court issued its decision in *People v. Reyes* on June 29, 2023. This opinion confirmed the caselaw that the committee relied upon in proposing the instruction.
540B, 540C, 703	Appellate Defenders Inc., by Cindi Mishkin, Assistant Director.	AM	The appellate project associated with the Fourth District Court of Appeal appreciates the opportunity to review and comment on the proposed modifications to the Judicial Council of California, Criminal Jury Instructions (CALCRIM). After reviewing the proposals, our staff respectfully submits the following comments which apply to the proposed (identical) additions to CALCRIM Nos. 540B, 540C, and 703.	No response necessary.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

Instruction No.	Commenter	Position	Comment	Committee Response
			For each of these instructions, we do agree with the addition of the last bullet under Authority, namely, "Defendant's Youth Can Be Relevant Factor When Determining Reckless Indifference," and the attendant case law. The key word in the foregoing is "youth," as each of the cases does address.	
			ADI notes, however, that in the instruction itself, the wording, which presumably is intended to reflect this case law, is, "How old was the defendant?" ADI finds the wording uncertain in two respects. First, all of the other factors (but one), are worded in terms such as, "Did the defendant know . . . ?" or "Was the defendant [near/aware] . . . ?" That is, a juror is asked to make a "yes" or "no" determination. In contrast, the proposed factor, "How old was the defendant?" does not suggest how the jurors are to apply this factor. Amending the language to read, "Did the defendant's youth and maturity level contribute to the commission of the offense?" uses language from *People v. Jones* (2022) 86 Cal.App.5th 1076, cited in the proposed CALCRIM's new authority, to explain how the jurors are to consider this factor. Thank you for your consideration.	The committee declines to make this change. The questions in this section are intentionally open-ended and neutral. The authority section informs the parties about the significance of the defendant's age.
540B, 540C, and 703	Office of the State Public Defenders, by Mary McComb, State Public Defender, and AJ Kutchins, Supervising Deputy State Public Defender	AM	The Office of the State Public Defender ("OSPD") is a statewide office with the mission of representing indigent persons in their appeals from criminal convictions in both capital and non-capital cases. The Legislature has instructed OSPD to "engage in related efforts for the purpose of improving the quality of indigent defense." (Govt. Code § 15420, subd. (b).)	No response necessary.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

Instruction No.	Commenter	Position	Comment	Committee Response
			The jury instructions addressed in our comments are implicated repeatedly in our day-to-day practice. We hope that our experience with the application of these instructions and the problems they have sometimes engendered can provide a useful perspective to the Council as it attempts to ensure that jurors receive the most accurate information possible when undergoing the difficult task of applying the law to the facts before them. We appreciate the opportunity to participate in this process. Thank you for considering the following comments.	
			Clarification of the Reckless Indifference Standard The Office of the State Public Defender (OSPD) offers this comment out of concern that CALCRIM Nos. 540B, 540C and 703 – both as they have existed and under the proposed revisions – fail to provide jurors with the basic guidance necessary to determine if a defendant has acted with "reckless indifference to human life" as that standard has been defined, repeatedly, by the Supreme Court. The proposed revisions to these instructions address the potential felony-murder liability of defendants who aided and abetted the underlying felony but did so without intending the resulting murder. As the instructions accurately state, such defendants can be found liable for felony murder only if, as "major participant[s]" in the underlying felony they acted "with reckless indifference to human life." (Pen. Code, §§ 189, subd. (e)(3), 190.2, subd. (d).) That standard has been an expression of California law since 1990, when it was adopted as a limitation on aider-and-abettor liability for the felony-murder special circumstance set out in Penal Code section 190.2. More recently, the Legislature	The committee declines to make this change. Based on *Scoggins*, the instruction as drafted incorporates the definition of the objective and subjective elements of reckless indifference to human life and the questions jurors may use to reach their conclusion. (*In re Scoggins* (2020) 9 Cal.5th 667, 676–677.)

Instruction No.	Commenter	Position	Comment	Committee Response
			incorporated it into the statute governing liability for felony murder itself. (Senate Bill No. 1437 (2017-2018 Reg. Sess.).) Throughout that time, the only explanation of the mental component of that standard has been the one set forth in the current instructions: "A person acts with reckless indifference to human life when he or she knowingly engages in criminal activity that he or she knows involves a grave risk of death." However, as the Supreme Court has recognized in a series of decisions in the interim, that definition, without more, has frequently permitted juries and courts alike to find defendants liable for felony murder even when the evidence did not justify such verdicts. (See *People v. Strong* (2022) 13 Cal.5th 698 (Strong); *In re Scoggins* (2020) 9 Cal.5th 667 (*Scoggins*); *People v. Clark* (2016) 63 Cal.4th 522 (*Clark*); *People v. Banks* (2015) 61 Cal.4th 788 (*Banks*).) Most recently, the Court referred to such instructions as expressing "outdated legal standards." (*Strong*, at p. 720 & fn. 4 [discussing CALCRIM No. 703].) As those cases make plain, the core of the problem lies with the phrase "grave risk"; unless further illumination is provided, any armed robbery or similar crime in which weapons are used could be seen as "involv[ing] a grave risk of death." But the law will not tolerate holding everyone who participates in such crimes culpable for felony murder every time an accomplice commits an unintended and unexpected killing in the course of the underlying felony. (See *Banks*, *supra*, 61 Cal.4th at p. 808.) Thus the Supreme Court has emphasized – in terms that speak directly to the proposed instructions – that "participation in an armed robbery, without more, does not involve 'engaging in criminal activities known to carry a grave risk of death.'"	

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

Instruction No.	Commenter	Position	Comment	Committee Response
			(*Banks, supra,* 61 Cal.4th at p. 805, italics added and citation omitted.) Rather, as the Court explained in *Banks*, to suffer liability, "[t]he defendant must be aware of and willingly involved in the violent manner in which the particular offense is committed, demonstrating reckless indifference to the significant risk of death his or her actions create." (*Id.* at p. 801.) *Clark* agreed, and refined the point further, explaining that reckless indifference "encompasses a willingness to kill (or to assist another in killing) to achieve a distinct aim, even if the defendant does not specifically desire that death as the outcome of his actions." (*Clark*, supra, 63 Cal.4th at p. 617.) The Supreme Court has repeatedly reiterated that exact language in subsequent cases describing the "reckless indifference" standard. (See *Strong, supra,* 13 Cal.5th at p. 706; *Scoggins, supra,* 9 Cal.5th at pp. 676-677.) In that series of opinions, each reversing a judgment, the Supreme Court made clear to the lower courts that the old understanding of the standard is no longer adequate or tolerable. But no one is telling jurors that. The Committee is now proposing to modify the instructions to reflect – in accordance with *Clark* – that "reckless indifference" entails both a subjective and an objective component. (See *Clark, supra,* 61 Cal.4th at p. 622.) OSPD supports that effort – but it does not begin to fill the fatal gap in the existing instructions.	

Instruction No.	Commenter	Position	Comment	Committee Response
			OSPD suggests that, to avoid the confusion and improper, unjust results that have repeatedly arisen, the instructions incorporate the clarifying language found in the Supreme Court's opinions. Thus OSPD proposes that the portions of CALCRIM Nos. 540B, 540C and 703 discussing "reckless indifference to human life" be modified to read substantially as follows: A person acts with reckless indifference to human life when he or she engages in criminal activity that a reasonable person would know involves a grave risk of death and he or she knows that the activity involves a grave risk of death. However, the defendant's participation in [insert underlying felony] does not, in itself, constitute engaging in a criminal activity known to carry a grave risk of death. Rather, to find that the defendant acted with reckless disregard of human life you must determine that his or her conduct demonstrated a willingness to kill (or to assist another in killing) to achieve a distinct aim, even if the defendant did not specifically desire that death as the outcome of his or her actions.	
733	Orange County Bar Association, by Michael A. Gregg, President.	D	Although, in a footnote, the Court of Appeal asks for this language to be added to the CALCRIM, it is important to note that, not only was this case arising in the context of a PC 995 motion with a reduced burden of proof, but also, there was a dissent that disagreed with the other 2 justices in their opinion of when the intent to kill must be manifested by the defendant. It is entirely possible that the result of this case would be different if it was a BRD standard.	The articulation of the law about torture and intent to kill for the special circumstance is not dependent on the standard of proof, nor does a dissenting opinion affect whether a case is authority.
763	Orange County Bar Association, by Michael A. Gregg, President.	AM	Appropriately adds *People v. Thomas* (2023) 14 Cal.5th 327, 378 to Authority section for proposition that "Mercy Equivalent to Sympathy or Compassion." However, citation to page 378 is incorrect. The citation should be changed to page 407.	The committee agrees and has corrected the pincite.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

CALCRIM Proposed Changes: Table of Contents

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733	Special Circumstances: Murder With Torture
763	Death Penalty: Factors to Consider—Not Identified as Aggravating or Mitigating
1801	Grand and Petty Theft
1802	Theft: As Part of Overall Plan

101. Cautionary Admonitions: Jury Conduct (Before, During, or After Jury Is Selected)

Our system of justice requires that trials be conducted in open court with the parties presenting evidence and the judge deciding the law that applies to the case. It is unfair to the parties if you receive additional information from any other source because that information may be unreliable or irrelevant and the parties will not have had the opportunity to examine and respond to it. Your verdict must be based only on the evidence presented during trial in this court and the law as I provide it to you.

During the trial, do not talk about the case or about any of the people or any subject involved in the case with anyone, not even your family, friends, spiritual advisors, or therapists. You may only say that you are on a jury and the anticipated length of the trial, and you may inform others of scheduling and emergency contact information. Do not share any information about the case by any means of communication, including in writing, by email, by telephone, on the Internet, social media, Internet chat rooms, and blogs. You must not talk about these things with other jurors either, until you begin deliberating.

As jurors, you may discuss the case together only after all of the evidence has been presented, the attorneys have completed their arguments, and I have instructed you on the law. After I tell you to begin your deliberations, you may discuss the case only in the jury room, and only when all jurors are present.

You must not allow anything that happens outside of the courtroom to affect your decision [unless I tell you otherwise]. During the trial, do not read, listen to, or watch any news report or commentary about the case from any source.

Do not use the Internet (, a dictionary/[, or _____<*insert other relevant source of information or means of communication*>]*)* in any way in connection with this case, either on your own or as a group. Do not investigate the facts or the law or do any research regarding this case or any of its participants. Do not conduct any tests or experiments, or visit the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate.

[If you have a cell phone or other electronic device, keep it turned off while you are in the courtroom and during jury deliberations. An electronic device includes any data storage device. If someone needs to contact you in an emergency, the court can receive messages that it will deliver to you without delay.]

During the trial, do not speak to a defendant, witness, lawyer, or anyone associated with them. Do not listen to anyone who tries to talk to you about the case or about any of the people or subjects involved in it. If someone asks you about the case, tell him or her that you cannot discuss it. If that person keeps talking to you about the case, you must end the conversation.

If you receive any information about this case from any source outside of the trial, even unintentionally, do not share that information with any other juror. If you do receive such information, or if anyone tries to influence you or any juror, you must immediately tell the bailiff.

Keep an open mind throughout the trial. Do not make up your mind about the verdict or any issue until after you have discussed the case with the other jurors during deliberations. Do not take anything I say or do during the trial as an indication of what I think about the facts, the witnesses, or what your verdict should be.

You must not let bias, sympathy, prejudice, or public opinion influence your assessment of the evidence or your decision. Bias can affect what we notice and pay attention to, what we see and hear, what we remember, how we perceive people, and how we make decisions. We may favor or be more likely to believe people whom we see as similar to us or with whom we identify. Conversely, we may disfavor or be less likely to believe people whom we see as different.

Although we are aware of some of our biases, we may not be aware of all of them. We refer to those biases as "implicit" or "unconscious." They may be based on stereotypes we would reject if they were brought to our attention. Implicit or unconscious biases can affect how we perceive others and how we make decisions, without our being aware of their effect. ~~Many people have assumptions and biases about or stereotypes of other people and may be unaware of them.~~

You must not be biased in favor of or against any party, witness, attorney, defendant[s], or alleged victim because of his or her disability, gender, nationality, national origin, race or ethnicity, religion, gender identity, sexual

orientation, [or] age (./,) [or socioeconomic status] (./,) [or _____<*insert any other impermissible form of bias*>.]

You must reach your verdict without any consideration of punishment.

I want to emphasize that you may not use any form of research or communication, including electronic or wireless research or communication, to research, share, communicate, or allow someone else to communicate with you regarding any subject of the trial. [If you violate this rule, you may be subject to jail time, a fine, or other punishment.]

When the trial has ended and you have been released as jurors, you may discuss the case with anyone. [But under California law, you must wait at least 90 days before negotiating or agreeing to accept any payment for information about the case.]

New January 2006; Revised June 2007, April 2008, December 2008, April 2010, October 2010, April 2011, February 2012, August 2012, August 2014, September 2019, April 2020, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct the jurors on how they must conduct themselves during trial. (Pen. Code, § 1122.) See also California Rules of Court Rule 2.1035.

When giving this instruction during the penalty phase of a capital case, the court has a **sua sponte** duty to delete the sentence which reads "Do not let bias, sympathy, prejudice, or public opinion influence your decision." (*People v. Lanphear* (1984) 36 Cal.3d 163, 165 [203 Cal.Rptr. 122, 680 P.2d 1081]; *California v. Brown* (1987) 479 U.S. 538, 545 [107 S.Ct. 837, 93 L.Ed.2d 934].) The court should also delete the following sentence: "You must reach your verdict without any consideration of punishment."

If there will be a jury view, give the bracketed phrase "unless I tell you otherwise" in the fourth paragraph. (Pen. Code, § 1119.)

AUTHORITY

- Statutory Admonitions. Pen. Code, § 1122.
- Avoid Discussing the Case. *People v. Pierce* (1979) 24 Cal.3d 199 [155 Cal.Rptr. 657, 595 P.2d 91]; *In re Hitchings* (1993) 6 Cal.4th 97 [24

Cal.Rptr.2d 74, 860 P.2d 466]; *In re Carpenter* (1995) 9 Cal.4th 634, 646–658 [38 Cal.Rptr.2d 665, 889 P.2d 985].

- Avoid News Reports. *People v. Holloway* (1990) 50 Cal.3d 1098, 1108–1111 [269 Cal.Rptr. 530, 790 P.2d 1327], disapproved on other grounds in *People v. Stansbury* (1995) 9 Cal.4th 824, 830 [38 Cal.Rptr.2d. 394, 889 P.2d 588].
- Judge's Conduct as Indication of Verdict. *People v. Hunt* (1915) 26 Cal.App. 514, 517 [147 P. 476].
- No Bias, Sympathy, or Prejudice. *People v. Hawthorne* (1992) 4 Cal.4th 43, 73 [14 Cal.Rptr.2d 133, 841 P.2d 118].
- No Independent Research. *People v. Karis* (1988) 46 Cal.3d 612, 642 [250 Cal.Rptr. 659, 758 P.2d 1189]; *People v. Castro* (1986) 184 Cal.App.3d 849, 853 [229 Cal.Rptr. 280]; *People v. Sutter* (1982) 134 Cal.App.3d 806, 820 [184 Cal.Rptr. 829].
- Prior Version of This Instruction Upheld. *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1182–1183 [67 Cal.Rptr.3d 871].
- Court's Contempt Power for Violations of Admonitions. Pen. Code, § 1122(a)(1); Code Civ. Proc., § 1209(a)(6) (effective January 1, 2012~~1/1/12~~).

RELATED ISSUES

Admonition Not to Discuss Case With Anyone

In *People v. Danks* (2004) 32 Cal.4th 269, 298–300 [8 Cal.Rptr.3d 767, 82 P.3d 1249], a capital case, two jurors violated the court's admonition not to discuss the case with anyone by consulting with their pastors regarding the death penalty. The Supreme Court stated:

> It is troubling that during deliberations not one but two jurors had conversations with their pastors that ultimately addressed the issue being resolved at the penalty phase in this case. Because jurors instructed not to speak to anyone about the case except a fellow juror during deliberations . . . . may assume such an instruction does not apply to confidential relationships, we recommend the jury be expressly instructed that they may not speak to anyone about the case, except a fellow juror during deliberations, and that this includes, but is not limited to, spouses, spiritual leaders or advisers, or therapists. Moreover, the jury should also be instructed that if anyone, other than a fellow juror during deliberations, tells a juror his or her view of the evidence in the case, the juror should report that conversation immediately to the court.

(*Id.* at p. 306, fn. 11.)

The court may, at its discretion, add the suggested language to the second paragraph of this instruction.

Jury Misconduct

It is error to instruct the jury to immediately advise the court if a juror refuses to deliberate or expresses an intention to disregard the law or to decide the case based on penalty, punishment, or any other improper basis. (*People v. Engelman* (2002) 28 Cal.4th 436, 449 [121 Cal.Rptr.2d 862, 49 P.3d 209].)

SECONDARY SOURCES

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial § 726.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 81, *Jury Selection and Opening Statement*, § 81.06[1], Ch. 85, *Submission to Jury and Verdict*, § 85.05[1], [4] (Matthew Bender).

209. Implicit or Unconscious Bias

In your role as a juror, you must not let bias influence your assessment of the evidence or your decisions.

I will now provide some information about how bias might affect decisionmaking. Our brains help us navigate and respond quickly to events by grouping and categorizing people, places, and things. We all do this. These mental shortcuts are helpful in some situations, but in the courtroom they may lead to biased decisionmaking.

Bias can affect what we notice and pay attention to, what we see and hear, what we remember, how we perceive people, and how we make decisions. We may favor or be more likely to believe people whom we see as similar to us or with whom we identify. Conversely, we may disfavor or be less likely to believe people whom we see as different.

Although we are aware of some of our biases, we may not be aware of all of them. We refer to those biases as "implicit" or "unconscious." They may be based on stereotypes we would reject if they were brought to our attention. Implicit or unconscious biases can affect how we perceive others and how we make decisions, without our being aware of their effect.

To ensure that bias does not affect your decisions in this case, consider the following steps:

1. **Reflect carefully and thoughtfully about the evidence. Think about why you are making each decision and examine it for bias. Resist the urge to jump to conclusions or to make judgments based on personal likes or dislikes, generalizations, prejudices, stereotypes, or biases.**

2. **Consider your initial impressions of the people and the evidence in this case. Would your impressions be different if any of the people were, for example, of a different age, gender, race, religion, sexual orientation, ethnicity, or national origin? Was your opinion affected because a person has a disability or speaks in a language other than English or with an accent? Think about the people involved in this case as individuals. Focusing on individuals can help reduce the effect of stereotypes on decisionmaking.**

3. **Listen to the other jurors. Their backgrounds, experiences, and insights may be different from yours. Hearing and sharing different perspectives may help identify and eliminate biased conclusions.**

The law demands that jurors make unbiased decisions, and these strategies can help you fulfill this important responsibility. You must base your decisions solely on the evidence presented, your evaluation of that evidence, your common sense and experience, and these instructions.

New September 2023

BENCH NOTES

Instructional Duty

This instruction may be given on request or sua sponte.

AUTHORITY

- Right to Unbiased Jurors. Pen. Code, § 745(a).
- Conduct Exhibiting Bias Prohibited. Pen. Code, § 1127h; Standard 10.20(b) of the California Standards of Judicial Administration.
- Implicit Bias in Decisionmaking. *People v. McWilliams* (2023) 14 Cal.5th 429, 451 [304 Cal.Rptr.3d 779, 796, 524 P.3d 768, 782] (conc. opn. of Liu, J.) [discussing empirical studies]; *United States v. Ray* (6th Cir. 2015) 803 F.3d 244, 259–260 & fn. 8 [defining the concept of implicit bias and recognizing its impact].

318. Prior Statements as Evidence

You have heard evidence of [a] statement[s] that a witness made before the trial. If you decide that the witness made (that/those) statement[s], you may use (that/those) statement[s] in two ways:

1. **To evaluate whether the witness's testimony in court is believable;**

AND

2. **As evidence that the information in (that/those) earlier statement[s] is true.**

New January 2006; Revised August 2012, September 2023

BENCH NOTES

Instructional Duty

The court has no sua sponte duty to give this instruction. (*People v. Griffin* (1988) 46 Cal.3d 1011, 1026 [251 Cal.Rptr. 643, 761 P.2d 103].) Use this instruction when a testifying witness has been confronted with a prior inconsistent statement.

If prior testimony of an unavailable witness was impeached with a prior inconsistent statement, use CALCRIM No. 319, *Prior Statements of Unavailable Witness*. (*People v. Williams* (1976) 16 Cal.3d 663, 668–669 [128 Cal.Rptr. 888, 547 P.2d 1000].) If the prior statements were obtained by a peace officer in violation of *Miranda*, give CALCRIM No. 356, Miranda-*Defective Statements*.

AUTHORITY

- Instructional Requirements. *California v. Green* (1970) 399 U.S. 149, 158 [90 S.Ct. 1930, 26 L.Ed.2d 489]; *People v. Cannady* (1972) 8 Cal.3d 379, 385–386 [105 Cal.Rptr. 129, 503 P.2d 585]; see Evid. Code, §§ 770, 791, 1235, 1236.
- This Instruction Upheld. *People v. Thomas* (2023) 14 Cal.5th 327, 394 [304 Cal.Rptr.3d 1, 523 P.3d 323]; *People v. Tuggles* (2009) 179 Cal.App.4th 339, 363-367 [100 Cal.Rptr.3d 820]; *People v. Golde* (2008) 163 Cal.App.4th 101, 120 [77 Cal.Rptr.3d 120].

SECONDARY SOURCES

1 Witkin, California Evidence (5th ed. 2012) Hearsay, § 158.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 82, *Witnesses*, § 82.22[3][b], Ch. 83, *Evidence*, § 83.13[3][e], [f], Ch. 85, *Submission to Jury and Verdict*, § 85.03[2][b] (Matthew Bender).

319. Prior Statements of Unavailable Witness

_____ <~~I~~*i*nsert name of unavailable witness> did not testify in this trial, but (his/her) testimony, taken at another time, was (read/played) for you. In addition to this testimony, you have heard evidence that _____ <*insert name of unavailable witness*> made (another/other) statement[s]. [I am referring to the statement[s] about which _____ <*insert name[s]*> testified.]

If you conclude that _____ <*insert name of unavailable witness*> made (that/those) other statement[s], you may only consider (it/them) in a limited way. You may only use (it/them) in deciding whether to believe the testimony of _____ <*insert name of unavailable witness*> that was (read/played) here at trial. You may not use (that/those) other statement[s] as proof that the information contained in (it/them) is true, nor may you use (it/them) for any other reason.

New January 2006; Revised September 2023

BENCH NOTES

Instructional Duty

The court has no sua sponte duty to give this instruction. (*People v. Griffin* (1988) 46 Cal.3d 1011, 1026 [251 Cal.Rptr. 643, 761 P.2d 103].)

Give this instruction when prior inconsistent statements of an unavailable witness were admitted for impeachment purposes. (*People v. Williams* (1976) 16 Cal.3d 663, 668–669 [128 Cal.Rptr. 888, 547 P.2d 1000].) If a testifying witness was confronted with prior inconsistent statements, give CALCRIM No. 318, *Prior Statements as Evidence*. If the prior statements were obtained by a peace officer in violation of *Miranda*, give CALCRIM No. 356, Miranda~~*Miranda*~~*-Defective Statements*.

Evidence Code section 1294 creates an exception to the impeachment-only rule in *Williams* for the use of prior inconsistent statements given as testimony in a preliminary hearing or prior proceeding in the same criminal matter.

AUTHORITY

- Instructional Requirements. *People v. Williams* (1976) 16 Cal.3d 663, 668–669 [128 Cal.Rptr. 888, 547 P.2d 1000]; see Evid. Code, §§ 145, 240, 770, 791, 1235, 1236, 1291.
- This Instruction Upheld. *People v. Thomas* (2023) 14 Cal.5th 327, 394 [304 Cal.Rptr.3d 1, 523 P.3d 323].

SECONDARY SOURCES

1 Witkin, California Evidence (5th ed. 2012) Hearsay, § 158.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 83, *Evidence*, § 83.13[3][e] (Matthew Bender).

334. Accomplice Testimony Must Be Corroborated: Dispute Whether Witness Is Accomplice

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Before you may consider the (statement/ [or] testimony) of _____ *<insert name[s] of witness[es]>* **as evidence against (the defendant/ _____** *<insert names of defendants>*) **[regarding the crime[s] of _____** *<insert name[s] of crime[s] if corroboration only required for some crime[s]>*], **you must decide whether _____** *<insert name[s] of witness[es]>*) **(was/were) [an] accomplice[s] [to (that/those) crime[s]]. A person is an *accomplice* if he or she is subject to prosecution for the identical crime charged against the defendant. Someone is subject to prosecution if:**

1. **He or she personally committed the crime;**

OR

2. **He or she knew of the criminal purpose of the person who committed the crime;**

AND

3. **He or she intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of the crime[;]/ [or] participate in a criminal conspiracy to commit the crime).**

[**The burden is on the defendant to prove that it is more likely than not that _____** *<insert name[s] of witness[es]>* **(was/were) [an] accomplice[s].]**

[An accomplice does not need to be present when the crime is committed. On the other hand, a person is not an accomplice just because he or she is present at the scene of a crime, even if he or she knows that a crime will be committed or is being committed and does nothing to stop it.]

[A person who lacks criminal intent but who pretends to join in a crime only to detect or prosecute those who commit that crime is not an accomplice.]

[A person may be an accomplice even if he or she is not actually prosecuted for the crime.]

[**You may not conclude that a child under 14 years old was an accomplice unless you also decide that when the child acted, (he/she) understood:**

1. **The nature and effect of the criminal conduct;**

2. **That the conduct was wrongful and forbidden;**

AND

3. **That (he/she) could be punished for participating in the conduct.]**

If you decide that a (declarant/ [or] witness) was not an accomplice, then supporting evidence is not required and you should evaluate his or her (statement/ [or] testimony) as you would that of any other witness.

If you decide that a (declarant/ [or] witness) was an accomplice, then you may not convict the defendant of _____ *<insert charged crime[s]>* **based on his or her (statement/ [or] testimony) alone. You may use (a statement/ [or] testimony) of an accomplice that tends to incriminate the defendant to convict the defendant only if:**

1. **The accomplice's (statement/ [or] testimony) is supported by other evidence that you believe;**

2. **That supporting evidence is independent of the accomplice's (statement/ [or] testimony);**

AND

3. **That supporting evidence tends to connect the defendant to the commission of the crime[s].**

Supporting evidence, however, may be slight. It does not need to be enough, by itself, to prove that the defendant is guilty of the charged crime[s], and it does not need to support every fact (mentioned by the accomplice in the statement/ [or] about which the accomplice testified). On the other hand, it is not enough if the supporting evidence merely shows that a crime was committed or the circumstances of its commission. The supporting evidence must tend to connect the defendant to the commission of the crime.

[The evidence needed to support the (statement/ [or] testimony) of one accomplice cannot be provided by the (statement/ [or] testimony) of another accomplice.]

Any (statement/ [or] testimony) of an accomplice that tends to incriminate the defendant should be viewed with caution. You may not, however, arbitrarily disregard it. You should give that (statement/ [or] testimony) the weight you think it deserves after examining it with care and caution and in the light of all the other evidence.

New January 2006; Revised June 2007, April 2010, April 2011, February 2016, March 2019, April 2020, September 2023

BENCH NOTES

Instructional Duty

There is a **sua sponte** duty to instruct on the principles governing the law of accomplices, including the need for corroboration, if the evidence at trial suggests that a witness could be an accomplice. (*People v. Tobias* (2001) 25 Cal.4th 327, 331 [106 Cal.Rptr.2d 80, 21 P.3d 758]; *People v. Guiuan* (1998) 18 Cal.4th 558, 569 [76 Cal.Rptr.2d 239, 957 P.2d 928].)

"Whether a person is an accomplice is a question of fact for the jury unless the facts and the inferences to be drawn therefrom are undisputed." (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 104 [17 Cal.Rptr.3d 710, 96 P.3d 30].) When the court concludes that the witness is an accomplice as a matter of law or the parties agree about the witness's status as an accomplice, do not give this instruction. Give CALCRIM No. 335, *Accomplice Testimony: No Dispute Whether Witness Is Accomplice*.

If a codefendant's testimony tends to incriminate another defendant, the court **must give** an appropriate instruction on accomplice testimony. (*People v. Avila* (2006) 38 Cal.4th 491, 562 [43 Cal.Rptr.3d 1, 133 P.3d 1076]; *citing People v. Box* (2000) 23 Cal.4th 1153, 1209 [99 Cal.Rptr.2d 69, 5 P.3d 130]; *People v. Alvarez* (1996) 14 Cal.4th 155, 218 [58 Cal.Rptr.2d 385, 926 P.2d 365].) The court **must** also instruct on accomplice testimony when two codefendants testify against each other and blame each other for the crime. (*Id.* at 218–219).

When the witness is a codefendant whose testimony includes incriminating statements, the court **should not** instruct that the witness is an accomplice as a matter of law. (*People v. Hill* (1967) 66 Cal.2d 536, 555 [58 Cal.Rptr. 340, 426 P.2d 908].) Instead, the court should give this instruction, informing the jury that it must decide whether the testifying codefendant is an accomplice. In addition, the court should instruct that when the jury considers this testimony as it relates to the testifying codefendant's defense, the jury should evaluate the testimony using the general rules of credibility, but if the jury considers testimony as incriminating evidence against the non-testifying codefendant, the testimony must be corroborated and should be viewed with caution. (See *People v. Coffman and Marlow, supra,* (2004) 34 Cal.4th at p. 105 [17 Cal.Rptr.3d 710, 96 P.3d 30].)

Do not give this instruction if accomplice testimony is solely exculpatory or neutral. (*People v. Smith* (2017) 12 Cal.App.5th 766, 778-780 [218 Cal.Rptr.3d 892] [telling jurors that corroboration is required to support neutral or exonerating accomplice testimony was prejudicial error].)

If the court concludes that the corroboration requirement applies to an out-of-court statement, use the word "statement" throughout the instruction. (See discussion in Related Issues section below.)

In a multiple codefendant case, if the corroboration requirement does not apply to all defendants, insert the names of the defendants for whom corroboration is required where indicated in the first sentence.

If the witness was an accomplice to only one or some of the crimes he or she testified about, the corroboration requirement only applies to those crimes and not to other crimes he or she may have testified about. (*People v. Wynkoop* (1958) 165 Cal.App.2d 540, 546 [331 P.2d 1040].) In such cases, the court may insert the specific crime or crimes requiring corroboration in the first sentence.

Give the bracketed paragraph that begins with "A person who lacks criminal intent" when the evidence suggests that the witness did not share the defendant's specific criminal intent, e.g., witness was an undercover police officer or an unwitting assistant.

Give the bracketed paragraph that begins with "You may not conclude that a child under 14 years old" on request if the defendant claims that a child witness's testimony must be corroborated because the child acted as an accomplice. (Pen. Code, § 26; *People v. Williams* (1936) 12 Cal.App.2d 207, 209 [55 P.2d 223].)

Give the bracketed sentence that begins with "The burden is on the defendant" unless acting with an accomplice is an element of the charged crime. (*People v. Martinez* (2019) 34 Cal.App.5th 721, 723 [246 Cal.Rptr.3d 442].) *Martinez* only involved charges where acting as an accomplice was an element.

AUTHORITY

- Instructional Requirements. Pen. Code, § 1111; *People v. Guiuan*, *supra*, ~~(1998)~~ 18 Cal.4th at p.~~558,~~ 569 ~~[76 Cal.Rptr.2d 239, 957 P.2d 928]~~.
- Accomplice May Not Provide Sole Basis for Admission of Other Evidence. *People v. Bowley* (1963) 59 Cal.2d 855, 863 [31 Cal.Rptr. 471, 382 P.2d 591].
- Consideration of Incriminating Testimony. *People v. Guiuan*, *supra*, ~~(1998)~~ 18 Cal.4th at p.~~558,~~ 569 ~~[76 Cal.Rptr.2d 239, 957 P.2d 928]~~.
- Defendant's Burden of Proof. *People v. Belton* (1979) 23 Cal.3d 516, 523 [153 Cal.Rptr. 195, 591 P.2d 485].
- Defense Admissions May Provide Necessary Corroboration. *People v. Williams* (1997) 16 Cal.4th 635, 680 [66 Cal.Rptr.2d 573, 941 P.2d 752].

- Accomplice Includes Co-perpetrator. *People v. Felton* (2004) 122 Cal.App.4th 260, 268 [18 Cal.Rptr.3d 626].
- Definition of Accomplice as Aider and Abettor. *People v. Stankewitz* (1990) 51 Cal.3d 72, 90–91 [270 Cal.Rptr. 817, 793 P.2d 23].
- Extent of Corroboration Required. *People v. Szeto* (1981) 29 Cal.3d 20, 27 [171 Cal.Rptr. 652, 623 P.2d 213].
- One Accomplice May Not Corroborate Another. *People v. Montgomery* (1941) 47 Cal.App.2d 1, 15 [117 P.2d 437], disapproved on other grounds in *Murgia v. Municipal Court* (1975) 15 Cal.3d 286, 301, fn. 11 [124 Cal.Rptr. 204, 540 P.2d 44] and *People v. Dillon* (1983) 34 Cal.3d 441, 454, fn. 2 [194 Cal.Rptr. 390, 668 P.2d 697].
- Presence or Knowledge Insufficient. *People v. Boyd* (1990) 222 Cal.App.3d 541, 557, fn. 14 [271 Cal.Rptr. 738]; *In re Michael T.* (1978) 84 Cal.App.3d 907, 911 [149 Cal.Rptr. 87].
- Testimony of Feigned Accomplice Need Not Be Corroborated. *People v. Salazar* (1962) 201 Cal.App.2d 284, 287 [20 Cal.Rptr. 25]; but see *People v. Brocklehurst* (1971) 14 Cal.App.3d 473, 476 [92 Cal.Rptr. 340]; *People v. Bohmer* (1975) 46 Cal.App.3d 185, 191–193 [120 Cal.Rptr. 136].
- Uncorroborated Accomplice Testimony May Establish Corpus Delicti. *People v. Williams* (1988) 45 Cal.3d 1268, 1317 [248 Cal.Rtpr. 834, 756 P.2d 221].
- Witness an Accomplice as a Matter of Law. *People v. Williams*, *supra*, ~~(1997)~~ 16 Cal.4th at p.~~635,~~ 679 ~~[66 Cal.Rptr.2d 573, 941 P.2d 752]~~.
- In-Custody Informant Testimony and Accomplice Testimony May Corroborate Each Other. *People v. Huggins* (2015) 235 Cal.App.4th 715, 719-720 [185 Cal.Rptr.3d 672].
- No Corroboration Requirement for Exculpatory Accomplice Testimony. *People v. Smith*, *supra*, ~~(2017)~~ 12 Cal.App.5th at pp.~~766,~~ 778–780 ~~[218 Cal.Rptr.3d 892]~~.
- This Instruction Upheld. *People v. Thomas* (2023) 14 Cal.5th 327, 391–392 [304 Cal.Rptr.3d 1, 523 P.3d 323].

RELATED ISSUES

Out-of-Court Statements

The out-of-~~-~~court statement of a witness *may* constitute "testimony" within the meaning of Penal Code section 1111, and may require corroboration. (*People v. Williams*, *supra*, ~~(1997)~~ 16 Cal.4th at p.~~153,~~ 245 ~~[66 Cal.Rptr.2d 123, 940 P.2d 710]~~; *People v. Belton*, *supra*, ~~(1979)~~ 23 Cal.3d at p.~~516,~~ 526 ~~[153 Cal.Rptr. 195, 591 P.2d 485]~~.) The Supreme

Court has quoted with approval the following summary of the corroboration requirement for out-of-court statements:

> ‘[T]estimony’ within the meaning of … section 1111 includes … all out-of-court statements of accomplices and coconspirators used as substantive evidence of guilt which are made under suspect circumstances. The most obvious suspect circumstances occur when the accomplice has been arrested or is questioned by the police. [Citation.] On the other hand, when the out-of-court statements are not given under suspect circumstances, those statements do not qualify as ‘testimony’ and hence need not be corroborated under … section 1111.

(*People v. Williams, supra*, 16 Cal.4th at p. 245 [quoting *People v. Jeffery* (1995) 37 Cal.App.4th 209, 218 [43 Cal.Rptr.2d 526] [quotation marks, citations, and italics removed]; see also *People v. Sully* (1991) 53 Cal.3d 1195, 1230 [283 Cal.Rptr. 144, 812 P.2d 163] [out-of-court statement admitted as excited utterance did not require corroboration].) The court must determine whether the out-of-court statement requires corroboration and, accordingly, whether this instruction is appropriate. The court should also determine whether the statement is testimonial, as defined in *Crawford v. Washington* (2004) 541 U.S. 36 [124 S.Ct. 1354, 158 L.Ed.2d 177], and whether the *Crawford* holding effects the corroboration requirement of Penal Code section 1111.

Incest With a Minor

Accomplice instructions are not appropriate in a trial for incest with a minor. A minor is a victim, not an accomplice, to incest. (*People v. Tobias*, *supra*, ~~(2001)~~ 25 Cal.4th at p.~~327,~~ 334 ~~[106 Cal.Rptr.2d 80, 21 P.3d 758]~~; see CALCRIM No. 1180, *Incest*.)

Liable to Prosecution When Crime Committed

The test for determining if a witness is an accomplice is not whether that person is subject to trial when he or she testifies, but whether he or she was liable to prosecution for the same offense at the time the acts were committed. (*People v. Gordon* (1973) 10 Cal.3d 460, 469 [110 Cal.Rptr. 906, 516 P.2d 298].) However, the fact that a witness was charged for the same crime and then granted immunity does not necessarily establish that he or she is an accomplice. (*People v. Stankewitz*, *supra*, ~~(1990)~~ 51 Cal.3d at p.~~72,~~ 90 ~~[270 Cal.Rptr. 817, 793 P.2d 23]~~.)

Threats and Fear of Bodily Harm

A person who is induced by threats and fear of bodily harm to participate in a crime, other than murder, is not an accomplice. (*People v. Brown* (1970) 6 Cal.App.3d 619, 624 [86 Cal.Rptr. 149]; *People v. Perez* (1973) 9 Cal.3d 651, 659–660 [108 Cal.Rptr. 474, 510 P.2d 1026].)

Defense Witness

"[A]lthough an accomplice witness instruction must be properly formulated … , there is no error in giving such an instruction when the accomplice's testimony favors the defendant." (*United States v. Tirouda* (9th Cir. 2005) 394 F.3d 683, 688.)

SECONDARY SOURCES

3 Witkin, California Evidence (5th ed. 2012) Presentation at Trial, §§ 110, 111, 118, 122.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 82, *Witnesses*, § 82.03, Ch. 85, *Submission to Jury and Verdict*, §§ 85.02[2][b], 85.03[2][b], [d], Ch. 87, *Death Penalty*, § 87.23[4][b] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 141, *Conspiracy, Solicitation, and Attempt*, § 141.02[5][b] (Matthew Bender).

377. Presence of Support Person/Dog/Dog Handler (Pen. Code, §§ 868.4, 868.5)

_____ *<insert name of witness>* **(will have/has/had) a (person/dog) present during (his/her) testimony. Do not consider the presence of the (person/dog [and dog handler]) who (is/was) with the witness for any purpose or allow it to distract you.**

New March 2018; Revised April 2020, September 2023

BENCH NOTES

Instructional Duty

The court must give this instruction for support dog, dog handler, or both, on request. The court may give this instruction for support person on request. If instructing on support persons, this instruction ~~only~~ applies only to prosecution witnesses.

AUTHORITY

- Elements. Pen. Code, §§ 868.4, 868.5.
- This Instruction Upheld. *People v. Picazo* (2022) 84 Cal.App.5th 778, 803–805 [300 Cal.Rptr.3d 649].

401. Aiding and Abetting: Intended Crimes

To prove that the defendant is guilty of a crime based on aiding and abetting that crime, the People must prove that:

1. **The perpetrator committed the crime;**

2. **The defendant knew that the perpetrator intended to commit the crime;**

3. **Before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime;**

AND

4. **The defendant's words or conduct did in fact aid and abet the perpetrator's commission of the crime.**

Someone *aids and abets* a crime if he or she knows of the perpetrator's unlawful purpose and he or she specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the perpetrator's commission of that crime.

If all of these requirements are proved, the defendant does not need to actually have been present when the crime was committed to be guilty as an aider and abettor.

[If you conclude that defendant was present at the scene of the crime or failed to prevent the crime, you may consider that fact in determining whether the defendant was an aider and abettor. However, the fact that a person is present at the scene of a crime or fails to prevent the crime does not, by itself, make him or her an aider and abettor.]

[A person who aids and abets a crime is not guilty of that crime if he or she withdraws before the crime is committed. To withdraw, a person must do two things:

1. **He or she must notify everyone else he or she knows is involved in the commission of the crime that he or she is no longer participating. The notification must be made early enough to prevent the commission of the crime.**

AND

2. **He or she must do everything reasonably within his or her power to prevent the crime from being committed. He or she does not have to actually prevent the crime.**

The People have the burden of proving beyond a reasonable doubt that the defendant did not withdraw. If the People have not met this burden, you may not find the defendant guilty under an aiding and abetting theory.]

New January 2006; Revised August 2012, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on aiding and abetting when the prosecution relies on it as a theory of culpability. (*People v. Beeman* (1984) 35 Cal.3d 547, 560-561 [199 Cal.Rptr. 60, 674 P.2d 1318].)

If there is evidence that the defendant was merely present at the scene or only had knowledge that a crime was being committed, the court has a **sua sponte** duty to give the bracketed paragraph that begins with "If you conclude that defendant was present." (*People v. Boyd* (1990) 222 Cal.App.3d 541, 557 fn.14 [271 Cal.Rptr. 738]; *In re Michael T.* (1978) 84 Cal.App.3d 907, 911 [149 Cal.Rptr. 87].)

If there is evidence that the defendant withdrew from participation in the crime, the court has a **sua sponte** duty to give the bracketed portion regarding withdrawal. (*People v. Norton* (1958) 161 Cal.App.2d 399, 403 [327 P.2d 87]; *People v. Ross* (1979) 92 Cal.App.3d 391, 404–405 [154 Cal.Rptr. 783].)

Do not give this instruction when instructing on aiding and abetting implied malice murder. Instead, give CALCRIM No. 526, *Implied Malice Murder: Aiding and Abetting.*

Related Instructions

Give CALCRIM No. 400, *Aiding and Abetting: General Principles*, before this instruction. Note that Penal Code section 30 uses "principal" but that CALCRIM Nos. 400 and 401 substitute "perpetrator" for clarity.

If the prosecution charges non-target crimes under the Natural and Probable Consequences Doctrine, give CALCRIM No. 402, *Natural and Probable Consequences Doctrine (Target and Non-Target Offenses Charged)*, if both non-target and target crimes have been charged. Give CALCRIM No. 403, *Natural and Probable Consequences (Only Non-Target Offense Charged)*, if only the non-target crimes have been charged.

If the defendant is charged with aiding and abetting robbery and there is an issue as to when intent to aid and abet was formed, give CALCRIM No. 1603, *Robbery: Intent of Aider and Abettor*.

If the defendant is charged with aiding and abetting burglary and there is an issue as to when intent to aid and abet was formed, give CALCRIM No. 1702, *Burglary: Intent of Aider and Abettor*.

AUTHORITY

- Definition of Principals. Pen. Code, § 31.
- Parties to Crime. Pen. Code, § 30.
- Presence or Knowledge Insufficient. *People v. Boyd*, *supra*, (1990) 222 Cal.App.3d at p. 541, 557 fn.14 [271 Cal.Rptr. 738]; *In re Michael T.*, *supra*, (1978) 84 Cal.App.3d at p. 907, 911 [149 Cal.Rptr. 87].
- Requirements for Aiding and Abetting. *People v. Beeman*, *supra*, (1984) 35 Cal.3d at pp. 547, 560–561 [199 Cal.Rptr. 60, 674 P.2d 1318].
- Withdrawal. *People v. Norton*, *supra*, (1958) 161 Cal.App.2d 399, at p. 403 [327 P.2d 87]; *People v. Ross*, *supra*, (1979) 92 Cal.App.3d 391, at pp. 404–405 [154 Cal.Rptr. 783].
- This Instruction Correct re Withdrawal Defense. *People v. Battle* (2011) 198 Cal.App.4th 50, 67 [129 Cal.Rptr.3d 828].

RELATED ISSUES

Perpetrator versus Aider and Abettor

For purposes of culpability, the law does not distinguish between perpetrators and aiders and abettors; however, the required mental states that must be proved for each are different. One who engages in conduct that is an element of the charged crime is a perpetrator, not an aider and abettor of the crime. (*People v. Cook* (1998) 61 Cal.App.4th 1364, 1371 [72 Cal.Rptr.2d 183].)

Accessory After the Fact

The prosecution must show that an aider and abettor intended to facilitate or encourage the target offense before or during its commission. If the defendant formed an intent to aid after the crime was completed, then he or she may be liable as an accessory after the fact. (*People v. Cooper* (1991) 53 Cal.3d 1158, 1160–1161 [282 Cal.Rptr. 450, 811 P.2d 742] [get-away driver, whose intent to aid was formed after asportation of property, was an accessory after the fact, not an aider and abettor]; *People v. Rutkowsky* (1975) 53 Cal.App.3d 1069, 1072–1073 [126 Cal.Rptr. 104]; *People v. Rodriguez* (1986) 42 Cal.3d 730, 760–761 [230 Cal.Rptr. 667, 726 P.2d 113].)

Factors Relevant to Aiding and Abetting

Factors relevant to determining whether a person is an aider and abettor include: presence at the scene of the crime, companionship, and conduct before or after the offense. (*People v. Singleton* (1987) 196 Cal.App.3d 488, 492 [241 Cal.Rptr. 842] [citing *People v. Chagolla* (1983) 144 Cal.App.3d 422, 429 [193 Cal.Rptr. 711]]; *People v. Campbell* (1994) 25 Cal.App.4th 402, 409 [30 Cal.Rptr.2d 525].)

Presence Not Required

A person may aid and abet a crime without being physically present. (*People v. Bohmer* (1975) 46 Cal.App.3d 185, 199 [120 Cal.Rptr. 136]; see also *People v. Sarkis* (1990) 222 Cal.App.3d 23, 27 [272 Cal.Rptr. 34].) Nor does a person have to physically assist in the commission of the crime; a person may be guilty of aiding and abetting if he or she intends the crime to be committed and instigates or encourages the perpetrator to commit it. (*People v. Booth* (1996) 48 Cal.App.4th 1247, 1256 [56 Cal.Rptr.2d 202].)

Principal Acquitted or Convicted of Lesser Offense

Although the jury must find that the principal committed the crime aided and abetted, the fact that a principal has been acquitted of a crime or convicted of a lesser offense in a separate proceeding does not bar conviction of an aider and abettor. (*People v. Wilkins* (1994) 26 Cal.App.4th 1089, 1092–1094 [31 Cal.Rptr.2d 764]; *People v. Summersville* (1995) 34 Cal.App.4th 1062, 1066–1069 [40 Cal.Rptr.2d 683]; *People v. Rose* (1997) 56 Cal.App.4th 990 [65 Cal.Rptr.2d 887].) A single Supreme Court case has created an exception to this principle and held that non-mutual collateral estoppel bars conviction of an aider and abettor when the principal was acquitted in a separate proceeding. (*People v. Taylor* (1974) 12 Cal.3d 686, 696–698 [117 Cal.Rptr.70, 527 P.2d 622].) In *Taylor*, the defendant was the "get-away driver" in a liquor store robbery in which one of the perpetrators inadvertently killed another during a gun battle inside the store. In a separate trial, the gunman was acquitted of the murder of his co-perpetrator because the jury did not find malice. The court held that collateral estoppel barred conviction of the aiding and abetting driver, reasoning that the policy considerations favoring application of collateral estoppel were served in the case. The court specifically limited its holding to the facts, emphasizing the clear identity of issues involved and the need to prevent inconsistent verdicts. (See also *People v. Howard* (1988) 44 Cal.3d 375, 411–414 [243 Cal.Rptr. 842, 749 P.2d 279] [court rejected collateral estoppel argument and reiterated the limited nature of its holding in *Taylor*].)

Specific Intent Crimes

If a specific intent crime is aided and abetted, the aider and abettor must share the requisite specific intent with the perpetrator. “[A]n aider and abettor will ‘share’ the perpetrator’s specific intent when he or she knows the full extent of the perpetrator’s criminal purpose and gives aid or encouragement with the intent or purpose of facilitating the perpetrator’s commission of the crime.” (*People v. Beeman*, *supra*, ~~(1984)~~ 35 Cal.3d ~~547,~~at p. 560 ~~[199 Cal.Rptr. 60, 674 P.2d 1318]~~ [citations omitted].) The perpetrator must have the requisite specific intent and the jury must be so instructed. (*People v. Patterson*

(1989) 209 Cal.App.3d 610 [257 Cal.Rptr. 407] [trial court erred in failing to instruct jury that perpetrator must have specific intent to kill]; *People v. Torres* (1990) 224 Cal.App.3d 763, 768–769 [274 Cal.Rptr. 117].) And the jury must find that the aider and abettor shared the perpetrator's specific intent. (*People v. Acero* (1984) 161 Cal.App.3d 217, 224 [208 Cal.Rptr. 565] [to convict defendant of aiding and abetting and attempted murder, jury must find that he shared perpetrator's specific intent to kill].)

Greater Guilt Than Actual Killer

An aider and abettor may be guilty of greater homicide-related crimes than the actual killer. When a person, with the mental state necessary for an aider and abettor, helps or induces another to kill, that person's guilt is determined by the combined acts of all the participants as well as that person's own mens rea. If that person's mens rea is more culpable than another's, that person's guilt may be greater even if the other is deemed the actual killer. (*People v. McCoy* (2001) 25 Cal.4th 1111, 1121 [108 Cal.Rptr.2d 188, 24 P.3d 1210].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Introduction to Crimes, §§ 94-97.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.03[2][d] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes*, § 140.10[3] (Matthew Bender).

402. Natural and Probable Consequences Doctrine (Target and Non-~~t~~Target Offenses Charged)

The defendant is charged in Count[s] __ with _____ <*insert target offense*> **and in Counts[s] ___ with _____** <*insert non-target offense*>**.**

You must first decide whether the defendant is guilty of _____ <*insert target offense*>**. If you find the defendant is guilty of this crime, you must then decide whether (he/she) is guilty of _____** <*insert non-target offense*>**.**

Under certain circumstances, a person who is guilty of one crime may also be guilty of other crimes that were committed at the same time.

To prove that the defendant is guilty of _____ <*insert non-target offense*>**, the People must prove that:**

1. **The defendant is guilty of _____** <*insert target offense*>**;**

2. **During the commission of _____** <*insert target offense*> **a coparticipant in that _____** <*insert target offense*> **committed the crime of _____** <*insert non-target offense*>**;**

AND

3. **Under all of the circumstances, a reasonable person in the defendant's position would have known that the commission of _____** <*insert non-target offense*> **was a natural and probable consequence of the commission of the _____** <*insert target offense*>**.**

A *coparticipant* in a crime is the perpetrator or anyone who aided and abetted the perpetrator. It does not include a victim or innocent bystander.

A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.

[Do not consider evidence of defendant's intoxication in deciding whether _____ <*insert non-target offense*> **was a natural and probable consequence of _____** <*insert target offense*>**.]**

To decide whether the crime of _____ <*insert non-target offense*> **was committed,**

please refer to the separate instructions that I (will give/have given) you on that crime.

[The People allege that the defendant originally intended to aid and abet the commission of either _____ <*insert target offense*> **or _____** <*insert other target offense*>. **The defendant is guilty of _____** <*insert non-target offense*> **if the People have proved that the defendant aided and abetted either _____** <*insert target offense*> **or _____** <*insert other target offense*> **and that _____** <*insert non-target offense*> **was the natural and probable consequence of either _____** <*insert target offense*> **or _____** <*insert other target offense*>**. However, you do not need to agree on which of these two crimes the defendant aided and abetted.]**

New January 2006; Revised June 2007, April 2010, February 2013, August 2014, February 2015, September 2019, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on aiding and abetting when the prosecution relies on that theory of culpability. (*People v. Beeman* (1984) 35 Cal.3d 547, 560–561[199 Cal.Rptr. 60, 674 P.2d 1318].)

The court has a **sua sponte** duty to identify and instruct on any target offense relied on by the prosecution as a predicate offense when substantial evidence supports the theory. Give all relevant instructions on the alleged target offense or offenses. The court, however, does not have to instruct on all potential target offenses supported by the evidence if the prosecution does not rely on those offenses. (*People v. Prettyman* (1996) 14 Cal.4th 248, 267–268 [58 Cal.Rptr.2d 827, 926 P.2d 1013]; see *People v. Huynh* (2002) 99 Cal.App.4th 662, 677–678 [121 Cal.Rptr.2d 340] [no sua sponte duty to instruct on simple assault when prosecutor never asked court to consider it as target offense].)

The target offense is the crime that the accused parties intended to commit. The non-target is an additional unintended crime that occurs during the commission of the target.

Give the bracketed paragraph beginning, "Do not consider evidence of defendant's intoxication" when instructing on aiding and abetting liability for a non-target offense. (*People v. Mendoza* (1998) 18 Cal.4th 1114, 1134 [77 Cal.Rptr.2d 428, 959 P.2d 735].)

Related Instructions

Give CALCRIM No. 400, *Aiding and Abetting: General Principles*, and CALCRIM No. 401, *Aiding and Abetting: Intended Crimes*, before this instruction.

This instruction should be used when the prosecution relies on the natural and probable

consequences doctrine and charges both target and non-target crimes. If only non-target crimes are charged, give CALCRIM No. 403, *Natural and Probable Consequences Doctrine (Only Non-tTarget Offense Charged)*.

AUTHORITY

- Aiding and Abetting Defined. *People v. Beeman*, *supra*, (1984) 35 Cal.3d 547, at pp. 560–561 [199 Cal.Rptr. 60, 674 P.2d 1318].
- Natural and Probable Consequences, Reasonable Person Standard. *People v. Nguyen* (1993) 21 Cal.App.4th 518, 531 [26 Cal.Rptr.2d 323].
- Reasonably Foreseeable Crime Need Not Be Committed for Reason Within Common Plan. *People v. Smith* (2014) 60 Cal.4th 603, 616–617 [180 Cal.Rptr.3d 100, 337 P.3d 1159].

COMMENTARY

In *People v. Prettyman*, *supra*, (1996) 14 Cal.4th at p.248, 268 [58 Cal.Rptr.2d 827, 926 P.2d 1013], the court concluded that the trial court must sua sponte identify and describe for the jury any target offenses allegedly aided and abetted by the defendant.

Although no published case to date gives a clear definition of the terms "natural" and "probable," nor holds that there is a sua sponte duty to define them, we have included a suggested definition. (See *People v. Prettyman, supra,* 14 Cal.4th at p. 291 (conc. & dis. opn. of Brown, J.); see also *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 107–109 [17 Cal.Rptr.3d 710, 96 P.3d 30] [court did not err in failing to define "natural and probable"].)

RELATED ISSUES

Murder and Attempted Murder

A verdict of murder or attempted murder may not be based on the natural and probable consequences doctrine. (Pen. Code, § 188(a)(3); *People v. Gentile* (2020) 10 Cal.5th 830, 849 [272 Cal.Rptr.3d 814, 477 P.3d 539] [murder]; *People v. Sanchez* (2022) 75 Cal.App.5th 191, 196 [290 Cal.Rptr.3d 390] [attempted murder].) Penal Code section 188, as amended by Statutes 2018, ch. 1015 (S.B. 1437), became effective January 1, 2019. The amendment added "malice shall not be imputed to a person based solely on his or her participation in a crime." The question whether this amendment abolished the natural and probable consequences doctrine as to attempted murder is unresolved.

Lesser Included Offenses

The court has a duty to instruct on lesser included offenses that could be the natural and probable consequence of the intended offense when the evidence raises a question

whether the greater offense is a natural and probable consequence of the original, intended criminal act. (*People v. Woods* (1992) 8 Cal.App.4th 1570, 1586–1588 [11 Cal.Rptr.2d 231] [aider and abettor may be found guilty of second degree murder under doctrine of natural and probable consequences although the principal was convicted of first degree murder].)

Specific Intent—Non-Target Crimes

Before an aider and abettor may be found guilty of a specific intent crime under the natural and probable consequences doctrine, the jury must first find that the perpetrator possessed the required specific intent. (*People v. Patterson* (1989) 209 Cal.App.3d 610, 614 [257 Cal.Rptr. 407] [trial court erroneously failed to instruct the jury that they must find that the perpetrator had the specific intent to kill necessary for attempted murder before they could find the defendant guilty as an aider and abettor under the "natural and probable" consequences doctrine], disagreeing with *People v. Hammond* (1986) 181 Cal.App.3d 463 [226 Cal.Rptr. 475] to the extent it held otherwise.) However, it is not necessary that the jury find that the aider and abettor had the specific intent; the jury must only determine that the specific intent crime was a natural and probable consequence of the original crime aided and abetted. (*People v. Woods*, *supra*, (1992) 8 Cal.App.4th 1570, at pp. 1586–1587 [11 Cal.Rptr. 2d 231].)

Target and Non-Target Offense May Consist of Same Act

Although generally, non-target offenses charged under the natural and probable consequences doctrine will be different and typically more serious criminal acts than the target offense alleged, they may consist of the same act with differing mental states. (*People v. Laster* (1997) 52 Cal.App.4th 1450, 1463–1466 [61 Cal.Rptr.2d 680] [defendants were properly convicted of attempted murder as natural and probable consequence of aiding and abetting discharge of firearm from vehicle. Although both crimes consist of same act, attempted murder requires more culpable mental state].)

Target Offense Not Committed

The Supreme Court has left open the question whether a person may be liable under the natural and probable consequences doctrine for a non-target offense, if the target offense was not committed. (*People v. Prettyman*, *supra*, (1996) 14 Cal.4th at p. 248, 262, fn. 4 [58 Cal.Rptr.2d 827, 926 P.2d 1013], but see *People v. Ayala* (2010) 181 Cal.App.4th 1440, 1452 [105 Cal.Rptr.3d 575]; *People v. Laster*, *supra*, (1997) 52 Cal.App.4th at pp. 1450, 1464–1465 [61 Cal.Rptr.2d 680].)

See generally, the related issues under CALCRIM No. 401, *Aiding and Abetting: Intended Crimes*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Introduction to Crimes, §§ 102, 104-106, 110.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, §§ 85.02[1A][a], 85.03[2][d] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes*, § 140.10[3] (Matthew Bender).

403. Natural and Probable Consequences (Only Non-tTarget Offense Charged)

[Before you may decide whether the defendant is guilty of _____ <*insert non-target offense*>**, you must decide whether (he/she) is guilty of _____** <*insert target offense*>**.]**

To prove that the defendant is guilty of _____ <*insert non-target offense*>**, the People must prove that:**

1. **The defendant is guilty of _____** <*insert target offense*>**;**

2. **During the commission of _____** <*insert target offense*> **a coparticipant in that _____** <*insert target offense*> **committed the crime of _____** <*insert non-target offense*>;

AND

3. **Under all of the circumstances, a reasonable person in the defendant's position would have known that the commission of the _____** <*insert non-target offense*> **was a natural and probable consequence of the commission of the _____** <*insert target offense*>**.**

A *coparticipant* in a crime is the perpetrator or anyone who aided and abetted the perpetrator. It does not include a victim or innocent bystander.

A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.

[Do not consider evidence of defendant's intoxication in deciding whether _____ <*insert non-target offense*> **was a natural and probable consequence of _____** <*insert target offense*>**.]**

To decide whether crime of _____ <*insert non-target offense*> **was committed, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s].**

[The People are alleging that the defendant originally intended to aid and abet _____ <*insert target offenses*>.

If you decide that the defendant aided and abetted one of these crimes and that _____ <*insert non-target offense*> was a natural and probable consequence of that crime, the defendant is guilty of _____ <*insert non-target offense*>. You do not need to agree about which of these crimes the defendant aided and abetted.]

New January 2006; Revised June 2007, April 2010, February 2015, September 2019, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on aiding and abetting when the prosecution relies on it as a theory of culpability. (*People v. Beeman* (1984) 35 Cal.3d 547, 560-561 [199 Cal.Rptr. 60, 674 P.2d 1318].)

The court has a **sua sponte** duty to identify and instruct on any target offense relied on by the prosecution as a predicate offense when substantial evidence supports the theory. Give all relevant instructions on the alleged target offense or offenses. The court, however, does not have to instruct on all potential target offenses supported by the evidence if the prosecution does not rely on those offenses. (*People v. Prettyman* (1996) 14 Cal.4th 248, 267–268 [58 Cal.Rptr.2d 827, 926 P.2d 1013]; see *People v. Huynh* (2002) 99 Cal.App.4th 662, 677–678 [121 Cal.Rptr.2d 340] [no sua sponte duty to instruct on simple assault when prosecutor never asked court to consider it as target offense].)

The target offense is the crime that the accused parties intended to commit. The non-target is an additional unintended crime that occurs during the commission of the target.

Do not give the first bracketed paragraph in cases in which the prosecution is also pursuing a conspiracy theory.

Give the bracketed paragraph beginning, "Do not consider evidence of defendant's intoxication" when instructing on aiding and abetting liability for a non-target offense. (*People v. Mendoza* (1998) 18 Cal.4th 1114, 1134 [77 Cal.Rptr.2d 428, 959 P.2d 735].)

Related Instructions

Give CALCRIM No. 400, *Aiding and Abetting: General Principles*, and CALCRIM No. 401, *Aiding and Abetting: Intended Crimes*, before this instruction.

This instruction should be used when the prosecution relies on the natural and probable consequences doctrine and charges only non-target crimes. If both target and non-target crimes are charged, give CALCRIM No. 402, *Natural and Probable Consequences Doctrine (Target and Non-tTarget Offenses Charged).*

AUTHORITY

- Aiding and Abetting Defined. *People v. Beeman, supra,* (1984) 35 Cal.3d at pp.547, 560–561 [199 Cal.Rptr. 60, 674 P.2d 1318].
- Natural and Probable Consequences, Reasonable Person Standard. *People v. Nguyen* (1993) 21 Cal.App.4th 518, 531 [26 Cal.Rptr.2d 323].
- No Unanimity Required. *People v. Prettyman, supra,* (1996) 14 Cal.4th at pp.248, 267–268 [58 Cal.Rptr.2d 827, 926 P.2d 1013].
- Presence or Knowledge Insufficient. *People v. Boyd* (1990) 222 Cal.App.3d 541, 557 fn.14 [271 Cal.Rptr. 738]; *In re Michael T.* (1978) 84 Cal.App.3d 907, 911 [149 Cal.Rptr. 87, 926 P.2d 1013].
- Withdrawal. *People v. Norton* (1958) 161 Cal.App.2d 399, 403 [327 P.2d 87]; *People v. Ross* (1979) 92 Cal.App.3d 391, 404–405 [154 Cal.Rptr. 783].
- Reasonably Foreseeable Crime Need Not Be Committed for Reason Within Common Plan. *People v. Smith* (2014) 60 Cal.4th 603, 616–617 [180 Cal.Rptr.3d 100, 337 P.3d 1159].

COMMENTARY

In *People v. Prettyman, supra,* (1996) 14 Cal.4th at p. 248, 268 [58 Cal.Rptr.2d 827, 926 P.2d 1013], the court concluded that the trial court must sua sponte identify and describe for the jury any target offenses allegedly aided and abetted by the defendant.

Although no published case to date gives a clear definition of the terms "natural" and "probable," nor holds that there is a sua sponte duty to define them, we have included a suggested definition. (See *People v. Prettyman, supra,* 14 Cal.4th at p. 291 (conc. & dis. opn. of Brown, J.); see also *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 107–109 [17 Cal.Rptr.3d 710, 96 P.3d 30] [court did not err in failing to define "natural and probable."])

RELATED ISSUES

Murder and Attempted Murder

A verdict of murder or attempted murder may not be based on the natural and probable consequences doctrine. (Pen. Code, § 188(a)(3); *People v. Gentile* (2020) 10 Cal.5th 830, 849 [272 Cal.Rptr.3d 814, 477 P.3d 539] [murder]; *People v. Sanchez* (2022) 75 Cal.App.5th 191, 196 [290 Cal.Rptr.3d 390] [attempted murder].) ~~Penal Code section 188, as amended by Statutes 2018, ch. 1015 (S.B. 1437), became effective January 1, 2019.) This amendment added "malice shall not be imputed to a person based solely on his or her participation in a crime." The question whether this legislation abolished the natural and probable consequences doctrine as to attempted murder is unresolved.~~

See the Related Issues section under CALCRIM No. 401, *Aiding and Abetting*, and CALCRIM No. 402, *Natural and Probable Consequences Doctrine (Target and Non-t~~T~~arget Offenses Charged)*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Introduction to Crimes, §§ 102, 104-106, 110.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch**.** 140, Challenges to Crimes, § 140.10[3] (Matthew Bender).

417. Liability for Coconspirators' Acts

A member of a conspiracy is criminally responsible for the crimes that he or she conspires to commit, no matter which member of the conspiracy commits the crime.

A member of a conspiracy is also criminally responsible for any act of any member of the conspiracy if that act is done to further the conspiracy and that act is a natural and probable consequence of the common plan or design of the conspiracy. This rule applies even if the act was not intended as part of the original plan. [Under this rule, a defendant who is a member of the conspiracy does not need to be present at the time of the act.]

A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.

A member of a conspiracy is not criminally responsible for the act of another member if that act does not further the common plan or is not a natural and probable consequence of the common plan.

To prove that the defendant is guilty of the crime[s] charged in Count[s] __, the People must prove that:

1. **The defendant conspired to commit one of the following crimes:** _____ <*insert target crime[s]*>**;**

2. **A member of the conspiracy committed** _____ <*insert nontarget offense[s]*> **to further the conspiracy;**

   AND

3. _____ <*insert nontarget offense[s]*> **(was/were) [a] natural and probable consequence[s] of the common plan or design of the crime that the defendant conspired to commit.**

[The defendant is not responsible for the acts of another person who was not a member of the conspiracy even if the acts of the other person helped accomplish the goal of the conspiracy.]

[A conspiracy member is not responsible for the acts of other conspiracy members that are done after the goal of the conspiracy had been accomplished.]

New January 2006; Revised October 2021, September 2023

BENCH NOTES

Instructional Duty

Give this instruction when there is an issue whether the defendant is liable for the acts of coconspirators. (See *People v. Flores* (1992) 7 Cal.App.4th 1350, 1363 [9 Cal.Rptr.2d 754] [no sua sponte duty when no issue of independent criminal act by coconspirator].)

The court **must** also give either CALCRIM No. 415, *Conspiracy*, or CALCRIM No. 416, *Evidence of Uncharged Conspiracy*, with this instruction. The court **must** also give all appropriate instructions on the offense or offenses alleged to be the target of the conspiracy. (*People v. Prettyman* (1996) 14 Cal.4th 248, 254 [58 Cal.Rptr.2d 827, 926 P.2d 1013].)

Give the bracketed sentence that begins with "Under this rule," if there is evidence that the defendant was not present at the time of the act. (See *People v. Benenato* (1946) 77 Cal.App.2d 350, 356 [175 P.2d 296]; *People v. King* (1938) 30 Cal.App.2d 185, 203 [85 P.2d 928].)

Although no published case to date gives a clear definition of the terms "natural" and "probable," nor holds that there is a sua sponte duty to define them, a suggested definition is included. (See *People v. Prettyman, supra,* ~~(1996)~~ 14 Cal.4th at p.~~248,~~ 291 ~~[58 Cal.Rptr.2d 827, 926 P.2d 1013]~~ (conc. & dis. opn. of Brown, J.).)

Give either of the last two bracketed paragraphs on request, when supported by the evidence.

Related Instructions

CALCRIM No. 418, *Coconspirator's Statements*.

AUTHORITY

- Natural and Probable Consequences; Reasonable Person Standard. *People v. Superior Court (Shamis)* (1997) 58 Cal.App.4th 833, 842–843 [68 Cal.Rptr.2d 388]; see *People v. Nguyen* (1993) 21 Cal.App.4th 518, 531 [26 Cal.Rptr.2d 323] [in context of aiding and abetting].
- Vicarious Liability of Conspirators. *People v. Hardy* (1992) 2 Cal.4th 86, 188 [5 Cal.Rptr.2d 796, 825 P.2d 781].

- Must Identify and Describe Target Offense. *People v. Prettyman*, *supra*, ~~(1996)~~ 14 Cal.4th at p.~~248,~~ 254 ~~[58 Cal.Rptr.2d 827, 926 P.2d 1013]~~.

RELATED ISSUES

Murder and Attempted Murder

A verdict of murder or attempted murder may not be based on the natural and probable consequences doctrine. (Pen. Code, § 188(a)(3); *People v. Gentile* (2020) 10 Cal.5th 830, 849 [272 Cal.Rptr.3d 814, 477 P.3d 539] [murder]; *People v. Sanchez* (2022) 75 Cal.App.5th 191, 196 [290 Cal.Rptr.3d 390] [attempted murder].) ~~(Penal Code section 188, as amended by Statutes 2018, ch. 1015 (S.B. 1437), became effective January 1, 2019.) The amendment added "malice shall not be imputed to a person based solely on his or her participation in a crime." The question of whether this amendment abolished the natural and probable consequences doctrine as to attempted murder is unresolved.~~

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Elements, §§ 98-99.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 141, *Conspiracy, Solicitation, and Attempt,* §§ 141.01[6], 141.02 (Matthew Bender).

521. First Degree Murder (Pen. Code, § 189)

<Select the appropriate section[s]. Give the final paragraph in every case.>

<Give if multiple theories alleged.>
[The defendant has been prosecuted for first degree murder under (two/__ <*insert number*>) theories: (1) _____ *<insert first theory, e.g., "the murder was willful, deliberate, and premeditated">* **[and] (2) _____** *<insert second theory, e.g., "the murder was committed by lying in wait">* **[and] [_____** *<insert additional theories>***].**

[Each theory of first degree murder has different requirements, and I will instruct you on (both/all __ *<insert number>***).**

You may not find the defendant guilty of first degree murder unless all of you agree that the People have proved that the defendant committed murder. But all of you do not need to agree on the same theory.]

<A. Deliberation and Premeditation>
[The defendant is guilty of first degree murder if the People have proved that (he/she) acted willfully, deliberately, and with premeditation. The defendant acted *willfully* if (he/she) intended to kill. The defendant acted *deliberately* if (he/she) carefully weighed the considerations for and against (his/her) choice and, knowing the consequences, decided to kill. The defendant *acted with premeditation* if (he/she) decided to kill before completing the act[s] that caused death.

The length of time the person spends considering whether to kill does not alone determine whether the killing is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to kill made rashly, impulsively, or without careful consideration is not deliberate and premeditated. On the other hand, a cold, calculated decision to kill can be reached quickly. The test is the extent of the reflection, not the length of time.]

<B. Torture>
[The defendant is guilty of first degree murder if the People have proved that the defendant committed murder~~ed~~ by torture. The defendant committed murder~~ed~~ by torture if:

1. **(He/She) willfully, deliberately, and with premeditation intended to inflict extreme and prolonged pain on the person killed while that person was still alive;**

2. **(He/She) intended to inflict such pain on the person killed for the calculated purpose of revenge, extortion, persuasion, or any other sadistic reason;**

3. **The acts causing death involved a high degree of probability of death;**

AND

4. **The torture was a cause of death.]**

[A person commits an act *willfully* when he or she does it willingly or on purpose. A person commits an act *deliberately* if he or she carefully weighs the considerations for and against his or her choice and, knowing the consequences, decides to act. A person commits an act with *premeditation* if (he/she) decided to inflict extreme and prolonged pain on a person before completing the act[s] that caused death.]

[There is no requirement that the person killed be aware of the pain.]

[A finding of torture does not require that the defendant intended to kill.]

<C. Lying in Wait>
[The defendant is guilty of first degree murder if the People have proved that the defendant committed murder~~ed~~ while lying in wait or immediately thereafter. The defendant committed murder~~ed~~ by lying in wait if:

1. **(He/She) concealed (his/her) purpose from the person killed;**

2. **(He/She) waited and watched for an opportunity to act;**

AND

3. **Then, from a position of advantage, (he/she) intended to and did make a surprise attack on the person killed.**

The lying in wait does not need to continue for any particular period of time, but its duration must be substantial enough to show a state of mind

equivalent to deliberation or premeditation. [*Deliberation* means carefully weighing the considerations for and against a choice and, knowing the consequences, deciding to act. An act is done with *premeditation* if the decision to commit the act is made before the act is done.]

[A person can conceal his or her purpose even if the person killed is aware of the person's physical presence.]

[The concealment can be accomplished by ambush or some other secret plan.]]

<D. Destructive Device or Explosive>
[The defendant is guilty of first degree murder if the People have proved that the defendant committed murder~~ed~~ by using a destructive device or explosive.]

[An *explosive* is any substance, or combination of substances, (1) whose main or common purpose is to detonate or rapidly combust and (2) which is capable of a relatively instantaneous or rapid release of gas and heat.]

[An *explosive* is [also] any substance whose main purpose is to be combined with other substances to create a new substance that can release gas and heat rapidly or relatively instantaneously.]

[_____ *<insert type of explosive from Health & Saf. Code, § 12000>* **is an *explosive*.]**

[A *destructive device* is _____ *<insert definition supported by evidence from Pen. Code, § 16460>***.]**

[_____ *<insert type of destructive device from Pen. Code, § 16460>* **is a *destructive device*.]**

<E. Weapon of Mass Destruction>
[The defendant is guilty of first degree murder if the People have proved that the defendant committed murder~~ed~~ by using a weapon of mass destruction.

[_____ *<insert type of weapon from Pen. Code, § 11417(a)(1)>* **is a *weapon of mass destruction*.]**

[_____ *<insert type of agent from Pen. Code, § 11417(a)(2)>* **is a *chemical warfare agent*.]]**

<F. Penetrating Ammunition>

[The defendant is guilty of first degree murder if the People have proved that when the defendant committed murder~~ed~~, (he/she) used ammunition designed primarily to penetrate metal or armor to commit the murder and (he/she) knew that the ammunition was designed primarily to penetrate metal or armor.]

<G. Discharge From Vehicle>

[The defendant is guilty of first degree murder if the People have proved that the defendant committed murder~~ed~~ by shooting a firearm from a motor vehicle. The defendant committed this kind of murder if:

1. **(He/She) shot a firearm from a motor vehicle;**

2. **(He/She) intentionally shot at a person who was outside the vehicle;**

AND

3. **(He/She) intended to kill that person.**

A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.

A *motor vehicle* includes (a/an) (passenger vehicle/motorcycle/motor scooter/bus/school bus/commercial vehicle/truck tractor and trailer/_____ *<insert other type of motor vehicle>*).]

<H. Poison>

[The defendant is guilty of first degree murder if the People have proved that the defendant committed murder~~ed~~ by using poison. The defendant committed murder by poison if:

1. **(He/She) deliberately gave _____ *<insert name of victim>* poison;**

AND

2. **When giving the poison, the defendant intended to kill _____ *<insert name of victim>* or to inflict injury likely to cause _____ *<insert name of victim>*'s death.**

[*Poison* is a substance, applied externally to the body or introduced into the body, that can kill by its own inherent qualities.]]

[_____ *<insert name of substance>* **is a *poison*.]**

[The requirements for second degree murder based on express or implied malice are explained in CALCRIM No. 520, *First or Second Degree Murder With Malice Aforethought*.]

The People have the burden of proving beyond a reasonable doubt that the killing was first degree murder rather than a lesser crime. If the People have not met this burden, you must find the defendant not guilty of first degree murder and the murder is second degree murder.

New January 2006; Revised August 2006, June 2007, April 2010, October 2010, February 2012, February 2013, February 2015, August 2015, September 2017, September 2022, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. Before giving this instruction, the court must give CALCRIM No. 520, *Murder With Malice Aforethought*. Depending on the theory of first degree murder relied on by the prosecution, give the appropriate alternatives A through H.

The court **must give** the final paragraph in every case.

If the prosecution alleges two or more theories for first degree murder, give the bracketed section that begins with "The defendant has been prosecuted for first degree murder under." If the prosecution alleges felony murder in addition to one of the theories of first degree murder in this instruction, give CALCRIM No. 548, *Murder: Alternative Theories*, instead of the bracketed paragraph contained in this instruction.

When instructing on murder by weapon of mass destruction, explosive, or destructive device, the court may use the bracketed sentence stating, "_____ is a weapon of mass destruction" or "is a chemical warfare agent," only if the device used is listed in the code section noted in the instruction. For example, "Sarin is a chemical warfare agent." However, the court may not instruct the jury that the defendant used the prohibited weapon. For example, the court may not state, "the defendant used a chemical warfare agent, sarin," or "the material used by the defendant, sarin, was a chemical warfare agent." (*People v. Dimitrov* (1995) 33 Cal.App.4th 18, 25–26 [39 Cal.Rptr.2d 257].)

Do **not** modify this instruction to include the factors set forth in *People v. Anderson* (1968) 70 Cal.2d 15, 26–27 [73 Cal.Rptr. 550, 447 P.2d 942].

Although those factors may assist in appellate review of the sufficiency of the evidence to support findings of premeditation and deliberation, they neither define the elements of first degree murder nor guide a jury's determination of the degree of the offense. (*People v. Moon* (2005) 37 Cal.4th 1, 31 [32 Cal.Rptr.3d 894, 117 P.3d 591]; *People v. Steele* (2002) 27 Cal.4th 1230, 1254 [120 Cal.Rptr.2d 432, 47 P.3d 225]; *People v. Lucero* (1988) 44 Cal.3d 1006, 1020 [245 Cal.Rptr. 185, 750 P.2d 1342].)

AUTHORITY

- Types of Statutory First Degree Murder. Pen. Code, § 189.
- Armor Piercing Ammunition Defined. Pen. Code, § 16660.
- Destructive Device Defined. Pen. Code, § 16460.
- For Torture, Act Causing Death Must Involve a High Degree of Probability of Death. *People v. Cook* (2006) 39 Cal.4th 566, 602 [47 Cal.Rptr.3d 22, 139 P.3d 492].
- Mental State Required for Implied Malice. *People v. Knoller* (2007) 41 Cal.4th 139, 143 [59 Cal.Rptr.3d 157, 158 P.3d 731].
- Explosive Defined. Health & Saf. Code, § 12000; *People v. Clark* (1990) 50 Cal.3d 583, 604 [268 Cal.Rptr. 399, 789 P.2d 127].
- Weapon of Mass Destruction Defined. Pen. Code, § 11417.
- Discharge From Vehicle. *People v. Chavez* (2004) 118 Cal.App.4th 379, 386–387 [12 Cal.Rptr.3d 837] [drive-by shooting clause is not an enumerated felony for purposes of the felony murder rule].
- Lying in Wait Requirements. *People v. Stanley* (1995) 10 Cal.4th 764, 794 [42 Cal.Rptr.2d 543, 897 P.2d 481]; *People v. Ceja* (1993) 4 Cal.4th 1134, 1139 [17 Cal.Rptr.2d 375, 847 P.2d 55]; *People v. Webster* (1991) 54 Cal.3d 411, 448 [285 Cal.Rptr. 31, 814 P.2d 1273]*; People v. Poindexter* (2006) 144 Cal.App.4th 572, 582–585 [50 Cal.Rptr.3d 489]; *People v. Laws* (1993) 12 Cal.App.4th 786, 794–795 [15 Cal.Rptr.2d 668].
- Poison Defined. *People v. Van Deleer* (1878) 53 Cal. 147, 149.
- Premeditation and Deliberation Defined. *People v. Pearson* (2013) 56 Cal.4th 393, 443–444 [154 Cal.Rptr.3d 541, 297 P.3d 793]; *People v. Anderson, supra,* 70 Cal.2d at pp. 26–27; *People v. Bender* (1945) 27 Cal.2d 164, 183–184 [163 P.2d 8]; *People v. Daugherty* (1953) 40 Cal.2d 876, 901–902 [256 P.2d 911].
- Torture Requirements. *People v. Pensinger* (1991) 52 Cal.3d 1210, 1239 [278 Cal.Rptr. 640, 805 P.2d 899]; *People v. Bittaker* (1989) 48 Cal.3d 1046, 1101

[259 Cal.Rptr. 630, 774 P.2d 659], habeas corpus granted in part on other grounds in *In re Bittaker* (1997) 55 Cal.App.4th 1004 [64 Cal.Rptr.2d 679]; *People v. Wiley* (1976) 18 Cal.3d 162, 168–172 [133 Cal.Rptr. 135, 554 P.2d 881]; see also *People v. Pre* (2004) 117 Cal.App.4th 413, 419–420 [11 Cal.Rptr.3d 739] [comparing torture murder with torture].

- Murder by Poison Requirements. *People v. Brown* (2023) 14 Cal.5th 453, 471 [305 Cal.Rptr.3d 127, 524 P.3d 1088].

LESSER INCLUDED OFFENSES

- Murder. Pen. Code, § 187.
- Voluntary Manslaughter. Pen. Code, § 192(a).
- Involuntary Manslaughter. Pen. Code, § 192(b).
- Attempted First Degree Murder. Pen. Code, §§ 663, 189.
- Attempted Murder. Pen. Code, §§ 663, 187.
- Elements of Special Circumstances Not Considered in Lesser Included Offense Analysis. *People v. Boswell* (2016) 4 Cal.App.5th 55, 59–60 [208 Cal.Rptr.3d 244].

RELATED ISSUES

Premeditation and Deliberation—Heat of Passion Provocation

Provocation may reduce murder from first to second degree. (*People v. Thomas* (1945) 25 Cal.2d 880, 903 [156 P.2d 7] [provocation raised reasonable doubt about premeditation or deliberation, "leaving the homicide as murder of the second degree; i.e., an unlawful killing perpetrated with malice aforethought but without premeditation and deliberation"]; see *People v. Padilla* (2002) 103 Cal.App.4th 675, 679 [126 Cal.Rptr.2d 889] [evidence of hallucination is admissible at guilt phase to negate deliberation and premeditation and to reduce first degree murder to second degree murder].) There is, however, no sua sponte duty to instruct the jury on this issue. (*People v. Middleton* (1997) 52 Cal.App.4th 19, 31–33 [60 Cal.Rptr.2d 366], disapproved on other grounds in *People v. Gonzalez* (2003) 31 Cal.4th 745, 752 [3 Cal.Rptr.3d 676, 74 P.3d 771].) On request, give CALCRIM No. 522, *Provocation: Effect on Degree of Murder*.

Torture—Causation

The finding of murder by torture encompasses the totality of the brutal acts and circumstances that led to a victim's death. "The acts of torture may not be segregated into their constituent elements in order to determine whether any single

act by itself caused the death; rather, it is the continuum of sadistic violence that constitutes the torture [citation]." (*People v. Proctor* (1992) 4 Cal.4th 499, 530–531 [15 Cal.Rptr.2d 340, 842 P.2d 1100].)

Torture—Instruction on Voluntary Intoxication

"[A] court should instruct a jury in a torture-murder case, when evidence of intoxication warrants it, that intoxication is relevant to the specific intent to inflict cruel suffering." (*People v. Pensinger*, *supra*, 52 Cal.3d at p. 1242; see CALCRIM No. 625, *Voluntary Intoxication: Effects on Homicide Crimes*.)

Torture—Pain Not an Element

All that is required for first degree murder by torture is the calculated *intent to cause pain* for the purpose of revenge, extortion, persuasion, or any other sadistic purpose. There is no requirement that the victim actually suffer pain. (*People v. Pensinger*, *supra*, ~~(1991)~~ 52 Cal.3d ~~1210,~~at p. 1239 ~~[278 Cal.Rptr. 640, 805 P.2d 899]~~.)

Torture—Premeditated Intent to Inflict Pain

Torture-murder, unlike the substantive crime of torture, requires that the defendant acted with deliberation and premeditation when inflicting the pain. (*People v. Pre*, *supra*, 117 Cal.App.4th at pp. 419–420; *People v. Mincey* (1992) 2 Cal.4th 408, 434–436 [6 Cal.Rptr.2d 822, 827 P.2d 388].)

Lying in Wait—Length of Time Equivalent to Premeditation and Deliberation

In *People v. Stanley*, *supra*, 10 Cal.4th at p. 794, the court approved this instruction regarding the length of time a person lies in wait: "[T]he lying in wait need not continue for any particular time, provided that its duration is such as to show a state of mind equivalent to premeditation or deliberation."

Discharge From a Vehicle—Vehicle Does Not Have to Be Moving

Penal Code section 189 does not require the vehicle to be moving when the shots are fired. (Pen. Code, § 189; see also *People v. Bostick* (1996) 46 Cal.App.4th 287, 291 [53 Cal.Rptr.2d 760] [finding vehicle movement is not required in context of enhancement for discharging firearm from motor vehicle under Pen. Code, § 12022.55].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 117.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.01 (Matthew Bender).

522. Provocation: Effect on Degree of Murder

Provocation may reduce a murder from first degree to second degree [and may reduce a murder to manslaughter]. The weight and significance of the provocation, if any, are for you to decide.

If you conclude that the defendant committed murder but was provoked, consider the provocation in deciding whether the crime was first or second degree murder. [Also, consider the provocation in deciding whether the defendant committed murder or manslaughter.]

[Provocation does not apply to a prosecution under a theory of felony murder.]

New January 2006; Revised April 2011, March 2017, September 2023

BENCH NOTES

Instructional Duty

Provocation may reduce murder from first to second degree. (*People v. Thomas* (1945) 25 Cal.2d 880, 903 [156 P.2d 7] [provocation raised reasonable doubt about premeditation or deliberation, "leaving the homicide as murder of the second degree; i.e., an unlawful killing perpetrated with malice aforethought but without premeditation and deliberation"]; see also *People v. Cole* (2004) 33 Cal.4th 1158, 1211–1212 [17 Cal.Rptr.3d 532, 95 P.3d 811] [court adequately instructed on relevance of provocation to whether defendant acted with intent to torture for torture murder].) There is, however, no sua sponte duty to instruct the jury on this issue. (*People v. Rogers* (2006) 39 Cal.4th 826, 877-880 [48 Cal.Rptr.3d 1, 141 P.3d 135].) This is a pinpoint instruction, to be given on request where evidence supports the theory. (*People v. Thomas* (2023) 14 Cal.5th 327, 384 [304 Cal.Rptr.3d 1, 523 P.3d 323].)

This instruction may be given after CALCRIM No. 521, *First Degree Murder*.

If the court will be instructing on voluntary manslaughter, give both bracketed portions on manslaughter.

If the court will be instructing on felony murder, give the bracketed sentence stating that provocation does not apply to felony murder.

AUTHORITY

- Provocation Reduces From First to Second Degree. *People v. Thomas*, *supra*, ~~(1945)~~ 25 Cal.2d at p.~~880,~~ 903 ~~[156 P.2d 7]~~; see also *People v. Cole*, *supra*, ~~(2004)~~ 33 Cal.4th ~~1158,~~ at pp. 1211–1212 ~~[17 Cal.Rptr.3d 532, 95 P.3d 811]~~.
- Pinpoint Instruction. *People v. Rogers*, *supra*, ~~(2006)~~ 39 Cal.4th at pp. ~~826,~~ 877–878~~]~~.
- This Instruction Upheld. *People v. Hernandez* (2010) 183 Cal.App.4th 1327, 1333-1335 [107 Cal.Rptr.3d 915].

SECONDARY SOURCES

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications*, § 73.16 (Matthew Bender).

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.04[1][c] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, §§ 142.01, 142.02 (Matthew Bender).

526. Implied Malice Murder: Aiding and Abetting

To prove that the defendant is guilty of aiding and abetting murder by acting with implied malice, the People must prove that:

1. **The perpetrator committed [an] act[s] that (was/were) dangerous to human life;**

2. **The perpetrator's act[s] caused the death of (another person/ [or] a fetus);**

3. **The defendant knew that the perpetrator intended to commit the act[s] that (was/were) dangerous to human life;**

4. **Before or during the commission of the perpetrator's act[s], the defendant intended to aid and abet the perpetrator in committing the act[s] that (was/were) dangerous to human life;**

5. **Before or during the commission of the perpetrator's act[s], the defendant knew the perpetrator's act[s] (was/were) dangerous to human life, and the defendant deliberately acted with conscious disregard for human life;**

AND

6. **By words or conduct, the defendant did in fact aid and abet the perpetrator's commission of the act[s].**

If all of these requirements are proved, the defendant does not need to actually have been present when the crime was committed to be guilty as an aider and abettor.

Someone *aids and abets* a crime if he or she knows of the perpetrator's unlawful purpose and he or she specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the perpetrator's commission of that crime.

An act is *dangerous to human life* if there is a high degree of probability that the act will result in death.

[If you conclude that defendant was present at the scene of the crime or failed to prevent the crime, you may consider that fact in determining whether the defendant was an aider and abettor. However, the fact that a person is present at the scene of a crime or fails to prevent the crime does not, by itself, make him or her an aider and abettor.]

[It is not necessary that the perpetrator or the defendant be aware of the existence of a fetus to be guilty of murdering that fetus.]

[A *fetus* is an unborn human being that has progressed beyond the embryonic stage after major structures have been outlined, which typically occurs at seven to eight weeks after fertilization.]

[An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.]

[A person who aids and abets a crime is not guilty of that crime if he or she withdraws before the crime is committed. To withdraw, a person must do two things:

1. **He or she must notify everyone else he or she knows is involved in the commission of the crime that he or she is no longer participating. The notification must be made early enough to prevent the commission of the crime.**

AND

2. **He or she must do everything reasonably within his or her power to prevent the crime from being committed. He or she does not have to actually prevent the crime.**

The People have the burden of proving beyond a reasonable doubt that the defendant did not withdraw. If the People have not met this burden, you may not find the defendant guilty under an aiding and abetting theory.]

New September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on aiding and abetting when the prosecution relies on it as a theory of culpability. (*People v. Beeman* (1984) 35 Cal.3d 547, 560–561 [199 Cal.Rptr. 60, 674 P.2d 1318].)

If there is evidence that the defendant was merely present at the scene or only had knowledge that a crime was being committed, the court has a **sua sponte** duty to give the bracketed paragraph that begins with "If you conclude that defendant was present." (*People v. Boyd* (1990) 222 Cal.App.3d 541, 557 fn.14 [271 Cal.Rptr. 738]; *In re Michael T.* (1978) 84 Cal.App.3d 907, 911 [149 Cal.Rptr. 87].)

If there is evidence that the defendant withdrew from participation in the crime, the court has a **sua sponte** duty to give the bracketed portion regarding withdrawal. (*People v. Norton* (1958) 161 Cal.App.2d 399, 403 [327 P.2d 87]; *People v. Ross* (1979) 92 Cal.App.3d 391, 404–405 [154 Cal.Rptr. 783].)

If the prosecution's theory of the case is that the defendant committed murder based on his or her failure to perform a legal duty, the court may modify this instruction, consistent with the language in CALCRIM No. 520, *First or Second Degree Murder With Malice Aforethought.*

Related Instructions

Give CALCRIM No. 520, *Murder: First or Second Degree Murder With Malice Aforethought* and CALCRIM No. 400, *Aiding and Abetting: General Principles*, before this instruction. Note that Penal Code section 30 uses "principal" but that CALCRIM Nos. 400 and 526 substitute "perpetrator" for clarity.

AUTHORITY

- Instructional Requirements. *People v. Reyes* (2023) 14 Cal.5th 981 [309 Cal.Rptr.3d 832, 531 P.3d 357].
- Aiding and Abetting Liability for Implied Malice Murder. *People v. Reyes, supra*, 14 Cal.5th at p.__; *People v. Gentile* (2020) 10 Cal.5th 830, 850–851 [272 Cal.Rptr.3d 814, 477 P.3d 539].
- Presence or Knowledge Insufficient. *People v. Boyd* (1990) 222 Cal.App.3d 541, 557 fn.14 [271 Cal.Rptr. 738]; *In re Michael T., supra,* 84 Cal.App.3d at p. 911.
- "Dangerous to Human Life" Defined. *People v. Reyes, supra*, 14 Cal.5th at p.__.
- Fetus Defined. *People v. Davis* (1994) 7 Cal.4th 797, 814–815 [30 Cal.Rptr.2d 50, 872 P.2d 591]; *People v. Taylor* (2004) 32 Cal.4th 863, 867 [11 Cal.Rptr.3d 510, 86 P.3d 881].
- Withdrawal. *People v. Norton, supra*, 161 Cal.App.2d at p. 403; *People v. Ross* (1979) 92 Cal.App.3d 391, 404–405 [154 Cal.Rptr. 783].

COMMENTARY

In recognizing that Penal Code section 188(a)(3) bars imputed malice, and therefore bars conviction of second degree murder under a natural and probable consequences theory, the California Supreme Court further held that: “an aider and abettor who does not expressly intend to aid a killing can still be convicted of second degree murder if the person knows that his or her conduct endangers the life of another and acts with conscious disregard for life.” (*People v. Gentile, supra,* 10 Cal.5th at pp. 850–851.) Unlike imputed malice, which involves vicarious liability, implied malice involves the concept of natural and probable consequences, which is still permissible because implied malice “is based upon the natural and probable consequences of a defendant’s *own* act committed with knowledge of and disregard for the risk of death the act carries.” (*People v. Vargas, supra,* 84 Cal.App.5th at p. 953 fn. 6.) Therefore, aiding and abetting implied malice murder remains a valid theory of liability, notwithstanding the statutory changes effected by Senate Bill 1437 (Stats. 2018, ch. 1015) and Senate Bill 775 (Stats. 2021, ch. 551). (See *People v. Reyes, supra,* 14 Cal.5th at p.__.)

540B. Felony Murder: First Degree—Coparticipant Allegedly Committed Fatal Act (Pen. Code, § 189)

<Give the following introductory sentence when not giving CALCRIM No. 540A.>
[The defendant is charged [in Count __] with murder, under a theory of first degree felony murder.]

The defendant may [also] be guilty of murder, under a theory of felony murder, even if another person did the act that resulted in the death. I will call the other person the *perpetrator*.

To prove that the defendant is guilty of first degree murder under this theory, the People must prove that:

1. **The defendant (committed [or attempted to commit][,]/ [or] aided and abetted[,]/ [or] was a member of a conspiracy to commit)** _____ *<insert felony or felonies from Pen. Code, § 189>***;**

2. **The defendant (intended to commit[,]/ [or] intended to aid and abet the perpetrator in committing[,]/ [or] intended that one or more of the members of the conspiracy commit)** _____ *<insert felony or felonies from Pen. Code, § 189>***;**

3. **If the defendant did not personally commit [or attempt to commit]** _____ *<insert felony or felonies from Pen. Code, § 189>***, then a perpetrator, (whom the defendant was aiding and abetting/ [or] with whom the defendant conspired), committed [or attempted to commit]** _____ *<insert felony or felonies from Pen. Code, § 189>***;**

4. **While committing [or attempting to commit]** _____ *<insert felony or felonies from Pen. Code, § 189>***, the perpetrator caused the death of another person;**

<Alternative for Pen. Code, § 189(e)(2) and (e)(3) liability>
[5A. The defendant intended to kill;

AND

5B. The defendant (aided and abetted[,])/ [or] counseled[,]/ [or] commanded[,]/ [or] induced[,]/ [or] solicited[,]/ [or] requested[,]/ [or] assisted) the perpetrator in the commission of first degree murder(./;)]

[OR]

[(5A/6A). The defendant was a major participant in the_____<*insert felony or felonies from Pen. Code, § 189*>**;**

AND

(5B/6B). When the defendant participated in the _____<*insert felony or felonies from Pen. Code, § 189*>**, (he/she) acted with reckless indifference to human life(./;)]**
[OR]

<*Alternative for Pen. Code, § 189(f) liability*>
[(5A/6A/7A). _____<*insert officer's name, excluding title*> **was a peace officer lawfully performing (his/her) duties as a peace officer;**

AND

(5B/6B/7B). When the defendant acted, (he/she) knew, or reasonably should have known, that _____<*insert officer's name, excluding title*> **was a peace officer performing (his/her) duties.]**

[A person may be guilty of felony murder of a peace officer even if the killing was unintentional, accidental, or negligent.]

To decide whether (the defendant/ [and] the perpetrator) committed [or attempted to commit] _____ <*insert felony or felonies from Pen. Code, § 189*>**, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s]. [To decide whether the defendant aided and abetted a crime, please refer to the separate instructions that I (will give/have given) you on aiding and abetting.] [To decide whether the defendant was a member of a conspiracy to commit a crime, please refer to the separate instructions that I (will give/have given) you on conspiracy.] You must apply those instructions when you decide whether the People have proved first degree murder under a theory of felony murder.**

[The defendant must have (intended to commit[,]/ [or] aid and abet[,]/ [or] been a member of a conspiracy to commit) the (felony/felonies) of _____

<insert felony or felonies from Pen. Code, § 189> **before or at the time of the death.]**

[It is not required that the person die immediately, as long as the act causing death occurred while the defendant was committing the (felony/felonies).]

[It is not required that the person killed be the (victim/intended victim) of the (felony/felonies).]

[It is not required that the defendant be present when the act causing the death occurs.]

[You may not find the defendant guilty of felony murder unless all of you agree that the defendant or a perpetrator caused the death of another. You do not all need to agree, however, whether the defendant or a perpetrator caused that death.]

<The following instructions can be given when reckless indifference and major participant under Pen. Code, § 189(e)(3) applies.>
[A person *acts with reckless indifference to human life* when he or she knowingly engages in criminal activity that a reasonable person would he or she knows involves a grave risk of death and he or she knows that the activity involves a grave risk of death.]

[When you decide whether the defendant acted with *reckless indifference to human life*, consider all the evidence. No one of the following factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant acted with reckless indifference to human life. Among the factors you may consider are:

- **[Did the defendant know that [a] lethal weapon[s] would be present during the _____*<insert underlying felony>*?]**
- **[Did the defendant know that [a] lethal weapon[s] (was/were) likely to be used?]**
- **[Did the defendant know that [a] lethal weapon[s] (was/were) used?]**
- **[Did the defendant know the number of weapons involved?]**
- **[Was the defendant near the person(s) killed when the killing occurred?]**
- **[Did the defendant have an opportunity to stop the killing or to help the victim(s)?]**
- **[How long did the crime last?]**
- **[Was the defendant aware of anything that would make a coparticipant likely to kill?]**

[● Did the defendant try to minimize the possibility of violence?]
[● How old was the defendant?]
[● _____<*insert any other relevant factors*>**]]**

[When you decide whether the defendant was a *major participant,* consider all the evidence. No one of the following factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant was a major participant. Among the factors you may consider are:

[● What was the defendant's role in planning the crime that led to the death[s]?]
[● What was the defendant's role in supplying or using lethal weapons?]
[● What did the defendant know about dangers posed by the crime, any weapons used, or past experience or conduct of the other participant[s]?]
[● Was the defendant in a position to facilitate or to prevent the death?]
[● Did the defendant's action or inaction play a role in the death?]
[● What did the defendant do after lethal force was used?]
[● _____<*insert any other relevant factors*>**]]**

<*Give the following instructions when Pen. Code, § 189(f) applies.*>
[A person who is employed as a police officer by _____ <*insert name of agency that employs police officer*> **is a peace officer.]**

[A person employed by _____ <*insert name of agency that employs peace officer, e.g., "the Department of Fish and Wildlife"*> **is a peace officer if _____**<*insert description of facts necessary to make employee a peace officer, e.g, "designated by the director of the agency as a peace officer"*>**.]**

[The duties of (a/an) _____ <*insert title of peace officer*> **include _____** <*insert job duties*>**.]**

New January 2006; Revised April 2010, August 2013, February 2015, September 2019, April 2020, September 2020, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime. The court also has a **sua sponte** duty to instruct on the elements of any underlying felonies. (*People v. Cain* (1995) 10 Cal.4th 1, 36 [40 Cal.Rptr.2d 481, 892 P.2d 1224].)

If the facts raise an issue whether the homicidal act caused the death, the court has a **sua sponte** duty to give CALCRIM No. 240, *Causation*.

The court has a **sua sponte** duty to instruct on aiding and abetting when the prosecutor relies on it as a theory of culpability. (*People v. Beeman* (1984) 35 Cal.3d 547, 560–561 [199 Cal.Rptr. 60, 674 P.2d 1318].) The court has a **sua sponte** duty to instruct on conspiracy when the prosecution has introduced evidence of a conspiracy to prove liability for other offenses. (See, e.g., *People v. Pike* (1962) 58 Cal.2d 70, 88 [22 Cal.Rptr. 664, 372 P.2d 656]; *People v. Ditson* (1962) 57 Cal.2d 415, 447 [20 Cal.Rptr. 165, 369 P.2d 714].)

Give all appropriate instructions on all underlying felonies, aiding and abetting, and conspiracy.

If the prosecution's theory is that the defendant, as well as the perpetrator, committed or attempted to commit the underlying felony or felonies, then select "committed [or attempted to commit]" in element 1 and "intended to commit" in element 2. In addition, in the paragraph that begins with "To decide whether," select both "the defendant and the perpetrator." Give all appropriate instructions on any underlying felonies with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense. The court may also need to modify the instruction to state "the defendant and the perpetrator each committed [the crime] if . . . ."

If the prosecution's theory is that the defendant aided and abetted or conspired to commit the felony, select one or both of these options in element 1 and the corresponding intent requirements in element 2. In addition, in the paragraph that begins with "To decide whether," select "the perpetrator" in the first sentence. Give the second and/or third bracketed sentences. Give all appropriate instructions on any underlying felonies and on aiding and abetting and/or conspiracy with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense. The court may also need to modify the instruction to state "the perpetrator committed," rather than "the defendant," in the instructions on the underlying felony.

If the defendant was a nonkiller who fled, leaving behind an accomplice who killed, see *People v. Cavitt* (2004) 33 Cal.4th 187, 206, fn. 7 [14 Cal.Rtpr.3d 281, 91 P.3d 222] [continuous transaction] and the discussion of *Cavitt* in *People v. Wilkins* (2013) 56 Cal.4th 333, 344 [153 Cal.Rptr.3d 519, 295 P.3d 903].

If there is evidence that the defendant did not form the intent to commit the felony until after the homicide, or did not join the conspiracy or aid and abet the felony until after the homicide, the defendant is entitled on request to an instruction pinpointing this issue. (*People v. Hudson* (1955) 45 Cal.2d 121, 124–127 [287

P.2d 497]; *People v. Silva* (2001) 25 Cal.4th 345, 371 [106 Cal.Rptr.2d 93, 21 P.3d 769].) Give the bracketed sentence that begins with "The defendant must have (intended to commit." For an instruction specially tailored to robbery-murder cases, see *People v. Turner* (1990) 50 Cal.3d 668, 691 [268 Cal.Rptr. 706, 789 P.2d 887].

Give the bracketed sentence that begins with "It is not required that the person die immediately" on request if relevant based on the evidence.

The felony-murder rule does not require that the person killed be the victim of the underlying felony. (*People v. Johnson* (1972) 28 Cal.App.3d 653, 658 [104 Cal.Rptr. 807] [accomplice]; *People v. Welch* (1972) 8 Cal.3d 106, 117–119 [104 Cal.Rptr. 217, 501 P.2d 225] [innocent bystander]; *People v. Salas* (1972) 7 Cal.3d 812, 823 [103 Cal.Rptr. 431, 500 P.2d 7] [police officer].) Give the bracketed sentence that begins with "It is not required that the person killed be" on request.

Give the last bracketed sentence, stating that the defendant need not be present, on request.

If the prosecutor is proceeding under both malice and felony-murder theories, or is proceeding under multiple felony-murder theories, give CALCRIM No. 548, *Murder: Alternative Theories*. If the prosecutor is relying only on a theory of felony murder, no instruction on malice should be given. (See *People v. Cain*, *supra*, ~~(1995)~~ 10 Cal.4th at pp.~~1,~~ 35–37 ~~[40 Cal.Rptr.2d 481, 892 P.2d 1224]~~ [error to instruct on malice when felony murder only theory].)

There is **no** sua sponte duty to clarify the logical nexus between the felony and the homicidal act. If an issue about the logical nexus requirement arises, the court may give the following language:

> **There must be a logical connection between the cause of death and the** _____ <*insert felony or felonies from Pen. Code, § 189*> **[or attempted** _____ <*insert felony or felonies from Pen. Code, § 189*>**]. The connection between the cause of death and the** _____ <*insert felony or felonies from Pen. Code, § 189*> **[or attempted** _____ <*insert felony or felonies from Pen. Code, § 189*>**] must involve more than just their occurrence at the same time and place.]**

People v. Cavitt, *supra*, ~~(2004)~~ 33 Cal.4th at pp.~~187,~~ 203–~~–~~204 ~~[14 Cal.Rtpr.3d 281, 91 P.3d 222]~~; *People v. Wilkins*, *supra*, ~~(2013)~~ 56 Cal.4th at p.~~333,~~ 347 ~~[153 Cal.Rptr.3d 519, 295 P.3d 903]~~.

In *People v. Banks* (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330], the court identified certain factors to guide the jury in its determination of whether the defendant was a major participant but stopped short of holding that the court has a sua sponte duty to instruct on those factors. The trial court should determine whether the *Banks* factors need be given.

The court does not have a sua sponte duty to define "reckless indifference to human life." (*People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197].) However, this "holding should not be understood to discourage trial courts from amplifying the statutory language for the jury." (*Id.* at p. 579.) The court may give the bracketed definition of reckless indifference if requested.

In *People v. Clark* (2016) 63 Cal.4th 522, 614-620 [203 Cal.Rptr.3d 407, 372 P.3d 811], the court identified certain factors to guide the jury in its determination of whether the defendant acted with reckless indifference to human life but did not hold that the court has a sua sponte duty to instruct on those factors. *Clark* noted that these factors had been applied by appellate courts "in cases involving nonshooter aiders and abettors to commercial armed robbery felony murders." (*Id.* at p. 618.) The trial court should determine whether the *Clark* factors need be given.

Related Instructions—Other Causes of Death

This instruction should be used only when the prosecution alleges that a coparticipant in the felony committed the act causing the death.

When the alleged victim dies during the course of the felony as a result of a heart attack, a fire, or a similar cause, rather than as a result of some act of force or violence committed against the victim by one of the participants, give CALCRIM No. 540C, *Felony Murder: First Degree—Other Acts Allegedly Caused Death*. (Cf. *People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79 P.3d 542]; *People v. Stamp* (1969) 2 Cal.App.3d 203, 209–211 [82 Cal.Rptr. 598]; *People v. Hernandez* (1985) 169 Cal.App.3d 282, 287 [215 Cal.Rptr. 166]; but see *People v. Gunnerson* (1977) 74 Cal.App.3d 370, 378–381 [141 Cal.Rptr. 488] [simultaneous or coincidental death is not killing].)

If the evidence indicates that someone other than the defendant or a coparticipant committed the fatal act, then the crime is not felony murder. (*People v. Washington* (1965) 62 Cal.2d 777, 782–783 [44 Cal.Rptr. 442, 402 P.2d 130]; *People v. Caldwell* (1984) 36 Cal.3d 210, 216 [203 Cal.Rptr. 433, 681 P.2d 274]; see also *People v. Gardner* (1995) 37 Cal.App.4th 473, 477 [43 Cal.Rptr.2d 603].) Liability may be imposed, however, under the provocative act doctrine. (*Pizano v. Superior Court of Tulare County* (1978) 21 Cal.3d 128, 134 [145 Cal.Rptr. 524, 577 P.2d 659]; see CALCRIM No. 560, *Homicide: Provocative Act by Defendant*.)

Related Instructions

CALCRIM No. 400 et seq., *Aiding and Abetting: General Principles*.

CALCRIM No. 415 et seq., *Conspiracy*.

AUTHORITY

- Felony Murder: First Degree. Pen. Code, § 189.
- Specific Intent to Commit Felony Required. *People v. Gutierrez (2*002) 28 Cal.4th 1083, 1140 [124 Cal.Rptr.2d 373, 52 P.3d 572].
- Infliction of Fatal Injury. *People v. Alvarez* (1996) 14 Cal.4th 155, 222–223 [58 Cal.Rptr.2d 385, 926 P.2d 365].
- Defendant Must Join Felonious Enterprise Before or During Killing of Victim. *People v. Pulido* (1997) 15 Cal.4th 713, 726 [63 Cal.Rptr.2d 625, 936 P.2d 1235].
- Logical Nexus Between Felony and Killing. *People v. Dominguez* (2006) 39 Cal.4th 1141~~]~~; *People v. Cavitt, supra,* ~~(2004)~~ 33 Cal.4th at pp.~~187,~~ 197–206~~]~~.
- Merger Doctrine Does Not Apply to First Degree Felony Murder. *People v. Farley* (2009) 46 Cal.4th 1053, 1118-1120 [96 Cal.Rptr.3d 191, 210 P.3d 361].
- Reckless Indifference to Human Life. *In re Scoggins* (2020) 9 Cal.5th 667, 676–677 [264 Cal.Rptr.3d 804, 467 P.3d 198]; *People v. Clark, supra,* ~~(2016)~~ 63 Cal.4th at pp.~~522,~~ 614–620 ~~[203 Cal.Rptr.3d 407, 372 P.3d 811]~~; *People v. Banks, supra,* ~~(2015)~~ 61 Cal.4th at pp.~~788,~~ 807–811 [189 Cal.Rptr.3d 208, 351 P.3d 330]; *People v. Estrada, supra,* ~~(1995)~~ 11 Cal.4th at p.~~568,~~ 578 ~~[46 Cal.Rptr.2d 586, 904 P.2d 1197]~~; *Tison v. Arizona* (1987) 481 U.S. 137, 157–158 [107 S.Ct. 1676, 95 L.Ed.2d 127].
- Major Participant. *People v. Banks* (2015) 61 Cal.4th 788, 803–808 [189 Cal.Rptr.3d 208, 351 P.3d 330].
- Objective Criminal Negligence Standard for Peace Officer Exception. *People v. Sifuentes* (2022) 83 Cal.App.5th 217, 229–230 [299 Cal.Rptr.3d 320].
- Defendant's Youth Can Be Relevant Factor When Determining Reckless Indifference. *People v. Jones* (2022) 86 Cal.App.5th 1076, 1091–1093 [302 Cal.Rptr.3d 847] [20-year-old defendant]; *People v. Keel* (2022) 84 Cal.App.5th 546, 558–559 [300 Cal.Rptr.3d 483] [juvenile defendant]; *People v. Ramirez* (2021) 71 Cal.App.5th 970, 987 [286 Cal.Rptr.3d 771] [juvenile defendant]; *In re Moore* (2021) 68 Cal.App.5th 434, 454 [283 Cal.Rptr.3d 584] [juvenile defendant].

RELATED ISSUES

See the Related Issues section of CALCRIM No. 540A, *Felony Murder: First Degree—Defendant Allegedly Committed Fatal Act*.

See the Related Issues section of CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Introduction to Crimes, §§ 98, 109.

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 151–168, 178.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* § 140.10[3][b], Ch. 142, *Crimes Against the Person,* § 142.01[1][e], [2][b] (Matthew Bender).

540C. Felony Murder: First Degree—Other Acts Allegedly Caused Death (Pen. Code, § 189)

The defendant is charged [in Count __] with first degree murder, under a theory of felony murder.

The defendant may be guilty of murder, under a theory of felony murder, even if another person did the act that resulted in the death. I will call the other person the *perpetrator*.

To prove that the defendant is guilty of first degree murder under this theory, the People must prove that:

1. **The defendant (committed [or attempted to commit][,]/ [or] aided and abetted[,]/ [or] was a member of a conspiracy to commit) _____** *<insert felony or felonies from Pen. Code, § 189>***;**

2. **The defendant (intended to commit[,]/ [or] intended to aid and abet the perpetrator in committing[,]/ [or] intended that one or more of the members of the conspiracy commit) _____** *<insert felony or felonies from Pen. Code, § 189>***;**

<Give element 3 if defendant did not personally commit or attempt felony.>
[3. A perpetrator, (whom the defendant was aiding and abetting/ [or] with whom the defendant conspired), personally committed [or attempted to commit] _____ *<insert felony or felonies from Pen. Code, § 189>***;]**

(3/4). The commission [or attempted commission] of the _____ *<insert felony or felonies from Pen. Code, § 189>* **was a substantial factor in causing the death of another person;**

<Alternative for Pen. Code, § 189(e)(2) and (e)(3) liability>
[(4A/5A). The defendant intended to kill;

AND

(4B/5B). The defendant (aided and abetted[,]/[or] counseled[,]/ [or] commanded[,]/ [or] induced[,]/ [or] solicited[,]/ [or] requested[,]/ [or] assisted) the perpetrator in the commission of murder(./;)]

[OR]

[(4A/5A/6A). The defendant was a major participant in the _____<*insert felony or felonies from Pen. Code, § 189*>**;**

AND

(4B/5B/6B). When the defendant participated in the _____<*insert felony or felonies from Pen. Code, § 189*>**, (he/she) acted with reckless indifference to human life(./;)]**

[OR]

<*Alternative for Pen. Code, § 189(f) liability*>
[(4A/5A/6A/7A). _____<*insert officer's name, excluding title*> **was a peace officer lawfully performing (his/her) duties as a peace officer;**

AND

(4B/5B/6B/7B). When the defendant acted, (he/she) knew, or reasonably should have known, that _____<*insert officer's name, excluding title*> **was a peace officer performing (his/her) duties.]**

[A person may be guilty of felony murder of a peace officer even if the killing was unintentional, accidental, or negligent.]

To decide whether (the defendant/ [and] the perpetrator) committed [or attempted to commit] _____ <*insert felony or felonies from Pen. Code, § 189*>**, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s]. [To decide whether the defendant aided and abetted a crime, please refer to the separate instructions that I (will give/have given) you on aiding and abetting.] [To decide whether the defendant was a member of a conspiracy to commit a crime, please refer to the separate instructions that I (will give/have given) you on conspiracy.] You must apply those instructions when you decide whether the People have proved first degree murder under a theory of felony murder.**

An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence.

[There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.]

[The defendant must have (intended to commit[,]/ [or] aid and abet[,]/ [or] been a member of a conspiracy to commit) the (felony/felonies) of _____ *<insert felony or felonies from Pen. Code, § 189>* **before or at the time of the death.]**

[It is not required that the person die immediately, as long as the act causing death occurred while the defendant was committing the (felony/felonies).]

[It is not required that the person killed be the (victim/intended victim) of the (felony/felonies).]

[It is not required that the defendant be present when the act causing the death occurs.]

<The following instructions can be given when reckless indifference and major participant under Pen. Code, § 189(e)(3) applies.>
[A person *acts with reckless indifference to human life* when he or she ~~knowingly~~ engages in criminal activity that a reasonable person would ~~he or she~~ know~~s~~ involves a grave risk of death and he or she knows that the activity involves a grave risk of death.]

[When you decide whether the defendant acted with *reckless indifference to human life*, consider all the evidence. No one of the following factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant acted with reckless indifference to human life. Among the factors you may consider are:

- **[● Did the defendant know that [a] lethal weapon[s] would be present during the _____***<insert underlying felony>***?]**
- **[● Did the defendant know that [a] lethal weapon[s] (was/were) likely to be used?]**
- **[● Did the defendant know that [a] lethal weapon[s] (was/were) used?]**
- **[● Did the defendant know the number of weapons involved?]**
- **[● Was the defendant near the person(s) killed when the killing occurred?]**
- **[● Did the defendant have an opportunity to stop the killing or to help the victim(s)?]**

[● How long did the crime last?]
[● Was the defendant aware of anything that would make a coparticipant likely to kill?]
[● Did the defendant try to minimize the possibility of violence?]
[● How old was the defendant?]
[● _____<*insert any other relevant factors*>]]

[When you decide whether the defendant was a *major participant*, consider all the evidence. No one of the following factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant was a major participant. Among the factors you may consider are:

[● What was the defendant's role in planning the crime that led to the death[s]?]
[● What was the defendant's role in supplying or using lethal weapons?]
[● What did the defendant know about dangers posed by the crime, any weapons used, or past experience or conduct of the other participant[s]?]
[● Was the defendant in a position to facilitate or to prevent the death?]
[● Did the defendant's action or inaction play a role in the death?]
[● What did the defendant do after lethal force was used?]
[● _____<*insert any other relevant factors.*>]]

<Give the following instructions when Pen. Code, § 189(f) applies.>
[A person who is employed as a police officer by _____ *<insert name of agency that employs police officer>* **is a peace officer.]**

[A person employed by _____ *<insert name of agency that employs peace officer, e.g., "the Department of Fish and Wildlife">* **is a peace officer if _____***<insert description of facts necessary to make employee a peace officer, e.g, "designated by the director of the agency as a peace officer">***.]**

[The duties of (a/an) _____ *<insert title of peace officer>* **include _____** *<insert job duties>***.]**

New January 2006; Revised April 2010, August 2013, September 2019, April 2020, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime. The court also has a **sua sponte** duty to instruct on the elements of any underlying felonies. (*People v. Cain* (1995) 10 Cal.4th 1, 36 [40 Cal.Rptr.2d 481, 892 P.2d 1224].)

The court has a **sua sponte** duty to instruct on aiding and abetting when the prosecutor relies on it as a theory of culpability. (*People v. Beeman* (1984) 35 Cal.3d 547, 560-561 [199 Cal.Rptr.60, 674 P.2d 1318].) The court has a **sua sponte** duty to instruct on conspiracy when the prosecution has introduced evidence of a conspiracy to prove liability for other offenses. (See, e.g., *People v. Pike* (1962) 58 Cal.2d 70, 88 [22 Cal.Rptr. 664, 372 P.2d 656]; *People v. Ditson* (1962) 57 Cal.2d 415, 447 [20 Cal.Rptr. 165, 369 P.2d 714].)

Give all appropriate instructions on all underlying felonies, aiding and abetting, and conspiracy.

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401]; see generally, *People v. Cervantes* (2001) 26 Cal.4th 860, 866–874 [111 Cal.Rptr.2d 148, 29 P.3d 225].) Because causation is likely to be an issue in any case in which this instruction is given, the committee has included the paragraph that begins with "An act causes death if." If there is evidence of multiple potential causes, the court should also give the bracketed paragraph that begins with "There may be more than one cause of death." (*People v. Sanchez* (2001) 26 Cal.4th 834, 845–849 [111 Cal.Rptr.2d 129, 29 P.3d 209]; *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135].)

If the prosecution's theory is that the defendant committed or attempted to commit the underlying felony, then select "committed [or attempted to commit]" in element 1 and "intended to commit" in element 2. In addition, in the paragraph that begins with "To decide whether," select "the defendant" in the first sentence. Give all appropriate instructions on any underlying felonies with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense.

If the prosecution's theory is that the defendant aided and abetted or conspired to commit the felony, select one of these options in element 1 and the corresponding intent requirement in element 2. Give bracketed element 3. Give the bracketed sentence at the beginning of the instruction that begins with "The defendant may be guilty of murder." In addition, in the paragraph that begins with "To decide whether," select "the perpetrator" in the first sentence. Give the second and/or third bracketed sentences. Give all appropriate instructions on any underlying felonies and on aiding and abetting and/or conspiracy with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense. The court may

also need to modify the instruction to state "the perpetrator committed," rather than "the defendant," in the instructions on the underlying felony.

If there is evidence that the defendant did not form the intent to commit the felony until after the homicide, or did not join the conspiracy or aid and abet the felony until after the homicide, the defendant is entitled on request to an instruction pinpointing this issue. (*People v. Hudson* (1955) 45 Cal.2d 121, 124–127 [287 P.2d 497]; *People v. Silva* (2001) 25 Cal.4th 345, 371 [106 Cal.Rptr.2d 93, 21 P.3d 769].) Give the bracketed sentence that begins with "The defendant must have (intended to commit)." For an instruction specially tailored to robbery-murder cases, see *People v. Turner* (1990) 50 Cal.3d 668, 691 [268 Cal.Rptr. 706, 789 P.2d 887].

Give the bracketed sentence that begins with "It is not required that the person die immediately" on request if relevant based on the evidence.

The felony-murder rule does not require that the person killed be the victim of the underlying felony. (*People v. Johnson* (1972) 28 Cal.App.3d 653, 658 [104 Cal.Rptr. 807] [accomplice]; *People v. Welch* (1972) 8 Cal.3d 106, 117–119 [104 Cal.Rptr. 217, 501 P.2d 225] [innocent bystander]; *People v. Salas* (1972) 7 Cal.3d 812, 823 [103 Cal.Rptr. 431, 500 P.2d 7] [police officer].) Give the bracketed sentence that begins with "It is not required that the person killed be" on request.

Give the last bracketed sentence, stating that the defendant need not be present, on request.

If the defendant was a nonkiller who fled, leaving behind an accomplice who killed, see *People v. Cavitt* (2004) 33 Cal.4th 187, 206, fn. 7 [14 Cal.Rtpr.3d 281, 91 P.3d 222] [continuous transaction] and the discussion of *Cavitt* in *People v. Wilkins* (2013) 56 Cal.4th 333, 344 [153 Cal.Rptr.3d 519, 295 P.3d 903].

If the prosecutor is proceeding under both malice and felony-murder theories, or is proceeding under multiple felony-murder theories, give CALCRIM No. 548, *Murder: Alternative Theories*. If the prosecutor is relying only on a theory of felony murder, no instruction on malice should be given. (See *People v. Cain*, *supra*, ~~(1995)~~ 10 Cal.4th at pp.~~1,~~ 35–37 ~~[40 Cal.Rptr.2d 481, 892 P.2d 1224]~~ [error to instruct on malice when felony murder only theory].)

There is **no** sua sponte duty to clarify the logical nexus between the felony and the homicidal act. If an issue about the logical nexus requirement arises, the court may give the following language:

> **There must be a logical connection between the cause of death and the _____** <*insert felony or felonies from Pen. Code, § 189*> **[or attempted _____** <*insert felony or felonies from Pen. Code, § 189*>**]. The connection between the cause of death and the _____** <*insert felony or felonies from Pen. Code, § 189*> **[or attempted**

_____ <*insert felony or felonies from Pen. Code, § 189*>**] must involve more than just their occurrence at the same time and place.]**

People v. Cavitt, *supra*, (2004) 33 Cal.4th at pp.187, 203–204 [14 Cal.Rtpr.3d 281, 91 P.3d 222]; *People v. Wilkins* (2013) 56 Cal.4th 333, 347 [153 Cal.Rptr.3d 519, 295 P.3d 903].

In *People v. Banks* (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330], the court identified certain factors to guide the jury in its determination of whether the defendant was a major participant but stopped short of holding that the court has a **sua sponte** duty to instruct on those factors. The trial court should determine whether the *Banks* factors need be given.

The court does not have a sua sponte duty to define "reckless indifference to human life." (*People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197].) However, this "holding should not be understood to discourage trial courts from amplifying the statutory language for the jury." (*Id.* at p. 579.) The court may give the bracketed definition of reckless indifference if requested.

In *People v. Clark* (2016) 63 Cal.4th 522, 614-620 [203 Cal.Rptr.3d 407, 372 P.3d 811], the court identified certain factors to guide the jury in its determination of whether the defendant acted with reckless indifference to human life but did not hold that the court has a sua sponte duty to instruct on those factors. *Clark* noted that these factors had been applied by appellate courts "in cases involving nonshooter aiders and abettors to commercial armed robbery felony murders." (*Id.* at p. 618.) The trial court should determine whether the *Clark* factors need be given.

Related Instructions—Other Causes of Death

This instruction should be used only when the alleged victim dies during the course of the felony as a result of a heart attack, fire, or a similar cause rather than as a result of some act of force or violence committed against the victim by one of the participants in the felony. (Cf. *People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79 P.3d 542] [arson causing death of accomplice]; *People v. Stamp*, *supra*, (1969) 2 Cal.App.3d at pp.203, 209–211 [82 Cal.Rptr. 598] [heart attack caused by robbery]; *People v. Hernandez*, *supra*, (1985) 169 Cal.App.3d at p.282, 287 [215 Cal.Rptr. 166] [same]; but see *People v. Gunnerson*, *supra*, (1977) 74 Cal.App.3d at pp.370, 378–381 [141 Cal.Rptr. 488] [simultaneous or coincidental death is not killing].)

See the Bench Notes to CALCRIM No. 540A, *Felony Murder: First Degree—Defendant Allegedly Committed Fatal Act*, for a discussion of other instructions to use if the evidence indicates a person committed an act of force or violence causing the death.

AUTHORITY

- Felony Murder: First Degree. Pen. Code, § 189.
- Specific Intent to Commit Felony Required. *People v. Gutierrez (2*002) 28 Cal.4th 1083, 1140 [124 Cal.Rptr.2d 373, 52 P.3d 572].
- Infliction of Fatal Injury. *People v. Alvarez* (1996) 14 Cal.4th 155, 222–223 [58 Cal.Rptr.2d 385, 926 P.2d 365].
- Defendant Must Join Felonious Enterprise Before or During Killing of Victim. *People v. Pulido* (1997) 15 Cal.4th 713, 726 [63 Cal.Rptr.2d 625, 936 P.2d 1235].
- Death Caused by Felony but Not by Act of Force or Violence Against Victim. *People v. Billa*, *supra*, ~~(2003)~~ 31 Cal.4th at p.~~1064,~~ 1072 ~~[6 Cal.Rptr.3d 425, 79 P.3d 542]~~ [arson causing death of accomplice]; *People v. Stamp* (1969) 2 Cal.App.3d 203, 209–211 [82 Cal.Rptr. 598] [heart attack caused by robbery]; *People v. Hernandez* (1985) 169 Cal.App.3d 282, 287 [215 Cal.Rptr. 166] [same]; but see *People v. Gunnerson* (1977) 74 Cal.App.3d 370, 378–381 [141 Cal.Rptr. 488] [simultaneous or coincidental death is not killing].
- Logical Nexus Between Felony and Killing. *People v. Dominguez* (2006) 39 Cal.4th 1141 [47 Cal.Rptr.3d 575, 140 P.3d 866]; *People v. Cavitt*, *supra*, ~~(2004)~~ 33 Cal.4th at pp.~~187,~~ 197–206 ~~[14 Cal.Rptr.3d 281, 91 P.3d 222]~~.
- Merger Doctrine Does Not Apply to First Degree Felony Murder. *People v. Farley* (2009) 46 Cal.4th 1053, 1118-1120 [96 Cal.Rptr.3d 191, 210 P.3d 361].
- Reckless Indifference to Human Life. *In re Scoggins* (2020) 9 Cal.5th 667, 676–677 [264 Cal.Rptr.3d 804, 467 P.3d 198]; *People v. Clark*, *supra*, ~~(2016)~~ 63 Cal.4th at pp.~~522,~~ 614–620 ~~[203 Cal.Rptr.3d 407, 372 P.3d 811]~~; *People v. Banks*, *supra*, ~~(2015)~~ 61 Cal.4th ~~788,~~at pp. 807–811 ~~[189 Cal.Rptr.3d 208, 351 P.3d 330]~~; *People v. Estrada*, *supra*, ~~(1995)~~ 11 Cal.4th at p.~~568,~~ 578 ~~[46 Cal.Rptr.2d 586, 904 P.2d 1197]~~; *Tison v. Arizona* (1987) 481 U.S. 137, 157–158 [107 S.Ct. 1676, 95 L.Ed.2d 127].
- Major Participant. *People v. Banks*, *supra*, ~~(2015)~~ 61 Cal.4th at pp.~~788,~~ 803–808 ~~[189 Cal.Rptr.3d 208, 351 P.3d 330]~~.
- Objective Criminal Negligence Standard for Peace Officer Exception. *People v. Sifuentes* (2022) 83 Cal.App.5th 217, 229–230 [299 Cal.Rptr.3d 320].
- Defendant's Youth Can Be Relevant Factor When Determining Reckless Indifference. *People v. Jones* (2022) 86 Cal.App.5th 1076, 1091-1093 [302 Cal.Rptr.3d 847] [20-year-old defendant]; *People v. Keel* (2022) 84 Cal.App.5th 546, 558–559 [300 Cal.Rptr.3d 483] [juvenile defendant]; *People v. Ramirez* (2021) 71 Cal.App.5th 970, 987 [286 Cal.Rptr.3d 771] [juvenile

defendant]; *In re Moore* (2021) 68 Cal.App.5th 434, 454 [283 Cal.Rptr.3d 584] [juvenile defendant].

RELATED ISSUES

See the Related Issues section of CALCRIM No. 540A, *Felony Murder: First Degree—Defendant Allegedly Committed Fatal Act*, and CALCRIM No. 540B, *Felony Murder: First Degree—Coparticipant Allegedly Committed Fatal Act*.

See the Related Issues section of CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 118–168.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* §§ 140.04, 140.10[3][b], Ch. 142, *Crimes Against the Person,* § 142.01[1][e], [2][b] (Matthew Bender).

541–547. Reserved for Future Use

563. Conspiracy to Commit Murder (Pen. Code, § 182)

(The defendant[s]/Defendant[s] _____ <*insert name[s]*>) **(is/are) charged [in Count __] with conspiracy to commit first degree murder [in violation of Penal Code section 182].**

To prove that (the/a) defendant is guilty of this crime, the People must prove that:

1. **The defendant intended to agree and did agree with [one or more of] (the other defendant[s]/ [or] _____** <*insert name[s] or description[s] of coparticipant[s]*>**) to intentionally and unlawfully kill;**

2. **At the time of the agreement, the defendant and [one or more of] the other alleged member[s] of the conspiracy intended that one or more of them would intentionally and unlawfully kill;**

3. **(The/One of the) defendant[s][,] [or _____** <*insert name[s] or description[s] of coparticipant[s]*>**][,] [or (both/all) of them] committed [at least one of] the following overt act[s] alleged to accomplish the killing: _____** <*insert the alleged overt acts*>**;**

AND

4. **(~~[~~At least one of these/This~~]~~) overt act[s] was committed in California.**

To decide whether (the/a) defendant committed (this/these) overt act[s], consider all of the evidence presented about the overt act[s].

To decide whether (the/a) defendant and [one or more of] the other alleged member[s] of the conspiracy intended to commit *murder in the first degree*, please refer to Instructions 520 (*First or Second Degree Murder With Malice Aforethought*) and 521 (*First Degree Murder*) which define that crime.

When deciding whether (the/a) defendant and [one or more of] the other alleged member[s] of the conspiracy intended to commit *murder in the first degree*, do not consider implied malice. Conspiracy to commit murder requires an intent to kill.

The People must prove that the members of the alleged conspiracy had an agreement and intent to commit murder. The People do not have to prove that any of the members of the alleged conspiracy actually met or came to a detailed or formal agreement to commit that crime. An agreement may be inferred from conduct if you conclude that members of the alleged conspiracy acted with a common purpose to commit the crime.

An *overt act* is an act by one or more of the members of the conspiracy that is done to help accomplish the agreed upon crime. The overt act must happen after the defendant has agreed to commit the crime. The overt act must be more than the act of agreeing or planning to commit the crime, but it does not have to be a criminal act itself.

[You must all agree that at least one alleged overt act was committed in California by at least one alleged member of the conspiracy, but you do not have to all agree on which specific overt act or acts were committed or who committed the overt act or acts.]

[You must make a separate decision as to whether each defendant was a member of the alleged conspiracy.]

[A member of a conspiracy does not have to personally know the identity or roles of all the other members.]

<Give when evidence of group membership is used to prove the conspiracy.>
[Someone who merely accompanies or associates with members of a conspiracy but who does not intend to commit the murder~~crime~~ is not a member of the conspiracy.]

[Evidence that a person did an act or made a statement that helped accomplish the goal of the conspiracy is not enough, by itself, to prove that the person was a member of the conspiracy.]

New January 2006; Revised August 2006,~~;~~ ~~Revised~~ April 2010, February 2014, September 2020, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime when the defendant is charged with conspiracy. (See *People v. Morante* (1999) 20 Cal.4th 403, 416 [84 Cal.Rptr.2d 665, 975 P.2d 1071].) Use this

instruction only if the defendant is charged with conspiracy to commit murder. If the defendant is charged with conspiracy to commit another crime, give CALCRIM No. 415, *Conspiracy*. If the defendant is not charged with conspiracy but evidence of a conspiracy has been admitted for another purpose, do not give either instruction. Give CALCRIM No. 416, *Evidence of Uncharged Conspiracy*.

The court has a **sua sponte** duty to instruct on the elements of the offense alleged to be the target of the conspiracy. (*People v. Cortez* (1998) 18 Cal.4th 1223, 1238–1239 [77 Cal.Rptr.2d 733, 960 P.2d 537]; *People v. Fenenbock* (1996) 46 Cal.App.4th 1688, 1706 [54 Cal.Rptr.2d 608].) Give all appropriate instructions defining the elements of murder.

In elements 1 and 3, insert the names or descriptions of alleged coconspirators if they are not defendants in the trial. (See *People v. Liu* (1996) 46 Cal.App.4th 1119, 1131 [54 Cal.Rptr.2d 578].) See also the Commentary section below.

Give the bracketed sentence that begins with "You must all agree that at least one overt act alleged" if multiple overt acts are alleged in connection with a single conspiracy. (See *People v. Russo* (2001) 25 Cal.4th 1124, 1135–1136 [108 Cal.Rptr.2d 436, 25 P.3d 641].)

Give the bracketed sentence that begins with "You must make a separate decision" if more than one defendant is charged with conspiracy. (See *People v. Fulton* (1984) 155 Cal.App.3d 91, 101 [201 Cal.Rptr. 879]; *People v. Crain* (1951) 102 Cal.App.2d 566, 581–582 [228 P.2d 307].)

Do not cross-reference the murder instructions unless they have been modified to delete references to implied malice. Otherwise, a reference to implied malice could confuse jurors, because conspiracy to commit murder may not be based on a theory of implied malice. (*People v. Swain* (1996) 12 Cal.4th 593, 602-603, 607 [49 Cal.Rptr.2d 390, 909 P.2d 994].)

Give the bracketed sentence that begins with "A member of a conspiracy does not have to personally know," on request if there is evidence that the defendant did not personally know all the alleged coconspirators. (See *People v. Van Eyk* (1961) 56 Cal.2d 471, 479 [15 Cal.Rptr. 150, 364 P.2d 326].)

Where the defendant is alleged to have been part of a gang-related conspiracy, consider adding an admonition to distinguish evidence of gang rivalry violent conduct from evidence to support a conviction for conspiracy to commit murder. (*People v. Ware* (2022) 14 Cal.5th 151, 174 [301 Cal.Rptr.3d 511, 520 P.3d 601].) For example, "The defendant is alleged to have been part of a gang-related conspiracy. Evidence of gang rivalry violent conduct alone may or may not support a conviction for conspiracy to commit murder."

Give the ~~two~~ final bracketed sentence~~s~~ on request. (See *People v. Toledo-Corro* (1959) 174 Cal.App.2d 812, 820 [345 P.2d 529].)

Defenses—Instructional Duty

If there is sufficient evidence that the defendant withdrew from the alleged conspiracy, the court has a **sua sponte** duty to give CALCRIM No. 420, *Withdrawal From Conspiracy*.

If the case involves an issue regarding the statute of limitations or evidence of withdrawal by the defendant, a unanimity instruction may be required. (*People v. Russo*, *supra*, ~~(2001)~~ 25 Cal.4th at p.~~1124,~~ 1136, fn. 2 ~~[108 Cal.Rptr.2d 436, 25 P.3d 641]~~; see also Related Issues section to CALCRIM No. 415, *Conspiracy*, and CALCRIM 3500, *Unanimity*.)

Related Instructions

CALCRIM No. 415, *Conspiracy*.

CALCRIM No. 520, *Murder With Malice Aforethought*.

CALCRIM No. 521, *First Degree Murder*

AUTHORITY

- Elements. Pen. Code, §§ 182(a), 183; *People v. Ware*, *supra*, 14 Cal.5th at p. 163; *People v. Morante*, *supra*, ~~(1999)~~ 20 Cal.4th at p.~~403,~~ 416 ~~[84 Cal.Rptr.2d 665, 975 P.2d 1071]~~; *People v. Swain*, *supra*, ~~(1996)~~ 12 Cal.4th at p.~~593,~~ 600 ~~[49 Cal.Rptr.2d 390, 909 P.2d 994]~~; *People v. Liu*, *supra*, ~~(1996)~~ 46 Cal.App.4th at p.~~1119,~~ 1128 ~~[54 Cal.Rptr.2d 578]~~.
- Overt Act Defined. Pen. Code, § 184; *People v. Saugstad* (1962) 203 Cal.App.2d 536, 549–550 [21 Cal.Rptr. 740]; *People v. Zamora* (1976) 18 Cal.3d 538, 549, fn. 8 [134 Cal.Rptr. 784, 557 P.2d 75].
- Elements of Underlying Offense. *People v. Fenenbock* (1996) 46 Cal.App.4th 1688, 1706 [54 Cal.Rptr.2d 608]; *People v. Cortez*, *supra*, ~~(1998)~~ 18 Cal.4th ~~1223,~~at pp. 1238–1239 ~~[77 Cal.Rptr.2d 733, 960 P.2d 537]~~.
- Express Malice Murder. *People v. Swain*, *supra*, ~~(1996)~~ 12 Cal.4th at pp.~~593,~~ 602~~–~~–603, 607 ~~[49 Cal.Rptr.2d 390, 909 P.2d 994]~~.
- Premeditated First Degree Murder. *People v. Cortez*, *supra*, ~~(1998)~~ 18 Cal.4th at p.~~1223,~~ 1232 ~~[77 Cal.Rptr.2d 733, 960 P.2d 537]~~.
- Unanimity on Specific Overt Act Not Required. *People v. Russo*, *supra*, ~~(2001)~~ 25 Cal.4th at pp.~~1124,~~ 1133–1135 ~~[108 Cal.Rptr.2d 436, 25 P.3d 641]~~.
- No Conspiracy to Commit Second Degree Murder. *People v. Beck and Cruz* (2019) 8 Cal.5th 548, 641 [256 Cal.Rptr.3d 1, 453 P.3d 1038].

- Admonition in Gang Cases. *People v. Ware*, *supra*, 14 Cal.5th at p. 166.

COMMENTARY

It is sufficient to refer to coconspirators in the accusatory pleading as "persons unknown." (*People v. Sacramento Butchers' Protective Association* (1910) 12 Cal.App. 471, 483 [107 P. 712]; *People v. Roy* (1967) 251 Cal.App.2d 459, 463 [59 Cal.Rptr. 636]; see 1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Elements, § 87.) Nevertheless, this instruction assumes the prosecution has named at least two members of the alleged conspiracy, whether charged or not.

Conspiracy to commit murder cannot be based on a theory of implied malice. (*People v. Swain*, *supra*, ~~(1996)~~ 12 Cal.4th at pp.~~593,~~ 602–~~–~~603, 607 ~~[49 Cal.Rptr.2d 390, 909 P.2d 994]~~.) All conspiracy to commit murder is necessarily conspiracy to commit premeditated first degree murder. (*People v. Cortez*, *supra*, ~~(1998)~~ 18 Cal.4th at p.~~1223,~~ 1232 ~~[77 Cal.Rptr. 2d 733, 960 P.2d 537]~~.)

LESSER INCLUDED OFFENSES

There is no crime of conspiracy to commit attempted murder. (*People v. Iniguez* (2002) 96 Cal.App.4th 75, 79 [116 Cal.Rptr.2d 634].)

The court has a **sua sponte** duty to instruct the jury on a lesser included target offense if there is substantial evidence from which the jury could find a conspiracy to commit that offense. (*People v. Horn* (1974) 12 Cal.3d 290, 297 [115 Cal.Rptr. 516, 524 P.2d 1300], disapproved on other ground in *People v. Cortez*, *supra*, ~~(1998)~~ 18 Cal.4th at pp.~~1223,~~ 1237–1238 ~~[77 Cal.Rptr.2d 733, 960 P.2d 537]~~; *People v. Cook* (2001) 91 Cal.App.4th 910, 918 [111 Cal.Rptr.2d 204]; *People v. Kelley* (1990) 220 Cal.App.3d 1358, 1365–1366, 1370 [269 Cal.Rptr. 900].

There is a split of authority whether a court may look to the overt acts in the accusatory pleadings to determine if it has a duty to instruct on any lesser included offenses to the charged conspiracy. (*People v. Cook*, *supra*, 91 Cal.App.4th at pp. 919–920, 922 [court may look to overt acts pleaded in charge of conspiracy to determine whether charged offense includes a lesser included offense]; contra, *People v. Fenenbock*, *supra*, 46 Cal.App.4th at pp. 1708–1709 ~~-~~[court should examine description of agreement in pleading, not description of overt acts, to decide whether lesser offense was necessarily the target of the conspiracy].)

RELATED ISSUES

Multiple Conspiracies

Separately planned murders are punishable as separate conspiracies, even if the separate murders are incidental to a single objective. (*People v. Liu*, *supra*, ~~(1996)~~ 46 Cal.App.4th at p.~~1119,~~ 1133 ~~[54 Cal.Rptr.2d 578]~~.)

See the Related Issues section to CALCRIM No. 415, *Conspiracy*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Elements, §§ 82-83.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 141, *Conspiracy, Solicitation, and Attempt,* §§ 141.01[2], 141.02[3], [4][b], [5][c], Ch. 142, *Crimes Against the Person,* § 142.01[2][e] (Matthew Bender).

564–569. Reserved for Future Use

592. Gross Vehicular Manslaughter (Pen. Code, § 192(c)(1))

<If gross vehicular manslaughter is a charged offense, give alternative A; if this instruction is being given as a lesser included offense, give alternative B.>

<Introductory Sentence: Alternative A—Charged Offense>
[The defendant is charged [in Count __] with gross vehicular manslaughter [in violation of Penal Code section 192(c)(1)].]

<Introductory Sentence: Alternative B—Lesser Included Offense>
[Gross vehicular manslaughter is a lesser crime than gross vehicular manslaughter while intoxicated.]

To prove that the defendant is guilty of gross vehicular manslaughter, the People must prove that:

1. **The defendant (drove a vehicle/operated a vessel);**

2. **While (driving that vehicle/operating that vessel), the defendant committed (a/an) (misdemeanor[,]/ [or] infraction[,]/ [or] otherwise lawful act that might cause death);**

3. **The defendant committed the (misdemeanor[,]/ [or] infraction[,]/ [or] otherwise lawful act that might cause death) with gross negligence;**

AND

4. **The defendant's grossly negligent conduct caused the death of another person.**

Gross negligence **involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with gross negligence when:**

1. **He or she acts in a reckless way that creates a high risk of death or great bodily injury;**

AND

2. **A reasonable person would have known that acting in that way would create such a risk.**

In other words, a person acts with gross negligence when the way he or she acts is so different from how an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

[*Gross negligence* may include, based on the totality of the circumstances, any of the following:

- **Participating in a sideshow; (and/or)**
- **Participating in a motor vehicle speed contest on a highway; (and/or)**
- **Speeding over 100 miles per hour.]**

[A *sideshow* is an event in which two or more persons block or impede traffic on a highway, for the purpose of performing motor vehicle stunts, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators.]

[*Participating in a motor vehicle speed contest* includes a motor vehicle race against another vehicle, a clock, or another timing device.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[A person facing a sudden and unexpected emergency situation not caused by that person's own negligence is required only to use the same care and judgment that an ordinarily careful person would use in the same situation, even if it appears later that a different course of action would have been safer.]

[An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.]

[There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.]

[The People allege that the defendant committed the following (misdemeanor[s]/ [and] infraction[s]): _____ <*insert misdemeanor[s]/ infraction[s]*>**.**

Instruction[s] __ tell[s] you what the People must prove in order to prove that the defendant committed _____ <*insert misdemeanor[s]/infraction[s]*>**.]**

[The People [also] allege that the defendant committed the following otherwise lawful act(s) that might cause death: _____ <*insert act[s] alleged*>**.]**

[You may not find the defendant guilty unless all of you agree that the People have proved that the defendant committed at least one alleged (misdemeanor[,]/ [or] infraction[,]/ [or] otherwise lawful act that might cause death) and you all agree on which (misdemeanor[,]/ [or] infraction[,]/ [or] otherwise lawful act that might cause death) the defendant committed.]

[The People have the burden of proving beyond a reasonable doubt that the defendant committed gross vehicular manslaughter. If the People have not met this burden, you must find the defendant not guilty of that crime. You must consider whether the defendant is guilty of the lesser crime[s] of _____ <*insert lesser offense[s]*>**.]**

New January 2006; Revised February 2015, September 2020, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

The court has a **sua sponte** duty to specify the predicate misdemeanor(s) or infraction(s) alleged and to instruct on the elements of the predicate offense(s). (*People v. Milham* (1984) 159 Cal.App.3d 487, 506 [205 Cal.Rptr. 688]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].) In element 2, instruct on either theory of vehicular manslaughter (misdemeanor/infraction or lawful act committed with negligence) as appropriate. The court **must** also give the appropriate instruction on the elements of the the predicate misdemeanor or infraction.

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of death, the court

should give the "direct, natural, and probable" language in the first bracketed paragraph on causation. If there is evidence of multiple causes of death, the court should also give the "substantial factor" instruction in the second bracketed paragraph on causation. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].)

There is a split in authority over whether there is a **sua sponte** duty to give a unanimity instruction when multiple predicate offenses are alleged. (*People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30] [unanimity instruction required, overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735] [unanimity instruction not required but preferable]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438] [unanimity instruction not required]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906] [unanimity instruction not required, harmless error if was required].) A unanimity instruction is included in a bracketed paragraph for the court to use at its discretion.

If there is sufficient evidence and the defendant requests it, the court should instruct on the imminent peril/sudden emergency doctrine. (*People v. Boulware* (1940) 41 Cal.App.2d 268, 269–270 [106 P.2d 436].) Give the bracketed sentence that begins with "A person facing a sudden and unexpected emergency."

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

AUTHORITY

- Gross Vehicular Manslaughter. Pen. Code, § 192(c)(1).
- Gross Vehicular Manslaughter During Operation of a Vessel. Pen. Code, § 192.5(a).
- Unlawful Act Dangerous Under the Circumstances of Its Commission. *People v. Wells* (1996) 12 Cal.4th 979, 982 [50 Cal.Rptr.2d 699, 911 P.2d 1374].
- Specifying Predicate Unlawful Act. *People v. Milham*, *supra*, ~~(1984)~~ 159 Cal.App.3d at p.~~487,~~ 506 ~~[205 Cal.Rptr. 688]~~.
- Elements of Predicate Unlawful Act. *People v. Ellis*, *supra*, ~~(1999)~~ 69 Cal.App.4th at p.~~1334,~~ 1339 ~~[82 Cal.Rptr.2d 409]~~.

- Unanimity Instruction. *People v. Gary*, *supra*, ~~(1987)~~ 189 Cal.App.3d at p.~~1212,~~ 1218 ~~[235 Cal.Rptr. 30]~~, overruled on other grounds in *People v. Flood*, *supra*, ~~(1998)~~ 18 Cal.4th at p.~~470,~~ 481 ~~[76 Cal.Rptr.2d 180, 957 P.2d 869]~~; *People v. Durkin*, *supra*, ~~(1988)~~ 205 Cal.App.3d Supp. at p.~~9,~~ 13 ~~[252 Cal.Rptr. 735]~~; *People v. Mitchell*, *supra*, ~~(1986)~~ 188 Cal.App.3d at p.~~216,~~ 222 ~~[232 Cal.Rptr. 438]~~; *People v. Leffel*, *supra*, ~~(1988)~~ 203 Cal.App.3d at pp.~~575,~~ 586–587 ~~[249 Cal.Rptr. 906]~~.
- Gross Negligence. *People v. Bennett* (1992) 54 Cal.3d 1032, 1036 [2 Cal.Rptr.2d 8, 819 P.2d 849].
- Examples of Gross Negligence. Pen. Code, § 192(e)(2).
- "Motor Vehicle Speed Contest" Defined. Veh. Code, § 23109(a).
- "Sideshow" Defined. Veh. Code, § 23109(i)(2)(A).
- Causation. *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Imminent Peril/Sudden Emergency Doctrine. *People v. Boulware*, *supra*, ~~(1940)~~ 41 Cal.App.2d at p.~~268,~~ 269 ~~[106 P.2d 436]~~.

LESSER INCLUDED OFFENSES

- Vehicular Manslaughter With Ordinary Negligence. Pen. Code, § 192(c)(2); see *People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1165–1166 [123 Cal.Rptr.2d 322].
- Manslaughter During Operation of a Vessel Without Gross Negligence. Pen. Code, § 192.5(b).

RELATED ISSUES

Predicate Act Need Not Be Inherently Dangerous

"[T]he offense which constitutes the 'unlawful act' need not be an inherently dangerous misdemeanor or infraction. Rather, to be an 'unlawful act' within the meaning of section 192(c)(1), the offense must be dangerous under the circumstances of its commission. An unlawful act committed with gross negligence would necessarily be so." (*People v. Wells*, *supra*, ~~(1996)~~ 12 Cal.4th at p.~~979,~~ 982 ~~[50 Cal.Rtpr.2d 699, 911 P.2d 1374]~~.)

Lawful Act in an Unlawful Manner: Negligence

The statute uses the phrase "lawful act which might produce death, in an unlawful manner." (Pen. Code, § 192(c)(1).) "[C]ommitting a lawful act in an unlawful manner simply means to commit a lawful act with negligence, that is, without

reasonable caution and care." (*People v. Thompson* (2000) 79 Cal.App.4th 40, 53 [93 Cal.Rptr.2d 803].) Because the instruction lists the negligence requirement as element 3, the phrase "in an unlawful manner" is omitted from element 2 as repetitive.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 262–268.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes*, § 140.04, Ch. 142, *Crimes Against the Person*, § 142.02[1][a], [2][c], [4] (Matthew Bender).

600. Attempted Murder (Pen. Code, §§ 21a, 663, 664)

The defendant is charged [in Count __] with attempted murder.

To prove that the defendant is guilty of attempted murder, the People must prove that:

1. **The defendant took at least one direct but ineffective step toward killing (another person/ [or] a fetus);**

AND

2. **The defendant intended to kill (that/a) (person/ [or] fetus).**

A *direct step* requires more than merely planning or preparing to commit murder or obtaining or arranging for something needed to commit murder. A direct step is one that goes beyond planning or preparation and shows that a person is putting his or her plan into action. A direct step indicates a definite and unambiguous intent to kill. It is a direct movement toward the commission of the crime after preparations are made. It is an immediate step that puts the plan in motion so that the plan would have been completed if some circumstance outside the plan had not interrupted the attempt.

[A person who attempts to commit murder is guilty of attempted murder even if, after taking a direct step toward killing, he or she abandons further efforts to complete the crime, or his or her attempt fails or is interrupted by someone or something beyond his or her control. On the other hand, if a person freely and voluntarily abandons his or her plans before taking a direct step toward committing the murder, then that person is not guilty of attempted murder.]

[The defendant may be guilty of attempted murder even if you conclude that murder was actually completed.]

[A *fetus* is an unborn human being that has progressed beyond the embryonic stage after major structures have been outlined, which typically occurs at seven to eight weeks after fertilization.]

<Give when kill zone theory applies>
[A person may intend to kill a primary target and also [a] secondary target[s] within a zone of fatal harm or "kill zone." A "kill zone" is an area in which

the defendant used lethal force that was designed and intended to kill everyone in the area around the primary target.

In order to convict the defendant of the attempted murder of _____ *<insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>***, the People must prove that the defendant not only intended to kill _____** *<insert name of primary target alleged>* **but also either intended to kill _____** *<insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>***, or intended to kill everyone within the kill zone.**

In determining whether the defendant intended to kill _____*<insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>***, the People must prove that (1) the only reasonable conclusion from the defendant's use of lethal force, is that the defendant intended to create a kill zone; and (2) _____***<insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>* was located within the kill zone.**

In determining whether the defendant intended to create a "kill zone" and the scope of such a zone, you should consider all of the circumstances including, but not limited to, the following:

- **[● The type of weapon used(;/.)]**
- **[● The number of shots fired(;/.)]**
- **[● The distance between the defendant and_____<***insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory***>(;/.)]**
- **[● The distance between _____<***insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory***> and the primary target.]**

If you have a reasonable doubt whether the defendant intended to kill _____ *<insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>* **or intended to kill _____** *<insert name or description of primary target alleged>* **by killing everyone in the kill zone, then you must find the defendant not guilty of the attempted murder of _____** *<insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>***.]**

New January 2006; Revised December 2008, August 2009, April 2011, August 2013, September 2019, April 2020, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on the elements of the crime of attempted murder when charged, or if not charged, when the evidence raises a question whether all the elements of the charged offense are present. (See *People v. Breverman* (1998) 19 Cal.4th 142, 154 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [discussing duty to instruct on lesser included offenses in homicide generally].)

The second bracketed paragraph is provided for cases in which the prosecution theory is that the defendant created a "kill zone," harboring the specific and concurrent intent to kill others in the zone. (*People v. Bland* (2002) 28 Cal.4th 313, 331 [121 Cal.Rptr.2d 546, 48 P.3d 1107].) "The conclusion that transferred intent does not apply to attempted murder still permits a person who shoots at a group of people to be punished for the actions towards everyone in the group even if that person primarily targeted only one of them." (*Id.* at p. 329.)

The *Bland* court stated that a special instruction on this issue was not required. (*Id*. at p. 331, fn.6.) The bracketed language is provided for the court to use at its discretion.

Give the next-to-last bracketed paragraph when the defendant has been charged only with attempt to commit murder, but the evidence at trial reveals that the murder was actually completed. (See Pen. Code, § 663.)

~~Penal Code section 188, as amended by Statutes 2018, ch. 1015 (S.B. 1437), became effective January 1, 2019. The amendment added "malice shall not be imputed to a person based solely on his or her participation in a crime." The natural and probable consequences doctrine as the basis for attempted murder may be affected by this statutory change.~~ A verdict of attempted murder may not be based on the natural and probable consequences doctrine. (Pen. Code, § 188(a)(3); *People v. Sanchez* (2022) 75 Cal.App.5th 191, 196 [290 Cal.Rptr.3d 390].)

Related Instructions

CALCRIM Nos. 3470–3477, Defense Instructions.

CALCRIM No. 601, *Attempted Murder: Deliberation and Premeditation.*

CALCRIM No. 602, *Attempted Murder: Peace Officer, Firefighter, Custodial Officer, or Custody Assistant.*

CALCRIM No. 603, *Attempted Voluntary Manslaughter: Heat of Passion—Lesser Included Offense*.

CALCRIM No. 604, *Attempted Voluntary Manslaughter: Imperfect Self-Defense—Lesser Included Offense*.

AUTHORITY

- Attempt Defined. Pen. Code, §§ 21a, 663, 664.
- Murder Defined. Pen. Code, § 187.
- Specific Intent to Kill Required. *People v. Guerra* (1985) 40 Cal.3d 377, 386 [220 Cal.Rptr. 374, 708 P.2d 1252].
- Fetus Defined. *People v. Davis* (1994) 7 Cal.4th 797, 814–815 [30 Cal.Rptr.2d 50, 872 P.2d 591]; *People v. Taylor* (2004) 32 Cal.4th 863, 867 [11 Cal.Rptr.3d 510, 86 P.3d 881].
- Kill Zone Explained. *People v. Canizales* (2019) 7 Cal.5th 591, 607-608 [248 Cal.Rptr.3d 370, 442 P.3d 686]; *People v. Stone* (2009) 46 Cal.4th 131, 137–138 [92 Cal.Rptr.3d 362, 205 P.3d 272].
- This Instruction Correctly States the Law of Attempted Murder. *People v. Lawrence* (2009) 177 Cal.App.4th 547, 556-557 [99 Cal.Rptr.3d 324].

LESSER INCLUDED OFFENSES

Attempted voluntary manslaughter is a lesser included offense. (*People v. Van Ronk* (1985) 171 Cal.App.3d 818, 824–825 [217 Cal.Rptr. 581]; *People v. Williams* (1980) 102 Cal.App.3d 1018, 1024–1026 [162 Cal.Rptr. 748].)

RELATED ISSUES

Specific Intent Required

"[T]he crime of attempted murder requires a specific intent to kill . . . ." (*People v. Guerra*, *supra*, ~~(1985)~~ 40 Cal.3d at p.~~377,~~ 386 ~~[220 Cal.Rptr. 374, 708 P.2d 1252]~~.)

> In instructing upon the crime of attempt to commit murder, there should never be any reference whatsoever to implied malice. Nothing less than a specific intent to kill must be found before a defendant can be convicted of attempt to commit murder, and the instructions in this respect should be lean and unequivocal in explaining to the jury that only a specific intent to kill will do.

(People v. Santascoy (1984) 153 Cal.App.3d 909, 918 [200 Cal.Rptr. 709].)

Solicitation

Attempted solicitation of murder is a crime. (*People v. Saephanh* (2000) 80 Cal.App.4th 451, 460 [94 Cal.Rptr.2d 910].)

Single Bullet, Two Victims

A shooter who fires a single bullet at two victims who are both in his line of fire can be found to have acted with express malice toward both victims. (*People v.* Smith) (2005) 37 Cal.4th 733, 744 [37 Cal.Rptr.3d 163, 124 P.3d 730]. See also *People v. Perez* (2010) 50 Cal.4th 222, 225 [112 Cal.Rptr.3d 310, 234 P.3d 557].)

No Attempted Involuntary Manslaughter

"[T]here is no such crime as attempted involuntary manslaughter." (*People v. Johnson* (1996) 51 Cal.App.4th 1329, 1332 [59 Cal.Rptr.2d 798].)

Transferred and Concurrent Intent

"[T]he doctrine of transferred intent does not apply to attempted murder." (*People v. Bland*, *supra*, ~~(2002)~~ 28 Cal.4th at p.~~313,~~ 331 ~~[121 Cal.Rptr.2d 546, 48 P.3d 1107]~~.) "[T]he defendant may be convicted of the attempted murders of any[one] within the kill zone, although on a concurrent, not transferred, intent theory." (*Ibid*~~d~~.)

Kill Zone Theory

Give the kill zone instruction "only in those cases where the court concludes there is sufficient evidence to support a jury determination that the *only* reasonable inference from the circumstances of the offense is that a defendant intended to kill everyone in the zone of fatal harm. The use or attempted use of force that merely *endangered* everyone in the area is insufficient to support a kill zone instruction." (*People v. Canizales*, *supra*, ~~(2019)~~ 7 Cal.5th at p.~~591,~~ 608 ~~[248 Cal.Rptr.3d 370, 442 P.3d 686]~~.)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Elements, §§ 56–71.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* § 140.02[3]; Ch. 141, *Conspiracy, Solicitation, and Attempt,* § 141.20; Ch. 142, *Crimes Against the Person,* § 142.01[3][e] (Matthew Bender).

604. Attempted Voluntary Manslaughter: Imperfect Self-Defense—Lesser Included Offense (Pen. Code, §§ 21a, 192, 664)

An attempted killing that would otherwise be attempted murder is reduced to attempted voluntary manslaughter if the defendant attempted to kill a person because (he/she) acted in imperfect (self-defense/ [or] defense of another).

If you conclude the defendant acted in complete (self-defense/ [or] defense of another), (his/her) action was lawful and you must find (him/her) not guilty of any crime. The difference between complete (self-defense/ [or] defense of another) and imperfect (self-defense/ [or] defense of another) depends on whether the defendant's belief in the need to use deadly force was reasonable.

The defendant acted in imperfect (self-defense/ [or] defense of another) if:

1. **The defendant took at least one direct but ineffective step toward killing a person.**

2. **The defendant intended to kill when (he/she) acted.**

3. **The defendant believed that (he/she/ [or] someone else/_____ <*insert name of third party*>) was in imminent danger of being killed or suffering great bodily injury.**

AND

4. **The defendant believed that the immediate use of deadly force was necessary to defend against the danger.**

BUT

5. **At least one of the defendant's beliefs was unreasonable.**

[Imperfect self-defense does not apply when the defendant, through (his/her) own wrongful conduct, has created circumstances that justify (his/her) adversary's use of force.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The defendant must have actually believed there was imminent danger of death or great bodily injury to (himself/herself/ [or] someone else).

In evaluating the defendant's beliefs, consider all the circumstances as they were known and appeared to the defendant.

[If you find that _____<*insert name or description of alleged victim*>**threatened or harmed the defendant [or others] in the past, you may consider that information in evaluating the defendant's beliefs.]**

[If you find that the defendant knew that _____<*insert name or description of alleged victim*> **had threatened or harmed others in the past, you may consider that information in evaluating the defendant's beliefs.]**

[If you find that the defendant received a threat from someone else that (he/she) reasonably associated with _____<*insert name or description of alleged victim*>**, you may consider that threat in evaluating the defendant's beliefs.]**

The People have the burden of proving beyond a reasonable doubt that the defendant was not acting in imperfect self-defense. If the People have not met this burden, you must find the defendant not guilty of attempted murder.

New January 2006; Revised August 2009, October 2010, February 2012, February 2013, September 2020, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on attempted voluntary manslaughter on either theory, heat of passion or imperfect self-defense, when evidence of either is "substantial enough to merit consideration" by the jury. (See *People v. Breverman* (1998) 19 Cal.4th 142, 153–163 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [discussing charge of completed murder]; *People v. Barton* (1995) 12 Cal.4th 186, 201 [47 Cal.Rptr.2d 569, 906 P.2d 531] [same].)

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86]

[upholding instructions containing great bodily injury definition as written].)

Perfect Self-Defense

Most courts hold that an instruction on imperfect self-defense **is required** in every case in which a court instructs on perfect self-defense. If there is substantial evidence of a defendant's belief in the need for self-defense, there will *always* be substantial evidence to support an imperfect self-defense instruction because the reasonableness of that belief will always be at issue. (See *People v. Ceja* (1994) 26 Cal.App.4th 78, 85–86 [31 Cal.Rptr.2d 475], overruled in part in *People v. Blakeley* (2000) 23 Cal.4th 82, 91 [96 Cal.Rptr.2d 451, 999 P.2d 675]; see also *People v. De Leon* (1992) 10 Cal.App.4th 815, 824 [12 Cal.Rptr.2d 825].) The court in *People v. Rodriguez* disagreed, however, and found that an imperfect self-defense instruction was not required sua sponte on the facts of the case where the defendant's version of the crime "could only lead to an acquittal based on justifiable homicide," and when the prosecutor's version of the crime could only lead to a conviction of first degree murder. (*People v. Rodriguez* (1997) 53 Cal.App.4th 1250, 1275 [62 Cal.Rptr.2d 345]; see also *People v. Williams* (1992) 4 Cal.4th 354, 362 [14 Cal.Rptr.2d 441, 841 P.2d 961] [in a rape prosecution, the court was not required to give a mistake-of-fact instruction where the two sides gave wholly divergent accounts with no middle ground to support a mistake-of-fact instruction].)

In evaluating whether the defendant actually believed in the need for self-defense, the jury may consider the effect of antecedent threats and assaults against the defendant, including threats received by the defendant from a third party that the defendant reasonably associated with the aggressor. (*People v. Minifie* (1996) 13 Cal.4th 1055, 1065, 1069 [56 Cal.Rptr.2d 133, 920 P.2d 1337].) If there is sufficient evidence, the court should give the bracketed paragraphs on prior threats or assaults on request.

Related Instructions

CALCRIM Nos. 3470–3477, *Defense Instructions*.

CALCRIM No. 571, *Voluntary Manslaughter: Imperfect Self-Defense—Lesser Included Offense*.

CALCRIM No. 603, *Attempted Voluntary Manslaughter: Heat of Passion—Lesser Included Offense*.

AUTHORITY

- Attempt Defined. Pen. Code, §§ 21a, 664.
- Manslaughter Defined. Pen. Code, § 192.
- Attempted Voluntary Manslaughter. *People v. Van Ronk* (1985) 171

Cal.App.3d 818, 824–825 [217 Cal.Rptr. 581]; *People v. Williams* (1980) 102 Cal.App.3d 1018, 1024–1026 [162 Cal.Rptr. 748].

- Imperfect Self-Defense Defined. *People v. Flannel* (1979) 25 Cal.3d 668, 680–683 [160 Cal.Rptr. 84, 603 P.2d 1]; *People v. Barton*, *supra*, ~~(1995)~~ 12 Cal.4th at p.~~186,~~ 201 ~~[47 Cal.Rptr.2d 569, 906 P.2d 531]~~; *In re Christian S.* (1994) 7 Cal.4th 768, 773 [30 Cal.Rptr.2d 33, 872 P.2d 574]; see *People v. Uriarte* (1990) 223 Cal.App.3d 192, 197–198 [272 Cal.Rptr. 693] [insufficient evidence to support defense of another person].
- Availability of Imperfect Self-Defense. *People v. Enraca* (2012) 53 Cal.4th 735, 761 [137 Cal.Rptr.3d 117, 269 P.3d 543] [not available]; *People v. Vasquez* (2006) 136 Cal.App.4th 1176, 1179–1180 [39 Cal.Rptr.3d 433] [available].
- This Instruction Upheld. *People v. Lopez* (2011) 199 Cal.App.4th 1297, 1307 [132 Cal.Rptr.3d 248].

RELATED ISSUES

See the Related Issues section to CALCRIM No. 603, *Attempted Voluntary Manslaughter: Heat of Passion—Lesser Included Offense* and CALCRIM No. 571, *Voluntary Manslaughter: Imperfect Self-Defense—Lesser Included Offense*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 224.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* § 73.11 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 141, *Conspiracy, Solicitation, and Attempt,* §§ 141.20[2], 141.21; Ch. 142, *Crimes Against the Person,* §§ 142.01[3][e], 142.02[2][a] (Matthew Bender).

605–619. Reserved for Future Use

703. Special Circumstances: Intent Requirement for Accomplice After June 5, 1990—Felony Murder (Pen. Code, § 190.2(d))

If you decide that (the/a) defendant is guilty of first degree murder but was not the actual killer, then, when you consider the special circumstance[s] of _____ *<insert felony murder special circumstance[s]>*, **you must also decide whether the defendant acted either with intent to kill or with reckless indifference to human life.**

In order to prove (this/these) special circumstance[s] for a defendant who is not the actual killer but who is guilty of first degree murder as (an aider and abettor/ [or] a member of a conspiracy), the People must prove either that the defendant intended to kill, or the People must prove all of the following:

1. **The defendant's participation in the crime began before or during the killing;**

2. **The defendant was a major participant in the crime;**

AND

3. **When the defendant participated in the crime, (he/she) acted with reckless indifference to human life.**

[A person *acts with reckless indifference to human life* when he or she ~~knowingly~~ engages in criminal activity that a reasonable person would ~~he or she~~ know~~s~~ involves a grave risk of death and he or she knows that the activity involves a grave risk of death.]

[The People do not have to prove that the actual killer acted with intent to kill or with reckless indifference to human life in order for the special circumstance[s] of _____ *<insert felony-murder special circumstance[s]>* **to be true.]**

[If you decide that the defendant is guilty of first degree murder, but you cannot agree whether the defendant was the actual killer, then, in order to find (this/these) special circumstance[s] true, you must find either that the defendant acted with intent to kill or you must find that the defendant acted with reckless indifference to human life and was a *major participant* in the crime.]

[When you decide whether the defendant acted with *reckless indifference to human life*, consider all the evidence. No one of the following factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant acted with reckless indifference to human life. Among the factors you may consider are:

- **[● Did the defendant know that [a] lethal weapon[s] would be present during the _____**<*insert underlying felony*>**?]**
- [**● Did the defendant know that [a] lethal weapon[s] (was/were) likely to be used?]**
- **[● Did the defendant know that [a] lethal weapon[s] (was/were) used?]**
- **[● Did the defendant know the number of weapons involved?]**
- **[● Was the defendant near the person(s) killed when the killing occurred?]**
- **[● Did the defendant have an opportunity to stop the killing or to help the victim(s)?]**
- **[● How long did the crime last?]**
- **[● Was the defendant aware of anything that would make a coparticipant likely to kill?]**
- **[● Did the defendant try to minimize the possibility of violence?]**
- **[● How old was the defendant?]**
- **[● _____**<*insert any other relevant factors*>**]]**

[When you decide whether the defendant was a *major participant*, consider all the evidence. No one of the following factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant was a major participant. Among the factors you may consider are:

- **[● [What was the defendant's role in planning the crime that led to the death[s]?]**
- **[● What was the defendant's role in supplying or using lethal weapons?]**
- **[● What did the defendant know about dangers posed by the crime, any weapons used, or past experience or conduct of the other participant[s]?]**
- **[● Was the defendant in a position to facilitate or to prevent the death?]**
- **[● Did the defendant's action or inaction play a role in the death?]**
- **[● What did the defendant do after lethal force was used?]**
- **[● _____**<*insert any other relevant factors.*>]]

If the defendant was not the actual killer, then the People have the burden of proving beyond a reasonable doubt that (he/she) acted with either the intent to kill or with reckless indifference to human life and was a major participant in the crime for the special circumstance[s] of _____ <*insert felony*

murder special circumstance[s]> **to be true. If the People have not met this burden, you must find (this/these) special circumstance[s] (has/have) not been proved true [for that defendant].**

New January 2006; Revised April 2008, February 2016, August 2016, September 2019, April 2020, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct the jury on the mental state required for accomplice liability when a special circumstance is charged and there is sufficient evidence to support the finding that the defendant was not the actual killer. (See *People v. Jones* (2003) 30 Cal.4th 1084, 1117 [135 Cal.Rptr.2d 370, 70 P.3d 359].) If there is sufficient evidence to show that the defendant may have been an accomplice and not the actual killer, the court has a **sua sponte** duty to give the accomplice intent instruction, regardless of the prosecution's theory of the case. *(Ibid.)*

Do not give this instruction when giving CALCRIM No. 731, *Special Circumstances: Murder in Commission of Felony—Kidnapping With Intent to Kill After March 8, 2000*~~Special Circumstances: Murder in Commission of Felony—Kidnapping With Intent to Kill After March 8, 2000~~ or CALCRIM No. 732, *Special Circumstances: Murder in Commission of Felony—Arson With Intent to Kill*~~Special Circumstances: Murder in Commission of Felony—Arson With Intent to Kill~~. (*People v. Odom*~~People v. Odom~~ (2016) 244 Cal.App.4th 237, 256–257 [197 Cal.Rptr.3d 774].)

When multiple special circumstances are charged, one or more of which require intent to kill, the court may need to modify this instruction.

Proposition 115 modified the intent requirement of the special circumstance law, codifying the decisions of *People v. Anderson* (1987) 43 Cal.3d 1104, 1147 [240 Cal.Rptr. 585, 742 P.2d 1306], and *Tison v. Arizona* (1987) 481 U.S. 137, 157–158 [107 S.Ct. 1676, 95 L.Ed.2d 127]. The current law provides that the actual killer does not have to act with intent to kill unless the special circumstance specifically requires intent. (Pen. Code, § 190.2(b).) If the felony-murder special circumstance is charged, then the People must prove that a defendant who was not the actual killer was a major participant and acted with intent to kill or with reckless indifference to human life. (Pen. Code, § 190.2(d)**;** *People v. Banks* (2015) 61 Cal.4th 788, 807-809 [189 Cal.Rptr.3d 208, 351 P.3d 330]; *People v. Estrada* (1995) 11 Cal.4th 568, 571 [46 Cal.Rptr.2d 586, 904 P.2d 1197].)

Use this instruction for any case in which the jury could conclude that the defendant was an accomplice to a killing that occurred after June 5, 1990, when the felony-murder special circumstance is charged.

Give the bracketed paragraph stating that the People do not have to prove intent to kill or reckless indifference on the part of the actual killer if there is a codefendant alleged to be the actual killer or if the jury could convict the defendant as either the actual killer or an accomplice.

If the jury could convict the defendant either as a principal or as an accomplice, the jury must find intent to kill or reckless indifference if they cannot agree that the defendant was the actual killer. (*People v. Jones*, *supra*, ~~(2003)~~ 30 Cal.4th at p.~~1084,~~ 1117 ~~[135 Cal.Rptr.2d 370, 70 P.3d 359]~~.) In such cases, the court should give both the bracketed paragraph stating that the People do not have to prove intent to kill or reckless indifference on the part of the actual killer, and the bracketed paragraph that begins with "[I]f you decide that the defendant is guilty of first degree murder, but you cannot agree whether the defendant was the actual killer . . . ."

In *People v. Banks*, *supra*, ~~(2015)~~ 61 Cal.4th at pp.~~788,~~ 803–808 ~~[189 Cal.Rptr.3d 208, 351 P.3d 330]~~, the court identified certain factors to guide the jury in its determination of whether the defendant was a major participant, but stopped short of holding that the court has a sua sponte duty to instruct on those factors. The trial court should determine whether the *Banks* factors need be given.

The court does not have a sua sponte duty to define "reckless indifference to human life." (*People v. Estrada*, *supra*, ~~(1995)~~ 11 Cal.4th at p.~~568,~~ 578 ~~[46 Cal.Rptr.2d 586, 904 P.2d 1197]~~.) However, this "holding should not be understood to discourage trial courts from amplifying the statutory language for the jury." (*Id.* at p. 579.) The court may give the bracketed definition of reckless indifference if requested.

In *People v. Clark* (2016) 63 Cal.4th 522, 614-620 [203 Cal.Rptr.3d 407, 372 P.3d 811], the court identified certain factors to guide the jury in its determination of whether the defendant acted with reckless indifference to human life but did not hold that the court has a sua sponte duty to instruct on those factors. *Clark* noted that these factors had been applied by appellate courts "in cases involving nonshooter aiders and abettors to commercial armed robbery felony murders." (*Id.* at p. 618.) The trial court should determine whether the *Clark* factors need be given.

Do not give this instruction if accomplice liability is not at issue in the case.

AUTHORITY

- Accomplice Intent Requirement, Felony Murder. Pen. Code, § 190.2(d).

- Reckless Indifference to Human Life. *In re Scoggins* (2020) 9 Cal.5th 667, 676–677 [264 Cal.Rptr.3d 804, 467 P.3d 198]; *People v. Clark*, *supra*, ~~(2016)~~ 63 Cal.4th at pp.~~522,~~ 614–~~620~~ ~~[203 Cal.Rptr.3d 407, 372 P.3d 811]~~; *People v. Banks*, *supra*, ~~(2015)~~ 61 Cal.4th at pp.~~788,~~ 807–~~811~~ ~~[189 Cal.Rptr.3d 208, 351 P.3d 330]~~; *People v. Estrada*, *supra*, ~~(1995)~~ 11 Cal.4th ~~568,~~at p. 578 ~~[46 Cal.Rptr.2d 586, 904 P.2d 1197]~~; *Tison v. Arizona*, *supra*, ~~(1987)~~ 481 U.S. at pp. ~~137,~~ 157–158 ~~[107 S.Ct. 1676, 95 L.Ed.2d 127]~~.
- Constitutional Standard for Intent by Accomplice. *Tison v. Arizona*, *supra*, ~~(1987)~~ 481 U.S. at pp.~~137,~~ 157–158 ~~[107 S.Ct. 1676, 95 L.Ed.2d 127]~~.
- Major Participant. *People v. Banks*, *supra*, ~~(2015)~~ 61 Cal.4th at pp.~~788,~~ 803–808 ~~[189 Cal.Rptr.3d 208, 351 P.3d 330]~~.
- Defendant's Youth Can Be Relevant Factor When Determining Reckless Indifference. *People v. Jones* (2022) 86 Cal.App.5th 1076, 1091–1093 [302 Cal.Rptr.3d 847] [20-year-old defendant]; *People v. Keel* (2022) 84 Cal.App.5th 546, 558–559 [300 Cal.Rptr.3d 483] [juvenile defendant]; *People v. Ramirez* (2021) 71 Cal.App.5th 970, 987 [286 Cal.Rptr.3d 771] [juvenile defendant]; *In re Moore* (2021) 68 Cal.App.5th 434, 454 [283 Cal.Rptr.3d 584] [juvenile defendant].

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 536, 543.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 87, Death Penalty, § 87.14[2][b][ii] (Matthew Bender).

733. Special Circumstances: Murder With Torture (Pen. Code, § 190.2(a)(18))

The defendant is charged with the special circumstance of murder involving the infliction of torture [in violation of Penal Code section 190.2(a)(18)].

To prove that this special circumstance is true, the People must prove that:

1. **The defendant intended to kill _____** <*insert name of decedent*>**;**

2. **The defendant also intended to inflict extreme physical pain and suffering on _____** <*insert name of decedent*> **while that person was still alive;**

3. **The defendant intended to inflict such pain and suffering on _____** <*insert name of decedent*> **for the calculated purpose of revenge, extortion, persuasion, or any other sadistic reason;**

AND

<*Alternative A—on or after June 6, 1990*>

[4. The defendant did an act involving the infliction of extreme physical pain and suffering on _____ <*insert name of decedent*>**.]**

<*Alternative B—before June 6, 1990*>

[4. The defendant in fact inflicted extreme physical pain on _____ <*insert name of decedent*>**.]**

There is no requirement that the person killed be aware of the pain.

New January 2006; Revised February 2013, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on the elements of the special circumstance. (See *People v. Williams* (1997) 16 Cal.4th 635, 689 [66 Cal.Rptr.2d 573, 941 P.2d 752].)

In element 4, always give alternative 4A unless the homicide occurred prior to June 6, 1990. (*People v. Davenport* (1985) 41 Cal.3d 247, 271 [221 Cal.Rptr. 794, 710 P.2d 861].) If the homicide occurred prior to June 6, 1990, give alternative 4B. For homicides after that date, alternative 4B should not be given. (*People v. Crittenden* (1994) 9 Cal.4th 83, 140, fn. 14 [36 Cal.Rptr.2d 474, 885 P.2d 887].)

AUTHORITY

- Special Circumstance. Pen. Code, § 190.2(a)(18).
- Must Specifically Intend to Torture. *People v. Davenport*, *supra*, ~~(1985)~~ 41 Cal.3d at pp.~~247,~~ 265–266 ~~[221 Cal.Rptr. 794, 710 P.2d 861]~~; *People v. Pensinger* (1991) 52 Cal.3d 1210, 1255 [278 Cal.Rptr. 640, 805 P.2d 899].
- Causation Not Required. *People v. Crittenden*, *supra*, ~~(1994)~~ 9 Cal.4th at pp.~~83,~~ 141–142 ~~[36 Cal.Rptr.2d 474, 885 P.2d 887]~~.
- Pain Not an Element. *People v. Davenport*, *supra*, ~~(1985)~~ 41 Cal.3d at p.~~247,~~ 271 ~~[221 Cal.Rptr. 794, 710 P.2d 861]~~; *People v. Crittenden*, *supra*, ~~(1994)~~ 9 Cal.4th at p.~~83,~~ 140, fn. 14. ~~[36 Cal.Rptr.2d 474, 885 P.2d 887]~~
- Intent to Torture Need Not be Deliberate~~,~~ and Premeditated. *People v. Cole* (2004) 33 Cal.4th 1158, 1227–1228 [17 Cal.Rptr.3d 532, 95 P.3d 811].
- Prolonged Pain Not Required. *People v. Cole*, *supra*, ~~(2004)~~ 33 Cal.4th at pp.~~1158,~~ 1227–1228 ~~[17 Cal.Rptr.3d 532, 95 P.3d 811]~~.
- Spatial and Temporal Nexus. *People v. Gonzales* (2012) 54 Cal.4th 1234, 1278 [144 Cal.Rptr.3d 757, 281 P.3d 834].

RELATED ISSUES

Causation Not Required for Special Circumstance

"[T]he prosecution was not required to prove that the acts of torture inflicted upon [the victim] were the cause of his death" in order to prove the torture-murder special circumstance. (*People v. Crittenden*, *supra*, ~~(1994)~~ 9 Cal.4th at p.~~83,~~ 142 ~~[36 Cal.Rptr.2d 474, 885 P.2d 887]~~.) Causation is required for first degree murder by torture. *(Ibid.)* However, the torture-murder special circumstance only "requires 'some proximity in time [and] space between the murder and torture.'" (*People v. Bemore* (2000) 22 Cal.4th 809, 843 [94 Cal.Rptr.2d 840, 996 P.2d 1152] [quoting *People v. Barnett* (1998) 17 Cal.4th 1044, 1161 [74 Cal.Rptr.2d 121, 954 P.2d 384]].) It applies "where the death involved the infliction of torture, regardless of whether the acts constituting the torture were the cause of death." (*People v. Jennings* (2010) 50 Cal.4th 616, 647 [114 Cal.Rptr.3d 133, 237 P.3d 474].) The defendant must intend to kill during the torture, but "not necessarily at the moment

of a particular fatal blow." (*People v. Superior Court (Fernandez)* (2023) 88 Cal.App.5th 26, 39, fn. 7 [304 Cal.Rptr.3d 488].)

Instruction on Voluntary Intoxication

"[A] court should instruct a jury in a torture-murder case, when evidence of intoxication warrants it, that intoxication is relevant to the specific intent to inflict cruel suffering." (*People v. Pensinger*, *supra*, ~~(1991)~~ 52 Cal.3d at p.~~1210,~~ 1242 ~~[278 Cal.Rptr. 640, 805 P.2d 899]~~; see CALCRIM No. 625, *Voluntary Intoxication: Effects on Homicide Crimes*.)

Pain Not an Element

As with first degree murder by torture, all that is required for the special circumstance is the calculated *intent to cause pain* for the purpose of revenge, extortion, persuasion, or any other sadistic purpose. Prior to June 6, 1990, the special circumstance stated "torture requires proof of the infliction of extreme physical pain." (Pre-June 6, 1990, Pen. Code, § 190.2(a)(18).) Proposition 115 eliminated this language. Thus, for all homicides after June 6, 1990, there is no requirement under the special circumstance that the victim actually suffer pain. (*People v. Pensinger*, *supra*, ~~(1991)~~ 52 Cal.3d at p.~~1210,~~ 1239~~[278 Cal.Rptr. 640, 805 P.2d 899]~~; *People v. Davenport*, *supra*, ~~(1985)~~ 41 Cal.3d at p.~~247,~~ 271~~[221 Cal.Rptr. 794, 710 P.2d 861]~~; *People v. Crittenden*, *supra*, ~~(1994)~~ 9 Cal.4th at p.~~83,~~ 140, fn. 14~~[36 Cal.Rptr.2d 474, 885 P.2d 887]~~.)

Deliberate~~,~~ and Premeditated Intent to Inflict Pain Not Required

"[P]remeditated and deliberate intent to torture is not an element of the torture-murder special circumstance." (*People v. Cole*, *supra*, ~~(2004)~~ 33 Cal.4th at p.~~1158,~~ 1227~~[17 Cal.Rptr.3d 532, 95 P.3d 811]~~ [italics omitted].)

Prolonged Pain Not Required

"We have held that by enacting the torture-murder special circumstance statute (§ 190.2, subd. (a)(18)), the electorate meant to foreclose any requirement that the defendant be proved to have intended to inflict *prolonged* pain." (*People v. Cole*, *supra*, ~~(2004)~~ 33 Cal.4th at p.~~1158,~~ 1228~~[17 Cal.Rptr.3d 532, 95 P.3d 811]~~ [italics in original, citation and internal quotation marks omitted].)

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 525-526.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 87, *Death Penalty*, §§ 87.13[18], 87.14 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.01[2][a][v] (Matthew Bender).

763. Death Penalty: Factors to Consider—Not Identified as Aggravating or Mitigating (Pen. Code, § 190.3)

In reaching your decision, you must consider and weigh the aggravating and mitigating circumstances or factors shown by the evidence.

An *aggravating circumstance or factor* is any fact, condition, or event relating to the commission of a crime, above and beyond the elements of the crime itself, that increases the wrongfulness of the defendant's conduct, the enormity of the offense, or the harmful impact of the crime. An aggravating circumstance may support a decision to impose the death penalty.

A *mitigating circumstance or factor* is any fact, condition, or event that makes the death penalty less appropriate as a punishment, even though it does not legally justify or excuse the crime. A mitigating circumstance is something that reduces the defendant's blameworthiness or otherwise supports a less severe punishment. A mitigating circumstance may support a decision not to impose the death penalty.

Under the law, you must consider, weigh, and be guided by specific factors, where applicable, some of which may be aggravating and some of which may be mitigating. I will read you the entire list of factors. Some of them may not apply to this case. If you find there is no evidence of a factor, then you should disregard that factor.

The factors are:

(a) The circumstances of the crime[s] of which the defendant was convicted in this case and any special circumstances that were found true.

(b) Whether or not the defendant has engaged in violent criminal activity other than the crime[s] of which the defendant was convicted in this case. *Violent criminal activity* is criminal activity involving the unlawful use, attempt to use, or direct or implied threat to use force or violence against a person. [The other violent criminal activity alleged in this case will be described in these instructions.]

(c) Whether or not the defendant has been convicted of any prior felony other than the crime[s] of which (he/she) was convicted in this case.

(d) Whether the defendant was under the influence of extreme mental or emotional disturbance when (he/she) committed the crime[s] of which (he/she) was convicted in this case.

(e) Whether the victim participated in the defendant's homicidal conduct or consented to the homicidal act.

(f) Whether the defendant reasonably believed that circumstances morally justified or extenuated (his/her) conduct in committing the crime[s] of which (he/she) was convicted in this case.

(g) Whether at the time of the murder the defendant acted under extreme duress or under the substantial domination of another person.

(h) Whether, at the time of the offense, the defendant's capacity to appreciate the criminality of (his/her) conduct or to follow the requirements of the law was impaired as a result of mental disease, defect, or intoxication.

(i) The defendant's age at the time of the crime[s] of which (he/she) was convicted in this case.

(j) Whether the defendant was an accomplice to the murder and (his/her) participation in the murder was relatively minor.

(k) Any other circumstance, whether related to these charges or not, that lessens the gravity of the crime[s] even though the circumstance is not a legal excuse or justification. These circumstances include sympathy or compassion for the defendant or anything you consider to be a mitigating factor, regardless of whether it is one of the factors listed above.

[You must disregard any jury instruction given to you in the guilt [and sanity] phase[s] of this trial if it conflicts with your consideration and weighing of these factors.]

Do not consider the absence of a mitigating factor as an aggravating factor.

[You may not consider as an aggravating factor anything other than the factors contained in this list that you conclude are aggravating in this case. You must not take into account any other facts or circumstances as a basis for imposing the death penalty.]

[Even if a fact is both a "special circumstance" and also a "circumstance of the crime," you may consider that fact only once as an aggravating factor in your weighing process. Do not double-count that fact simply because it is both a "special circumstance" and a "circumstance of the crime."]

[Although you may consider sympathy or compassion for the defendant, you may not let sympathy for the defendant's family influence your decision. [However, you may consider evidence about the impact the defendant's execution would have on (his/her) family if that evidence demonstrates some positive quality of the defendant's background or character.]]

New January 2006; Revised August 2006, June 2007, April 2008, December 2008, March 2021, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct the jury on the factors to consider in reaching a decision on the appropriate sentence. (*Lockett v. Ohio* (1978) 438 U.S. 586, 604–605 [98 S.Ct. 2954, 57 L.Ed.2d 973]; *People v. Benson* (1990) 52 Cal.3d 754, 799 [276 Cal.Rptr. 827, 802 P.2d 330].)

Although not required, "[i]t is . . . the better practice for a court to instruct on all the statutory penalty factors, directing the jury to be guided by those that are applicable on the record." (*People v. Marshall* (1990) 50 Cal.3d 907, 932 [269 Cal.Rptr. 269, 790 P.2d 676], cert. den. *sub nom.* ~~sub nom.~~ *Marshall v. California* (1991) 498 U.S. 1110]; *People v. Miranda* (1987) 44 Cal.3d 57, 104–105 [241 Cal.Rptr. 594, 744 P.2d 1127]; *People v. Melton* (1988) 44 Cal.3d 713, 770 [244 Cal.Rptr. 867, 750 P.2d 741].) The jury must be instructed to consider only those factors that are "applicable." (*Williams v. Calderon* (1998) 48 F.Supp.2d 979, 1023.)

When the court will be instructing the jury on prior violent criminal activity in aggravation, give the bracketed sentence that begins with "The other violent criminal activity alleged in this case." (See *People v. Robertson* (1982) 33 Cal.3d 21, 55 [188 Cal.Rptr. 77, 655 P.2d 279]; *People v. Yeoman* (2003) 31 Cal.4th 93, 151 [2 Cal.Rptr.3d 186, 72 P.3d 1166].) The court also has a **sua sponte** duty to give CALCRIM No. 764, *Death Penalty: Evidence of Other Violent Crimes* in addition to this instruction.

When the court will be instructing the jury on prior felony convictions, the court also has a **sua sponte** duty to give CALCRIM No. 765, *Death Penalty: Conviction for Other Felony Crimes* in addition to this instruction.

On request, the court must instruct the jury not to double-count any "circumstances of the crime" that are also "special circumstances." (*People v. Melton, supra*, 44 Cal.3d at p. 768.) When requested, give the bracketed paragraph that begins with "Even if a fact is both a 'special circumstance' and also a 'circumstance of the crime'."

On request, give the bracketed sentence that begins with "You may not let sympathy for the defendant's family." (*People v. Ochoa* (1998) 19 Cal.4th 353, 456 [79 Cal.Rptr.2d 408, 966 P.2d 442].) On request, give the bracketed sentence that begins with "However, you may consider evidence about the impact the defendant's execution." *(Ibid.)*

The bracketed sentence that begins with "You must disregard any jury instruction" may be given unless the jury did not hear a prior phase of the case. (See *People v. Arias* (1996) 13 Cal.4th 92, 171 [51 Cal.Rptr.2d 770, 913 P.2d 980], cert. den. *sub nom.*~~sub nom.~~ *Arias v. California* (1997) 520 U.S. 1251 [117 S.Ct. 2408, 138 L.Ed.2d 175].)

AUTHORITY

- Death Penalty Statute. Pen. Code, § 190.3.
- Jury Must Be Instructed to Consider Any Mitigating Evidence and Sympathy. *Lockett v. Ohio, supra,* ~~(1978)~~ 438 U.S. at pp.~~586,~~ 604–605 ~~[98 S.Ct. 2954, 57 L.Ed.2d 973]~~; *People v. Benson, supra,* ~~(1990)~~ 52 Cal.3d at p.~~754,~~ 799 ~~[276 Cal.Rptr. 827, 802 P.2d 330]~~; *People v. Easley* (1983) 34 Cal.3d 858, 876 [196 Cal.Rptr. 309, 671 P.2d 813].
- Should Instruct on All Factors. *People v. Marshall, supra,* ~~(1990)~~ 50 Cal.3d at p.~~907,~~ 932 ~~[269 Cal.Rptr. 269, 790 P.2d 676]~~, cert. den. *sub nom.*~~sub nom.~~ *Marshall v. California* (1991) 498 U.S. 1110 [111 S.Ct. 1023, 112 L.Ed.2d 1105].
- Must Instruct to Consider Only "Applicable Factors". *Williams v. Calderon* (1998) 48 F.Supp.2d 979, 1023; *People v. Marshall, supra,* ~~(1990)~~ 50 Cal.3d at p.~~907,~~ 932 ~~[269 Cal.Rptr. 269, 790 P.2d 676]~~, cert. den. *sub nom.*~~sub nom.~~ *Marshall v. California* (1991) 498 U.S. 1110 [111 S.Ct. 1023, 112 L.Ed.2d 1105].
- Mitigating Factor Must Be Supported by Evidence. *Delo v. Lashley* (1993) 507 U.S. 272, 275, 277 [113 S.Ct. 1222, 122 L.Ed.2d 620].
- Aggravating and Mitigating Defined. *People v. Dyer* (1988) 45 Cal.3d 26, 77–78 [246 Cal.Rptr. 209, 753 P.2d 1]; *People v. Adcox* (1988) 47 Cal.3d 207, 269–270 [253 Cal.Rptr. 55, 763 P.2d 906].

- On Request Must Instruct to Consider Only Statutory Aggravating Factors. *People v. Hillhouse* (2002) 27 Cal.4th 469, 509 [117 Cal.Rptr. 2d 45, 40 P.3d 754], cert. den. *sub nom.*~~sub nom.~~ *Hillhouse v. California* (2003) 537 U.S. 1114 [123 S.Ct. 869, 154 L.Ed.2d 789]; *People v. Gordon* (1990) 50 Cal.3d 1223, 1275, fn. 14 [270 Cal.Rptr. 451, 792 P.2d 251].
- Mitigating Factors Are Examples. *People v. Melton*, *supra*, ~~(1988)~~ 44 Cal.3d at p.~~713,~~ 760 ~~[244 Cal.Rptr. 867, 750 P.2d 741]~~; *Belmontes v. Woodford* (2003) 350 F.3d 861, 897~~]~~.
- Must Instruct to Not Double-Count. *People v. Melton*, *supra*, ~~(1988)~~ 44 Cal.3d at p.~~713,~~ 768 ~~[244 Cal.Rptr. 867, 750 P.2d 741]~~.
- Threats of Violence Must Be Directed at Persons. *People v. Kirkpatrick* (1994) 7 Cal.4th 988, 1016 [30 Cal.Rptr.2d 818, 874 P.2d 248].
- Mercy Equivalent to Sympathy or Compassion. *People v. Thomas* (2023) 14 Cal.5th 327, 407 [304 Cal.Rptr.3d 1, 523 P.3d 323].

COMMENTARY

Aggravating and Mitigating Factors—Need Not Specify

The court is not required to identify for the jury which factors may be aggravating and which may be mitigating. (*People v. Hillhouse*, *supra*, ~~(2002)~~ 27 Cal.4th at p.~~469,~~ 509 ~~[117 Cal.Rptr.2d 45, 40 P.3d 754]~~, cert. den. *sub nom.*~~sub nom.~~ *Hillhouse v. California* (2003) 537 U.S. 1114 [123 S.Ct. 869, 154 L.Ed.2d 789].) "The aggravating or mitigating nature of the factors is self-evident within the context of each case." *(Ibid.)* However, the court is required on request to instruct the jury to consider only the aggravating factors listed. (*Ibid.*; *People v. Gordon*, *supra*, ~~(1990)~~ 50 Cal.3d at p.~~1223,~~ 1275, fn. 14 ~~[270 Cal.Rptr. 451, 792 P.2d 251]~~.) In *People v. Hillhouse*, the Supreme Court stated, "we suggest that, on request, the court merely tell the jury it may not consider in aggravation anything other than the aggravating statutory factors." The committee has rephrased this for clarity and included in the text of this instruction, "You may not consider as an aggravating factor anything other than the factors contained in this list that you conclude are aggravating in this case." (*People v. Hillhouse*~~People v. Hillhouse~~, *supra*, ~~(2002)~~ 27 Cal.4th at p.~~469,~~ 509, fn. 6 ~~[117 Cal.Rptr.2d 45, 40 P.3d 754]~~, cert. den. *sub nom.*~~sub nom.~~ *Hillhouse v. California* (2003) 537 U.S. 1114 [123 S.Ct. 869, 154 L.Ed.2d 789].)

Although the court is not required to specify which factors are the aggravating factors, it is not error for the court to do so. (*People v. Musselwhite* (1998) 17 Cal.4th 1216, 1269 [74 Cal.Rptr.2d 212, 954 P.2d 475].) In ~~*People v.* *Musselwhite*, *supra*, 17 Cal.4th at p. 1269,~~ decided prior to *Hillhouse*, the Supreme Court held

that the trial court properly instructed the jury that "*only* factors (a), (b) and (c) of section 190.3 could be considered in aggravation . . . " (*Id.* (italics in original).)

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 545, 549–550, 563, 568, 571–572, 584–591.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 87, *Death Penalty*, §§ 87.23, 87.24 (Matthew Bender).

1801. Grand and Petty Theft (Pen. Code, §§ 486, 487–488, 490.2, 491)

If you conclude that the defendant committed a theft, you must decide whether the crime was grand theft or petty theft.

[The defendant committed petty theft if (he/she) stole (property/ [(and/or)] services~~]~~) worth $950 or less.]

[The defendant committed grand theft if the value of the (property/ [(and/or)] services~~]~~) is more than $950.]

[Theft of property from the person is grand theft if the value of the property is more than $950. Theft is *from the person* if the property taken was in the clothing of, on the body of, or in a container held or carried by, that person.]

[Theft of (an automobile/ a horse/_____<*insert other item listed in statute*>**) is grand theft if the value of the property is more than $950.]**

[Theft of a firearm is grand theft.]

[Theft of (fruit/nuts/_____<*insert other item listed in statute*>**) worth more than $950 is grand theft.]**

[Theft of (fish/shellfish/aquacultural products/_____<*insert other item listed in statute*>**) worth more than $950 is grand theft if (it/they) (is/are) taken from a (commercial fishery/research operation).]**

[The value of _____ <*insert relevant item enumerated in Pen. Code, § 487(b)(1)(B)*>**may be established by evidence proving that on the day of the theft, the same items of the same variety and weight as those stolen had a wholesale value of more than $950.]**

[The value of (property/services) is the fair (market value of the property/market wage for the services performed).]

<*Fair Market Value—Generally*>
[*Fair market value* is the highest price the property would reasonably have been sold for in the open market at the time of, and in the general location of, the theft.]

<*Fair Market Value—Urgent Sale*>

[*Fair market value* is the price a reasonable buyer and seller would agree on if the buyer wanted to buy the property and the seller wanted to sell it, but neither was under an urgent need to buy or sell.]

The People have the burden of proving beyond a reasonable doubt that the theft was grand theft rather than a lesser crime. If the People have not met this burden, you must find the defendant not guilty of grand theft.

New January 2006; Revised February 2012, August 2015, April 2020, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction if grand theft has been charged.

If grand theft is based on multiple thefts arising from one overall plan, give CALCRIM No. 1802, *Theft: As Part of Overall Plan*

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration pursuant to subdivision (c) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

If the evidence raises an issue that the value of the property may be inflated or deflated because of some urgency on the part of either the buyer or seller, the second bracketed paragraph on fair market value should be given.

AUTHORITY

- Determination of Grand vs. Petty Theft. Pen. Code, §§ 486, 487–488, 490.2, 491.
- Value/Nature of Property/Theft Ff~~f~~rom the Person. Pen. Code, §§ 487(b)~~–~~–(ed~~)~~), 487a.
- Theft of a Ff~~f~~irearm Ii~~s~~s Gg~~g~~rand Tt~~t~~heft. Pen. Code, §§ 487(d)(2), 490.2(c)

RELATED ISSUES

Proposition 47 (Penal Code Section 490.2)

After the passage of Proposition 47 in 2014, theft is defined in Penal Code section 487 as a misdemeanor unless the value of the property taken exceeds $950. ~~(~~Pen.

Code, § 490.2.) This represents a change from the way grand theft was defined under Penal Code section 487(b)–(d) before the enactment of Proposition 47. In 2016, Proposition 63 added subdivision (c) to Penal Code section, § 490.2 (excepting theft of a firearm).

Taking From the Person

To constitute a taking from the person, the property must, in some way, be physically attached to the person. (*People v. Williams* (1992) 9 Cal.App.4th 1465, 1472 [12 Cal.Rptr.2d 243].) Applying this rule, the court in *Williams* held that a purse taken from the passenger seat next to the driver was not a taking from the person. (*Ibid.* [see generally for court's discussion of origins of this rule].) *Williams* was distinguished by the court in *People v. Huggins* (1997) 51 Cal.App.4th 1654, 1656–1657 [60 Cal.Rptr.2d 177], where evidence that the defendant took a purse placed on the floor next to and touching the victim's foot was held sufficient to establish a taking from the person. The victim intentionally placed her foot next to her purse, physically touching it and thereby maintaining dominion and control over it.

Theft of Fish, Shellfish, or Aquacultural Products

Fish taken from public waters are not "property of another" within the meaning of Penal Code section 484 and 487; only the Fish and Game Code applies to such takings. (*People v. Brady* (1991) 234 Cal.App.3d 954, 959, 961–962 [286 Cal.Rptr. 19]; see, e.g., Fish & Game Code, § 12006.6 [unlawful taking of abalone].)

Value of Written Instrument

If the thing stolen is evidence of a debt or some other written instrument, its value is (1) the amount due or secured that is unpaid, or that might be collected in any contingency, (2) the value of the property, title to which is shown in the instrument, or (3) or the sum that might be recovered in the instrument's absence. (Pen. Code, § 492; see *Buck v. Superior Court* (1966) 245 Cal.App.2d 431, 438 [54 Cal.Rptr. 282] [trust deed securing debt]; *People v. Frankfort* (1952) 114 Cal.App.2d 680, 703 [251 P.2d 401] [promissory notes and contracts securing debt]; *People v. Quiel* (1945) 68 Cal.App.2d 674, 678 [157 P.2d 446] [unpaid bank checks]; see also Pen. Code, §§ 493 [value of stolen passage tickets], 494 [completed written instrument need not be issued or delivered].) If evidence of a debt or right of action is embezzled, its value is the sum due on or secured by the instrument. (Pen. Code, § 514.) Section 492 only applies if the written instrument has value and is taken from a victim. (See *People v. Sanders* (1998) 67 Cal.App.4th 1403, 1414, fn. 16 [79 Cal.Rptr.2d 806].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property §§ 4, 8.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01 (Matthew Bender).

1802. Theft: As Part of Overall Plan

If you conclude that the defendant committed more than one theft, you must then decide if the defendant committed ~~multiple petty thefts or a single~~ grand theft. To prove that the defendant is guilty of ~~a single~~ grand theft, the People must prove that:

1. **The defendant committed multiple theft~~s~~ of (property/ [(and/or)] services) ~~from the same owner or possessor on more than one occasion~~;**

2. **The combined value of the (property/ [(and/or)] services) was over $950;**

AND

3. **In obtaining ~~The defendant obtained~~ the (property/ [(and/or)] services), ~~as part of a single, overall plan or objective~~the defendant was motivated by one intention, one general impulse, and one plan.**

If you conclude that, as to one or more alleged theft, the People have failed to prove grand theft, ~~any multiple~~ the theft[s] you have found proven (is/are) petty theft[s].

New January 2006; Revised February 2012, August 2015, August 2016, September 2023

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on aggregating the value of the property or services taken if grand theft is charged on that theory.

The total value of the property taken must exceed $950 to be grand theft. (See Pen. Code, § 490.2.)

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration pursuant to subdivision (~~-~~c) of section 290, give CALCRIM No. 3100, *Prior Conviction: ~~-~~Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

AUTHORITY

- Aggregating Value of Property Taken According to Overall Plan or General Intent. Pen. Code, § 487(e); *People v. Whitmer* (2014) 59 Cal.4th 733, 740–741 [174 Cal.Rptr.3d 594, 329 P.3d 154]; *People v. Bailey* (1961) 55 Cal.2d 514, 518–519 [11 Cal.Rptr. 543, 360 P.2d 39].
- Grand Theft of Property or Services. Pen. Code, § 487(a) [property or services exceeding $950 in value].

RELATED ISSUES

~~***Multiple Victims***~~

~~Where multiple victims are involved, there is disagreement about applying the *Bailey* doctrine and cumulating the charges even if a single plan or intent is demonstrated. (See *People v. Brooks* (1985) 166 Cal.App.3d 24, 30 [210 Cal.Rptr. 90] [auctioneer stole proceeds from property belonging to several people during a single auction; conviction for multiple counts of theft was error]; *People v. Columbia Research Corp.* (1980) 103 Cal.App.3d Supp. 33 [163 Cal.Rptr. 455] [series of petty thefts from numerous victims occurring over 10-month period properly consolidated into single grand theft conviction where defendant employed same scheme to defraud victims of money]; but see *People v. Garcia* (1990) 224 Cal.App.3d 297, 307–309 [273 Cal.Rptr. 666] [defendant filed fraudulent bonds at different times involving different victims; multiple convictions proper]; *In re David D.* (1997) 52 Cal.App.4th 304, 309 [60 Cal.Rptr.2d 552] [stating that *Garcia* "articulately criticized" *Brooks* and *Columbia Research*; declined to apply *Bailey* to multiple acts of vandalism].)~~

Combining Grand Thefts

A defendant "may be convicted of multiple counts of grand theft based on separate and distinct acts of theft, even if committed pursuant to a single overarching scheme." (See *People v. Whitmer*, *supra*, 59 Cal.4th at p. 741.) Before *Whitmer*, numerous Courts of Appeal had interpreted *Bailey* as permitting only one conviction of grand theft where multiple crimes were unified by a single intent, impulse, and plan. (See, e.g., *People v. Kronemyer* (1987) 189 Cal.App.3d 314, 363–364 [234 Cal.Rptr. 442]; *People v. Brooks* (1985) 166 Cal.App.3d 24, 31 [210 Cal.Rptr. 90]; *People v. Gardner* (1979) 90 Cal.App.3d 42, 47–48 [153 Cal.Rptr. 160]; *People v. Richardson* (1978) 83 Cal.App.3d 853, 866 [148 Cal.Rptr. 120]; *People v. Sullivan* (1978) 80 Cal.App.3d 16, 19 [145 Cal.Rptr. 313].) *Whitmer* disapproved, but did not expressly overrule, this line of appellate cases. (See *People v. Whitmer*, *supra*, 59 Cal.4th at pp. 740–741.)

~~The *Bailey* doctrine can be asserted by the *defendant* to combine multiple grand thefts committed as part of an overall scheme into a single offense. (See *People v.*~~

~~*Brooks* (1985) 166 Cal.App.3d 24, 31 [210 Cal.Rptr. 90] [multiple grand thefts from single auction fund]; *People v. Gardner* (1979) 90 Cal.App.3d 42, 47–48 [153 Cal.Rptr. 160] [multiple grand theft of hog carcasses]; *People v. Richardson* (1978) 83 Cal.App.3d 853, 866 [148 Cal.Rptr. 120] [multiple attempted grand thefts], disapproved on other grounds in *People v. Saddler* (1979) 24 Cal.3d 671, 682, fn. 8 [156 Cal.Rptr. 871, 597 P.2d 130]; see also *People v. Sullivan* (1978) 80 Cal.App.3d 16, 19 [145 Cal.Rptr. 313] [error to refuse defense instruction about aggregating thefts].)~~

~~A serial thief "may be convicted of multiple counts of grand theft based on separate and distinct acts of theft, even if committed pursuant to a single overarching scheme." [disapproving any interpretation of *People v. Bailey* (1961) 55 Cal.2d 514 [11 Cal.Rptr. 543, 360 P.2d 39] inconsistent with this conclusion.] *People v. Whitmer* (2014) 59 Cal.4th 733, 740–741 [174 Cal.Rptr.3d 594, 329 P.3d 154].~~

~~***Theft Enhancement***~~

~~If there are multiple charges of theft, whether grand or petty theft, the aggregate loss exceeds any of the statutory minimums in Penal Code section 12022.6(a), and the thefts arise from a common scheme or plan, an additional prison term may be imposed. (Pen. Code, § 12022.6(b).) If the aggregate loss exceeds statutory amounts ranging from $50,000 to $2.5 million, an additional term of one to four years may be imposed. (Pen. Code, § 12022.6(a)(1)–(4); see *People v. Daniel* (1983) 145 Cal.App.3d 168, 174–175 [193 Cal.Rptr. 277] [no error in refusing to give unanimity instruction].)~~

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, §§ 12, 13.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01[1][i] (Matthew Bender).

Item number: 11

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/22/2023

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

Title of proposal: Criminal Procedure: Appointment of Trial Counsel in Capital Cases

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend rule 4.117

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

*Staff contact (*name, phone and e-mail*): Sarah Fleischer-Ihn, 415-865-7702, sarah.fleischer-ihn@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): 11/2/2022, 2/16/2023
Project description from annual agenda: Amend Cal. Rules of Court, rule 4.117, qualifications for appointed counsel in capital cases: Develop a proposal to amend the rule to clarify that qualified counsel must be appointed when special circumstances are charged

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.: 23-125
For business meeting on September 18–19, 2023

Title
Criminal Procedure: Appointment of Trial Counsel in Capital Cases

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 4.117

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 10, 2023

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

Executive Summary

The Criminal Law Advisory Committee recommends amending the rule governing qualifications for appointed trial counsel in capital cases. This amendment would clarify that the requirement for appointment of qualified counsel applies in all capital cases unless the district attorney affirmatively states on the record that the death penalty will not be sought.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2024, amend rule 4.117 of the California Rules of Court to clarify that requirement for appointment of qualified counsel applies in all capital cases unless the district attorney affirmatively states on the record that the death penalty will not be sought.

The proposed amended rule is attached at page 5.

Relevant Previous Council Action

The Judicial Council adopted rule 4.117 with an effective date of January 1, 2003. The council adopted the rule to implement statewide minimum standards for appointment of trial counsel in capital cases. The rule was designed to help ensure adequate representation in death penalty trials

and to avoid unnecessary delay and expense in appointing counsel. The rule was most recently amended with minor non-substantive changes, effective January 1, 2007.

Analysis/Rationale

The Judicial Council report recommending adoption of rule 4.117 noted:

> [I]t is not always clear at arraignment, when counsel would normally be appointed, whether the District Attorney will be seeking the death penalty. Thus, as a practical matter, the rule would apply to all special-circumstances cases, unless there has been an explicit statement by the District Attorney that the death penalty will not be sought. This procedure is consistent with the current practice in counties with local standards. In those counties attorneys who are qualified to be assigned to death penalty cases are appointed to all cases involving special circumstances.

(Judicial Council of Cal., Advisory Com. Rep., *Minimum Standards for Appointed Trial Counsel in Capital Cases* (Aug. 19, 2002), pp. 3–4.)

The language in subsection (b) of the current rule begins, "In cases in which the death penalty is sought, the court must assign qualified trial counsel to represent the defendant." The Criminal Law Advisory Committee is recommending amendment of the rule because it is concerned that the phrase "in which the death penalty is sought" could be misinterpreted as applying only when the district attorney has made an affirmative statement indicating that the district attorney is seeking the death penalty, regardless of whether the complaint alleges special circumstances.

Penal Code section 987.9 lends support to the committee's position that qualified trial counsel should be appointed at the outset. This statute allows an indigent defendant charged in a capital case or under Penal Code section 190.05(a)[1] to seek funds for investigators, experts, and others whose assistance is needed to prepare or present a defense. The state regulations on reimbursement to counties for the cost of homicide trials under section 987.9 allow for reimbursement in a special circumstances case unless it "no longer involves the death penalty." (Cal. Code Regs., tit. 2, § 1026.2.) This phrase applies if "either the allegations of special circumstances have been dismissed or the prosecution has formally elected not to seek the death penalty." (*Ibid.*; see also *Gardner v. Superior Court* (2010) 185 Cal.App.4th 1003, 1014 ["a murder case in which special circumstances are alleged is a 'capital case' within the meaning of section 987.9, unless and until the prosecution expressly indicates that the death penalty will not be sought"].)

[1] "The penalty for a defendant found guilty of murder in the second degree, who has served a prior prison term for murder in the first or second degree, shall be confinement in the state prison for a term of life without the possibility of parole or confinement in the state prison for a term of 15 years to life. For purposes of this section, a prior prison term for murder of the first or second degree is that time period in which a defendant has spent actually incarcerated for his or her offense prior to release on parole." (Pen. Code, § 190.05(a).)

The rationale for when a defendant is eligible for indigent capital defense funds under section 987.9 applies equally to the rule of when qualified counsel should be appointed in a special circumstances case. Because the current phrase “in which the death penalty is sought” may not be sufficiently precise, the committee recommends amending rule 4.117(b) to clarify that qualified counsel should be appointed in all capital cases “unless the district attorney has made an affirmative statement on the record that the prosecution will not be seeking the death penalty.”

Policy implications

This proposal has no major policy implications because the recommendation is to clarify the applicability of an existing rule.

Comments

This proposal circulated for comment from March 30 to May 12, 2023. The committee sought specific comments on whether the rule should specify that the statement from the district attorney be made on the record or whether it was preferred that the rule remain silent on this point. As noted, regulations and cases interpreting section 987.9 do not require the statement to be on the record.

Eight comments were received. The Superior Courts of Orange, San Bernardino, and San Diego Counties; the Orange County Bar Association and Riverside County Criminal Defense Bar Association; one public defender; and one member of the public agreed with the proposal. One criminal defense attorney agreed with the proposal if modified to add that death penalty–related ancillary service funding mechanisms be available unless the prosecution makes a statement on the record that the death penalty will not be sought. Because this modification would be a substantive change, the committee will consider this suggestion at a future proposal cycle meeting.

Several commenters agreed with the proposal as circulated, and two commenters expressly agreed (in response to the request for specific comments on this point) with specifying that the statement be made on the record, while one preferred that the rule remain silent on whether the statement had to be on the record. The committee recommends requiring that the statement be made on the record, noting that doing so appears to be the standard practice.

Alternatives considered

The committee did not consider taking no action, determining that it was important to amend the rule for clarity.

Fiscal and Operational Impacts

The committee received comments from two courts that the rule amendment will require training of judicial officers and courtroom clerks, whereas another court did not anticipate any changes to its appointment procedures.

Attachments and Links

1. Cal. Rules of Court, rule 4.117, at page 5
2. Chart of comments, at pages 6–10

Rule 4.117 of the California Rules of Court is amended, effective January 1, 2024, to read:

Rule 4.117. Qualifications for appointed trial counsel in capital cases

(a) * * *

(b) General qualifications

In cases in which ~~the death penalty is sought~~ a person is charged with a capital offense, the court must assign qualified trial counsel to represent the defendant unless the district attorney has made an affirmative statement on the record that the prosecution will not be seeking the death penalty. The attorney may be appointed only if the court, after reviewing the attorney's background, experience, and training, determines that the attorney has demonstrated the skill, knowledge, and proficiency to diligently and competently represent the defendant. An attorney is not entitled to appointment simply because he or she meets the minimum qualifications.

(c)–(i) * * *

SPR23-12
Criminal Procedure: Appointment of Trial Counsel in Capital Cases

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Michael A. Gregg President	A	*The proposal appropriately addresses the stated purpose.	Thank you for reviewing and submitting a comment for this proposal.
2.	John Phillipsborn Law Office of John T. Phillipsborn San Francisco, California	AM	This comment is submitted by a defense lawyer who has defended capital cases for 40 years in more than 10 different California counties; is one of the authors of the California Death Penalty Defense Manual (and has been for close to 30 years); a lawyer for the Mexican Capital Legal Assistance Program; and is one of CACJ's amicus committee chairs (30 years) who is often consulted by defense counsel in capital cases on appointment of counsel and ancillary funding issues. Rule 4.117 should be amended to require a statement on the record that the death penalty will not be sought in the case before the host court determines that (a) death qualified counsel is not required and (b) that death penalty related ancillary service funding mechanisms need not be employed in the case. There is no standard procedure for the appointment of death qualified counsel in use--meaning in actual use--throughout California. Depending on the local practice and expressed preferences of the Judge who has the case, both the DA and institutional defender office may take the position that regardless of any clearly stated prosecution position, the case is 'probably not' going to be a death penalty case, and therefore strict regard for defense counsels' qualifications can be dispensed with. In a few instances brought to	Further amending the rule to state that death penalty-related ancillary service funding mechanisms need not be employed if a statement is made on the record that the death penalty will not be sought would be a substantive change to the proposal that was circulated. For this reason, the committee believes public comment should be sought before any such recommendation is made. The committee will consider this suggestion during a future proposal cycle as time and resources allow.

	Commenter	Position	Comment	Committee Response
			my attention both as an MCLAP lawyer and as a CACJ amicus chair, particularly in co-defendant special circumstance murder cases it has happened that the trial court appointed counsel without inquiry into capital case qualifications, and ended up appointing counsel whose experience in defending murder cases was extremely limited. The same has happened when an institutional defender office assigned a special circumstance murder case to a lawyer with both limited experience and little (if any) documented capital case defense training. The Rule should be amended as proposed.	
3.	Angelica A. Rivera Senior Defense Attorney, Fresno County Public Defender's Office	A	No specific comment.	Thank you for reviewing and submitting a comment for this proposal.
4.	Riverside County Criminal Defense Bar Association by Graham Donath, President	A	The Riverside County Criminal Defense Bar Association strongly supports the proposed amendment. * Riverside County is an outlier not only within California but known nationwide for our District Attorney's excessive pursuit of the death penalty. Poor or no access to funding for counsel is a significant issue within Riverside in particular, compared to other jurisdictions. This problem is exacerbated by the fact that frequently attorneys who do not meet the minimum standards for capital defense representation are initially appointed and work on these capital punishment eligible cases as if they were not a capital case for extended periods of time, as the DA frequently does not	Thank you for reviewing and submitting a comment for this proposal.

	Commenter	Position	Comment	Committee Response
			make their election to seek death until years into a case. This of course creates a real disadvantage to defendants and even the new defense counsel who are later appointed once the declaration is made and appropriate counsel is sought. These cases are not currently treated by the courts or county as capital cases for funding purposes until such a declaration is made. This is contrary to what we believe would be the appropriate and ethical manner of treating such cases, and the proposed amendment helps to rectify that. Regarding the direct question, we agree that the phrasing about whether the DA has elected to not seek the death penalty should be on the record, either in a formal notice filed with the court or by way of statement in open court on the record. We appreciate the Judicial Council's attention to this critical issue, and strongly support the adoption of the proposed rule change.	The committee agrees with requiring the statement to be on the record.
5.	Kaitlin Schneider Fresno, CA	A	These changes are necessary to allow defendants to be appropriately represented and to have the seriousness of the case addressed.	Thank you for reviewing and submitting a comment for this proposal.
6.	Superior Court of Orange County by Iyana Doherty Courtroom Operations Supervisor	A	Agree with the proposed language changes to clarify that appointment of counsel applies to all capital cases unless the district attorney affirmatively states on the record that the death penalty will not be sought.	Thank you for reviewing and submitting a comment for this proposal.

SPR23-12
Criminal Procedure: Appointment of Trial Counsel in Capital Cases

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

	Commenter	Position	Comment	Committee Response
			• Proposal does appropriately address the stated purpose • Modified phrase is preferred Implementation requirements- No training needed. • Judicial info would be attorneys are now appointed for all capital cases unless the District Attorney states they are not pursuing the death penalty. • Recommend for Alternate Defense Services to review regarding potential costs associated to the impact of appointments of the qualified attorneys	The committee agrees with other commenters and prefers the language in the proposal requiring the statement to be on the record for clarity, rather than the modified phrase which eliminates that requirement. It is the committee's understanding that Alternate Defense Services administers the court's conflict panel, including the appointment of qualified counsel in capital cases.
7.	Superior Court of San Bernardino County by Denise McGovern Management Analyst II	A	I don't anticipate this will impact our court's Indigent Defense Program, which oversees appointment of attorneys in Capital and Life without Parole cases where the Public Defender has conflicted off. Our requirements for attorneys in Capital eligible cases will not change. This will also not affect our PC 987.9 procedures. I cannot comment on courtroom procedures.	Thank you for reviewing and submitting a comment for this proposal.
8.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	• Does the proposal appropriately address the stated purpose? **Yes.** • Would the alternate phrasing be preferable to explicitly requiring that the statement be on the record? **San Diego would prefer that the DA's intention to not seek the death**	Thank you for reviewing and submitting a comment for this proposal. The committee agrees with requiring the statement to be on the record.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			penalty be stated on the record. This makes the record crystal clear, and hopefully triggers the DA to let the court know at the earliest opportunity. • Would the proposal provide cost savings? If so, please quantify. **No.** • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **Training judicial officers and courtroom clerks to make sure the proper processes are followed at the first court appearance (rather than waiting for the DA to affirmatively announce they are seeking the death penalty).** • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.** • How well would this proposal work in courts of different sizes? **This proposal would work fine in the San Diego Superior Court (a large court).** Additional Comments: **None.**	

Item number: 12

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/22/2023

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

Title of proposal: Criminal Law: Circumstances in Aggravation

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Revise form CR-101

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

*Staff contact (*name, phone and e-mail*): Sarah Fleischer-Ihn, 415-865-7702, sarah.fleischer-ihn@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): 2/16/2023
Project description from annual agenda: Develop a proposal to revise the felony plea form to incorporate a waiver of the right to a trial on aggravating factors that can be used to sentence the defendant to the upper term of a criminal offense or enhancement, to reflect statutory changes under SB 567 (Stats. 2021, ch. 731).

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

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

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

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

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

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

Judicial Council *of* California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-130
For business meeting on September 18–19, 2023

Title
Criminal Law: Circumstances in Aggravation

Rules, Forms, Standards, or Statutes Affected
Revise form CR-101

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 18, 2023

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

Executive Summary

The Criminal Law Advisory Committee recommends revisions to the optional Judicial Council felony plea form to reflect statutory changes regarding the right to trial on aggravating circumstances in order to justify imposition of the upper term of a criminal offense or enhancement, and to improve consistency throughout the form.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2024, revise *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101) to reflect statutory changes regarding the right to a trial on circumstances in aggravation and to make technical changes to improve consistency throughout the form.

The proposed revised form is attached at pages 4–10.

Relevant Previous Council Action

The Judicial Council approved optional form CR-101, effective January 1, 2007, to promote increased uniformity in felony plea waiver forms used throughout the state. Form CR-101 was

last substantively revised, effective March 1, 2023, to reflect statutory changes to the definition of a firearm under Assembly Bill 1621 (Stats. 2022, ch. 76).

Analysis/Rationale

Senate Bill 567 (Stats. 2021, ch. 731) amended Penal Code sections 1170 and 1170.1 to state that a court may impose an upper term of custody for a criminal offense or enhancement if aggravating factors were found true beyond a reasonable doubt at trial or on stipulation by the defendant, with specified exceptions. A court requested a revision of the optional felony plea form to reflect these statutory changes.

Appellate courts remain divided about whether section 1170(b) applies to plea agreements (compare *People v. Mitchell* (2022) 83 Cal.App.5th 1051, 1057–1058 [statute does not apply to negotiated plea deals], review granted Dec. 14, 2022, S277314, and *People v. Sallee* (2023) 88 Cal.App.5th 330, 335–338 [statute does not apply to negotiated plea deals], review granted April 26, 2023, S278690, with *People v. Todd* (2023) 88 Cal.App.5th 373, 377–378 [statute applies to negotiated plea deals], review granted April 26, 2023, S279154). Notwithstanding this unresolved issue, the committee believes that making findings about circumstances in aggravation as part of the guilty or no contest plea, when relevant, would be the safest course to preserve the record. Therefore, the committee has added "circumstances in aggravation" to the plea form as an additional category.

In addition to the changes in response to SB 567, the committee changed some descriptive terms in the form for better clarity and consistency. The current plea form includes sentencing considerations for prior convictions, enhancements, and alternate sentencing schemes (the latter referred to as "allegations" or "special allegations"). However, the form characterizes those considerations collectively as "allegations" in some sections and as "prior convictions, enhancements, and special allegations" in others. These references are inconsistent and interspersed throughout the form. The proposal would improve consistency by consistently specifying "prior convictions," "enhancements," "allegations," and "circumstances in aggravation" when relevant.

The proposal would also replace the term "special allegations" with "allegations." The committee thought the term "special allegations" could be confused with special circumstances as defined in Penal Code section 190.2. Further, the committee agreed that, in practice, "allegations" is the common term in use to refer to alternative sentencing schemes.

Policy implications

This proposal has no major policy implications because the recommendation is to implement new legislation and improve consistency within the form.

Comments

This proposal circulated for comment from March 30 to May 12, 2023. The committee received two comments agreeing with the proposal from the Superior Court of Orange County and the

Orange County Bar Association. A chart of the comments received and the committee's responses is attached at page 11.

Alternatives considered

The committee did not consider the alternative of taking no action, determining that it was important to revise the form to implement statutory changes.

In discussing replacing "special allegations" with "allegations," some committee members were concerned that "allegations" was too broad a term and could be interpreted to apply to the alleged charges or everything alleged in the complaint, rather than just an alternative sentencing scheme. However, the committee ultimately agreed that the manner in which "allegations" was used in the plea form—alongside prior convictions, enhancements, and circumstances in aggravation—sufficiently conveyed its meaning.

Fiscal and Operational Impacts

As an optional form, expected costs should be limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Form CR-101, at pages 4–10
2. Chart of comments, at page 11

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR *(name)*:		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		**07/17/2023 DRAFT Not approved by the Judicial Council**
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant:		CASE NUMBER:
PLEA FORM, WITH EXPLANATIONS AND WAIVER OF RIGHTS—FELONY		

INSTRUCTIONS:

(1) Fill out this form only if you want to plead guilty or no contest.

(2) Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank.

(3) On page 6, sign and date the form under "DEFENDANT'S STATEMENT."

(4) Keep in mind that the court cannot give legal advice. If you have any questions about anything in this form, ask your attorney.

1. **CHARGES AND MAXIMUM TERM.** I want to plead guilty or no contest ("nolo contendere") to the charges and admit the following prior convictions, enhancements, allegations, and circumstances in aggravation listed below. I understand that the minimum and maximum penalties for the charges to which I am pleading guilty or no contest are listed below. INITIALS ☐

COUNT	CHARGES (SECTION & DESCRIPTION)	YEARS / MONTHS MINIMUM	YEARS / MONTHS MAXIMUM	PRIOR CONVICTIONS, ENHANCEMENTS, ALLEGATIONS & CIRCUMSTANCES IN AGGRAVATION (SECTION & DESCRIPTION)	YEARS / MONTHS MINIMUM	YEARS / MONTHS MAXIMUM	TOTAL MAXIMUM TIME
						AGGREGATE MAXIMUM TIME OF IMPRISONMENT	

2. **PLEA AGREEMENT.** I understand that I must tell the court on this form about any promises anyone has made to me about the sentence I will receive or the sentence recommendations that will be made to the court. My attorney, the court, or the prosecutor has explained to me that if I plead guilty or no contest to the charges and admit the prior convictions, enhancements, allegations, and circumstances in aggravation listed above, the court will sentence me as follows:

   a. Check one: ☐ **State Prison** (or the Division of Juvenile Justice) ☐ **County Jail** for INITIALS ☐

      (1) ☐ years and months or

      (2) ☐ not less than years and months and/or not more than years and months.

      (3) ☐ Other *(specify)*:

   b. **Probation** for years under conditions to be set by the court, including INITIALS ☐

      ☐ days in the **county jail** or

      ☐ up to days in the **county jail.**

   I understand that a violation of any of the conditions of probation, including failure to complete a drug education or treatment program, if ordered by the court, may cause the court to send me to **county jail or state prison** for up to the **"Aggregate Maximum Time of Imprisonment"** specified in item 1, which may include a period of mandatory supervision under Penal Code section 1170(h)(5)(B) if the court sends me to county jail.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

2. c. **Split Sentence (1170(h)(5)(B)):** years and days in the county jail and years and days on mandatory supervision under conditions set by the court. I understand that if I violate any of the terms or conditions of mandatory supervision, I may be remanded into custody for the entire unserved portion of the sentence. ☐

d. **Open Plea**

(1) ☐ I understand the maximum and minimum sentences for the charges, enhancements, and allegations stated on page 1. No one has made any other promises to me about what sentence the court may order. ☐

(2) ☐ I understand that I am not eligible for probation.

(3) ☐ I understand that I will not be granted probation unless the court finds at the time of sentencing that this is an unusual case where the interests of justice would be best served by granting probation.

e. **Restitution, Statutory Fees, and Assessments** ☐

I understand that the court will order me to pay the following amounts (if an amount is not yet known, "TBD" for "to be determined" is entered next to the $); I must prepare financial disclosure statements to assist the court in determining my ability to pay; and refusal or failure to prepare the required financial disclosure statements may be used against me at sentencing:

(1) ☐ $ **to the Victim Restitution Fund**
(2) ☐ $ **restitution to actual victims**
(3) ☐ $ **restitution to the State of California, Victims of Crime Fund**
(4) ☐ $ **court operations assessment**
(5) ☐ $ **court facilities assessment**
(6) ☐ $ **base fine plus any applicable penalties, assessments, and surcharges**
(7) ☐ $ **other** *(specify):*
(8) ☐ $ **other** *(specify):*
(9) ☐ An (additional) amount to be determined by the court at sentencing or such other hearing as the court may set.

f. **Fines for Revocation of Parole, Postrelease Community Supervision, Mandatory Supervision, or Probation** ☐

I understand that if I am sentenced to **state prison**, the court **will** impose a parole revocation fine or a postrelease community supervision revocation fine, which will be collected only if my parole or postrelease community supervision is later revoked. I also understand that if I am granted probation or mandatory supervision, the court **will** impose a probation revocation fine or mandatory supervision revocation fine, which will be collected only if my probation or mandatory supervision is later revoked.

g. **Dismissal of Other Counts** ☐

I understand that as part of the plea agreement bargain, the following counts will be dismissed after sentencing:

I understand and agree that the sentencing judge may consider facts underlying dismissed counts to determine restitution and to sentence me on the counts to which I am entering a plea. ☐

h. **Other Terms *(specify):*** ☐

3. **CONSEQUENCES OF MY PLEA** INITIALS

a. **No Contest ("Nolo Contendere") Plea** ☐

I understand that a no contest plea is the same as pleading guilty and that if I plead no contest, I will be convicted and my no contest plea could be used against me in a civil case.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

3. b. **Parole and Postrelease Community Supervision** ☐
I understand that if I am sentenced to **state prison**
(1) I will be placed on parole or postrelease community supervision for up to years after my release.
(2) if I abscond or the court tolls my supervision, the total time of parole or postrelease community supervision can be extended.
(3) if I violate any of the terms or conditions of my parole, I can be sentenced to county jail for up to 180 days for each violation, or returned to state prison for up to one year, up to a maximum of years. If I violate any of the terms or conditions of postrelease community supervision, I can be sentenced to county jail for up to 180 days for each violation, for up to a maximum of 3 years.

c. **Effect of Conviction on Other Cases** ☐
I understand that a conviction in this case may constitute a violation of any other current grant of parole, mandatory supervision, postrelease community supervision, or probation in any other case and that I may receive additional punishment as a result of that violation.

d. **Registration** ☐
I understand that I will be required to register with the local police agency or sheriff's department in the city or county in which I reside as

(1) ☐ an arson offender (3) ☐ a sex offender **(this registration is a lifelong requirement)**
(2) ☐ a gang member (4) ☐ Other *(specify):*

and that if I fail to register or to keep my registration current for any reason, new felony criminal charges may be filed against me.

e. **Prints and DNA Samples** ☐
I understand that I must provide biological samples and prints for identification purposes—including buccal (mouth) swab samples, right thumb prints, palm prints of each hand, and blood specimens or other biological samples required by law—and that failure to do so constitutes a new criminal offense.

f. **Serious or Violent Felony** ☐
(1) ☐ I understand that by pleading guilty or no contest to a serious or violent felony ("strike"), the penalty for any future felony conviction will be increased as a result of my convicion in this case, depending on the number of strikes I have, up to a mandatory prison sentence of double the term otherwise provided or a term of at least 25 years to life.
(2) ☐ I understand that if I am convicted of a violent felony, jail or prison conduct/work-time credit I may accrue will not exceed 15 percent.
(3) ☐ I understand that if I am admitting a prior strike conviction, prison work-time credit that I may accrue will not exceed 20 percent of the total term of imprisonment.
(4) ☐ I understand that if I am convicted of murder or a third felony conviction of certain offenses, I am ineligible to receive work-time credits. Count is such an offense.

g. **Prior Prison Term for Sexually Violent Offense** ☐
I understand that if I am sentenced to serve a state prison term for this sexually violent offense, as defined in Welfare and Institutions Code section 6600(b), the penalty for any future felony conviction may be increased as a result of my incarceration in this case.

h. **Driver's License and Vehicle Forfeiture** ☐
I understand that my privilege to drive a motor vehicle may be revoked or suspended by the court or the California Department of Motor Vehicles and my vehicle may be ordered forfeited if it was involved in the offense.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

3. i. **Immigration Consequences** INITIALS
I understand that if I am not a citizen of the United States, my plea of guilty or no contest may result in my deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States. ☐

j. **Firearms (Guns), Firearm Parts, and Ammunition Prohibition** ☐
I understand that federal and state laws prohibit a convicted felon from possessing firearms (guns), firearm parts, or ammunition for life. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531).

k. **Other Consequences** *(specify):* ☐

4. **RIGHT TO AN ATTORNEY** ☐
I understand that I have the right to an attorney of my choice to represent me throughout the proceedings. If I cannot afford to hire an attorney, the court will appoint one to represent me.
I hereby give up my right to be represented by an attorney. ☐

5. **OTHER CONSTITUTIONAL RIGHTS**
I understand that I am entitled to each of the following rights as to the charges, enhancements, allegations, and circumstances in aggravation listed in item 1 (on page 1):

a. **Right to a Jury Trial** ☐
I understand that I have a right to a speedy and public jury trial. At the trial, I would be presumed to be innocent, and I could not be convicted unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were unanimously convinced beyond a reasonable doubt that I am guilty. I have a right, through my counsel, to participate in jury selection.

b. **Right to a Court Trial** ☐
I understand that, as an alternative to a jury trial, if the prosecutor agrees, I may give up a jury trial and have a court trial in which the judge alone, without a jury, hears the evidence. I still could not be convicted unless, after hearing all of the evidence, the judge was convinced beyond a reasonable doubt that I am guilty.

c. **Right to Confront and Cross-Examine Witnesses** ☐
I understand that I have the right to confront and cross-examine all witnesses testifying against me. This means that the prosecution must produce the witnesses in court, they must testify under oath in my presence, and my attorney may question them.

d. **Right to Remain Silent and Not to Incriminate Myself** ☐
I understand that I have the right to remain silent, and my silence cannot be considered as evidence against me. I understand that I also have the right not to incriminate myself, and I cannot be forced to testify.

e. **Right to Produce Evidence and to Present a Defense** ☐
I understand that I have a right to present evidence and to have the court issue subpoenas to bring to court all witnesses and evidence favorable to me, at no cost to me. I also have the right to testify on my own behalf.

6. **BEFORE THE PLEA**

a. **Discussion With My Attorney** ☐

Before entering this plea, I have had a full opportunity to discuss the following with my attorney:

(1) The facts of my case;

(2) The elements of the charged offenses, prior convictions, enhancements, allegations, and circumstances in aggravation;

(3) Any defenses that I may have;

(4) My constitutional and statutory rights and waiver of those rights;

(5) The consequences of this plea, including the immigration consequences; and

(6) Anything else I think is important to my case.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

6. b. **Questions** INITIALS
I have no further questions of the court or of my attorney with regard to my plea and admissions in this case, any of the rights, or anything else on this form. ☐

c. **Stipulation to Commissioner**
I understand that I have the right to have a judge take my plea and sentence me. I give up this right and agree to have a commmissioner, sitting as a temporary judge, take my plea and sentence me. ☐

d. **Medications or Controlled Substances**
I am not taking any medication that affects my ability to understand this form and the consequences of my plea, have not recently consumed any alcohol or drugs, and am not suffering from any medical condition, except for the following: ☐

e. **Court Approval of Plea Agreement**
I understand that the plea agreement in item 2 (on pages 1 and 2) is based on the facts before the court. I understand that if the court approves this plea agreement, the approval of the court is not binding, and that the court may withdraw its approval of the plea agreement upon further consideration of the matter. I understand that if the court withdraws its approval of this plea agreement, I will be allowed to withdraw my plea. (Pen. Code, § 1192.5.) ☐

7. **STATUTORY RIGHT TO A PRELIMINARY HEARING** ☐
I understand that before I have a trial, the law gives me the right to a speedy preliminary hearing at which the prosecution would produce evidence and the court must find reasonable cause to believe I committed the crimes with which I have been charged. I understand that I have all of the above constitutional rights at the preliminary hearing, except for the right to a jury trial.

I give up my right to a preliminary hearing and the constitutional rights listed in item 5 (on page 4).

8. **WAIVER OF CONSTITUTIONAL AND STATUTORY RIGHTS** ☐
I give up, for each of the charges, enhancements, allegations, and circumstances in aggravation listed in item 1 (on page 1), my right to a jury trial, my right to a court trial, my right to confront and cross-examine witnesses, my right to remain silent and not to incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf. I understand that I am, in fact, incriminating myself with my plea.

9. **THE PLEA** ☐
I freely and voluntarily plead ☐ GUILTY ☐ NO CONTEST to the charges listed in item 1 (on page 1) and admit the prior convictions, enhancements, allegations, and circumstances in aggravation listed in item 1 (on page 1), understanding that this plea and admission will lead to the penalties listed in item 2 (on pages 1 and 2).

a. I offer my plea of guilty or no contest freely and voluntarily and with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or my loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest. ☐

b. **I understand that the court is required to find a factual basis for my plea to make sure that I am entering a plea to the proper offenses under the facts of the case.**

I offer to the court the following as the basis for my plea of guilty or no contest and any admissions:

(1) **I understand that the court may consider the following as proof of the factual basis for my plea:** ☐

(a) ☐ Preliminary hearing transcript
(b) ☐ Police report
(c) ☐ Probation report
(d) ☐ Welfare investigator's declaration
(e) ☐ Court documents regarding any alleged prior offenses
(f) ☐ Other*(specify):*
(g) ☐ *(Specify facts):*

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

9. b. (2) **I am pleading guilty or no contest to take advantage of a plea agreement (my attorney will stipulate to a factual basis for the plea).** (*People v. West* (1970) 3 Cal.3d 595.) ☐

10. **AFTER THE PLEA**

a. **Surrender**
I understand that the court is allowing me to surrender at a later date to begin serving time in custody. ☐

I agree that if I fail to appear on the date set for surrender or sentencing without a legal excuse, my plea will become an "open plea" to the court, I will not be allowed to withdraw my plea, and I may be sentenced up to the maximum allowed by law. ☐

b. **Sentencing Court**
I understand that I have the right to be sentenced by the same judge or commissioner who takes my plea. I give up that right and agree that any judge or commissioner may sentence me. ☐

c. **Sentencing Date**
I understand that I have the right to be sentenced within 20 court days. I give up that right and agree to be sentenced at a later date. ☐

11. **MANDATORY WARNING** ☐
I understand that if I am charged with violating Vehicle Code section 23103, as specified in Vehicle Code section 23103.5, or Vehicle Code sections 23152 or 23153, the following warning applies:

You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and as a result of that driving someone is killed, you can be charged with murder.

DEFENDANT'S STATEMENT

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and effects of any prior convictions, enhancements, allegations, and circumstances in aggravation have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DEFENDANT)

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge; any possible defenses to the charges; the effect of any prior convictions, enhancements, allegations, and circumstances in aggravation; and the consequences of the plea.

I concur in the plea and admissions and join in the waiver of the defendant's constitutional and statutory rights, and I hereby stipulate that there is a factual basis for the plea and refer the court to the ☐ police report ☐ preliminary hearing transcript ☐ probation report ☐ other *(specify):* . (*People v. West* (1970) 3 Cal.3d 595.)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ATTORNEY)

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below.

Language: ☐ Spanish ☐ Other *(specify):*

Date:

(CERTIFICATION NUMBER)

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF INTERPRETER)

DISTRICT ATTORNEY'S STATEMENT

I have read this form and understand the terms of the plea agreement.

I ☐ agree ☐ do not agree with the terms of the plea agreement and the indicated sentence.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF DISTRICT ATTORNEY)

COURT'S FINDINGS AND ORDER

The court, having reviewed this form (and any addenda), and having orally examined the defendant, finds as follows:

1. The initialed items in this form have been read by or read to the defendant, and the defendant understands each of them.
2. The defendant understands the nature of the crimes, prior convictions, enhancements, allegations, and circumstances in aggravation listed in item 1 (on page 1) and the consequences of the plea and any admissions.
3. The defendant expressly, knowingly, understandingly, and intelligently waives the constitutional and statutory rights associated with this plea.
4. The defendant's plea, admissions, and waiver of rights are made freely and voluntarily.
5. A factual basis exists for the plea and admissions, or the defendant is pleading under a plea bargain under *People v. West.*

The court accepts the defendant's plea, admissions, and waiver of rights, and the defendant is hereby convicted based thereon.

It is ordered that this document be filed with the court's records of this case and that the defendant's plea, admissions, and waiver of rights be accepted and entered in the minutes of this court.

Date:

▶ (SIGNATURE OF JUDICIAL OFFICER)

SPR23-13
Criminal Law: Circumstances in Aggravation

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Michael A. Gregg President	A	*The above listed proposal appropriately addresses the stated purpose.	Thank you for reviewing and submitting a comment for this proposal.
2.	Superior Court of Orange County by Iyana Doherty, Courtroom Operations Supervisor	A	Agree with the proposed changes to the Felony Tahl forms of right to trial on circumstances in aggravation justifying the imposition of upper term of a criminal offense or enhancement. Also agree with modifying “special allegations” to allegations. • The proposal would require reprinting of local form L-341 with the new revisions – no cost savings. • Implementation requirements – communication to staff, stakeholders, and Judicial Officers of addition of language in Felony Tahl forms. • Three months for implementation is sufficient	Thank you for reviewing and submitting a comment for this proposal.

Item number: 13

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/22/2023

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

Title of proposal: Criminal Procedure: Petition for Resentencing Based on Health Conditions due to Military Service

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Revise form CR-412/MIL-412

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

*Staff contact (*name, phone and e-mail*): Sarah Fleischer-Ihn, 5-7702, sarah.fleischer-ihn@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): 11/1/22
Project description from annual agenda: Develop a proposal to revise Petition for Resentencing Based on Health Conditions Due to Military Service (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.

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

Judicial Council *of* California

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-040
For business meeting on September 18–19, 2023

Title
Criminal Procedure: Petition for Resentencing Based on Health Conditions Due to Military Service

Rules, Forms, Standards, or Statutes Affected
Revise form CR-412/MIL-412

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 31, 2023

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

Executive Summary

The Criminal Law Advisory Committee recommends revising the optional Judicial Council petition for resentencing based on health conditions due to military service to reflect statutory changes expanding eligibility for relief and clarifying that relief is available for health conditions discovered after sentencing.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2024, revise *Petition for Resentencing Based on Health Conditions Due to Military Service Listed in Penal Code Section 1170.91(b)* (form CR-412/MIL-412) to reflect statutory changes to section 1170.91(b) expanding eligibility for relief and clarifying that relief is available for health conditions discovered after sentencing.

The proposed revised form is attached at page 7.

Relevant Previous Council Action

Optional form CR-412/MIL-412 was approved by the Judicial Council, effective January 1, 2020, to implement the provisions of Assembly Bill 865 (Stats. 2018, ch. 523). This legislation

allowed veterans to benefit retroactively from Penal Code section 1170.91,[1] which permits a judge to consider health conditions that have resulted from military service as a mitigating factor at sentencing. This form has not been revised since its approval.

Analysis/Rationale

Enacted by Assembly Bill 2098 (Stats. 2014, ch. 163), section 1170.91 requires the court, starting January 1, 2015, to consider a defendant's status as a veteran suffering from health conditions as a result of military service as a mitigating factor for sentencing to a determinate term. Assembly Bill 865 (Stats. 2018, ch. 523) made section 1170.91 retroactive by authorizing a court to resentence any person sentenced for a felony conviction before January 1, 2015, who was a veteran suffering from health conditions as a result of military service. (§ 1170.91(b).) Taken together, courts are required to consider military service–related health conditions as a mitigating factor for persons sentenced on or after January 1, 2015, and to consider petitions for resentencing for persons sentenced before January 1, 2015, with military service–related health conditions.

Senate Bill 1209 (Stats. 2022, ch. 721) amended section 1170.91(b) to remove the requirement that the petitioner be sentenced before January 1, 2015. According to Senator Eggman, the bill's author, this amendment sought to address situations where health conditions related to military service are belatedly discovered after the original sentencing, such as the situation in *People v. Valliant* (2020) 55 Cal.App.5th 903. (Assem. Com. on Pub. Saf., Analysis of Sen. Bill No. 1209 (2021–2022 Reg. Sess.), as amended May 19, 2022, p. 4.) In *Valliant*, the defendant was sentenced in March 2015, and the Department of Veterans Affairs verified in 2017 that his post-traumatic stress disorder stemmed from military service. The defendant filed a petition for resentencing under section 1170.91(b), asserting that his military service–related trauma was not considered as a factor in mitigation at the time of sentencing. The trial court denied the petition because he was sentenced after January 1, 2015, and section 1170.91(b) allowed resentencing only for persons sentenced before January 1, 2015. The ruling was affirmed on appeal, but the court invited the Legislature to revisit the issue and, "if it believes it is appropriate to do so, to provide Valliant and any other veteran in a similar position, with statutory relief." (*People v. Valliant, supra,* 55 Cal.App.5th at p. 912.) The Supreme Court denied the petition for review, but Justice Liu provided a concurring statement, noting that "by requiring that the original sentencing occur prior to January 1, 2015, for an individual to be eligible for resentencing—irrespective of when it was determined that the trauma, mental health, or substance abuse conditions were a result of military service—section 1170.91, subdivision (b) fails to ensure equal treatment of all veterans." (*People v. Valliant* (2020) 275 Cal.Rptr.3d 221, 228–230 (conc. statement of Liu, J.).)

[1] All further references are to the Penal Code unless otherwise specified.

SB 1209 also expanded resentencing relief under section 1170.91(b) to indeterminate sentences, with the exclusion of convictions for specified serious and violent felonies and offenses requiring sex offender registration.

The proposed form revisions reflect these statutory changes by:

- Revising item 5 to further incorporate statutory language stating that the circumstance of suffering from the identified health condition was not considered as a mitigating factor in deciding the sentence;
- Revising item 6 to remove the requirement that the petitioner verify that they were sentenced before January 1, 2015;
- Adding a new item 6 with a check box for a petitioner to indicate whether there is new evidence about a health condition that was discovered after sentencing; and
- Adding a new item 7 stating, "Petitioner was not convicted of, or does not have one or more prior convictions for, an offense that is listed in Penal Code section 667(e)(2)(C)(iv) or an offense requiring sex offender registration under Penal Code section 290(c)."

The committee also proposes deleting the provision asking for the moving party's date of birth as unnecessary, and technical and formatting revisions to comply with Judicial Council form standards.

Policy implications

This proposal furthers the council's policy of ensuring access to justice for all litigants by conforming the form to reflect statutory changes.

Comments

The Criminal Law Advisory Committee circulated the proposed form for public comment two separate times, incorporating revisions based on comments received in the first circulation in the second circulation. Some of the more significant comments are provided below. The committee's specific responses to each comment are available in the attached comment charts at pages 8–19.

First circulation (W23-05)

This proposal first circulated for public comment from December 9, 2022, to January 20, 2023. The proposed revisions reflected statutory changes to section 1170.91(b) by deleting the requirement that the petitioner be sentenced before January 1, 2015, adding item 6 excluding petitioners convicted of specified serious and violent felony offenses and offenses requiring sex offender registration, and making technical changes.

The committee received four comments in total: two comments agreeing with the proposal, from the Superior Court of Orange County and the Orange County Bar Association; one comment that did not indicate a position but appears to agree with the proposal if modified, from Justice Eileen C. Moore of the Fourth Appellate District of the Court of Appeal, Division Three; and one comment from a member of the public disagreeing with the proposal due to a disagreement with

the underlying law. The full text of the comments and the committee's responses are on the attached comment chart labeled W23-05; the substantive comments are summarized below.

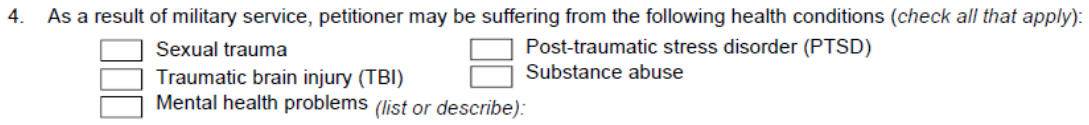
"Diagnosed" health conditions. The committee considered a comment to revise item 5 to refer to "all diagnosed" health conditions resulting from military service. However, nothing in the statute requires a health condition to be formally "diagnosed," only that the petitioner "may be suffering from" specific health conditions resulting from military service. Thus, the committee declines to refer to diagnosed health conditions in the form.

Health conditions that were discovered after the original sentencing. Items 4 and 5 correspond to section 1170.91(b)(1), which authorizes relief for "[a] person currently serving a sentence for a felony conviction . . . who is, or was, a member of the United States military and who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the person's military service," who can show that "the circumstance of suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the person's military service was not considered" as a mitigating factor during sentencing.

A commenter expressed concern that the current phrasing of item 5 –which was not changed in the first proposal circulated– could be read to exclude relief for health conditions that were diagnosed after the original sentencing, stating that SB 1209 intended to provide relief in these types of situations.

In light of the legislative history behind SB 1209, the committee proposed revising item 5 as follows: "When petitioner was sentenced, the judge did not consider all of the above health conditions resulting from petitioner's military service as a factor in deciding the sentence."

The "all of the above" language would tie item 5 to item 4, which allows the petitioner to identify health conditions they may be suffering from as a result of military service:


4. As a result of military service, petitioner may be suffering from the following health conditions (*check all that apply*):
☐ Sexual trauma ☐ Post-traumatic stress disorder (PTSD)
☐ Traumatic brain injury (TBI) ☐ Substance abuse
☐ Mental health problems *(list or describe):*

The committee recirculated the proposal to seek further comment on these changes, as well as deleting a provision asking for the moving party's date of birth as unnecessary, and further technical changes, including adding a court address box to the petition.

Second circulation (SPR23-34)

The committee received six comments in total: two comments agreeing with the proposal from the Superior Court of Orange County and a criminal defense attorney; three comments that agreed if modified from Justice Eileen Moore of the Fourth District Court of Appeal, the Orange County Bar Association, and a criminal defense attorney; and one comment from a member of the public that did not indicate a position but appears to agree with the proposal if modified. The

full text of the comments and the committee's responses are on the attached comment chart labeled SPR23-34; the substantive comments are summarized below.

Additional statutory language. Three commenters requested the committee incorporate additional statutory language from section 1170.91(b)(1) into the form by further revising item 5 to state that the identified health condition was not considered "as a mitigating factor" in deciding the sentence and when the petitioner was sentenced, the judge did not "consider the circumstance of suffering from all of the above health conditions" resulting from petitioner's military service as a factor in deciding the sentence. The committee recommends adding the additional statutory language to the form.

Indicating the discovery of new evidence discovered after sentencing. Two commenters stated that the proposed changes to the form do not provide a way for a petitioner to indicate the discovery of new evidence after the sentencing, as expressed in *People v. Valliant.* Based on the legislative history of SB 1209, the committee agreed and proposes a new optional item for a petitioner to indicate this.

Appointment of counsel. A commenter requested adding an item for the petitioner to indicate if they are requesting counsel. Because this would be a substantive change to the proposal that would require circulation for public comment, staff recommends the committee consider this suggestion during a future proposal cycle.

Deleting court branch name. The committee proposed adding a court address box to this form and other record cleaning forms to conform to Judicial Council form standards. The committee received a comment objecting to adding the court address box on a separate record cleaning forms proposal,[2] on the basis that this change could be confusing to self-represented parties and create an additional barrier to filing. The committee declined to remove the address box, which is a standard item on Judicial Council forms, but agreed that the "branch name" line should be removed in order to simplify this section of the form. The committee recommends the same revision on this form.

Alternatives considered

The committee did not consider the alternative of taking no action, determining that it was important to revise the form to implement statutory changes.

Fiscal and Operational Impacts

Expected costs are limited to possible case management system updates and the production of new forms. The committee received comments from one court noting that the revisions would require the production of new forms and review with court staff. The court did not anticipate significant costs or training needs.

[2] See Judicial Council of Cal., Advisory Com. Rep., *Criminal Procedure: Record Cleaning Forms* (July 28, 2023), p. 10.)

Attachments and Links

1. Form CR-412, at page 7
2. Chart of comments, at pages 8–19
3. Link A: Sen. Bill 1209 (Stats. 2022, ch. 721), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1209*

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR *(name):*		DRAFT Not approved by the Judicial Council 7/17/2023
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE:		
THE PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: CDC OR ID NO.:		CASE NUMBER:
PETITION FOR RESENTENCING BASED ON HEALTH CONDITIONS DUE TO MILITARY SERVICE LISTED IN PENAL CODE SECTION 1170.91(b)		*FOR COURT USE ONLY* DATE: TIME: DEPARTMENT:

Instructions *(if you are filing for yourself):* File this petition with the same court where you were sentenced. File a separate petition for each case in which you are asking for resentencing. "Petitioner" as used in this form refers to you.

1. Petitioner *(the defendant named above)* is currently serving a sentence for the felony conviction listed below.
   a. ☐ Petitioner is currently in jail or prison.
   b. ☐ Petitioner is on supervision (for example, probation, parole, PRCS, mandatory supervision) because of the conviction.
2. On *(date of conviction):* , petitioner was convicted of the following felony offenses:

Code *(Penal, Vehicle, etc.)*	Section	Name of offense

   ☐ Check here if additional space is needed for listing offenses and use *Attachment to Judicial Council Form* (form MC-025) to list the information requested.
3. Military service *(choose one)*
   a. ☐ Petitioner was a member of the U.S. military. Petitioner served in *(branch of military):*
      from *(date of entry into military):* until *(last date served in the U.S. military):*
   b. ☐ Petitioner is currently a member of the U.S. military. Petitioner serves in *(branch of military):*
      and petitioner's entry date was:
4. As a result of military service, petitioner may be suffering from the following health conditions *(check all that apply):*
   ☐ Sexual trauma ☐ Post-traumatic stress disorder (PTSD)
   ☐ Traumatic brain injury (TBI) ☐ Substance abuse
   ☐ Mental health problems *(list or describe):*
5. ☐ When petitioner was sentenced, the judge did not consider the circumstance of suffering from all of the above health conditions resulting from petitioner's military service as a mitigating factor in deciding the sentence.
6. ☐ Petitioner has new evidence about a health condition that was discovered after sentencing.
7. Petitioner was not convicted of, or does not have one or more prior convictions for, an offense that is listed in Penal Code section 667(e)(2)(C)(iv) or an offense requiring sex offender registration under Penal Code section 290(c).

Date: _____ ▶ _____

SIGNATURE OF PETITIONER OR ATTORNEY

Proof of Service **(form CR-106) may be used to provide proof of service of this petition.**

Form Approved for Optional Use
Judicial Council of California
CR-412/MIL-412 [Rev. January 1, 2024]

PETITION FOR RESENTENCING BASED ON HEALTH CONDITIONS DUE TO MILITARY SERVICE LISTED IN PENAL CODE SECTION 1170.91(b)

W23-05

Petition for Resentencing Based on Health Conditions due to Military Service (Revise form CR-412/MIL-412)

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

	Commenter	Position	Comment	DRAFT Committee Response
1.	Lezlie Abbott Counselor Fresno, California	**N**	Currently the Penal Code section 1026, et. allows for a legal insanity requirement regardless of mental health conditions due to military service. If they could have distinguishing between right and wrong at the time of commission of the crime, there should not be any changes.	Thank you for reviewing and submitting a comment for this proposal. This comment goes beyond the scope of the proposal.
2.	Hon. Eileen C. Moore Justice Court of Appeal, Fourth Appellate District	NI	Item #5 states: "When petitioner was sentenced, the judge did not consider health conditions resulting from petitioner's military service as a factor in deciding the sentence." The impetus for Senator Eggman's change to Penal Code section 1170.91 was the holding in *People v. Valliant* (2020) 55 Cal.App.5th 903. Valliant was sentenced prior to January 1, 2015 [when 1170.91 was first enacted], but was not diagnosed with PTSD until sometime in 2016. Thus, he didn't qualify for resentencing under either subdivision (a) or (b). As time goes by, we are learning more and more about these military-caused maladies. For example, the Council on Criminal Justice's Veterans Justice Commission issued a preliminary assessment in August 2022. [It is attached] Note that on p. 4, it states: "**Research has found robust associations between PTSD, traumatic brain injury, substance use**	Thank you for reviewing and submitting a comment for this proposal.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	DRAFT Committee Response
			disorders, and both aggressive behavior and criminal justice system involvement for veterans." Also note that on p. 6, it states: "**TBI increases the risk for a range of additional cognitive impairment and mental health disorder diagnoses over time, from PTSD and anxiety disorders to schizophrenia and psychotic disorders. These correlations are strongest for TBI and PTSD; for affected veterans, having a TBI is correlated with a 44% increase in later PTSD diagnosis.**" Thus, it is apparent that even though the judge may have considered one of the maladies during the original sentencing, another malady may have been diagnosed after sentencing. I think item #5 needs to be updated along with the rest of the proposed updates. I think something like this would be appropriate: "When petitioner was sentenced, the judge did not consider [**ALL DIAGNOSED**] health conditions resulting from petitioner's military service as a factor in deciding the sentence."	The committee declines the suggestion to refer to "all diagnosed" health conditions resulting from military service, as nothing in the statute requires a health condition to be formally diagnosed; the statute only requires demonstrating that the defendant "may be suffering from" the listed ailments resulting from military service. However, the committee agrees to clarify item 5 by revising the language to refer to "all of the above health conditions resulting from petitioner's military service as a factor in deciding the sentence." This would tie item 5 in with item 4, which allows the petitioner to state the health conditions that may be suffering from.

W23-05

Petition for Resentencing Based on Health Conditions due to Military Service (Revise form CR-412/MIL-412)

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

	Commenter	Position	Comment	DRAFT Committee Response
3.	Orange County Bar Association By Michael A. Gregg, President	A	• *Does the proposal appropriately address the stated purpose?* Accurately reflects changes in law. The proposal appropriately addresses the stated purpose.	Thank you for reviewing and submitting a comment for this proposal.
4.	Superior Court of Orange County By Elizabeth Flores, Operations Analyst	A	• *Does the proposal appropriately address the stated purpose?* Yes • *Would the proposal provide cost savings? If so, please quantify.* No. Petition filings may increase because those eligible now include defendants who were sentenced to indeterminate life sentences, as well as those sentenced prior to January 1, 2015. It would not be cost saving because new forms must be printed. However, the cost would not be significant. • *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?* Replacing forms and reviewing them with courtroom clerks and clerk's office staff. Training would not be needed and the update to staff should take approximately 10 minutes for each department. All procedures referencing the financial statement would have to be updated to include the new form link and	Thank you for reviewing and submitting a comment for this proposal.

W23-05

Petition for Resentencing Based on Health Conditions due to Military Service (Revise form CR-412/MIL-412)

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

	Commenter	Position	Comment	DRAFT Committee Response
			verbiage. Docket code changes would not be needed. • *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes. • *How well would this proposal work in courts of different sizes?* The proposal will have minimal impact to courts of different sizes.	

SPR23-34
Criminal Procedure: Petition for Resentencing Based on Health Conditions From Military Service

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Michael A. Gregg, President	AM	The proposed form fails to remedy the concern expressed in *People v. Valliant* because it does not provide a way for Petitioner to allege the discovery of new evidence after the sentencing. For example, at sentencing the court may have considered defendant's mental health problems. Subsequent to the sentencing, the mental health problems have worsened and also may have been linked to military service by the VA. If Petitioner checks "mental health problems" in item 4 and checks item 5, the court might erroneously deny the petition without realizing that new evidence exists. The form should add an item to allow Petitioner to allege that new evidence exists. Item 5 should state "When petitioner was sentenced, the judge did not consider all of the circumstances of suffering from the above health conditions as mitigating factors." Item 5 should state "as mitigating factors." It is not enough that the judge considered the health condition if it was not considered as a mitigating factor. It is possible that a sentencing court considered a listed health condition as a factor either in aggravation or as a reason not to mitigate. For example, a court could have concluded a defendant was a particular risk to public safety because he/she is a trained killer with PTSD or other mental health condition.	The committee agrees with this suggestion and will add a new item for the petitioner to indicate if they have new evidence about a health condition that was discovered after sentencing. The committee agrees with this suggestion to further incorporate the statutory language of Penal Code section 1170.91(b)(1) into item 5 by stating that the identified health condition was not considered as a mitigating factor in deciding the sentence.
2.	Orange County Public Defender	AM	The proposed form fails to remedy the concern expressed in *People v. Valliant* because it does	The committee agrees with this suggestion and will add a new item for the petitioner to indicate if

	Commenter	Position	Comment	Committee Response
	By Adam Vining, Assistant Public Defender		provide a way for Petitioner to allege the discovery of new evidence after the sentencing. For example, at sentencing the court may have considered defendant's mental health problems. Subsequent to the sentencing, the mental health problems have worsened and also may have been linked to military service by the VA. If Petitioner checks "mental health problems" in item 4 and checks item 5, the court might erroneously deny the petition without realizing that new evidence exists. The form should add an item to allow Petitioner to allege that new evidence exists.	they have new evidence about a health condition that was discovered after sentencing.
			Item 5 should state "When petitioner was sentenced, the judge did not consider all of the circumstances of suffering from the above health conditions as mitigating factors."	The committee agrees with this suggestion to further incorporate the statutory language of Penal Code section 1170.91(b)(1) into item 5 by stating that the judge did not consider the circumstance of suffering from all of the above health conditions.
			Item 5 should state "as mitigating factors." It is not enough that the judge considered the health condition if it was not considered as a mitigating factor. It is possible that a sentencing court considered a listed health condition as a factor either in aggravation or as a reason not to mitigate. For example, a court could have concluded a defendant was a particular risk to public safety because he/she is a trained killer with PTSD or other mental health condition.	The committee agrees with this suggestion to further incorporate the statutory language of Penal Code section 1170.91(b)(1) into item 5 by stating that the identified health condition was not considered as a mitigating factor in deciding the sentence.
			Reference to "resulting from petitioner's military service" is duplicative of Item 4 and should be deleted from Item 5.	The committee prefers to keep the language in item 5 for clarity.

SPR23-34
Criminal Procedure: Petition for Resentencing Based on Health Conditions From Military Service

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

	Commenter	Position	Comment	Committee Response
3.	Hon. Eileen C. Moore Associate Justice Court of Appeal, Fourth Appellate District, Division Three	NI	**COMMENT #1:** On the proposed form, item 5 states: When petitioner was sentenced, the judge did not consider all of the above health conditions resulting from petitioner's military service as a factor in deciding the sentence. My comment about item 5: The statute, Penal Code 1170.91 (b)(1) requires that the sentencing court did not consider the health condition "as a factor in mitigation at the time of sentencing." It is possible that a sentencing court considered a listed health condition as a factor either in aggravation or as a reason not to mitigate. For example, a court could have concluded a defendant was a particular risk to public safety because he/she is a trained killer with PTSD. For that reason, I suggest the form somehow make it clear that the sentencing court considered the health condition as a mitigating factor. **COMMENT #2:** On the proposed form, item 5 states: When petitioner was sentenced, the judge did not consider all of the above health conditions resulting from petitioner's military service as a factor in deciding the sentence.	Thank you for reviewing and submitting a comment for this proposal. The committee agrees with this suggestion to further incorporate the statutory language of Penal Code section 1170.91(b)(1) into item 5 by stating that the identified health condition was not considered as a mitigating factor in deciding the sentence.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			My comment about item 5: The statute, Penal Code 1170.91 (b)(1) states . . .to request resentencing **if the circumstance of suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the person's military service was not considered** as a factor in mitigation at the time of sentencing. In order to fully explain my concern about the proposed language on the form, I refer to the case of *People v. Valliant* (2020) 275 Cal.Rptr. 3d 221. Valliant, a veteran, was sentenced in 2015. The reality is that it sometimes takes the VA years to diagnose a veteran's condition. As Justice Liu noted: "In fact, it was not until 2017 that the United States Department of Veterans Affairs (VA) verified that his conditions stemmed from his military service." So, a defendant/veteran may have some evidence he/she is suffering from one of the listed health conditions, just as Valliant did in 2015. And the sentencing court might have considered it, but something more about the condition is revealed later, just as the circumstance in *Valliant.* This kind of situation, that is learning more about the circumstances, is not at all unusual in that some veterans go to	

SPR23-34
Criminal Procedure: Petition for Resentencing Based on Health Conditions From Military Service

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

	Commenter	Position	Comment	Committee Response
			non-VA professionals who suspect one of the listed health conditions, but don't have enough experience in military trauma to emphatically pronounce a diagnosis. Also notice that Valliant suspected he had PTSD in 2015, but when that diagnosis was confirmed by the VA in 2017, the VA **also** concluded he had an opioid disorder stemming from military service. I suggest the form have language that better states what the statute states, perhaps something like: When petitioner was sentenced, the judge **did not consider the circumstance of suffering from any or all of the above health conditions** resulting from petitioner's military service as a factor in deciding the sentence.	The committee agrees with this suggestion to further incorporate the statutory language of Penal Code section 1170.91(b)(1) into item 5 by stating that the judge did not consider the circumstance of suffering from all of the above health conditions.
4.	Angelica Rivera Senior Defense Attorney Fresno County Public Defender's Office	A	No specific comment.	Thank you for reviewing and submitting a comment for this proposal.
5.	Superior Court of Orange County by Iyana Doherty, Courtroom Operations Supervisor	A	Agree with the proposed changes; modification to item 5, removing DOB, and removing/replacing item 6. No cost savings as this form is printed as needed. Procedures and processes have already been modified/implemented.	Thank you for reviewing and submitting a comment for this proposal.
6.	James Glenn Valliant Costa Mesa, California	NI	I have no issue or comment on substantive changes proposed so far to the form. My first	Thank you for reviewing and submitting a comment for this proposal.

	Commenter	Position	Comment	Committee Response
			comment is on making the form and process as simple as possible for incarcerated Veterans who might be using it. Due to changes made to the law, there potentially will now be Veterans incarcerated for decades eligible. These Veterans may have little to no outside help and may possibly be somewhat compromised in their ability to fend for themselves. With that in mind: 1) Would it be possible to add one more item indicating / asking if the Veteran would like to have counsel assigned? Some Veterans may not be aware this is available to them. I suspect most will need and want that legal assistance. Making it plain to them would be helpful. My final comment is on narrative and background discussion contained in both SPR23-34 and W23-05. I have noticed that a substantial change SB1209 made to PC1170.91 has gone largely unnoticed and has not been properly described. The statement Senate Bill 1209 "add(ed) exclusions for petitioners convicted of specified serious and violent felonies and offenses requiring sex offender registration" is an incorrect description of what the bill did. To clarify; The bill did not "add" such exclusions. Those individuals were never eligible under PC1170.91. PC1170.91 in its previous form	Because this would be a substantive change to the proposal, the committee believes public comment should be sought before it is considered for adoption. The committee will consider this suggestion during a future proposal cycle. The committee appreciates the comment. The committee will note in its report recommending these revisions that Senate Bill 1209 amended Penal Code section 1170.91 to allow resentencing for persons with indeterminate sentences, with specified exceptions.

	Commenter	Position	Comment	Committee Response
			stated "as a factor in mitigation when imposing a term under *subdivision (b) of Section 1170*". That language excluded all indeterminate sentenced Veterans from eligibility. SB1209 removed "when imposing a term under subdivision (b) of Section 1170" and changed the language to "as a factor in mitigation when imposing a sentence" thereby *adding* indeterminate sentenced Veterans to eligibility. The exclusionary language regarding specified felonies / sex registrants was included to define which indeterminate sentences were *now being added* to eligibility. I am not parsing words; in my opinion the addition to eligibility is a point that needs clarification to petitioners and attorneys and the courts as it importantly adds this class of indeterminate sentenced Veterans. It is incumbent on us to do what we can to make all involved aware that this new group of Veterans now have this opportunity. Your language and narrative fails to do that. In the process of designing and negotiating language for the legislation we had extensive discussion on this exact topic. 2) I request the Committee amend and clarify narrative to state "Senate Bill 1209 expands sentencing and resentencing eligibility to indeterminate sentenced veterans except those convicted of specified serious and violent	

	Commenter	Position	Comment	Committee Response
			felonies and offenses requiring sex offender registration” I do not have a suggestion regarding how that information might be incorporated into the petition itself. If possible doing so would be helpful for the purpose of bringing awareness to potential petitioners. Perhaps the Judicial Council and Committee can give thought and consideration to how that might be accomplished?	It is the committee’s position that new item #6, which states the specific offenses that are excluded from relief, will assist petitioners with determining whether they may be eligible for relief, regardless of whether the sentence was determinate or indeterminate.

Item number: 14

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Criminal Procedure: Record Cleaning Forms

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Revise forms CR-180, CR-181, CR-400, CR-401, CR-402, CR-403, CR-409, CR-409-INFO, CR-430, CR-430-INFO, CR-431, and CR-432

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

*Staff contact (*name, phone and e-mail*): Alex Bender, 415-865-7995, Alex.Bender@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*): February 16, 2023
Project description from annual agenda: 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 (Stats. 2022, ch. 494; ability to pay reimbursement fees for dismissal petitions), SB 1106 (Stats. 2022, ch. 734; court prohibited from denying relief based on unpaid restitution or restitution fine), SB 731 (Stats. 2022, ch. 814; automated record relief under Penal Code section 1203.425), and AB 160 (Stats. 2022, ch. 771: extending relief under Penal Code section 1203.4b to individuals who participated in institutional firehouse programs) will also be implemented in this proposal

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: Penal Code section 851.91
  ☐ 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.: 23-173
For business meeting on September 18–19, 2023

Title
Criminal Procedure: Record Cleaning Forms

Rules, Forms, Standards, or Statutes Affected
Revise forms CR-180, CR-181, CR-400, CR-401, CR-402, CR-403, CR-409, CR-409-INFO, CR-430, CR-430-INFO, CR-431, and CR-432

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 28, 2023

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Executive Summary

The Criminal Law Advisory Committee recommends revising optional criminal forms used to petition for dismissals and reductions of convictions and request sealing of arrest records. The proposed revisions reflect recent statutory changes that allow for automatic record relief, expand who is eligible for relief, and clarify the effect of relief granted.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2024:

1. Revise the following forms to conform to recent legislation by adding a notice that automatic relief may have already been granted and to make other clarifying and technical changes:

   - *Petition for Dismissal* (form CR-180);
   - *Order for Dismissal* (form CR-181);
   - *Petition/Application (Health and Safety Code, § 11361.8) Adult Crime(s)* (form CR-400);

- *Petition to Seal Arrest and Related Records (Pen. Code, § 851.91)* (form CR-409);

- *Information on How to File a Petition to Seal Arrest and Related Records Under Penal Code Section 851.91* (form CR-409-INFO); and

- *Petition for Dismissal—Incarcerated Individual Hand Crew (Pen. Code, § 1203.4b)* (form CR-430);

2. Further revise form CR-430 and revise the following additional forms to account for the expansion of relief provided by recent legislation and to make other clarifying and technical changes:

   - *Information on Filing a Petition for Dismissal—Incarcerated Individual Hand Crew (Pen. Code, § 1203.4b)* (form CR-430-INFO);

   - *Court Cover Letter and Agency Certification—Incarcerated Individual Hand Crew (Pen. Code, § 1203.4b)* (form CR-431); and

   - *Order on Petition—Incarcerated Individual Hand Crew (Pen. Code, § 1203.4b)* (form CR-432);

3. Further revise forms CR-430-INFO and CR-432 to conform to recent legislation by indicating that the petitioner may still be subject to the terms and conditions of any unexpired criminal protective order; and

4. Revise the following forms make the title consistent with the recommended new title of form CR-400 and to make minor technical changes:

   - *Proof of Service for Petition/Application (Health and Safety Code, § 11361.8) Adult Crime(s)* (form CR-401);

   - *Prosecuting Agency Response to Petition/Application (Health and Safety Code, § 11361.8) Adult Crime(s)* (form CR-402); and

   - *Order After Petition/Application (Health and Safety Code, § 11361.8) Adult Crimes* (form CR-403).

The revised forms are attached at pages 15–38.

Relevant Previous Council Action

Effective January 1, 2019, the Judicial Council revised forms CR-180 and CR-181 by adding an option to request conviction relief under Penal Code section 1203.42[1] for persons who were sentenced to state prison for a felony that, if committed after criminal justice realignment

[1] All further references are to the Penal Code unless otherwise specified.

legislation that became effective in 2011, would have been eligible for a county jail sentence under section 1170(h)(5).

Effective July 1, 2017, the council approved forms CR-400, CR-401, and CR-402 as replacements for form CR-187 (which was concurrently revoked), and renumbered form CR-188 as form CR-403. Collectively, these forms implemented Proposition 64, the "Control, Regulate and Tax Adult Use of Marijuana Act," which, effective November 9, 2016, eliminated or reduced the punishment for designated marijuana-related offenses, and added Health and Safety Code section 11361.8, which provided a resentencing and redesignation mechanism for persons convicted under the previous law who would not have been guilty of an offense or who would have been guilty of a lesser offense had Proposition 64 been in effect at the time. Proposition 64 also directed the council to develop forms for use by persons applying for the relief provided for in the initiative. Effective March 14, 2022, the council made minor revisions to form CR-402 to correct inadvertent errors—but forms CR-400 and CR-401 have not been revised, and form CR-403 has not been revised apart from being renumbered.

Effective January 1, 2019, the council approved forms CR-409 and CR-409-INFO. These forms implement Senate Bill 393 (Stats. 2017, ch. 680), which added section 851.91 and directed the council to develop forms for use by persons applying to have their arrest records sealed under this section.

Effective January 1, 2022, the council approved forms CR-430, CR-430-INFO, CR-431, and CR-432. These forms implement Assembly Bill 2147 (Stats. 2020, ch. 60), which authorized conviction relief for persons who successfully participated as an incarcerated individual hand crew member in a fire camp program operated by a county or the California Department of Corrections and Rehabilitation.

Analysis/Rationale

The recommended form revisions are based largely on statutory changes made by recently enacted legislation:

- Effective January 1, 2020, Assembly Bill 1076 (Stats. 2019, ch. 578) added sections 851.93 and 1203.425, requiring the state Department of Justice (DOJ) to, beginning on January 1, 2021, review statewide criminal history records and, without requiring a petition or motion, grant automatic record relief to persons with arrests for a misdemeanor or felony punishable in the county jail that did not result in a conviction, as specified, and to persons with convictions who completed probation without revocation or who completed an infraction or misdemeanor sentence without probation, as specified. Persons granted relief are released from most penalties and disabilities resulting from the arrest or conviction, and courts, in turn, are generally prohibited from disclosing information on these arrests or convictions, as well as convictions granted relief under other specified dismissal statutes.

- Effective January 1, 2022, Assembly Bill 1281 (Stats. 2021, ch. 209) amended sections 1203.4, 1203.4a, 1203.4b, and 1203.425 to specify that dismissal of a pleading under these sections does not invalidate a protective order issued by the court in the underlying case, and that such an order remains in effect until the order expires or is modified by the issuing court, despite the dismissal of the underlying pleading.

- Effective September 29, 2022, Assembly Bill 160 (Stats. 2022, ch. 771) amended section 1203.4b to allow defendants who successfully participated at an institutional firehouse, as specified, to petition to have their qualifying convictions dismissed. Defendants granted relief are released from all penalties and disabilities resulting from their conviction.

- Effective January 1, 2023, Assembly Bill 1706 (Stats. 2022, ch. 387) amended Health and Safety Code section 11361.9 to require courts to issue an order granting relief under Health and Safety Code section 11361.8 for specified marijuana-related convictions, and to notify the state DOJ by March 1, 2023, in cases where the prosecuting agency did not challenge the granting of relief by July 1, 2020.[2]

- Effective January 1, 2023, Senate Bill 731 (Stats. 2022, ch. 814) amended section 1203.41 to allow defendants who have been convicted of a felony to petition for dismissal relief, as long as the conviction does not require registration as a sex offender; and commencing July 1, 2023, amended section 851.93 to extend automatic arrest record relief to persons who have been arrested for a felony, including a felony punishable in the state prison, as specified, and section 1203.425 to extend automatic conviction record relief to defendants convicted of a felony other than one for which the defendant completed probation without revocation, as specified.

- Effective January 1, 2023, Senate Bill 1106 (Stats. 2022, ch. 734) amended sections 17, 1203.4, 1203.4a, 1203.41, 1203.42, and 1203.45 to prohibit the denial of relief under these sections because of an unfulfilled order of restitution or restitution fine. Effective July 10, 2023, Assembly Bill 134 (Stats. 2023, ch. 47) amended section 1203.4b in the same manner.

- Effective January 1, 2023, Senate Bill 1260 (Stats. 2022, ch. 842) amended section 1203.41 to require an order granting relief under this section to specify that the order does not relieve the petitioner of the obligation to disclose the conviction on enrollment as a provider of in-home supportive services and "waiver personal care services."

[2] Previously, effective January 1, 2019, Assembly Bill 1793 (Stats. 2018, ch. 993) added Health and Safety Code section 11361.9, which removed the burden of seeking relief for marijuana-related convictions from an eligible defendant and made it the responsibility of government agencies. Section 11361.9 required the state DOJ to identify past convictions potentially eligible for relief under Health and Safety Code section 11361.8 and notify the relevant prosecuting agency, which had until July 1, 2020, to challenge the granting of relief based on ineligibility or a perceived public safety risk. A court granting relief was required to notify the state DOJ, which in turn was required to update the defendant's criminal information accordingly.

Based on this legislation, and also to avoid the use of gendered pronouns and make minor technical changes, the committee recommends that the council, effective January 1, 2024, revise the forms as described below.

Petition for Dismissal **(form CR-180)**

- Add a notice that the state DOJ may have already granted automatic relief under section 1203.425, that filing a petition may be unnecessary if relief has already been granted, and that a DOJ RAP sheet may (but is not required to) be requested to confirm whether relief has already been granted.

- Revise item 5 to account for the expansion of dismissal relief under section 1203.41 to a petitioner who served a felony state prison sentence and whose conviction did not result in a requirement to register as a sex offender.

- Revise items 4, 7, and 9 to avoid the use of gendered pronouns.

- Eliminate the declaration under penalty of perjury from the signature line and specify in items 2c, 3b, 4, 5c, and 6 that either *Attachment* (form MC-025) or *Attached Declaration* (form MC-031) may be used if additional space is needed.

- Make minor technical changes: add court address box; rephrase items 2, 3, 5, and 6 for clarity; add printed name field to signature line.

Order for Dismissal **(form CR-181)**

- Combine items 5 and 6 as new item 5 and renumber subsequent items as needed.

- Revise new item 6 to account for statutory changes regarding the petitioner's disclosure requirements.[3]

- Add a notice provision as new item 8 stating that dismissal under section 1203.4 or 1203.4a does not release the petitioner from the terms and conditions of any unexpired criminal protective order, as specified.

- Add a notice provision as new item 11 stating that, except as provided in section 1203.425(a)(4), if the order is granted under section 1203.4, 1203.4a, 1203.41, or 1203.42, the court must not disclose information concerning the conviction except to the person whose conviction was granted relief or to a criminal justice agency.

[3] As noted above, SB 1260 amended section 1203.41 to require an order granting relief under this section to specify that the petitioner must still disclose the conviction on enrollment as a provider of in-home supportive services and "waiver personal care services." This statutory provision came to the attention of the committee only after the rest of the proposal had already circulated for public comment. Because this additional notice language is a minor change needed to conform the order form to the statute, the committee is recommending it now even though it was not circulated. A recommendation for a minor substantive change unlikely to create controversy may be adopted without circulation for comment. (Cal. Rules of Court, rule 10.22(d).)

- Revise item 5 and new item 7 to avoid the use of gendered pronouns.

- Make minor technical changes: add court address box; revise introductory text before item 1.

***Petition/Application Under Health and Safety Code Section 11361.8—Adult Crimes* (form CR-400)**

- Add a notice that automatic relief may have already been granted, that filing a petition may be unnecessary if relief has already been granted, and that a DOJ RAP sheet may (but is not required to) be requested to confirm whether relief has already been granted.

- Revise items 2 and 4 to avoid the use of gendered pronouns.

- Revise signature line to clarify that an attorney may sign.

- Make minor technical changes: revise title; add court address box; add numbering to items 1 and 2; add printed name field to signature line.

***Proof of Service for Petition/Application Under Health and Safety Code Section 11361.8—Adult Crimes* (form CR-401)**

- Make minor technical changes: revise title to conform to recommended new title of form CR-400; add court address box.

***Prosecuting Agency Response to Petition/Application Under Health and Safety Code Section 11361.8—Adult Crimes* (form CR-402)**

- Make minor technical changes: revise title to conform to recommended new title of form CR-400; add court address box; add instructions ("choose all that apply"); add numbering to check box items; add printed name field to signature line.

***Order After Petition/Application Under Health and Safety Code Section 11361.8—Adult Crimes* (form CR-403)**

- Make minor technical changes: revise title to conform to recommended new title of form CR-400; add court address box; add numbering and clarifying instructions to items 1, 2, and 3; move location of check box in items 1, 2, 3, 5, and 6.

***Petition to Seal Arrest and Related Records* (form CR-409)**

- Add a reference to *Information on How to File a Petition to Seal Arrest and Related Records* (form CR-409-INFO).

- Add a notice that automatic relief may have already been granted under section 851.93, that filing a petition may be unnecessary if relief has already been granted, and that a DOJ RAP sheet may (but is not required to) be requested to confirm whether relief has already been granted.

- Revise for clarity instructions on filling out case number and case name in upper right corner of page 1.

- Simplify and eliminate duplication in items 3e, 3f, and 3g.

- Add a check box to item 3f for the petitioner to indicate whether a prosecutor filed a case against the petitioner.

- Revise item 3h: rephrase instructions so that pro se petitioners are not deterred from requesting relief; add text to clarify when the interests-of-justice standard applies.

- Make minor technical changes: reorganize item 1 by separating attorney/petitioner fields and add text regarding address information; clarify instructions in items 2 and 3; add printed name field to signature line.

***Information on How to File a Petition to Seal Arrest and Related Records* (form CR-409-INFO)**

- Add numbering to each question item, and reorder in a more logical fashion so that item 3 is new item 5, item 4 is new item 3, and item 5 is new item 4.

- Revise item 1 to clarify what records are eligible for sealing.

- Revise item 2 to include a reference to *Petition to Seal Arrest and Related Records* (form CR-409), clarify that form CR-409 is optional, and clarify that petitioners should try to provide as much information as they can.

- Revise new item 4 to provide more information on service.

- Revise new item 5 to clarify how courts determine eligibility for arrest sealing.

- Revise item 8 to state that automatic relief may have already been granted under section 851.93, that filing a petition may be unnecessary if relief has already been granted, and that a DOJ RAP sheet may (but is not required to) be requested to confirm whether relief has already been granted.

***Petition for Dismissal—Incarcerated Individual Hand Crew or Institutional Firehouse Participant* (form CR-430)**

- Add a notice that automatic relief may have already been granted under section 1203.425, that filing a petition may be unnecessary if relief has already been granted, and that a DOJ RAP sheet may (but is not required to) be requested to confirm whether relief has already been granted.

- Revise title and language in items 1 and 2 to account for the expansion of relief under section 1203.4b to successful participants at an institutional firehouse.

- Remove declaration from signature line and specify in item 2 that either *Attachment* (form MC-025) or *Attached Declaration* (form MC-031) may be used if additional space is needed.

- Make minor technical changes: reorganize item 1 by separating petitioner/attorney and address fields.

***Information on Filing a Petition for Dismissal—Incarcerated Individual Hand Crew or Institutional Firehouse Participant* (form CR-430-INFO)**

- Revise item 3 to indicate that either *Attachment* (form MC-025) or *Attached Declaration* (form MC-031) may be used if additional space is needed.

- Add new item 4 to inform petitioners that the court cannot deny relief under section 1203.4b due to unpaid restitution or restitution fines; renumber subsequent items as appropriate.[4]

- Revise new item 9 to include information on form CR-431.

- Add a bullet to new item 13 that states that a dismissal will not release a petitioner from the terms and conditions of an unexpired criminal protective order that has not been modified or terminated by the court.

- Revise title and language in items 1 and 3 and new items 8, 9, 10, and 12 to account for the expansion of dismissal relief under section 1203.4b to successful participants at an institutional firehouse.

***Court Cover Letter and Agency Certification—Incarcerated Individual Hand Crew or Institutional Firehouse Participant* (form CR-431)**

- Revise title and language throughout to account for the expansion of dismissal relief under section 1203.4b to successful participants at an institutional firehouse.

- Revise form to clarify that court clerk should fill out request for certification.

- Revise form to include space for address of parent institution of conservation camp or institutional firehouse.[5]

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[4] The committee recommends this revision because, as anticipated in the invitation to comment, cleanup legislation was signed into law, effective July 10, 2023, amending section 1203.4b to provide that courts cannot deny relief under this section because of an unfulfilled or unpaid order of restitution or restitution fine. (See Judicial Council of Cal., Invitation to Com., *Criminal Procedure: Record Cleaning Forms* (SPR23-14), fn. 3, *www.courts.ca.gov/documents/spr23-14.pdf*; Assem. Bill 134 (Stats. 2023, ch. 47); Pen. Code, § 1203.4b(c)(4).)

[5] The committee has confirmed that form CR-431 can be sent to the address currently on the form (the Camp Liaison Captain at the California Department of Corrections and Rehabilitation) or to the Classification and Parole Representative at the parent institution for the fire camp or firehouse that the petitioner was assigned to. Because this

***Order on Petition—Incarcerated Individual Hand Crew or Institutional Firehouse Participant* (form CR-432)**

- Add a notice provision to item 3 stating that a petitioner may still be subject to the terms and conditions of any unexpired criminal protective order as specified.

- Revise title and language in items 1, 2, and 4 to account for the expansion of dismissal relief under section 1203.4b to successful participants at an institutional firehouse.

- Make minor technical changes: add numbering to items 2 and 3; rephrase item 3 for clarity.

Policy implications

This proposal furthers the council's policy of ensuring access to justice for all litigants. Without updated forms that conform to statutory relief provisions and that are optimized for clarity and ease of use, pro se petitioners, in particular, may encounter difficulties in requesting criminal record relief or understanding the effect of relief granted.

Comments

This proposal circulated for comment from March 29 to May 12, 2023 as part of the regular spring comment cycle.[6] Ten comments were received from a range of stakeholders: courts (Orange County and San Diego), the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee (TCPJAC/CEAC), public defenders, advocacy organizations (Neighborhood Legal Services of Los Angeles County, Root & Rebound, Legal Services for Prisoners with Children, Californians for Safety and Justice), and a bar association (Orange County). Six commenters agreed with the proposal, three agreed if modified, and one did not indicate a position but provided a specific suggestion regarding record cleaning forms. Although no commenters disagreed with the proposal, the advocacy organizations had feedback on some of the proposed revisions, as well as additional suggestions on how to make the forms easier to use and more comprehensible. As described below, the committee incorporated modifications to the revised forms based on the comments. A chart with all comments received and the committee's responses is attached at pages 39–67.

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was confirmed by the committee only after the rest of the proposal had already circulated for public comment, the committee is recommending this revision now even though it was not circulated. A recommendation for a minor substantive change unlikely to create controversy may be adopted without circulation for comment. (Cal. Rules of Court, rule 10.22(d).)

[6] A proposal to revise forms CR-180, CR-181, CR-400, CR-409, and CR-409-INFO previously circulated for public comment in spring 2020. (See Judicial Council of Cal., Invitation to Com., *Criminal Procedure: Automatic Record Relief* (SPR20-10), *www.courts.ca.gov/documents/spr20-10.pdf.*) Those proposed revisions were to reflect the automatic record relief provisions from AB 1793 and AB 1076, which added Health and Safety Code section 11361.9 and Penal Code sections 851.93 and 1203.425, respectively. Comments were received, but the committee withdrew the proposal with the intention of reintroducing it at a later date after a trailer bill pushed back the operative date of key provisions of Penal Code sections 851.93 and 1203.425 to July 1, 2022. (See Sen. Bill 118 (Stats. 2020, ch. 29).) Comments suggesting the avoidance of gendered pronouns in forms CR-180 and CR-181 have been incorporated into the current proposal.

Forms CR-180, CR-181, CR-400, CR-401, CR-402 & CR-403—court address box
In response to the committee's recommendation to add a court address box to the top of these forms, one commenter objected on the basis that this change could be confusing and create an additional barrier to filing. The committee declined to remove the address box, which is a standard item on Judicial Council forms, but is recommending that the "branch name" line be removed because it may be confusing and unnecessary.

Forms CR-180, CR-400, CR-409 & CR-430—note to petitioner regarding automatic relief
As to these four petition forms, two commenters suggested modifying the "note to petitioner" regarding automatic relief at the top of each form. Specifically, they suggested that the notice should more clearly (1) indicate that petitioning for relief might still be worthwhile even if automatic relief has been granted,[7] and (2) state that it is not necessary to obtain a DOJ RAP sheet before filing the petition. The committee agreed with these suggestions and incorporated them into the recommended forms.

Forms CR-180 & CR-430—instruction regarding attachment forms
Based on its conclusion that the statutes underlying these petition forms do not require that the forms be submitted under penalty of perjury, in the invitation to comment, the committee proposed removing the declaration under penalty of perjury from the forms' signature lines and replacing the forms' references to *Attached Declaration* (form MC-031) (which is signed under penalty of perjury) with references to *Attachment* (form MC-025) (which is not under penalty of perjury).[8] In response to these proposed revisions, one commenter noted that submitting materials under penalty of perjury can enhance a petitioner's credibility (particularly as to petitions decided without a hearing), and suggested in part that forms CR-180 and CR-430 should continue to include a reference to form MC-031 as an optional attachment form. Another commenter thought that changing form CR-180 to only refer to form MC-025 might be confusing, and suggested that it would be preferable to inform petitioners that either attachment form can be used to supplement the petition. The committee agreed with these suggestions and incorporated them into the recommended forms.

Form CR-180—revisions for clarity and accuracy for relief under section 1203.41
One commenter suggested revising item 5c to more accurately reflect statutory requirements for relief. The committee agreed with this suggestion and incorporated it into the recommended form.

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[7] As to form CR-409, automatic arrest relief under Penal Code section 851.93 does not result in all of the same benefits as being granted relief after filing a petition under section 851.91; as to form CR-180, felony reduction relief under Penal Code section 17(b) is not part of automatic conviction relief under section 1203.425; and generally, DOJ-granted relief may not immediately be reflected in court records.

[8] The committee did not propose in the invitation to comment and is not now recommending that a similar change be made to form CR-409 because the underlying statute, Penal Code section 851.91, requires that the petition be verified.

Form CR-181—notice provision
One commenter stated that, to the extent the notice provision in new item 6 instructs petitioners granted relief under sections 1203.4, 1203.41, and/or 1203.42 that they must still disclose the conviction for state licensure, the notice provision conflicts with recent occupational licensing reforms. The committee declined to modify or delete this aspect of the recommended notice provision because an order granting relief under these sections is statutorily required to include such language. (See Pen. Code, §§ 1203.4(a)(1), 1203.41(b)(2), 1203.42(b)(2).)

Form CR-409—revisions for clarity
One commenter suggested that the instructions on filling out the case number and case name fields in the upper right corner of page 1 should be revised for clarity and that item 3h should be revised to indicate when the interests-of-justice standard applies. Another commenter suggested revising item 3f to include a check box for the petitioner to indicate that a prosecutor filed a case against the petitioner. The committee agreed with these suggestions and incorporated them into the recommended form.

Form CR-409-INFO—revisions for clarity
One commenter suggested revising the information sheet to clarify what records are eligible for sealing, clarify the possibility of filing a petition with incomplete information, provide more information on service, and provide a clearer explanation of how courts decide whether to grant or deny a petition. Another commenter suggested providing more nuanced and accurate information on automatic arrest record sealing. The committee agreed with these suggestions and incorporated them into the recommended information sheet.

Form CR-430-INFO—information on court cover sheet
One commenter suggested that the information sheet should briefly explain the role of form CR-431. The committee agreed with this suggestion and incorporated it into the recommended information sheet.

Form CR-431—revisions for clarity
One commenter suggested that the form should clarify which sections are filled out by the court. The committee agreed with this suggestion and incorporated it into the recommended form.

Suggested substantive changes
The committee declined to incorporate the following suggestions into its recommendations at this time, viewing them as substantive changes to the proposal that would necessitate an additional public comment period and thereby delay consideration of the recommended forms for approval. The committee may consider these suggestions during a future proposal cycle:

- Forms CR-180, CR-409: remove blank space for an interests-of-justice argument by the petitioner because these spaces falsely suggest that a petitioner can provide a useful or complete argument in support of the petition in the limited space provided.

- Forms CR-181, CR-403: add space for judges to list their reasons for denying relief.

- Form CR-181: revise the form to combine dismissal and reduction relief (e.g., a single check box that states: "The court grants the petition for dismissal and grants the petition for reduction").

- Forms CR-430-INFO: add information for petitioners about potential benefits of including a statement signed under penalty of perjury.

- Create an information sheet for form CR-180.

- Create a new single sheet cover page for form CR-180 for attorneys who are filing for dismissal relief, early termination of probation, and/or felony reduction on behalf of clients.

Alternatives considered

Because the proposed form revisions relating to the expansion of relief under Penal Code sections 1203.4b and 1203.41 are based on statutory changes, the committee viewed these revisions as necessary and did not consider other alternatives.

Although the committee considered not updating the forms with notice provisions regarding automatic record relief, limitations on disclosure, and the effect of relief on unexpired criminal protective orders, the committee determined that this information would be useful and potentially save time and resources for courts and petitioners.

The committee considered making no changes to the signature line in form CR-180 (which currently requires the petitioner to declare under penalty of perjury that the information provided is true and correct) and adding penalty of perjury language to the signature line in form CR-430 (which currently requires the petitioner to state that the information provided is true or believed to be true but does not include penalty of perjury language). Instead, however, the committee concluded that the attestation clause in both forms should be eliminated because (1) the underlying dismissal statutes do not require the request for relief to be verified or submitted under penalty of perjury,[9] and absent a statutory mandate, verification should not be required

[9] See Pen. Code, §§ 1203.4, 1203.4a, 1203.4b, 1203.41, 1203.42, 1203.43, 1203.49. Under section 1203.43, if court records showing the case resolution are no longer available and a defendant submits a declaration under penalty of perjury stating that the charges were dismissed, the court must presume the truth of the declaration, provided that the defendant also submits a copy of the defendant's state summary criminal history information (SCHI). However, the defendant is not *required* to submit a declaration under penalty of perjury; the statute merely provides that a court must presume any such declaration to be true under specified circumstances. The current version of form CR-180 accounts for this statutory provision in item 7b by including a box where the defendant may declare under penalty of perjury that the charges were dismissed and indicate whether the state SCHI is attached.

Additionally, under section 1203.4a(f), a petition for dismissal of an infraction must be by "written declaration, except upon a showing of compelling need." Because section 1203.4a(f) does not expressly require the written declaration to be sworn or under oath (i.e., an affidavit), or under penalty of perjury, the committee interpreted this provision as aimed toward eliminating the need for an in-person hearing rather than imposing a verification requirement. (Compare § 1203.4a(f) [referring to a "written declaration"] with §§ 1203.43(b), 1269c, 18140 [referring to a declaration "under penalty of perjury"] and with § 851.91(b)(1)(A), (E)(vii) [requiring petition and

because it is an exception to general pleading practice and an additional burden to the petitioner; (2) the underlying dismissal statutes outline a procedure that includes notice to the prosecuting attorney and thus contemplates an adversarial hearing at which issues regarding the admissibility or reliability of a petitioner's statements of fact (or other supporting evidence) can be addressed;[10] and (3) when possible, courts can and do independently verify relevant case information.

Fiscal and Operational Impacts

Expected costs are limited to training, possible case management system updates, and the production of new forms. As to forms CR-409 and CR-409-INFO, the Judicial Council was required by law to develop these forms and to translate them into four languages, so revisions to these forms would require modest translation costs. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Proposed forms CR-180, CR-181, CR-400, CR-401, CR-402, CR-403, CR-409, CR-409-INFO, CR-430, CR-430-INFO, CR-431, and CR-432, at pages 14–37
2. Chart of comments, at pages 38–66
3. Link A: Assem. Bill 1076 (Stats. 2019, ch. 578), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1076*
4. Link B: Assem. Bill 1281 (Stats. 2021, ch. 209), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1281*
5. Link C: Assem. Bill 160 (Stats. 2022, ch. 771), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB160*
6. Link D: Assem. Bill 1706 (Stats. 2022, ch. 387), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1706*
7. Link E: Assem. Bill 1793 (Stats. 2018, ch. 993), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1793*
8. Link F: Sen. Bill 731 (Stats. 2022, ch. 814), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB731*
9. Link G: Sen. Bill 1106 (Stats. 2022, ch. 734), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1106*

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any accompanying declarations to be "verified"]; see also *Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 998 [inserting language not used by the Legislature into a statute "would violate the cardinal rule of statutory construction that courts must not add provisions to statutes"]; Code Civ. Proc., § 1858 ["In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted. . . ."].) This accords with the general principle that procedural requirements and rights are sometimes less rigorous where infractions are concerned. (See *People v. Carlucci* (1979) 23 Cal.3d 249, 257 ["it is in the interests of the defendant, law enforcement, the courts, and the public to provide simplified and expeditious procedures for the adjudication of less serious traffic offenses"]; Pen. Code, § 19.6.)

[10] Although a petition for dismissal of an infraction must be by "written declaration, except on a showing of compelling need," in such petitions, the prosecuting attorney must still be given notice as specified—and there is thus still an opportunity for the prosecution to object to the defendant's request for relief. (Pen. Code, § 1203.4a(f).).

10. Link H: Sen. Bill 1260 (Stats. 2022, ch. 842), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB1260*
11. Link I: Assem. Bill 134 (Stats. 2023, ch. 47), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB134*
12. Link J: Pen. Code, § 851.93, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=851.93.&nodeTreePath=5.5.7&lawCode=PEN*
13. Link K: Pen. Code, § 1203.425, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1203.425.&nodeTreePath=5.10.1&lawCode=PEN*
14. Link L: Pen. Code, § 1203.4, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1203.4.&nodeTreePath=5.10.1&lawCode=PEN*
15. Link M: Pen. Code, § 1203.4a, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1203.4a.&nodeTreePath=5.10.1&lawCode=PEN*
16. Link N: Pen. Code, § 1203.4b, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1203.4b.&nodeTreePath=5.10.1&lawCode=PEN*
17. Link O: Health & Saf. Code, § 11361.9, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11361.9.&lawCode=HSC*
18. Link P: Health & Saf. Code, § 11361.8, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11361.8.&nodeTreePath=12.6.2&lawCode=HSC*

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR *(name):*		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:		CASE NUMBER:
PETITION FOR DISMISSAL **(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)**		*FOR COURT USE ONLY* DATE: TIME: DEPARTMENT:

DRAFT
Not approved by the Judicial Council

Note to petitioner: Your conviction may have already been automatically dismissed by the California Department of Justice (DOJ) under Penal Code section 1203.425. If so, this petition may be unnecessary—but there may be additional benefits to filing it with the court, including felony reduction under Penal Code section 17(b). If you want to know if your conviction has already been dismissed, you can request your Record of Arrest and Prosecution (RAP) sheet from the DOJ, but this is not required.

1. On *(date):* , the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following offenses or was granted deferred entry of judgment for the following offenses:

Code *(Penal, Vehicle, etc.)*	**Section**	**Type of offense** *(felony, misdemeanor, or infraction)*	**Eligible for reduction to misdemeanor under Penal Code, § 17(b)** ***(yes or no)***	**Eligible for reduction to infraction under Penal Code, § 17(d)(2)** ***(yes or no)***

If additional space is needed for listing offenses, use *Attachment to Judicial Council Form* (form MC-025).

2. ☐ **Felony or misdemeanor with probation granted *(Pen. Code, § 1203.4)***

Probation was granted on the terms and conditions stated in the docket of the above-entitled court; the petitioner is not serving a sentence for any offense, on probation for any offense, or currently charged with committing any crime, and the petitioner (*check all that apply*)

a. ☐ has fulfilled the conditions of probation for the entire period thereof.

b. ☐ has been discharged from probation prior to the termination of the period thereof.

c. ☐ should be granted relief in the interests of justice. *(Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below, or by attaching a letter or other relevant documents. If you need more space for your writing, you can use* Attachment *(form MC-025) or* Attached Declaration *(form MC-031) (which is signed under penalty of perjury) and attach it to this petition.)*

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

3. ☐ **Misdemeanor or infraction with sentence other than probation *(Pen. Code, § 1203.4a)***
Probation was not granted; more than one year has elapsed since judgment was pronounced. Petitioner has complied with the sentence of the court and is not serving a sentence for any offense or currently charged with committing any crime; and the petitioner *(check one)*
   a. ☐ has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land; ***or***
   b. ☐ should be granted relief in the interests of justice. *(Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use* Attachment *(form MC-025) or* Attached Declaration *(form MC-031) (which is signed under penalty of perjury) and attach it to this petition.)*

4. ☐ **Misdemeanor conviction under Penal Code section 647(b) *(Pen. Code, § 1203.49)***
Petitioner has completed a term of probation for a conviction under Penal Code section 647(b) and should be granted relief because the conviction was the result of petitioner's status as a victim of human trafficking.
(*Please provide evidence that the conviction was the result of your status as a victim of human trafficking. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use* Attachment *(form MC-025) or* Attached Declaration *(form MC-031) (which is signed under penalty of perjury) and attach it to this petition.)*

5. ☐ **Felony county jail sentence under Penal Code section 1170(h)(5) or felony state prison sentence *(Pen. Code, § 1203.41)***
Petitioner is not on parole or under supervision under Penal Code section 1170(h)(5)(B); is not serving a sentence for, on probation for, or currently charged with committing any crime; and should be granted relief in the interests of justice, and *(check one)*
   a. ☐ more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B).
   b. ☐ more than two years have elapsed since petitioner completed the felony county jail sentence **without** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A).
   c. ☐ more than two years have elapsed since petitioner completed the felony state prison sentence, and the conviction did not result in a requirement to register as a sex offender under Chapter 5.5 (starting with section 290) of Title 9 of Part 1 of the Penal Code.
   (Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use Attachment *(form MC-025) or* Attached Declaration *(form MC-031) (which is signed under penalty of perjury) and attach it to this petition.)*

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

6. ☐ **Felony prison sentence that would have been eligible for a felony county jail sentence after 2011 under Penal Code section 1170(h)(5) *(Pen. Code, § 1203.42)***

Petitioner is not under supervision and is not serving a sentence for, on probation for, or currently charged with committing any crime; more than two years have elapsed since petitioner completed the felony prison sentence; and petitioner should be granted relief in the interests of justice.

(Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use Attachment *(form MC-025) or* Attached Declaration *(form MC-031) (which is signed under penalty of perjury) and attach it to this petition.)*

7. ☐ **Deferred entry of judgment *(Pen. Code, § 1203.43)***

Petitioner performed satisfactorily during the period in which deferred entry of judgment was granted. The criminal charge(s) were dismissed under former Penal Code section 1000.3 on *(date):* . Furthermore *(check one),*

a. ☐ court records are available showing the case resolution; ***or***

b. ☐ petitioner declares under penalty of perjury that the charges were dismissed after petitioner completed the requirements for deferred entry of judgment. Petitioner (*check one*)

(1) ☐ has

(2) ☐ has not

attached a copy of petitioner's state summary criminal history information.

8. Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b) and eligible misdemeanor offenses be reduced to infractions under Penal Code section 17(d)(2).

9. Petitioner requests that petitioner be permitted to withdraw the plea of guilty, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under the Penal Code section(s) noted above.

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF PETITIONER OR ATTORNEY)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR *(name)*:	***FOR COURT USE ONLY*** **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE:	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
ORDER FOR DISMISSAL **(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)**	CASE NUMBER:

From the petition filed in this matter, the records of the court, and any other evidence presented in this matter, the court orders as follows:

1. ☐ The court **GRANTS** the petition for reduction of a felony to a misdemeanor (maximum punishment of 364 days per Pen. Code, § 18.5) under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) and reduces
   a. ☐ ALL FELONY CONVICTIONS in the above-entitled action.
   b. ☐ ALL MISDEMEANOR CONVICTIONS in the above-entitled action.
   c. ☐ only the following convictions in the above-entitled action *(specify charges and date of conviction)*:

2. ☐ The court **DENIES** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) for
   a. ☐ ALL FELONY CONVICTIONS in the above-entitled action.
   b. ☐ ALL MISDEMEANOR CONVICTIONS in the above-entitled action.
   c. ☐ only the following convictions in the above-entitled action *(specify charges and date of conviction)*:

3. ☐ The court **GRANTS** the petition for dismissal regarding the following convictions under Penal Code *(check all that apply)*
   ☐ § 1203.4 ☐ § 1203.4a ☐ § 1203.41 ☐ § 1203.42 ☐ § 1203.43 ☐ § 1203.49
   and it is ordered that the pleas of guilty or nolo contendere or verdicts or findings of guilt be set aside and vacated and a plea of not guilty be entered and that the complaint or information be, and is hereby, dismissed for *(check one)*
   a. ☐ ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
   b. ☐ only the following convictions or pleas for deferred entry of judgment in the above-entitled action *(specify charges and date of conviction or plea for deferred entry of judgment)*:

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

4. ☐ The court **DENIES** the petition for dismissal under Penal Code *(check all that apply)*
   ☐ § 1203.4 ☐ § 1203.4a ☐ § 1203.41 ☐ § 1203.42 ☐ § 1203.43 ☐ § 1203.49 for *(check one)*
   a. ☐ ALL CONVICTIONS OR PLEAS FOR DEFERRED ENTRY OF JUDGMENT in the above-entitled action.
   b. ☐ only the following convictions or pleas for deferred entry of judgment in the above-entitled action *(specify charges and date of conviction or plea for deferred entry of judgment):*

5. ☐ In granting this order under the provisions of Penal Code section 1203.49, the court finds that the petitioner was a victim of human trafficking when petitioner committed the crime.
   a. The court orders *(check one):*
      (1) ☐ the relief described in section 1203.4.
      (2) ☐ the relief described in section 1203.4, with the following exceptions *(specify):*
   b. The Department of Justice is hereby notified that petitioner was a victim of human trafficking when petitioner committed the crime, and notified of the relief ordered.

6. If this order is granted under the provisions of Penal Code section 1203.4, 1203.41, or 1203.42,
   a. the petitioner is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office, or for licensure by any state or local agency (or, under Penal Code section 1203.41, for licensure by a federally recognized tribe or for enrollment as a provider of in-home supportive services and "waiver personal care services" (see Welf. & Inst. Code, §§ 12300–12318, 14132.95, 14132.952, 14132.956, 14132.97)), or for contracting with the California State Lottery Commission; and
   b. dismissal of the conviction does not *automatically* relieve petitioner from the requirement to register as a sex offender. (See, e.g., Pen. Code, § 290.5.)

7. If this order is granted under the provisions of Penal Code section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.49, the petitioner is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections 29800 and 29900 (formerly sections 12021 and 12021.1) and Vehicle Code section 13555. In any subsequent prosecution of the petitioner for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The dismissal does not permit a person to own, possess, or have in their control a firearm if prevented by Penal Code section 29800 or 29900 (formerly sections 12021 and 12021.1). Dismissal of a conviction does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

8. Dismissal under Penal Code section 1203.4 or 1203.4a does not release petitioner from the terms and conditions of any unexpired criminal protective order issued under Penal Code section 136.2(i)(1), 273.5(j), 368(*l*), or 646.9(k).

9. In addition, as required by Penal Code section 299(f), relief under Penal Code section 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.49 does *not* release petitioner from the separate administrative duty to provide specimens, samples, or print impressions under the DNA and Forensic Identification Database and Data Bank Act (Pen. Code, § 295 et seq.) if petitioner was found guilty by a trier of fact, not guilty by reason of insanity, or pled no contest to a qualifying offense as defined in Penal Code section 296(a).

10. The basis for an order of dismissal granted under the provisions of Penal Code section 1203.43 is the invalidity of defendant's prior plea due to misinformation in former Penal Code section 1000.4 regarding the actual consequences of making a plea and successful completion of a deferred entry of judgment program.

FOR COURT USE ONLY

11. Notice: Except as provided in Penal Code section 1203.425(a)(4), if this order is granted under Penal Code section 1203.4, 1203.4a, 1203.41, or 1203.42, the court must not disclose information concerning a conviction granted relief to any person or entity, in any format, except to the person whose conviction was granted relief or to a criminal justice agency.

Date:

(JUDICIAL OFFICER)

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR *(name)*:		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		**DRAFT Not approved by the Judicial Council**
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:		CASE NUMBER:
PETITION/APPLICATION UNDER HEALTH AND SAFETY CODE SECTION 11361.8—ADULT CRIMES		*FOR COURT USE ONLY*
☐ **RESENTENCING OR DISMISSAL (Health & Saf. Code, § 11361.8(b))** ☐ **REDESIGNATION OR DISMISSAL/SEALING (Health & Saf. Code, § 11361.8(f))**		DATE: TIME: DEPARTMENT:

Note to petitioner/applicant: Your conviction may have already been automatically dismissed or redesignated. If so, this petition/application may be unnecessary—but there may be additional benefits to filing it with the court. If you want to know if your conviction has already been dismissed or redesignated, you can request your Record of Arrest and Prosecution (RAP) sheet from the California Department of Justice, but this is not required.

1. **CONVICTION INFORMATION *(check all of the Health and Safety Code sections that apply)***
   - a. ☐ 11357 - Possession of Marijuana
   - b. ☐ 11358 - Cultivation of Marijuana
   - c. ☐ 11359 - Possession of Marijuana for Sale
   - d. ☐ 11360 - Transportation, Distribution, or Importation of Marijuana
   - e. ☐ 11362.1 - Personal Use of Marijuana

2. **REQUEST *(check all that apply)***
   - a. ☐ PETITION: Petitioner is currently serving a sentence in the above-captioned case and now requests that the court recall and resentence or dismiss the conviction.
   - b. ☐ APPLICATION: Applicant has completed the sentence in the above-captioned case and now requests that the court redesignate or dismiss and seal the conviction.

3. **WAIVER OF HEARING BY ORIGINAL SENTENCING JUDGE**

   ☐ Petitioner/applicant waives the right to have this matter heard by the original sentencing judge. The presiding judge of the court may designate any judge to rule on this matter.

4. **WAIVER OF APPEARANCE**

   ☐ Petitioner/applicant understands there is a right to personally attend any hearing held in this matter. Petitioner/applicant gives up that right; the matter may be heard without petitioner/applicant's appearance.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PETITIONER/APPLICANT OR ATTORNEY)

***Proof of Service for Petition/Application under Health and Safety Code Section 11361.8—Adult Crimes* (form CR-401) may be used to provide proof of service of this petition/application.**

Form Approved for Optional Use
Judicial Council of California
CR-400 [Rev. January 1, 2024]

Health and Safety Code, § 11361.8
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR *(name):*		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:		CASE NUMBER:
PROOF OF SERVICE FOR PETITION/APPLICATION UNDER HEALTH AND SAFETY CODE SECTION 11361.8—ADULT CRIMES **Method of Service (only one):** ☐ **Personal Service** ☐ **Mail**		FOR COURT USE ONLY DATE: TIME: DEPARTMENT:

DRAFT
Not approved by the Judicial Council

1. Person serving: I am over the age of 18 and **not a party to this action.**
   a. Name:
   b. Residence or Business Address:
   c. Telephone:
2. I served a copy of the *Petition/Application under Health and Safety Code Section 11361.8—Adult Crimes* on the person or persons listed below as follows:
   a. Name of person served:
   b. Address where served:
   c. Date Served:
   d. Time Served: ☐ AM ☐ PM
3. The documents were served by the following means *(specify):*
   a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 2. Delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening.
   b. ☐ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 2 and *(specify one)*
      (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
      (2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

      I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

▶ _____
SIGNATURE OF DECLARANT

_____
(PRINTED NAME OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR *(name):*	***FOR COURT USE ONLY*** **DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE:	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
PROSECUTING AGENCY RESPONSE TO PETITION/APPLICATION UNDER HEALTH AND SAFETY CODE SECTION 11361.8—ADULT CRIMES	***FOR COURT USE ONLY*** DATE: TIME: DEPARTMENT:

PROSECUTING AGENCY RESPONSE *(choose all that apply):*

1. ☐ The prosecuting agency has no objection to this petition/application. Petitioner/applicant is entitled to the requested relief without a hearing.
2. ☐ The prosecuting agency requests a hearing and objects to the granting of the petition/application because
   a. ☐ petitioner/applicant was not convicted of an eligible offense.
   b. ☐ Other:
3. ☐ Petitioner is eligible for relief, but relief should be denied because petitioner presents an unreasonable risk of danger to public safety if he/she is resentenced.
4. ☐ The prosecuting agency does not object to petitioner's/applicant's eligibility for relief, but requests a hearing on the issue of resentencing.

Dated:

(TYPE OR PRINT NAME)

SIGNATURE OF PROSECUTING ATTORNEY

Form Approved for Optional Use
Judicial Council of California
CR-402 [Rev. January 1, 2024]

Health and Safety Code, § 11361.8
www.courts.ca.gov

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

PROOF OF SERVICE
FOR PROSECUTING AGENCY RESPONSE
Method of Service (only one):

☐ **Personal Service** ☐ **Mail**

1. Person serving: I am over the age of 18 and **not a party to this action.**
   a. Name:
   b. Residence or business address:
   c. Telephone:
2. I served a copy of *Prosecuting Agency Response to Petition/Application under Health and Safety Code section 11361.8—Adult Crimes* on the person or persons listed below as follows:
   a. Name of person served:
   b. Address where served:
   c. Date served:
   d. Time served: ☐ AM ☐ PM
3. The documents were served by the following means *(specify):*
   a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 2. Delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening.
   b. ☐ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 2 and *(specify one)*
      (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
      (2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

      I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

▶ SIGNATURE OF DECLARANT

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

ORDER AFTER PETITION/APPLICATION UNDER HEALTH AND SAFETY CODE SECTION 11361.8—ADULT CRIMES

☐ **RESENTENCING OR DISMISSAL (Health & Saf. Code, § 11361.8(b))**

☐ **REDESIGNATION OR DISMISSAL/SEALING (Health & Saf. Code, § 11361.8(f))**

FOR COURT USE ONLY

DATE:
TIME:
DEPARTMENT:

From the petition/application filed in this matter, the records of the court, and any other evidence presented in this matter, the court orders as follows:

1. ☐ **RESENTENCING GRANTED.**
The petitioner is eligible for the requested relief. The petition is **GRANTED**. The court hereby recalls the sentence imposed on the designated crime and enters the following additional orders:

   a. ☐ The following crime is resentenced as ☐ misdemeanor ☐ infraction
   (specify crime; more than one may be listed):

   b. ☐ The following sentence is imposed for the commission of the crime:

   c. ☐ The petitioner is given credit for time served of *(number of days):*

   d. ☐ Petitioner is required to complete a period of supervision of: ☐ months ☐ days
   ☐ parole ☐ postrelease community supervision ☐ mandatory supervision (Pen. Code, section 1170(h))
   ☐ formal probation ☐ informal probation

   e. ☐ The court releases the petitioner from any form of postconviction supervision.

   f. ☐ The court **DISMISSES** the following crime for the reason that the conviction is legally invalid:

   g. ☐ Other:

2. ☐ **REDESIGNATION GRANTED.**
The applicant is eligible for the requested relief. The application is **GRANTED.** The court hereby recalls the sentence imposed on the designated crime and enters the following additional orders:

   a. ☐ The following crime is redesignated as ☐ misdemeanor ☐ infraction
   (specify crime; more than one may be listed):

   b. ☐ The court **DISMISSES** the following crime for the reason that the conviction is legally invalid *(specify crime; more than one may be listed):*

   c. ☐ Other:

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

3. ☐ **RESENTENCING/REDESIGNATION DENIED.**
The petitioner/applicant is ineligible for the requested relief. The request for resentencing, redesignation, dismissal, or sealing is **DENIED** as to crime: for the following reasons:

a. ☐ The petitioner/applicant was convicted of an offense that is not eligible for the requested relief.

b. ☐ The petitioner's/applicant's age at the time the crime was committed makes petitioner/applicant ineligible for the requested relief.

c. ☐ The nature of the marijuana substance constituting the basis of the crime makes petitioner/applicant ineligible for the requested relief.

d. ☐ The quantity of the marijuana substance constituting the basis of the crime makes petitioner/applicant ineligible for the requested relief.

e. ☐ Although petitioner is eligible for relief, for reasons stated on the record, the court finds that resentencing of petitioner would pose an unreasonable risk of danger to public safety.

f. ☐ Other:

4. **MISDEMEANOR/INFRACTION FOR ALL PURPOSES**
Any misdemeanor resentenced as an infraction as a result of this order will thereafter be an infraction for all purposes. Any felony conviction resentenced as a result of this order as a misdemeanor or infraction will be a misdemeanor or infraction for all purposes.

5. ☐ **REGISTRATION.** The petitioner/applicant is relieved from the requirement to register as a narcotics offender under Health and Safety Code section 11590.

6. ☐ **SEALING OF CONVICTION.** The court's record of conviction is ordered sealed. No access to the information shall be permitted without court order.

IT IS SO ORDERED.

Date:

JUDICIAL OFFICER

CR-409 Petition to Seal Arrest and Related Records

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Before using this form, read *Information on How to File a Petition to Seal Arrest and Related Records* (form CR-409-INFO), available at www.courts.ca.gov/forms.

Note to petitioner: If your arrest did not result in a conviction and meets certain other conditions, you may have already been granted automatic arrest record relief by the California Department of Justice (DOJ) under Penal Code section 851.93. A petition to seal may be unnecessary if the DOJ has granted automatic relief—but there may be additional benefits to filing a petition with the court. If you want to know if you have already been granted relief, you can request your Record of Arrest and Prosecution (RAP) sheet from the DOJ, but this is not required.

Fill in the name and street address of the court that you are filing the petition in:

Superior Court of California, County of

If charges were filed against you and there is a court case associated with your arrest, fill in the case number and case name below. You do not need to fill out the boxes if an arrest happened but no criminal complaint was filed or charged in court:

Trial Court Case Number:

Trial Court Case Name:
People of the State of California
v. _____

1 Petitioner's Information

a. Your Full Name: _____

Date of birth: _____ *(mm/dd/yyyy)*

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name:

_____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead.)*

Street: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Email Address: _____

2 Notice of Court Hearing *(clerk fills out section below)*

A court hearing is scheduled on this petition as follows:

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

_____

If an interpreter is needed, please specify the language: _____

3 Information About Your Case *(provide as much information as you can)*

a. Date of the arrest you are requesting to be sealed: _____ *(mm/dd/yyyy)*

b. Where did the arrest happen? Include the city and county: _____

c. What law enforcement agency made the arrest? If it was a police department, include the city *(for example, ABC City Police Department)*. If it was a county sheriff, list the county *(for example, XYZ County Sheriff):*

_____

d. What is the arrest report number or police report number, if available? _____

Trial Court Case Number:

3 e. What were the offenses for which you were arrested (for example, Penal Code section 242 for battery)?

f. ☐ The prosecutor filed a case against me *(check if true)*.

If checked, what were the charges the prosecutor filed (for example, Penal Code section 242 for battery)?

g. If you would like to explain the information provided, please do so below, or complete and attach *Attached Declaration* (form MC-031) or submit other relevant documents.

h. Check any box that applies:

☐ I am entitled to have this arrest (the arrest described in 3 of this petition) sealed as a matter of right because the arrest did not result in a conviction, and I satisfy the requirements of Penal Code section 851.91.

☐ I am requesting to have the arrest sealed in the interests of justice. (Relief is unavailable as a matter of right if the arrest was for domestic violence, child abuse, or elder abuse, **and** petitioner's record shows a "pattern" of arrests and/or convictions for the same type of offense.) (Pen. Code, § 851.91(c)(2)(A).) *(Describe below how this is in the interests of justice. In deciding whether to grant this request, the court may consider any important factors, including hardship and difficulties caused by the arrest; statements or evidence regarding your good character; statements or evidence regarding the arrest; your record of convictions; or any other important factors. You may provide statements or evidence from you, from others, or both.)*

Please attach any additional signed and dated statements with the petition. Additional statements from you should be submitted on the *Attached Declaration* (form MC-031).

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____

_____ ▶ _____

Type or print your name *Signature of Petitioner or Attorney*

CR-409-INFO Information on How to File a Petition to Seal Arrest and Related Records

This information sheet does not cover all of the questions that may arise in a case. Do *not* deliver this information sheet to the court clerk.

1 What is a petition to seal arrest and related records?

The petition is a request to the court to seal arrest and related records under Penal Code section 851.91. You may ask the court to seal an arrest that did not result in a court case, or to seal an arrest that resulted in a court case—as long as the case did **not** result in a conviction. If you are requesting sealing for more than one arrest, you must file a separate petition for each arrest.

2 What information do I include in the petition?

Refer to *Petition to Seal Arrest and Related Records* (form CR-409) to see what information must be included in your petition. Because form CR-409 is an optional form, you may fill out the form or you may write your own petition.

You should carefully fill out all parts of form CR-409 or, if writing your own petition, include the same information as in the form. The court may deny your filing if you provide incomplete information, so provide as much information as you can.

3 What do I do with the petition once I fill it out?

If a criminal case was filed based on the arrest you want to have sealed, take or mail this petition to the clerk's office in the court where the case was filed.

If no criminal case was filed or charged against you, take or mail this petition to the clerk's office in the court that handles criminal matters for the city or county where the arrest happened. If you don't know which court this is, you may want to contact a court in the county to ask.

The clerk will give you a court date for the hearing, which should be at least 15 days from the date you file the petition. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

4 Must anyone else get the petition?

A copy of the petition must be served (delivered by hand, by mail, or electronically) on the prosecutor of the city or county where the arrest happened *and* the law enforcement agency that made the arrest, at least 15 days before the hearing on the petition. You can serve the petition by:

- Personal service: You or another person over age 18 go in person to hand-deliver a copy of the petition to the prosecuting attorney's office and to the law enforcement agency during business hours by handing it to an employee. Be sure to get the name of the employee for your proof of service.
- Service by mail: Mail a copy of the petition to the prosecuting attorney's office and to the law enforcement agency. You may mail the petition by first-class mail or by certified mail with a return receipt requested.
- Electronic service: Contact the prosecuting attorney's office and the law enforcement agency to see if they accept electronic service. If they do, the court may require proof of their consent to electronic service. You can use *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-CV), available at www.courts.ca.gov/forms.

After you have served the petition on the prosecutor and the law enforcement agency, you will need to file a "proof of service" with the court. You may use *Proof of Service—Criminal Record Clearing* (form CR-106), available at *www.courts.ca.gov/forms*.

5 How will the court make its decision?

The court will first determine if you are eligible to have your arrest sealed. You are **not** eligible and the court will **deny** your petition for arrest sealing if any of the following is true:

- Your arrest resulted in a conviction;
- You may still be charged with any of the offenses upon which the arrest was based;
- The arrest or case was filed for murder or any other offense for which there is no statute of limitations (except if you have been acquitted or found factually innocent); or
- You intentionally evaded law enforcement efforts to prosecute the arrest, including by engaging in identity fraud.

If none of the above is true, then the court will look at your arrest and your criminal record history (if any). In most types of cases, the court must seal your arrest **as a matter of right**—meaning that the court is required to **grant** your petition.

However, if your arrest was based on an offense involving domestic violence, child abuse, or elder abuse, and if your record demonstrates a "pattern" of arrests or convictions for the same type of offense, then the court can only seal your arrest **in the interests of justice**—meaning that the court may, but does not have to, grant your petition. The court will decide whether to seal your arrest in the interests of justice based on any relevant factors, including whether you have shown that the arrest has caused you hardship, whether you submitted declarations or evidence regarding your good character, declarations or evidence regarding the arrest, and your record of convictions (if any).

6 What happens if the court grants my petition (request)?

If the court grants the petition, it will send a copy of the order to law enforcement and the California Department of Justice to update the arrest record, noting that the arrest is sealed. Records that are sealed under the court's order will not be disclosed except to you or a criminal justice agency (which includes courts, peace officers, prosecuting attorneys, city attorneys pursuing specific actions, defense attorneys, probation officers, parole officers, and correctional officers). Criminal history providers may disclose information to other criminal history providers. For more information, see Penal Code section 851.92.

7 Are translations of the petition available?

Translations of the petition are available in Spanish, Chinese, Vietnamese, and Korean at the California Courts website at *www.courts.ca.gov/forms.htm*.

8 Are there other ways to seal or limit arrest records?

Yes. If your arrest did not result in a conviction and meets certain other conditions, you may have already been granted automatic arrest record relief by the California Department of Justice (DOJ) under Penal Code section 851.93. A petition to seal may be unnecessary if the DOJ has granted automatic relief—but there may be additional benefits to filing a petition with the court. If you want to know if you have already been granted relief, you can request your Record of Arrest and Prosecution (RAP) sheet from the DOJ—but this is not required to file a petition.

You may also request the court to deem an arrest a detention under Penal Code section 849.5; request a determination of factual innocence under section 851.8; receive an acquittal and a determination of factual innocence under section 851.85; have your conviction set aside based on a determination of factual innocence under section 851.86; and request relief after completion of a prefiling diversion program under section 851.87.

CR-430

Petition for Dismissal—Incarcerated Individual Hand Crew or Institutional Firehouse Participant

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Before using this form, read *Information on Filing a Petition for Dismissal—Incarcerated Individual Hand Crew or Institutional Firehouse Participant* (form CR-430-INFO), available at www.courts.ca.gov/forms).

A copy of this petition must be served on the prosecuting attorney and a proof of service must be filed with the court (you may use *Proof of Service* (form CR-106), available at *www.courts.ca.gov/forms*).

Note to petitioner: Your conviction may have already been automatically dismissed by the California Department of Justice (DOJ) under Penal Code section 1203.425. If so, this petition may be unnecessary—but there may be additional benefits to filing it with the court. If you want to know if your conviction has already been dismissed, you can request your Record of Arrest and Prosecution (RAP) sheet from the DOJ, but this is not required.

Fill in court name and street address:

Superior Court of California, County of

People of the State of California v.
Defendant:

Case Number:

For Court use only:
Date:
Time:
Department:

1 Petitioner's Information

a. Your Full Name: _____

Date of birth: _____ *(mm/dd/yyyy)*

Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name:

_____

Local Identifying Number *(if known):* _____

CDCR No. *(while in fire camp or institutional firehouse, if known)*:

_____

Name of fire camp or institutional firehouse *(if known):*

_____

Approximate dates in fire camp or institutional firehouse *(if known):* _____ *(month/year)* to _____ *(month/year)*

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead.)*

Street: _____
City: _____ State: _____ Zip: _____
Telephone: _____
Email Address: _____

2 Eligibility for relief under Penal Code section 1203.4b

a. Petitioner was not convicted of any of the following offenses: murder; kidnapping; rape (as defined in Penal Code section 261(a)(2), (a)(6), or Penal Code section 262(a)(1), (a)(4)); lewd acts on a child under 14 years of age (as defined in Penal Code section 288); any felony punishable by death or imprisonment in the state prison for life; any sex offense requiring registration under Penal Code section 290; escape from a secure perimeter within the previous 10 years; or arson.

2 b. While serving a sentence in this case, petitioner successfully participated as a member of (*check one):*

(1) ☐ An incarcerated individual hand crew in the California Conservation Camp program (fire camp operated by the California Department of Corrections and Rehabilitation);

(2) ☐ An incarcerated individual hand crew in a county fire camp program *(name of county):* _____ ; or

(3) ☐ An institutional firehouse *(name of institution):* _____ .

c. Petitioner adequately performed the hand crew or institutional firehouse duties and did not engage in any conduct that warranted removal from the program.

d. Petitioner has been released from custody and has no pending criminal charges.

e. In this case number: _____ , petitioner is currently (*check one*):
☐ on probation ☐ on parole ☐ on supervised release ☐ not on supervision.

f. ☐ Petitioner requests early termination of: ☐ probation ☐ parole ☐ supervised release.

g. Petitioner requests permission to withdraw the plea of guilty or nolo contendere, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered, and that the court dismiss this action in its discretion and in the interests of justice under Penal Code section 1203.4b.

(Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use Attachment *(form MC-025) or* Attached Declaration *(form MC-031) (which is signed under penalty of perjury) and attach it to this petition.)*

Date: _____

_____ ▶ _____

Type or print your name *Signature of Petitioner or Attorney*

CR-430-INFO Information on Filing a Petition for Dismissal—Incarcerated Individual Hand Crew or Institutional Firehouse Participant

Penal Code section 1203.4b allows eligible former inmates to ask the court to dismiss a conviction and take other actions that can improve their criminal record ("record clearing").

Read this information carefully to learn whether you may be eligible for § 1203.4b relief, and how to complete *Petition for Dismissal—Incarcerated Individual Hand Crew or Institutional Firehouse Participant* (form CR-430) to request relief. (Form CR-430 is available at www.courts.ca.gov/forms.)

1 Who is eligible to apply for relief under Penal Code § 1203.4b?

You must meet ALL of these requirements to be eligible to apply (petition) for relief under § 1203.4b:

a. You were incarcerated in state prison or county jail.

b. While in state prison or in county jail, you successfully participated as a hand crew member ("grade eligible") in a California Conservation Camp program operated by the California Department of Corrections and Rehabilitation (CDCR);

OR

While in county jail, you successfully participated in an incarcerated individual fire camp hand crew program operated by a county agency (for example, the sheriff's department);

OR

While incarcerated, you successfully participated at an institutional firehouse.

c. You have been released from custody (i.e., you are not in state prison or county jail).

d. You are not currently charged with committing any offense.

NOTE: You are NOT eligible for Penal Code section 1203.4b relief if your conviction was for any of these offenses: murder; kidnapping; rape (as defined in Penal Code section 261(a)(2), (6) or 262(a)(1), (4)); a violation of Penal Code section 288 (specified sex offenses); any felony punishable by death or imprisonment in the state prison for life; any sex offense requiring registration under Penal Code section 290; escape from a secure perimeter within the previous 10 years; or arson.

2 I'm still on probation, parole, or supervised release. Can I apply for § 1203.4b relief now?

- **Yes,** you can still petition for a § 1203.4b dismissal even if you are on a term of probation, parole, or supervised release. The law says that you are *not* required to complete your term of supervision before you can ask the court to dismiss your conviction.
- If you are still on a term of supervision and have not violated any terms or conditions of your supervision, and the court grants your petition for a § 1203.4b dismissal, the court will also order early termination of supervision.

3 What information do I need to include on my petition?

Form CR-430 is the form for requesting § 1203.4b relief. It is available at www.courts.ca.gov/forms. You do not have to use form CR-430 for your petition, but it helps organize the information for the court.

You will need to file a separate petition for each case. You will need to list on your petition:

- The case number; and
- Your local identifying number (if any, and if known).

It is helpful to provide details about your participation in a CDCR fire camp or an institutional firehouse program:

- The CDCR number you had while participating in fire camp or an institutional firehouse;
- The name of the fire camp or institutional firehouse; and
- The approximate dates that you were in fire camp or at an institutional firehouse.
  For example: CDCR No. TK12345;
  Eel River Camp, August–November, 2020

You are *not* required by law to provide this information in your petition. It can help speed up the court's decision on your request by making it easier for CDCR to locate and confirm your participation in fire camp or an institutional firehouse and report back to the court.

Tip: If you were a county jail inmate and participated in a fire camp, it is *very likely* the fire camp was operated by CDCR. You would have been given a CDCR number during your time in fire camp.

You may also explain why granting a dismissal would be in the interests of justice. You can write in the allotted space on the form, or you can use either *Attachment* (form MC-025) or *Attached Declaration* (form MC-031) (which is under penalty of perjury). Both are available at www.courts.ca.gov/forms.

4 I still owe a restitution fine in my case. Can I apply for § 1203.4b relief now?

Yes. The law says the court cannot deny § 1203.4b relief because of unpaid restitution and fines.

5 Where and how do I file my § 1203.4b petition with the court?

a. **You must file your petition with the court. File in the county where you were sentenced for the conviction you want the court to dismiss.**

First, check with the court clerk or check the court's website to see whether there are any local rules about filing and service of the petition, as well as how to obtain proof of filing.

- In many counties, you must serve the original § 1203.4b petition with the court, have the court file-stamp one copy, and then you must serve the file-stamped copy of the petition on the prosecuting attorney.
- If you "file first," as described in b. and c. below, the court has a chance to add a hearing date to the petition before you serve it.
- Some courts require you to first serve *a copy* of the § 1203.4b petition on the prosecuting attorney and *then* file the original petition with the court, together with a completed and signed proof of service. (See 6 and 7 for information on service and proof of service.)

b. Fill out petition form CR-430, *and make at least two copies*. You will use one copy to notify the prosecuting attorney. Be sure to keep the other copy for your own records.

c. File the original § 1203.4b petition with the court by:

- Taking the original petition and a copy to the court in person and handing it to the court clerk; *or*
- Mailing the petition and a copy to the court; *or*
- Filing the petition electronically, if the local court rules permit this type of filing.

d. When the court files the original petition, ask the court clerk to file-stamp the copy of the petition and return it to you. *This is an important step because, in many counties, the file-stamped copy must be served on the prosecuting attorney*. If you file the petition by mail, include the copy for the court clerk to file-stamp and then return to you. Include a self-addressed, stamped envelope for the clerk to use to mail the file-stamped copy back to you.

6 How do I "serve" a copy of my § 1203.4b petition on the prosecuting attorney?

a. "Serving" a petition means delivering a copy of the petition to the prosecuting attorney.

b. You must serve a copy of your § 1203.4b petition on the prosecuting attorney in the county where you filed your petition with the court.

c. You can serve the petition by:

- **Personal service:** You *or another person over age 18* go in person to hand-deliver a copy of the petition to the prosecuting attorney's office during business hours by handing it to an employee. Be sure to get the name of the employee for your proof of service.
- **Service by mail:** Mail a copy of the petition to the prosecuting attorney's office. You may mail the petition by first-class mail or by certified mail with a return receipt requested.
- **Electronic service:** Contact the prosecuting attorney's office to see if they accept electronic service. If they do, the court may require proof of their consent to electronic service. You can use *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-CV), available at *www.courts.ca.gov/forms*.

7 How do I prove that I served my § 1203.4b petition on the prosecuting attorney?

a. It is very important that you properly serve your § 1203.4b petition and then file proof with the court. This "proof of service" tells the court that you gave the prosecuting attorney the required notice of your § 1203.4b petition.

b. You will need to confirm that you served the petition by filing a proof of service form that describes who, when, where, and how you served your § 1203.4b petition. You can use *Proof of Service—Criminal Record Clearing* (form CR-106) for this purpose.

c. Fill out form CR-106. (Follow the directions on form CR-106-INFO. Both forms are available at *www.courts.ca.gov/forms*). Form CR-106 has spaces for you to write how you served the prosecuting attorney with your § 1203.4b petition. If you had someone else help you serve the petition on the prosecuting attorney, that person will have to fill out the proof of service form.

d. After filling out the proof of service (form CR-106), make a copy for you to keep.

e. You must file the original proof of service with the court to prove that you gave the prosecuting attorney the required notice of your § 1203.4b petition. You can file the proof of service form the same way you filed the petition.

8 What happens next?

a. **The court can consider your petition 15 days after you serve the prosecuting attorney with your petition. The prosecuting attorney can object to your petition at any time before the court grants or denies the petition.**

b. If the prosecuting attorney does object, you will receive a copy of the objection in the mail and the court will schedule a hearing. (See 11 for more information about the hearing.)

c. Before the court can grant your § 1203.4b petition, the court must get certification of your participation in fire camp or an institutional firehouse from CDCR or the appropriate county authority.

9 What is "certification" by CDCR or the appropriate county authority?

a. In order for the court to decide whether to grant your § 1203.4b petition, the court must have "certification" from CDCR or the county authority that:

- You successfully participated in fire camp as a hand crew member or at an institutional firehouse; AND
- You participated in fire camp or an institutional firehouse during the time you were incarcerated for the conviction you are asking the court to dismiss.

b. When you file your § 1203.4b petition, include a copy of form CR-431. You should fill out personal information on the form that you also included on form CR-430, but the court will fill out the rest. The court will then send the forms to CDCR or the appropriate county authority to ask for confirmation ("certification") of your successful participation in fire camp or an institutional firehouse.

c. "Successful participation" in fire camp or an institutional firehouse means that you adequately performed your duties and did not have any violations that could have led to your removal from fire camp or the institutional firehouse.

10 When will the court make a decision?

a. The court will not make a decision until it hears from CDCR or the appropriate county agency certifying participation.

b. The law does not set a time frame, but the court may ask CDCR or the appropriate county authority to respond to a request for certification by a certain date.

c. After CDCR or the appropriate county authority certifies whether your participation in fire camp or an institutional firehouse was successful, the court likely will contact you and the prosecuting attorney. But the law does not require the court to contact you, so you may want to check with the court to confirm that the certification has been received.

11 Will I have to attend a hearing?

a. The law does not *require* the court to hold a hearing in order to make a decision on your § 1203.4b petition. The court can make a decision on your petition without holding a hearing. But the law allows the court to hold a hearing if it chooses to do so.

b. The law allows the prosecuting attorney to request a hearing and to ask the court to deny your § 1203.4b petition.

c. If the court schedules a hearing, you will be notified of the hearing date and time. You have a right to attend the hearing and to explain why your § 1203.4b petition should be granted and your conviction dismissed.

d. *Note:* Even if the prosecuting attorney does not object to your § 1203.4b petition, the court may ask the prosecuting attorney to tell the court whether there is anything it should consider when deciding whether to grant your petition.

12 How will the court make its decision?

a. If you meet all of the eligibility factors, and the court receives certification of your successful participation in fire camp or at an institutional firehouse, the court may grant your § 1203.4b petition *if it is in the interests of justice.*

b. If the court determines that it's not in the interests of justice to grant relief, the court can deny your petition even if you meet all the eligibility requirements. You may resubmit your petition in the future if you think the court's decision was incorrect.

c. Once the court makes a decision on your § 1203.4b petition, it will issue an order (likely on form CR-432) that states whether the court granted or denied your petition. If the court grants your petition, the order will state which convictions have been dismissed and whether supervision has been terminated. The court will also report this change in your record to the Department of Justice so that your statewide criminal history summary can be updated.

13 If the court grants relief, what happens to my conviction?

a. If the court grants relief and dismisses the conviction, you will be released from most of the penalties and restrictions that are connected to the conviction. The law keeps certain penalties in place.

b. A dismissal will NOT:

- Reinstate your right to possess firearms.
- Prevent suspension of your driver's license in some cases.
- Allow you to omit the conviction from applications for the California Commission on Teacher Credentialing, a position as a peace officer, public officer, or for contracting with the California State Lottery Commission.
- Permit you to hold public office if the law prohibits people from holding public office as a result of that conviction.
- Seal or remove the court file from public inspection.
- Prevent the conviction from being used as a "prior" in the future.
- Remove from your record the fact that an arrest occurred.
- Release you from the terms and conditions of an unexpired criminal protective order that has not been modified or terminated by the court.

CR-431

Court Cover Letter and Agency Certification—Incarcerated Individual Hand Crew or Institutional Firehouse Participant

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

☐ **Secretary, California Department of Corrections and Rehabilitation** *(check one):*

☐ c/o Camp Liaison Captain
1515 S Street, 330 N-113
Sacramento, California 95811

☐ c/o Classification and Parole Representative
Parent Institution *(name):* _____
Address: _____

☐ **Appropriate county authority** ***(name)*:** _____
Address:

Superior Court of California, County of

Attached is a copy of a petition for relief under Penal Code section 1203.4b filed by:

Petitioner's Full Name: _____

Date of birth: _____ *(mm/dd/yyyy)*

CDCR No. *(while in fire camp or institutional firehouse, if known):* _____

Case Number:

Name of fire camp or institutional firehouse, if known: _____

Approximate dates in fire camp or institutional firehouse: _____ *(month/year)* to _____ *(month/year)*

For Court Use Only

Please certify, by ***(date)*:** _____, whether the petitioner successfully participated as a hand crew member in the CDCR incarcerated individual conservation camp program, as a member of a county incarcerated individual hand crew, or at an institutional firehouse and has been released from custody.

Date: _____

Court Clerk: _____ Court Contact Information *(optional)*: _____

Agency Certification

NOTE TO CERTIFYING AGENCY: Please fill out this certification and mail this form to the court at the address above.

The Secretary of the California Department of Corrections and Rehabilitation or the appropriate county authority certifies that, on case number: _____ *(check one):*

☐ The petitioner successfully participated as a hand crew member in the CDCR incarcerated individual conservation camp program, as a member of a county incarcerated individual hand crew, or at an institutional firehouse and has been released from custody.
Dates of participation: _____ *(month/year)* to _____ *(month/year)*

☐ The petitioner participated but was not successful as a hand crew member in the CDCR incarcerated individual conservation camp program, as a member of a county incarcerated individual hand crew, or at an institutional firehouse.

☐ The petitioner did not participate as a hand crew member in the CDCR incarcerated individual conservation camp program, as a member of a county incarcerated individual hand crew, or at an institutional firehouse.

Date: _____ Agency: _____

_____ _____
Type or print your name *Signature of Agency Representative*

CR-432

Order on Petition—Incarcerated Individual Hand Crew or Institutional Firehouse Participant

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Superior Court of California, County of

Case Number:

For Court use only:
Date:
Time:
Department:

1 Your Full Name: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

CDCR No. *(if known):* _____

Name of fire camp or institutional firehouse *(if known):*

_____

2 **The court finds:**

a. ☐ The Secretary of the California Department of Corrections and Rehabilitation or the appropriate county authority has certified to the court that the petitioner successfully participated as a hand crew member in the CDCR incarcerated individual conservation camp program, as a member of a county incarcerated individual hand crew, or at an institutional firehouse.

b. ☐ The petitioner has not violated any terms or conditions of probation, parole, or supervised release prior to, and during the pendency of, the petition for relief under Penal Code section 1203.4b. The court orders early termination of (*check one*):
☐ probation ☐ parole ☐ supervised release

c. ☐ It is in the interests of justice to dismiss the accusations or information against the petitioner and release the petitioner from all penalties and disabilities resulting from the offense of which the petitioner has been convicted, except as provided in Vehicle Code Section 13555.

3 The court **GRANTS** the petition for dismissal regarding the following convictions under Penal Code section 1203.4b *(check one)*:

a. ☐ for all convictions in case number: _____ or

b. ☐ for only the following convictions in case number: _____
(*specify charges and date of conviction*):

_____
_____
_____
_____
_____

Case Number:

3 As to these convictions, it is ordered that the petitioner's plea of guilty or nolo contendere be withdrawn and a plea of not guilty be entered, or the verdict of guilt be set aside. The court dismisses the accusations or information against the petitioner with respect to these charges.

Petitioner is released from all penalties and disabilities resulting from the convictions in this case for which the court is granting relief, except as follows:

- Suspension of petitioner's driver's license except as provided in Vehicle Code section 13555.
- In any subsequent prosecution, this conviction may have the same effect as if the accusation or information had not been dismissed.
- Petitioner must still disclose the conviction in response to any direct question in any questionnaire or application for licensure by the California Commission on Teacher Credentialing, for a position as a peace officer, for public office, or for contracting with the California State Lottery Commission.
- Petitioner may still be prohibited from owning, possessing, or having in petitioner's custody or control any firearm.
- Petitioner may still be prohibited from holding public office as a result of the dismissed conviction.
- Petitioner may still be subject to the terms and conditions of any unexpired criminal protective order issued under Penal Code section 136.2(i)(1), 273.5(j), 368(l), or 646.9(k).

4 ☐ The court **DENIES** the petition without prejudice because *(check all that apply):*

a. ☐ Petitioner's conviction is for an offense that is ineligible for relief under Penal Code section 1203.4b(a)(1)(A)–(H).

b. ☐ Petitioner is in custody.

c. ☐ Petitioner is currently charged with the commission of any other offense.

d. ☐ The Secretary of the California Department of Corrections and Rehabilitation or the appropriate county authority did not certify to the court that the petitioner successfully participated as a hand crew member in the CDCR incarcerated individual conservation camp program, as a member of a county incarcerated individual hand crew, or at an institutional firehouse.

e. ☐ Petitioner was not serving a sentence for this conviction at the time of participation in fire camp or an institutional firehouse.

f. ☐ The court finds that granting relief would not serve the interests of justice because:

g. ☐ Other:

Date: _____

_____
Signature of Judicial Officer

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Criminal Procedure: Record Cleaning Forms (revise forms CR-180, CR-181, CR-400, CR-401, CR-402, CR-403, CR-409, CR-409-INFO, CR-430, CR-430-INFO, CR-431, and CR-432)

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

	Commenter	Position	Comment	Committee Response
1.	Californians for Safety and Justice by Gilbert Johnson CA TimeDone Manager Oakland, CA	A	On behalf of the California TimeDone program, a project of Californians for Safety and Justice, I agree with the CR 180 form update to include the new penal code language across the state. This update is crucial to millions of Californians accessing record relief under Senate Bill 731.	The committee appreciates the comment.
2.	Legal Services for Prisoners with Children by Kellie Walters Staff Attorney Oakland, CA	AM	Regarding Form CR-181, the first amendment will "Combine items 5 and 6 as new item 5 and renumber items as needed." It could be clearer because the proposed document does not combine them.	The committee notes that the quoted description refers to items 5 and 6 in the current version of form CR-181 (revised as of January 1, 2019); those two items have been combined into new item 5 in the proposed form attached to the invitation to comment.
			Additionally, the requirement in section 6 that a petitioner who has received relief under 1203.4, 1203.41, or 1203.42 must still disclose for state licensure is contrary to the occupational licensing reforms that were recently passed.	Assuming that the commenter is suggesting that the notice provisions in new item 6 in proposed form CR-181 should be modified or deleted, the committee does not recommend this change. An order granting relief under Penal Code sections 1203.4, 1203.41, and/or 1203.42 is statutorily required to include the notice provisions in question. (See Pen. Code, §§ 1203.4(a)(1), 1203.41(b)(2), 1203.42(b)(2).)
3.	Neighborhood Legal Services of Los Angeles County by Laura Siegel, Staff Attorney and Bridget Engle, Supervising Attorney	AM	On behalf of Neighborhood Legal Services of Los Angeles County (NLSLA), we respectfully submit these comments in response to Invitation to Comment SPR23-14 regarding the Judicial Council Criminal Law Advisory Committee Proposed Forms CR-180, CR-181, CR 400, CR-401, CR-	The committee appreciates the comment. Please see the committee's response to the commenter's specific suggestions below.

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Criminal Procedure: Record Cleaning Forms (revise forms CR-180, CR-181, CR-400, CR-401, CR-402, CR-403, CR-409, CR-409-INFO, CR-430, CR-430-INFO, CR-431, and CR-432)

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	Commenter	Position	Comment	Committee Response
	Pacoima, CA		402, CR-403, CR-409, CR-409-INFO, CR-430, CR-430-INFO, CR-431, CR-432. The mission of NLSLA is to expand access to justice and address the most critical needs of impoverished communities, including those of individuals with prior system involvement. Our office has assisted hundreds of clients with removing critical barriers they face as a result of their criminal records, including preparation of expungement petitions, arrest seals, motions for early termination of probation, and petitions to reduce convictions to lower-level offenses. Criminal record history leads to difficulty obtaining and maintaining stable housing employment, and professional licenses for individuals with prior system involvement. These consequences negatively affect not only the individuals themselves but also their families who profoundly suffer from these penalties. The impact of these penalties has a ripple effect to the broader community. In California, low-income people of color are overrepresented at every stage in the criminal legal system. As a result, they are more likely to face the collateral consequences that stem from having a criminal record. Therefore, on top of reducing recidivism and increasing the likelihood of successful reentry, the ability to access clean slate relief is a vitally important race equity issue. NLSLA has seen numerous examples of people obtaining housing, jobs, and professional licenses after availing themselves of post-conviction relief. Unfortunately, we have	

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	Commenter	Position	Comment	Committee Response
			also seen just as many people who are unable to petition for relief due to a range of barriers. For example, a lack of clarity about the process for obtaining post-conviction relief, knowledge on how to collect necessary information, and instructions on how to complete, file and serve the required forms leaves pro per individuals feeling overwhelmed and ill-prepared to seek critical remedies they are otherwise eligible for. The recent statutory changes reflected in the proposed forms greatly expand the eligibility for record clearing relief and make other significant changes to this area of the law. We thank and commend the Judicial Council for producing forms that will be an important tool in facilitating access to this valuable form of relief for petitioners, and help the courts operate more efficiently by simplifying, standardizing, and clarifying the procedures and conserving court resources. However, in order to better achieve the stated purposes, we recommend the following modifications:	
			A. Recommended Changes to the Notice Provision Regarding the Possibility of Automatic Relief on Forms CR-180, CR-400, CR-409, and CR-430 We agree that providing notice to petitioners of the existence of automatic record-clearing relief is useful. However, we suggest modifications to the notice provision to better reflect that petitioning for relief may be necessary or desirable even if automatic relief has been granted, and to	

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<table>
<tr><th></th><th>Commenter</th><th>Position</th><th>Comment</th><th>Committee Response</th></tr>
<tr><td></td><td></td><td></td><td>further clarify that it is not necessary for petitioners to access Department of Justice (DOJ) RAP sheets before petitioning for relief.

In order to incorporate this information, we suggest the following changes to the notice provision of form CR-180, and suggest that corresponding changes also be made on the CR-400, CR-409, and CR-430 forms.

<table>
<tr><th>Current notice provision on proposed form CR-180</th><th>Recommended notice provision on form CR-180</th></tr>
<tr><td>Note to petitioner: Your conviction(s) may have already been automatically dismissed under Penal Code section 1203.425. If so, this petition may be unnecessary. To find out if your conviction has already been dismissed, request your Record of Arrest and Prosecution (RAP) sheet from the California Department of Justice. Failing to check, however, does not prevent you from filing this petition.</td><td>Note to petitioner: Your conviction(s) may have been automatically dismissed under Penal Code section 1203.425. If so, this petition may not be necessary, but there may be additional benefits to you even if your conviction was automatically dismissed. If you want to know if your conviction has already been dismissed, you have the option to request your Record of Arrest and Prosecution (RAP) sheet from the California Department of Justice, but this is not necessary.</td></tr>
</table></td><td>The committee agrees with aspects of this suggestion and has incorporated them, with modifications, into the revisions that it is recommending for adoption, as discussed below.</td></tr>
</table>

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	Commenter	Position	Comment	Committee Response
			The reasons for these recommended changes are discussed below. **1. Explain that even if automatic relief has been granted, petition-based relief may still be beneficial.** It is important that the proposed forms convey the information that the relief available through automatic record clearing may not offer the full range of benefits conferred through petition-based relief. For example, the petition-based arrest seal relief available through Penal Code section 851.91 is more comprehensive than the automatic relief available through Penal Code section 851.93, which explicitly allows the Department of Social Services to still consider arrests sealed pursuant to that section. Penal Code section 851.93(d)(6). Therefore, it is important to inform the public that petition-based relief may still be valuable for individuals seeking certain types of professional licenses. Also, when the DOJ grants automatic relief pursuant to Penal Code section 851.93 and Penal Code section 1203.425, the court records do not necessarily reflect this relief. That is, even when a DOJ RAP sheet shows that an	The committee agrees that these notice provisions should alert petitioners to potential differences between automatic and petition-based record relief. The committee has revised the recommended notice in form CR-180 to clarify that automatic relief is granted by the state Department of Justice (DOJ) (rather than the court), and that there may be additional benefits to affirmatively filing a petition, including felony reduction under Penal Code section 17(b). The committee has revised the recommended notice in form CR-409 to acknowledge that the benefits of automatic and petition-based relief may not be identical. Corresponding changes are being recommended in forms CR-400 and CR-430. The committee notes that, under the automatic relief statutes, once the DOJ has granted arrest or conviction record relief, the DOJ must notify the

	Commenter	Position	Comment	Committee Response
			arrest has been sealed pursuant to Penal Code section 851.93, the records of an associated court case are often still visible in court records. Similarly, when a DOJ RAP sheet shows that a conviction has been dismissed pursuant to Penal Code section 1203.425, the conviction may still appear on court records as a conviction that has not been dismissed. Therefore, the records may still appear on public court websites and records. We have seen many examples of this situation in Los Angeles County. Since private background check reports contain publicly available information, convictions granted automatic dismissals, but still appearing as non-dismissed convictions on court records, run the risk of being wrongfully reported on private background checks. **2. Further clarify that requesting DOJ RAP sheets is not necessary.** We suggest modifying the language in the current notice provision regarding the role of requesting DOJ RAP sheets to make it more accessible and more clearly convey that this is not a necessary step in the process. We are concerned that use of the phrase "failing to check" might deter petitioners who have not obtained their DOJ RAP sheets from petitioning. Also, in our experience, obtaining DOJ RAP sheets is a significant barrier for many petitioners given the associated cost, even with the fee waiver that partially covers the cost.	appropriate superior court that relief was granted, and the court thereafter is prohibited from disclosing information on the arrest or conviction except as specified. (Pen. Code, § 851.93(c), 1203.425(a)(3)(A).) The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			B. Recommend Changes to Proposed Forms CR-180 and CR-430 to Clarify the Possibility and Benefits of a Perjury Statement	

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Criminal Procedure: Record Cleaning Forms (revise forms CR-180, CR-181, CR-400, CR-401, CR-402, CR-403, CR-409, CR-409-INFO, CR-430, CR-430-INFO, CR-431, and CR-432)

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			The proposed forms reflect that the relevant dismissal statutes do not require a perjury statement by removing the penalty of perjury declaration from the signature line of forms CR-180 and CR-430, and changing references from Attached Declaration (form MC-031), which has a perjury statement, to Attachment (form MC-025), which does not itself include a perjury statement. However, making statements under penalty of perjury often makes the petition stronger. Not all issues involved in the decision are independently verifiable. For example, in the case of discretionary dismissal petitions in the interests of justice, the petitioner's explanation of mitigating circumstances and rehabilitation efforts and life changes may not be independently verifiable, and the petitioner's statements provide crucial information needed for the court to evaluate the petition. Furthermore, record-clearing petitions are often decided without an adversarial hearing, or even if there is a hearing, petitioners often do not have attorneys. For these reasons, it is important that petitioners have the opportunity to make their petitions more persuasive to a judicial officer through a perjury declaration and that they are informed about the benefits of doing so. Accordingly, we recommend that the forms provide information for petitioners about potential benefits of including a signed under penalty of perjury statement, include MC-031 as an option when suggesting a form to use for the declaration, and clarify the opportunity to add a penalty of perjury statement even if the petitioner is using a form that does not contain a perjury statement.	The committee agrees with the suggestion to revise forms CR-180 and CR-430 to inform petitioners that they may use *Attached Declaration* (form MC-031) if desired and has incorporated this suggestion into the revisions that it is recommending for adoption. The committee declines to otherwise revise the forms as suggested at this time, as the underlying statutes do not require the petitions to be submitted under penalty of perjury.

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			It may also be helpful to add information about perjury statements on information sheets associated with the affected forms, the CR-430-INFO, and the recommended CR-180-INFO discussed further below.	Because this would be an important substantive change to the proposal, the committee believes public comment should be sought before it is considered for adoption. The committee may consider this suggestion during a future proposal cycle.
			C. Recommended Addition of a CR-180-INFO Information Sheet to Assist Petitioners in Understanding and Using Form CR-180 Form CR-180 is complex, and understandably, has technical language. We suggest that one way to assist petitioners who use form CR-180 would be adding a CR-180-INFO information sheet to provide guidance on how to use the form CR-180 to petition for relief, similar to the way guidance is provided on the CR-409-INFO and CR-430-INFO information sheets. A note on the form CR-180 could then be added directing petitioners to form CR-180-INFO, similar to the notes at the top of forms CR-409 and CR-430 directing petitioners to the relevant information sheets. Below are some specific examples of information about petitioning for dismissal with form CR-180 that would benefit from further explanation on a CR-180-INFO. **Add information about service and filing:** Both CR-409-INFO and CR-430-INFO describe how to file a petition with	Because recommending a new form would be an important substantive change to the proposal, the committee believes public comment should be sought before such a new form is recommended to the Judicial Council. The committee may consider this suggestion during a future proposal cycle.

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	Commenter	Position	Comment	Committee Response
			the court, including advice like bringing or mailing an extra copy for the court to file-stamp. Those information sheets also include helpful information about what "service" means and who needs to be served. A CR-180-INFO could cover similar questions about where the petition should be filed, what prosecuting agency must be served, and how to show the court service was completed. **Add information about Senate Bill 1106:** On page 7, the Invitation to Comment refers to the statutory changes made by SB 1106 to Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42 and 1203.45 that prohibit denial of relief under these sections because of unpaid restitution. This is an important change in the law that affects the forms of relief covered by form CR-180. The Invitation to Comment notes that this change did not affect Penal Code section 1203.4b relief as anticipated, because of a chaptering issue, and suggests possible addition to the CR-430-INFO to address this issue should the chaptering issue be resolved before publication of the forms. However, because the forms of relief covered by form CR-180 are affected now by SB 1106, the suggested language in the possible addition to CR-430-INFO on page 7 of the Invitation to Comment would be a good addition to a CR-180-INFO to help petitioners access relief that has become available to them because of the statutory changes. **Clarify the two-year waiting period for petitioners who completed a state prison sentence and are seeking relief pursuant to Penal Code section 1203.41:** We suggest adding information that parole is not part of a prison	

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<table>
<tr><th></th><th>Commenter</th><th>Position</th><th>Comment</th><th>Committee Response</th></tr>
<tr><td></td><td></td><td></td><td>sentence, so for petitioners released from state prison and placed on parole, the two-year period begins upon release from prison.</td><td></td></tr>
<tr><td></td><td></td><td></td><td>D. Recommended Modifications to Proposed Form CR-180

In order to accurately reflect Penal Code section 1203.41(a)(6), and correctly describe eligibility for Penal Code section 1203.41 relief, we suggest modifying the language after the checkbox in item 5(c) of form CR-180.

<table><tr><th>Current language:</th><th>Recommended language:</th></tr><tr><td>More than two years have elapsed since petitioner completed the state felony prison sentence.</td><td>More than two years have elapsed since petitioner completed the state prison sentence and the conviction did not result in a requirement to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1.</td></tr></table></td><td>The committee agrees with this suggestion and has incorporated it, with minor modifications, into the revisions that it is recommending for adoption.</td></tr>
<tr><td></td><td></td><td></td><td>E. Recommended Modifications to Proposed Form CR-181

1. Provide places for judges to state reasons for denial.

It will be very beneficial to have a space on the form CR-181 that encourages the court to state the reasons for the</td><td>Because this would be an important substantive change to the proposal, the</td></tr>
</table>

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	Commenter	Position	Comment	Committee Response
			court's determination that granting relief to the petitioner would not serve the interests of justice, if that is the court's decision. This would be similar to item 4(f) on form CR-432, which provides a place for the court to give reasons for denying relief pursuant to Penal Code section 1203.4b. Providing the basis for the court's decision will better position petitioners for future access to this relief. Providing this space on the CR-181 also helps guide the courts efficiently through the process of considering the petition and communicating the decision to the petitioner. Furthermore, it will avoid courts having to respond to later questions about the reasons for the denial, conserving court resources. For example, there are a number of courthouses in Los Angeles County that do not hold hearings on expungement petitions. When a judge denies a petition and does not include a reason on the order or the minute order, often the only way to hear the judge's reasoning is to file another petition for expungement. **2. Modify the form to encourage ruling on reductions.** Although this issue is not related to the recent legislative changes, we also recommend modifications to form CR-181 to encourage rulings on reduction requests pursuant to Penal Code section 17(b) or Penal Code section 17(d)(2). Even though form CR-181 provides boxes in sections #1 and #2 for courts to indicate whether a reduction is being granted or denied, in our experience, these sections of the forms are often not used at all when courts decide petitions. That is, courts leave items #1 and #2 blank even when a petition includes a reduction request.	committee believes public comment should be sought before it is considered for adoption. The committee may consider this suggestion during a future proposal cycle. Because this suggestion would be important substantive change to the proposal, the committee believes public comment should be sought before it is considered for adoption. The committee may consider this suggestion during a future proposal cycle.

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			One option in order to address this issue would be to combine the dismissal and reduction decisions. So, the court can choose from options such as "The court grants the petition for dismissal and grants the petition for reduction" and "The court grants the petition for dismissal and denies the petition for reduction," and so on for the different possible decisions.	
			F. Recommended Modification to Proposed Form CR-403 Form We suggest adding a reason box for item 3(e), i.e., having the court providing a basis for determination that resentencing would provide an unreasonable risk of danger to public safety. The advantages of offering space for the court to provide reasons for denial are similar to the benefits described above in suggesting form CR-181 be modified to provide space for the court to give reasons for a denial.	Because this would be an important substantive change to the proposal, the committee believes public comment should be sought before it is considered for adoption. The committee may consider this suggestion during a future proposal cycle.
			G. Recommended Modifications to Proposed Form CR-409 **1. Clarify provision of trial court case number and name.** We recommend modifying the language on the right side of the first page, near the boxes for providing information on the trial court case number. **Current language:** | **Recommended language:**	The committee agrees with this suggestion and has incorporated it, with minor modifications, into the revisions that it is recommending for adoption.

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	Commenter	Position	Comment	Committee Response
			Fill this out if a criminal complaint was filed. / *If there is a court case associated with this arrest, fill in the trial court case number and name in the boxes below* The purpose of this suggested modification is to clear up any potential ambiguity about which part of the form the word "this" in the instructions refers to. **2. Clarify applicability relief in the interests of justice.** Another suggested modification concerns page 2, Section H, where a petitioner is prompted to describe why the interests of justice support the relief. Our high-volume practice of filing arrest seal petitions has shown us that judges often treat certain types of arrests as either categorically ineligible for relief, or they mistakenly believe they have discretion to grant or deny. This comes up most commonly with domestic violence-related arrests. For example, a petitioner with a single domestic violence arrest that meets all eligibility requirements under PC 851.91 is entitled to seal the arrest as a matter of right. However, despite the language in PC 851.91(c)(2)(a)(i)(I) indicating that a petitioner may only seal their domestic violence arrest in the interests of justice "if the petitioner's record demonstrates a pattern of domestic violence arrests, convictions, or both," judges often overlook the word "pattern" and believe they always have discretion if the arrest involves domestic violence. Subdivision ii in this section then goes on to state: (ii) For	The committee agrees with this suggestion and has incorporated it, with minor modifications, into the revisions that it is recommending for adoption.

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	Commenter	Position	Comment	Committee Response
			purposes of this subparagraph, "pattern" means two or more convictions, or five or more arrests, for separate offenses occurring on separate occasions within three years from at least one of the other convictions or arrests. Even though the plain language of the statute clearly defines "pattern," we see judges misinterpret the law on a regular basis. We believe adding clarity to the CR-409, Section H, will help prevent this mistake from happening (and the mistake leads to a waste of judicial resources, with mandatory petitions having to be re-filed and new hearings being held on what should be a very straightforward remedy). We recommend the following sentence be added to the form: "The interests of justice standard only applies to petitioners whose records show a "pattern" of arrests or convictions for offenses listed in PC 851.91(c)(2)(a)(i). "Pattern" is defined in PC 851.91(c)(2)(a)(i)(ii)."	
			H. Suggested Modifications to Proposed Form CR-409-INFO **1. Clarify the record types eligible for sealing.** We suggest adding information in item 1 that it is possible to seal an arrest that did not result in a court case, or an arrest that did result in charges being filed but no conviction. This will help clarify the applicable law for petitioners who may not be familiar with how to characterize different kinds of interactions with law enforcement or courts generally, and specifically may not know that court cases which do not result in conviction remain on court and state criminal records.	The committee agrees with this suggestion and has incorporated it, with minor modifications, into the revisions that it is recommending for adoption.

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SPR23-14

Criminal Procedure: Record Cleaning Forms (revise forms CR-180, CR-181, CR-400, CR-401, CR-402, CR-403, CR-409, CR-409-INFO, CR-430, CR-430-INFO, CR-431, and CR-432)

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<tr><td></td><td></td><td></td><td>
<table>
<tr><th>Current language:</th><th>Recommended language:</th></tr>
<tr><td>The petition is a request to the court to seal arrest and related records under Penal Code section 851.91. A separate petition must be filed for each arrest for which sealing is requested.</td><td>The petition is a request to the court to seal arrest and related records under Penal Code section 851.91. You can ask the court to seal arrests that did not result in a court case, or arrests that did result in charges being filed in court, but the court case did not result in a conviction. A separate petition must be filed for each arrest for which sealing is requested.</td></tr>
</table>

2. Clarify the possibility of filing with incomplete information.

It is often very difficult for petitioners, or even petitioners' attorneys, to get information about arrests. This difficulty seems to be recognized on the CR-409 form, which states in item 3, "(provide as much information as you can)." In contrast, the language in item 2 on proposed form CR-409-INFO states that, "The court may deny your filing if you provide incomplete information." While this does track Penal Code section 851.91(b)(2), in order to avoid deterring petitioners who may have incomplete information about their arrests, we suggest modifying the language in the last</td><td>The committee agrees with this suggestion and has incorporated it, with minor modifications, into the revisions that it is recommending for adoption.</td></tr>
</table>

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	Commenter	Position	Comment	Committee Response
			sentence of this section of the form to match the language on the CR-409 form "(provide as much information as you can)." **3. Correct and clarify eligibility for sealing arrests.** Item 3 lists out three scenarios under which the court will not seal an arrest as a matter of right, listed out as (1), (2) or (3). These listed scenarios generally track Penal Code section 851.91(a)(2). However, Penal Code section 851.91(a)(2) specifies situations under which arrests are ineligible to be sealed at all, neither as a matter of right nor in the interests of justice. The situations under which arrests can be sealed in the interests of justice are specified in Penal Code section 851.91(c)(2)(A)(i). Accordingly, we recommend changing the language in item 3 to accurately reflect the law specifying which arrests are eligible to be sealed as a matter of right, which are eligible to be sealed in the interests of justice, and which are ineligible to be sealed. **4. Clarify the meaning of relief "as a matter of right."** We suggest defining "as a matter of right" to help petitioners understand that this means that if the relevant conditions are met, the arrest seal is mandatory. **5. Provide more information about service.** We recommend providing more general information in item 5 about serving the prosecuting agency and law enforcement	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into

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			agency that made the arrest in order to help self-represented petitioners unfamiliar with court processes. Also, specifically, we recommend clarifying the electronic service option, which is often not available, and even if it is available, the process may be unclear to petitioners. In order to clarify these issues, we recommend adding language adapted from item 5 of the CR-430-INFO which provides more explanation and information about service.	the revisions that it is recommending for adoption.
			I. Recommended Modifications to Proposed Form CR-430-INFO We recommend adding information to item 8 of the CR-430-INFO about the CDCR/county authority certification process and about form CR-431. It may also be helpful to add information to item 8 of form CR-430-INFO clarifying which portions of the CR-431 form the petitioner is responsible for completing. This is discussed further below in the discussion of the recommended modifications to form CR-431. **1. Explain generally the role of the CR-431.** Item 8 of form CR-430-INFO explains that the court will contact CDCR or the county authority for certification of certain information needed to determine eligibility for dismissal pursuant to Penal Code section 1203.4b. In order to help petitioners understand this certification process, it would be helpful to briefly explain the role of form CR-431. For example, Item 8 could explain that the petitioner should submit form CR-431 to the court along with the other petition documents, and that the court will then send the	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

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	Commenter	Position	Comment	Committee Response
			form to CDCR or the appropriate county authority to certify and return to the court. **2. Add information about county authority contact information.** We also suggest clarifying for petitioners the use of the two checkboxes at the top of the CR-431 regarding whether the form is to be directed to CDCR or the appropriate county authority. If petitioners are responsible for adding the address for the relevant county authority on this form, it would also be helpful to explain how petitioners can get this information.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			J. Recommended Modifications to Proposed Form CR-431 **Clarify which information the petitioner should fill out and which parts the court fills out:** For example, it is not clear if the "Please certify by (date)___ " item in the middle of the page should be filled out by the petitioner or left blank for the court to complete. In order to guide petitioners, we suggest adding horizontal lines above and below this section or otherwise visually demarcating this section and indicating that the court is to fill out the information within the border, or alternatively, adding a horizontal line above the section and indicating that the petitioner should fill out the section above the line.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
4.	Orange County Bar Association By Michael A. Gregg President	A	*The proposal appropriately addresses the stated purpose.	The committee appreciates the comment.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
	Newport Beach, CA			
5.	Root & Rebound by Gail Yen California Policy Director Oakland, CA	AM	On behalf of Root & Rebound, I'm writing to share our public comments on the revisions to record cleaning forms proposed in SPR 23-14. Root & Rebound is a statewide reentry legal education and resource center based in Oakland, California that provides critical resources and support to the individuals, families, and communities most impacted by our criminal legal system. Our mission is to support people navigating reentry and reduce the harms perpetuated by mass incarceration. One of those ways is through helping people who need support in petitioning for conviction dismissals and sealing of arrest records with the use of these forms. Since record relief is one of the most common reasons why people with conviction records seek our legal support, we're acutely aware and regularly use these forms when supporting people in reentry. We are most concerned that these forms be navigable and useful for people who do not have legal assistance. Based on our extensive experience with these forms, we propose the following changes and edits to the following forms:	The committee appreciates this comment. Please see the committee's responses to the commenter's specific suggestions below.
			CR-180 1. Reinstate use of form MC-031 (specifically for declarations) the most common attachment for the CR-180. Exclusive use/suggestion of MC-025 risks confusion and deters use of a more specific form MC-031 that is often the most applicable. At a minimum explicitly offer both forms as options for attachment.	The committee agrees with the suggestion to inform petitioners that they may use *Attached Declaration* (form MC-031) if desired and has incorporated it into the revisions that it is recommending for adoption.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			2. Remove the blank spaces for an interest of justice argument by the petitioner. These limited spaces falsely suggest that a petitioner can possibly provide useful information or a reasonably complete argument in support of their petition in the space provided. These spaces are not sufficient or useful for supporting a petition in the interests of justice. Instead it should point directly to the optional form to attach when an interest of justice argument is required (see above).	Because this would be an important substantive change to the proposal, the committee believes public comment should be sought before it is considered for adoption. The committee may consider this suggestion during a future proposal cycle.
			3. Removing the excessive spaces also provides the opportunity to reduce the number of pages of this form from three to two pages. This will save paper and make the document easier to navigate for both petitioners and courts. We have experiences with courts mistakenly failing to turn to the third page and claiming that the form did not include a request for relief.	The committee appreciates the comment and notes that each of the proposed forms, including form CR-180, indicates the total number of pages in the bottom right corner ("Page x of x").
			4. The specific options for relief should be listed in statutory order (i.e. PC 1203.49 relief should be the last option on the form not the fourth of seven).	The committee declines the suggestion as unnecessary and prefers the current ordering of options for relief, which groups misdemeanor convictions together.
			5. In the initial explanatory note there is the suggestion that the DOJ RAP Sheet will verify if relief has been automatically granted. However, this information will not verify whether the local court has properly updated local records to reflect the automatic relief. This form should not suggest that these are the same and that DOJ relief is enough as many records for employment and housing are verified through county court records not through the DOJ state records.	The committee agrees that the note to petitioner should specify that automatic relief is granted by the state Department of Justice (DOJ) rather than the court and has incorporated this aspect of the suggestion into the revisions that it is recommending for adoption.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
				The committee also notes that, under the automatic relief statutes, once the DOJ has granted arrest or conviction record relief, the DOJ must notify the appropriate superior court that relief was granted, and the court thereafter is prohibited from disclosing information on the arrest or conviction except as specified. (Pen. Code, §§ 851.93(c), 1203.425(a)(3)(A).)
			6. Automatic relief does not also grant 17(b) reductions. The use of this form for 17(b) reductions even if the person has been granted automatic relief should be contemplated in the form and the first explanatory note should not deter someone from submitting this form for the purpose of 17(b) reduction.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			7. The last sentence of the initial explanatory note: "Failing to check, however, does not prevent you from filing this petition" includes a double negative and the "however" clause that may cause additional confusion about how automated relief impacts this petition process. This sentence would be rewritten in a more straightforward way.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			8. Remove the court address and branch requirements. These can be confusing and create more barriers to a petition. Please revert to the current form that does not require specific court info from the petitioner.	The committee declines to remove the address box because it is a standard item on Judicial Council forms and the petitioner should be aware of which court they are filing in. However, the committee agrees that the "branch name" line should be removed as it may be confusing and unnecessary, and the

	Commenter	Position	Comment	Committee Response
				committee has incorporated this change into the revisions that it is recommending for adoption.
			CR-181 9. Where the court "DENIES" an order the court should be required to provide a reason for the denial. There should be specific space for the court to complete a brief reasoning for the denial.	Because this would be an important substantive change to the proposal, the committee believes public comment should be sought before it is considered for adoption. The committee may consider this suggestion during a future proposal cycle.
			10. If the court finds that automatic relief has already been granted, the court should still grant the order and be required to order verification that all relief is reflected in local court records.	The comment is beyond the scope of the proposal.
			CR-400 et seq. 11. This form is superfluous. Relief granted by this form should have been completed automatically already under AB 1793 (2018). Continuing to update and invest in these forms diverts funds and focus from completing and verifying automatic relief for all eligible people. Further, failing to demand the state and counties do the required work to ensure everyone entitled to relief receives it contravenes the purpose of the law. When a law requires automatic relief there is specific intent that it be automatic and not simply a matter of individuals seeking individual relief.	The committee disagrees with the comment, given that the legislation in question did not remove the ability to affirmatively petition for relief. To the contrary, "[i]t is the intent of the Legislature that persons . . . who proactively petition for a recall or dismissal of sentence, dismissal and sealing, or redesignation pursuant to Section 11361.8 be prioritized for review." (Health & Saf. Code, § 11361.9(i).)

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			12. Remove the court address and branch requirements. These can be confusing and create more barriers to a petition. Please revert to the current form that does not require specific court info from the petitioner.	The committee declines to remove the address box because it is a standard item on Judicial Council forms and the petitioner should be aware of which court they are filing in. However, the committee agrees that the "branch name" line should be removed as it may be confusing and unnecessary, and the committee has incorporated this change into the revisions that it is recommending for adoption.
			CR-409 13. Either in 3.f., or in the right column under "Trial Court Case Number," or both, add a checkbox to affirmatively confirm that no criminal complaint was filed. This will clarify that the questions have been answered and not inadvertently omitted. This will help petitioners fill out the form with confidence that they have completed all of the necessary fields and do not need additional information. This is especially important because CR-409-INFO, number 2, requires the form be filled out completely before it is submitted.	The committee agrees with the suggestion to include a check box in item 3.f and has incorporated this into the revisions that it is recommending for adoption.
			14. Additionally, consider adding a box on the right column of the first page under the case name for the petitioner to list the arrest number. For the many instances where a person has an arrest but no criminal complaint it may be helpful to call this option out clearly and prominently.	The committee declines to incorporate the suggestion, given that an additional box on would be duplicative of item 3.d on the same page.
			15. Remove question 3.g. This section is unnecessary and confusing as it asks for an explanation for a petition that is a	The committee declines to incorporate the suggestion. Item 3.g allows the

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	Commenter	Position	Comment	Committee Response
			matter of right. Petitioners will either check 3.h. "matter of right," at which point no further explanation is required, or they will check 3.h. "Interest of justice" at which point they are directed to complete the MC-031 attachment.	petitioner an opportunity to provide additional information about the arrest, if any, that does not obviously belong elsewhere on the form. (See Pen. Code, § 851.91(b)(1)(E)(v) [listing information to be included in a petition to seal an arrest, including "[a]ny other information identifying the arrest" that is available from the arresting agency or the court].)
			16. Remove the lines for handwritten notes under 3.h. This is not sufficient space for a person to make an interest of justice argument and inclusion of this space gives people the wrong impression that such an argument can be made in this space. Directing someone to the additional MC-031 form should be the approach to providing interest of justice arguments.	Because this would be an important substantive change to the proposal, the committee believes public comment should be sought before it is considered for adoption. The committee may consider this suggestion during a future proposal cycle.
			17. The last sentence of the initial explanatory note: "Failing to check, however, does not prevent you from filing this petition" includes a double negative and the "however" clause that may cause additional confusion about how automated relief impacts this petition process. This sentence would be rewritten in a more straightforward way.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			CR-409-INFO 18. Number 8 tells petitioners that "A petition to seal ***is*** unnecessary if automatic relief has been granted" (emphasis added), however this would only be true if automatic relief was granted by the DOJ and that information was transmitted to the county court and reflected in all of its records. Depending on the county verifying that the county	The committee agrees with the suggestion and has revised item 8 in the recommended information sheet to conform with the revised note to petitioner in form CR-409.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			has actually reflected automatic relief may be impossible without filing such a petition. The INFO sheet, and the rest of the materials, should not suggest with certainty that a RAP sheet that reflects automatic relief is actual verification that county courts have reflected that relief.	
6.	Angelica A. Rivera Fresno County Public Defender's Office Senior Defense Attorney Fresno, CA	A	No specific comment.	No response required.
7.	San Diego Office of the Primary Public Defender by Jennifer Gerstenzang Deputy Public Defender San Diego, CA	NI	My name is Jennifer Gerstenzang and I am an attorney with the San Diego Public Defender's Fresh Start Program. Each of the attorneys on our unit has over 1200 clients at any given time, and we are constantly trying to streamline how we can assist our clients more efficiently and effectively. We are ecstatic about PC 1203.425 but know that most of our clients unfortunately do not qualify for mandatory/automatic expungements. Additionally, with the expansion of 1203.41, we have many more clients who desperately need our services. It would be great to have one uniform one page form to file for expungements with, as well as indicate we are asking 1203.3 and 17(b) relief, as these are the most common areas of relief we ask for. I think when an attorney is filing we don't need the space in the form to add why it is in the interests of justice (and, in most cases, the court will require much more information than what is in the small area allotted for the pro per petitioner in order to grant the	The committee appreciates the comment. Because this would be an important substantive change to the proposal, the committee believes public comment should be sought before it is considered for adoption. The committee may consider this suggestion during a future proposal cycle.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR23-14

Criminal Procedure: Record Cleaning Forms (revise forms CR-180, CR-181, CR-400, CR-401, CR-402, CR-403, CR-409, CR-409-INFO, CR-430, CR-430-INFO, CR-431, and CR-432)

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

	Commenter	Position	Comment	Committee Response
			petition) because we will be requiring our clients to submit a more thorough declaration on a separate piece of paper. As our program routinely files hundreds upon hundreds of these petitions a year, it would make it easier for all involved (our office, the court clerks, the prosecution, and the bench) to have a quick cover page where it is easy to see any and all relief the petitioner is requesting. I do think the CR-180 is important for pro per petitioners as it allows for a more easy route for them to file on their own. However, it would be nice to have a separate form that practitioners can use in order to submit these petitions. I have attached a proposed form that includes what I am suggesting.	
8.	Superior Court of Orange County by Iyana Doherty Courtroom Operations Supervisor	A	We agree with the suggested revisions to the optional forms as the revisions are necessary due to legislation changes and/or are useful for the courts and petitioners. • Yes, it states the purpose and adequately addresses the expansion of relief under PC section 1203.4b. • Implementation requirements – communication to staff and Judicial Officers. • No cost savings • Reviewing the new forms with the Courtroom Clerks and Case Processing unit would be about three hours each. • Docket codes to conform with the new verbiage added to the forms and update of procedures and local forms as needed. Approximately 5 days to train and implement successfully.	The committee appreciates the comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR23-14

Criminal Procedure: Record Cleaning Forms (revise forms CR-180, CR-181, CR-400, CR-401, CR-402, CR-403, CR-409, CR-409-INFO, CR-430, CR-430-INFO, CR-431, and CR-432)

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

	Commenter	Position	Comment	Committee Response
			• Docket code creation or modifications would also need to comply with the JBSIS and DOJ reporting. • Yes, 3 months would be sufficient and the preferred timeline to implement this new form instead of January 1st. Legislation updates are the priority for January 1st. • No difference anticipated for different sized courts.	
9.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	• Does the proposal appropriately address the stated purpose? **The proposal adequately addresses legislative changes.** • Do the proposed revisions to forms CR-430, CR-430-INFO, CR-431, and CR-432 adequately address the expansion of relief under Penal Code section 1203.4b to institutional firehouse participants? **Yes.** • Would the proposal provide cost savings? If so, please quantify. **No.** • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **None for this court. SD Superior Court has created its own forms.**	The committee appreciates the comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR23-14

Criminal Procedure: Record Cleaning Forms (revise forms CR-180, CR-181, CR-400, CR-401, CR-402, CR-403, CR-409, CR-409-INFO, CR-430, CR-430-INFO, CR-431, and CR-432)

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

	Commenter	Position	Comment	Committee Response
			• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.** • How well would this proposal work in courts of different sizes? **This proposal would work fine in the San Diego Superior Court (a large court).** Additional comment: **This does not have to do with any of the proposed changes, but San Diego Superior Court repeatedly gets conflicting information as to where to send the firecamp petitions (see Form CR-431, two sections for addresses). In December 2022, the court received a CDCR memo that listed various addresses for sending the court cover letter, depending on where the firecamp was located, none of which is the Sacramento address listed on the CR-431. In addition, it is taking CDCR months to return the firecamp certifications (even if a due date is given by the court), although it is unknown if this is due to staffing issues, sending the cover letter to the wrong address, or something else. This leads to rescheduled hearings and delayed relief. It would be helpful if there was some statewide, coordinated rules regarding addresses and the timeline for CDCR's response.**	The comment regarding statewide, coordinated rules regarding addresses and the timeline for CDCR's response is beyond the scope of the proposal. However, the committee has confirmed that the CDCR address currently listed on form CR-431 is correct, and that courts may also choose to send the form directly to the Classification and Parole Representative at the parent institution for the conservation camp or firehouse that the petitioner stated they were assigned to. To reflect this, the committee has incorporated an updated address field into the revisions that it is recommending for adoption.
10.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee	A	The JRS notes that the proposal is required to conform to a change of law. The JRS also notes the following:	The committee appreciates the comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR23-14

Criminal Procedure: Record Cleaning Forms (revise forms CR-180, CR-181, CR-400, CR-401, CR-402, CR-403, CR-409, CR-409-INFO, CR-430, CR-430-INFO, CR-431, and CR-432)

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

	Commenter	Position	Comment	Committee Response
			The proposal addresses the stated purpose, including changes to Penal Code section 1203.4b. It would likely result in cost savings to the courts. The form's notice provision regarding the possibility of automatic relief having previously been granted could result in fewer petitions being filed. The form also provides the litigant with the method of determining if prior automatic relief has been granted (in a way that does not involve the courts). There are no training or case management coding issues. There does not appear to be a disparate impact on courts of varying sizes.	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Item number: 15

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Family law: Child Custody and Visitation Orders Involving Gender-Affirming Health Care

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend Cal. Rules of Court, rule 5.151

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

*Staff contact (*name, phone and e-mail*): Gabrielle D.Selden, 415-865-8085 gabrielle.selden@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): November 1, 2022
Project description from annual agenda: Item 1: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration and will take action only where necessary to allow courts to implement the legislation efficiently.

Item 1.j. SB 107 (Weiner) 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.

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

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

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

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

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

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

Judicial Council *of* California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-162
For business meeting on September 18–19, 2023

Title
Family Law: Child Custody and Visitation Orders Involving Gender-Affirming Health Care

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.151

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy A. Pellman, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 28, 2023

Contact
Gabrielle D. Selden, 415-865-8085
gabrielle.selden@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending one rule of court, effective January 1, 2024, to implement Senate Bill 107 (Stats. 2022, ch. 810). Senate Bill 107 amends Family Code sections 3421 and 3424 and enacts a new public policy in Family Code section 3453.5 that supports a parent's ability to seek gender-affirming health care or gender-affirming mental health care for a child in the state of California without penalty. The amendments to the rule would provide procedures for situations in which a parent seeks emergency child custody or visitation orders in family court because the laws of another state prohibit that parent from providing gender-affirming health care or gender-affirming mental health care for their child.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2024, amend California Rules of Court, rule 5.151 to specify the procedures and forms that a parent or guardian must use to ask the court for temporary emergency orders when the issue relates to gender-affirming health care or gender-affirming mental health care—

care that is prohibited by the law of another state or unavailable in another state. In addition, the committee recommends replacing certain terms in a separate, relevant section of rule 5.51 to make the rule easier to understand.

The proposed revised rule is attached at pages 10–13.

Relevant Previous Council Action

The Judicial Council has not previously taken action on emergency orders relating to children who are in the state to receive gender-affirming health care or gender-affirming mental health care.

Analysis/Rationale

Changes to the Family Code

Senate Bill 107 adds subdivision (d) to Family Code section 3421 and extends the court's jurisdiction (under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)) to make initial child custody determinations if

> [t]he presence of a child in this state for the purpose of obtaining gender-affirming health care or gender-affirming mental health care, as defined by Section 16010.2 of the Welfare and Institutions Code, is sufficient to meet the requirements of paragraph (2) of subdivision (a).[1]

In addition, the bill amends Family Code section 3424 to provide that

> [a] court of this state has temporary emergency jurisdiction if the child is present in this state … because the child has been unable to obtain gender-affirming health care or gender-affirming mental health care, as defined by Section 16010.2 of the Welfare and Institutions Code.

Further, it adds section 3453.5 to the Family Code, which provides (in part) that:

> (a) 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

[1] Under Welfare and Institutions Code section 16010.2, "gender-affirming health care" means "medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, the following:

(i) Interventions to suppress the development of endogenous secondary sex characteristics.
(ii) Interventions to align the patient's appearance or physical body with the patient's gender identity.
(iii) Interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria, as defined in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition."

The statue also defines "gender-affirming mental health care" as "mental health care or behavioral health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, developmentally appropriate exploration and integration of identity, reduction of distress, adaptive coping, and strategies to increase family acceptance."

> 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.[2]

Cases with no out-of-state child custody orders

Under Family Code sections 3421(d) and 3424(c) the courts of this state have jurisdiction to make an initial child custody determination if (1) the child is in this state for the purpose of obtaining gender-affirming health care or gender-affirming mental health care and (2) there is no previous child custody determination that is entitled to be enforced in this state. The party seeking child custody orders would file an action in family court and then seek this specific relief as part of a request for child custody orders.

Cases with out-of-state child custody orders

Generally, under Family Code section 3446(b), a California court must recognize and enforce a registered child custody determination of a court of another state but may not modify the order. The same statute, however, makes an exception: "except in accordance with Chapter 2 (commencing with Section 3421)."

The exceptions to the prohibition on modifying an out-of-state child custody order are noted in Family Code sections 3424, 3427, and in case law.

- Family Code section 3424(a) provides that a court of this state has temporary emergency jurisdiction if, among other reasons, the child is present in this state because the child has been unable to obtain gender-affirming health care or gender-affirming mental health care.

- Under Family Code section 3424(c), if there is a previous child custody order or proceeding in another state having jurisdiction, a court of this state may issue a temporary emergency order, but the court must specify in the order a period of time that the court considers adequate until an order is obtained in the other state within the period specified or the period expires. There are different procedures for cases in which there are no previous child custody orders.[3]

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[2] As of July 17, 2023, 20 states in the United States have passed laws or policies banning gender-affirming health care for minors. Human Rights Campaign, *Map: Attacks on Gender Affirming Care by State,* https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map.

[3] Section 3424(b) provides:

> If there is no previous child custody determination that is entitled to be enforced under this part and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 3421 to 3423, inclusive. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

- Under the new provisions of Family Code section 3427(f)(1), a California court cannot determine that this state is an inconvenient forum where the law or policy of the other state limits the ability of a parent to obtain gender-affirming health care or gender-affirming mental health care for their child.

- Under Family Code section 3424(d), a California court issuing a temporary emergency order will still have to communicate with the out-of-state court to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Based on the foregoing, a court of this state is authorized to modify a child custody order issued in another state, at least temporarily. [4]

Rule 5.151

Changes to rule 5.151 under SB 107

In response to SB 107's changes to the UCCJEA, the committee recommends that the Judicial Council amend rule 5.151 to specify the procedures and forms that a parent or guardian must use to ask the court for temporary emergency orders when the issue relates to gender-affirming health care or gender-affirming mental health care—care that is prohibited by the law of another state or unavailable in another state. The rule with proposed amendments is provided in its entirety for context at pages 10–13.

The procedures specified in rule 5.151(d)(5) cover requests for temporary emergency orders involving child custody or visitation (parenting time) generally. The proposal would add subdivision (d)(6), titled "Applications for child custody or visitation (parenting time) when child is in the state for gender-affirming health care or gender-affirming medical care."

The proposed amendments to rule 5.151 would account for situations in which parties had not previously filed any action in family court involving custody or visitation of a child. In this situation, rule 5.151 would require the party to file a case in family court and then file the documents specified in subdivision (c) of the rule to ask that the California court issue temporary emergency orders to modify an out-of-state child custody order so that the child can obtain gender-affirming health care or gender-affirming mental health care in this state. In some situations, a party might decide to file a petition for dissolution of marriage or legal separation, a petition to determine a parental relationship, or a petition for custody and support and include the out-of-state child custody order with the initial filing.

The rule would also account for situations in which none of the previously mentioned petitions apply. For example, a party may simply want to register the out-of-state child custody orders in this state and then ask the court to issue temporary orders that modify those orders so that their

[4] However, "[e]ven though emergency jurisdiction ordinarily is intended to be short term and limited, [a court] may continue to exercise its authority as long as the risk of harm creating the emergency is ongoing." (*In re Angel L.* (2008) 159 Cal.App.4th 1127, 1139.)

child can obtain gender-affirming health care or gender-affirming mental health care in California. To provide a pathway for this type of action, the rule would require that the party file *Registration of Out-of-State Custody Order* (form FL-580) as the initial pleading. This would reflect the procedure that is currently used if there has already been a custody determination in another state.

In addition, the proposed rule (at subdivision (d)(6)(B) and (C)) references the forms, documents, and content that a party must provide to ask for temporary emergency orders that relate to children who are in California to obtain gender-affirming health care or gender-affirming mental health care. This subdivision is distinguished from subdivision (d)(5) (Applications regarding child custody or visitation (parenting time)) in that Family Code section 3064 does not apply to these cases. Therefore, a party would not have to show in the application immediate harm to a child or an immediate risk of a child's removal from the state of California before the court can issue a temporary order involving a child who is present in this state because the child has been unable to obtain gender-affirming health care or gender-affirming mental health care. To reflect this, committee recommends that the rule specify that Family Code section 3064 does not apply to subdivision (d)(6) matters.

However, the proposed rule cross-references some of the requirements listed in (d)(5) that apply to these case types; for example, the requirement to (1) advise the court of the existing custody and visitation arrangements and how they will be changed by the request for emergency orders and (2) include a completed form FL-105 if the form was not already filed or has changed since it was filed (see proposed subdivision (d)(6)(C)).

Additional change to rule 5.151

Finally, the committee recommends amending rule 5.51(d)(5) as illustrated below:

> "Applications for emergency orders ~~granting or modifying~~ involving child custody or visitation (parenting time) under Family Code section 3064 must:…"

Replacing the two legal terms would simplify the language and make this section easier for all persons to understand, including self-represented litigants. This change supports the Judicial Council's strategic goal of ensuring that court procedures are understandable.

Policy implications

As described in the section "Alternatives Considered" below, before circulating this proposal for comment the committee discussed whether rules or forms were necessary to implement SB 107. The committee agreed that new procedures are needed for these cases, as existing emergency (ex parte) options regarding child custody and visitation (parenting time) do not apply to the kind of situations described in SB 107.

The comments received generally supported the proposal with a few requests for revisions. Furthermore, there was no controversy or intense debate within the committee on the proposal or the recommendations made after considering public comments received.

Comments

The proposal was circulated for public comment from March 31 to May 12, 2023, as part of the regular spring comment cycle. The committee received a total of eight comments. Commenters included five courts (the Superior Courts of Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties), two organizations (Family Violence Appellate Project and Orange County Bar Association), and one individual. The committee's specific responses to each comment are available in the attached comments chart at pages 14–21.

Five commenters agreed with the proposal (of these, three commenters had no additional comments or suggested no edits). One commenter agreed with the proposal, if amended. Another commenter did not indicate a position but stated the proposal appropriately addresses the stated purpose and suggested no changes to the rule. One individual commenter disagreed with the proposal based on the belief that gender-affirming health care for minors is a political situation.

Proposal implements the law and policy of the Legislature regarding gender-affirming health care and mental health care

One individual commenter wrote, in part, that "[g]ender-affirming care is not a life-threatening situation, it is merely a political situation. Family law needs to stay away from politics as much as possible because managing political issues in the courts delegitimizes the role of the courts in family life."

In response, the committee noted that the denial of gender-affirming health care or mental health care is recognized as an urgent situation under Family Code section 3424(a). Such a denial or inability of a child to obtain gender-affirming health care or gender-affirming mental health care in another state is treated on par with a child who is abandoned or who needs to be protected because the child is subjected to, or threatened with, mistreatment or abuse. In each of these situations, a court of this state has temporary emergency jurisdiction to protect that child.

As defined in the Welfare and Institutions Code, gender-affirming health care is that which is medically necessary. Thus, the issue is about providing a child continuity of care that is medically necessary and in the best interest of that child. In this way, a child who receives gender-affirming health care is, by law, similarly situated as a child who receives any number of other medically necessary health care treatments, such as chemotherapy, dialysis, or psychotropic or other medications. As such, the court of this state will need to address, on an emergency basis, the urgent need for the child's continuity of care if such treatment has been denied the child in another state.

Based on the foregoing, the committee does not recommend changes to the rule in response to the comment.

Comments requesting changes

The Superior Court of Riverside County stated that the proposed new language in rule 5.151 should be "a subsection of Section (d)(5) Applications regarding child custody or visitation

(parenting time)." This would "… avoid the appearance that pursuit of gender-affirming treatment constitutes an emergency categorically."

The committee does not recommend that the new section in (d)(6) be included under rule 5.151(d)(5) because—unlike applications under (d)(5)—a party does not need to demonstrate compliance with Family Code section 3064 to obtain emergency orders relating gender-affirming health care for the child under SB 107. Further, the first paragraph of the new section (d)(6) specifically identifies when a request for orders regarding gender-affirming health care or mental health care for a child constitutes an emergency. Thus, the rule avoids any appearance that gender-affirming treatment constitutes and emergency categorically.

The Family Violence Appellate Project agreed with the proposal and "express[ed] [their] appreciation for the Council in implementing this important legislation for the benefit of trans and gender non-conforming youth who will need it." Because rule 5.151 does not apply to cases under the Domestic Violence Prevention Act (DVPA), the Family Violence Appellate Project suggested that the council adopt a similar, new rule specifically for DVPA cases. The comment reflects the committee's discussion before the comment period to consider developing a rule or form proposal to specify the requirements of SB 107 as it relates to requests made in DVPA proceedings. In this respect, the committee responds that it will further consider creating such a rule in a future cycle.

The Superior Court of Riverside County suggested changes to proposed subdivision (d)(6)(B) because it is overinclusive— requiring documents listed in (c) that were not necessary. On further review, the committee did not agree to change the rule because (c) specifies that some documents are required only if they are relevant to the relief requested or if required by the court.

The Superior Court of Riverside County suggested that the "and" between "gender-affirming health care" and "gender-affirming mental health care" in the rule be replaced with "or" so that the phrase conforms with and is consistent with Family Code sections 3421, 3424, and 3453.5. The committee agreed with the commenter and that revision is reflected in the proposed amended rule.

Finally, the Superior Court of San Diego County suggested a change to proposed rule 5.151(d)(6)(A) to clarify that an application for emergency orders involving gender-affirming health care for a child must be filed with or after filing the first papers. The committee agreed with this suggestion and has incorporated it into the proposed amended rule.

Other general comments

Superior Court of Riverside County: "Apart from the suggested edits below, the proposed revisions provide clarity and comply with changes in law. The proposal provides the framework for the courts' assertion of jurisdiction over out of state families seeking gender-affirming health care in California."

Superior Court of Orange County: "This proposal would make it easier for self-represented litigants and attorneys to seek changes to an out-of-state child custody order to obtain gender-affirming health care or gender-affirming mental health care for a child" and "would make it easier for the courts in cases involving parties with out-of-state orders due to the requirement to file the request/application with or after filing the *Registration of Out-of-State Custody Order* (FL-580)."

Superior Court of San Diego County: "The proposal would make it easier for litigants and attorneys by providing specific documents that need to be filed" and "easier for courts to make orders in cases involving parties with out-of-state child custody orders who seek to modify the order and obtain gender-affirming health care or gender-affirming mental health care for [the] child."

Most of the remaining comments concerned fiscal and operational impacts. These comments are noted in "Fiscal and Operational Impacts."

Alternatives considered

The committee considered not proposing changes to rules of court or forms because SB 107 does not specifically require that the Judicial Council take any action to implement the changes to the UCCJEA. However, the committee determined that developing statewide, uniform rules in this subject area will (1) provide statewide consistency in practice and procedure, (2) provide clear processes that implement new laws under SB 107, and (3) support an important judicial branch strategic plan goal: access, fairness, diversity, and inclusion.[5]

The committee also considered whether to develop a separate rule of court and a new form set to implement SB 107. After review, the committee instead decided to propose amending rule 5.151 to include requests under SB 107. Rule 5.151 currently provides guidance to courts and to parties about the forms and procedures required to request temporary emergency orders specifically relating to child custody and visitation (parenting time). Requests for orders about a child who is in the state to obtain gender-affirming health care and gender-affirming mental health care will be a new category of temporary emergency orders that the child's parent could request because, as previously noted, under SB 107 a party does not need to demonstrate compliance with Family Code section 3064 to obtain these emergency orders. Therefore, the committee recommends that changes to the rule under SB 107 not be included under 5.151(d)(5), but instead be added as separate paragraph (d)(6).

Further, the committee considered two options to address the issue of SB 107 remedies also being applicable to cases filed under the DVPA, but DVPA cases not being applicable to rule 5.151. Option A was to include an advisory committee comment to rule 5.151. Option B was a proposal to adopt a new rule in chapter 11, article 1 (Domestic Violence Prevention Act Cases), to specify that applications for child custody or visitation (parenting time) involving gender-

[5] *The Strategic Plan for California's Judicial Branch* (July 19, 2019) is available at *www.courts.ca.gov/documents/Strategic_Plan_Companion_2022.pdf*.

affirming health care (including gender-affirming mental health care) for a child may also be requested under the Domestic Violence Prevention Act. The majority of members voted for option A rather than expand the proposal to two rules to address the changes in the Family Code under SB 107, as there would be insufficient time in the current cycle to develop such a rule. Therefore, the committee will further consider developing a new rule in a future cycle to specify the requirements of SB 107 as it relates to requests made in DVPA proceedings.

Fiscal and Operational Impacts

Comments from courts about the fiscal and operational impacts included the following:

One court commented that implementation of the amended rule would require courts to create new procedures for staff, create new event codes and hearing codes in the case management system, and update the system to standardize minute order language. Another court indicated that there would be minimal changes to processes because applicants would be required to either register an existing out-of-state custody order or file a new case in family court.

Another court noted that judicial officers would also need to develop a framework for resolving the dispute between parents on authorizing gender-affirming treatments for their child.

Two courts indicated that the proposal would not result in cost savings, that three months would provide sufficient time for implementation, and that the proposal would work in courts of different sizes.

Attachments and Links

1. Cal. Rules of Court, rule 5.151, at pages 10–13
2. Chart of comments, at pages 14–21
3. Link A: Senate Bill 107, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB107*
4. Link B: Fam. Code, § 3421, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=3421*
5. Link C: Fam. Code, § 3424, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=3424*
6. Link D: Fam. Code, § 3453.5, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=3453.5*

Rule 5.151 of the California Rules of Court is amended, effective January 1, 2024, to read:

Rule 5.151. Request for temporary emergency (ex parte) orders; application; required documents

(a)–(b) * * *

(c) Required documents

(1) *Request for order*

A request for emergency orders must be in writing and must include all of the following completed documents:

(A) *Request for Order* (form FL-300) that identifies the relief requested.

(B) When relevant to the relief requested, a current *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) and *Property Declaration* (form FL-160).

(C) *Temporary Emergency (Ex Parte) Orders* (form FL-305) to serve as the proposed temporary order;

(D) A written declaration regarding notice of application for emergency orders based on personal knowledge. *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders* (form FL-303), a local court form, or a declaration that contains the same information as form FL-303 may be used for this purpose.

(E) A memorandum of points and authorities only if required by the court.

(2) *Request to reschedule hearing*

A request to reschedule a hearing must comply with the requirements of rule 5.95.

(d) Contents of application and declaration

(1) *Identification of attorney or party*

An application for emergency orders must state the name, address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, and telephone number of the party, if known to the applicant.

(2) *Affirmative factual showing required in written declarations*

The declarations must contain facts within the personal knowledge of the declarant that demonstrate why the matter is appropriately handled as an emergency hearing, as opposed to being on the court's regular hearing calendar.

An applicant must make an affirmative factual showing of irreparable harm, immediate danger, or any other statutory basis for granting relief without notice or with shortened notice to the other party.

(3) *Disclosure of previous applications and orders*

An applicant should submit a declaration that fully discloses all previous applications made on the same issue and whether any orders were made on any of the applications, even if an application was previously made upon a different state of facts. Previous applications include an order to shorten time for service of notice or an order shortening time for hearing.

(4) *Disclosure of change in status quo*

The applicant has a duty to disclose that an emergency order will result in a change in the current situation or status quo. Absent such disclosure, attorney's fees and costs incurred to reinstate the status quo may be awarded.

(5) *Applications regarding child custody or visitation (parenting time)*

Applications for emergency orders ~~granting or modifying~~ involving child custody or visitation (parenting time) under Family Code section 3064 must:

(A) Provide a full, detailed description of the most recent incidents showing:

(i) Immediate harm to the child as defined in Family Code section 3064(b); or

(ii) Immediate risk that the child will be removed from the state of California.

(B) Specify the date of each incident described in (A);

(C) Advise the court of the existing custody and visitation (parenting time) arrangements and how they would be changed by the request for emergency orders;

(D) Include a copy of the current custody orders, if they are available. If no orders exist, explain where and with whom the child is currently living; and

(E) Include a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) if the form was not already filed by a party or if the information has changed since it was filed.

(6) *Applications for child custody or visitation (parenting time) when child is in the state for gender-affirming health care or gender-affirming mental health care*

Notwithstanding the requirements in Family Code section 3064, when a child is in the state for the purpose of obtaining gender-affirming health care or gender-affirming mental health care, applications for emergency orders for child custody or visitation (parenting time) under Family Code sections 3427, 3428, and 3453.5 must:

(A) Be filed with, or after filing, either:

(i) A petition appropriate for the case type (for example, a petition for dissolution of marriage or legal separation, a petition to determine parental relationship, or a petition for custody and support); or

(ii) *Registration of Out-of-State Custody Order* (form FL-580) if there is a previous custody determination in another state and the party does not intend to file a petition under (i).

(B) Include the documents listed in (c) of this rule.

(C) Include the information specified in (d)(5)(C)–(E) of this rule.

(e) Contents of notice and declaration regarding notice of emergency hearing

(1) *Contents of notice*

When notice of a request for emergency orders is given, the person giving notice must:

(A) State with specificity the nature of the relief to be requested;

(B) State the date, time, and place for the presentation of the application;

(C) State the date, time, and place of the hearing, if applicable; and

(D) Attempt to determine whether the opposing party will appear to oppose the application (if the court requires a hearing) or whether ~~he or she~~ the opposing party will submit responsive pleadings before the court rules on the request for emergency orders.

(2) *Declaration regarding notice*

An application for emergency orders must be accompanied by a completed declaration regarding notice that includes one of the following statements:

(A) The notice given, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected and that, within the applicable time under rule 5.165, the applicant informed the opposing party where and when the application would be made;

(B) That the applicant in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party; or

(C) That, for reasons specified, the applicant should not be required to inform the opposing party.

Advisory Committee Comment

Applications for child custody or visitation (parenting time), including applications involving a child who is present in this state to obtain gender-affirming health care or gender-affirming mental health care under Family Code sections 3427, 3428, and 3453.5, may also be requested under the Domestic Violence Prevention Act (DVPA) (Fam. Code, §§ 6200–6460). Different forms and procedures apply to DVPA cases.

SPR23-16
Family Law: Child Custody and Visitation Orders Involving Gender-Affirming Health Care (amend Cal. Rules of Court, rule 5.151)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Lawyer's Association, Family Law Section Executive Committee (FLEXCOM) By Saul Bercovitch, Associate Executive Director, Governmental Affairs Sacramento	A	No additional comments.	No response required.
2.	Amanda de la Vega Carlsbad	N	Family law courts are already managing significant cases for current residents. Creating a forum for non-state residents to utilize courts for issues that are NOT threats to general safety and well-being is a waste of precious judicial resources. Many ex-parte options already exist and judicial officers are competent to discern when a true emergency exists.	The committee is not proposing creating a forum (or a form). Rather, the Legislature has made a change in the law giving courts authority to make emergency orders relating to gender-affirming health care for children and the committee is recommending the adoption of a new rule to provide processes that implement the law. New procedures are needed for these cases, as existing emergency (ex parte) option do not apply and are not as well targeted as the committee's proposal.
			Gender-affirming care is not a life-threatening situation, it is merely a political situation. Family law needs to stay away from politics as much as possible because managing political issues in the courts delegitimizes the role of the courts in family life.	California law does treat the denial of gender-affirming health care or mental health care as an urgent situation. In Family Code section 3424(a), the denial or inability of a child to obtain gender-affirming health care or gender-affirming mental health care in another state is treated on par with a child who is abandoned or who needs to be protected because the child is subjected to, or threatened with, mistreatment or abuse. In each of these situations, a court of this state has temporary emergency jurisdiction to protect that child. As defined in the Welfare and Institutions Code, gender-affirming healthcare is that which is

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
				"medically necessary." Thus, the issue is about providing a child continuity of care that is medically necessary and in the best interest of that child. In this way, a child who receives gender-affirming health care, by law, is similarly situated as a child who receives any number of other medically necessary healthcare treatments, such as chemotherapy, dialysis, psychotropic and other medications). As such, a court of this state is authorized to address, on an emergency basis, the urgent need for the child's continuity of care if such treatment has been denied the child in another state. Based on the foregoing, the committee recommends no changes to the rule in response to the comment.
3.	Family Violence Appellate Project By Jodi Lewis, Senior Managing Attorney and Cory Hernandez, Senior Staff Attorney	A	*We first want to express our appreciation for the Council in implementing this important legislation for the benefit of trans and gender non-conforming youth who will need it. We support the proposal and want to make the following recommendation:	No response required.
			We also want to suggest that, instead of doing just Option A or Option B, the Council adopt both Options: add the advisory committee comment to rule 5.151, and add the new rule for DVPA (Fam. Code, § 6200 et seq.) matters in Article 1 of Chapter 11 of Division 1 of Title 5 of the Rules of Court.	The comment reflects the committee's discussion before the comment period to consider developing a rule or form proposal to specify the requirements of SB 107 as it relates to requests made in DVPA proceedings. In this respect, the committee responds that it will further consider creating such a rule in a future cycle.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			This way parties, including self-represented litigants who may not have access to the advisory committee comments (e.g., a party may ask a court clerk about a rule of court and the clerk may print off the rule for them, but not the advisory committee comment), will know about this in a rule of court itself. This also keeps the advisory committee comment in rule 5.151, which is important because otherwise, given rule 5.151(a) says it does not apply to DVPA matters, courts and parties may think the new protections from SB 107 (in rule 5.151(d)(6)) do not apply to DVPA matters, even if there is another rule for DVPA matters specifically. Basically, we're advocating for a belt-and-suspenders approach to this important issue.	See above response. See above response.
4.	Orange County Bar Association By Michael A. Grepp, President Newport Beach	A	The proposal appropriately addresses the stated purpose. Forms make it easier to seek orders for all litigants.	No response required. No response required.
5.	Superior Court of Orange County By Family and Juvenile Law Division	NI	*The proposal appropriately addresses the stated purpose This proposal would make it easier for self-represented litigants and attorneys to seek changes to an out-of-state child custody order to obtain gender-affirming health care or gender-affirming mental health care for a child.	No response required. No response required.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			This proposal would make it easier for the courts in cases involving parties with out-of-state orders due to the requirement to file the request/application with or after filing the *Registration of Out-of-State Custody Order* (FL-580).	No response required.
			The proposal would not provide cost savings.	No response required.
			The implementation requirements would include creating new procedures for staff, new event codes and hearing codes in the case management system and creating updates in the system to standardize minute order language.	No response required.
			Three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation.	No response required.
			This proposal would work well in courts of different sizes.	No response required.
6.	Superior Court of Riverside County By Susan Ryan Chief Deputy of Legal Services	A	Apart from the suggested edits below, the proposed revisions provide clarity and comply with changes in law.	No response required.
			The proposal provides the framework for the courts' assertion of jurisdiction over out of state families seeking gender-affirming health care in California.	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			While the court would be able to find jurisdiction over a child who is present in the state and seeking such care, the best interest standard of review are not modified and CRC Rule 5.151 maintains that emergency orders are to prevent danger and irreparable harm to a party.	No response required.
			Thus, cases will likely arise where the jurisdiction is based on the child's presence in state while the emergency may or may not be related to the health care treatment. As a result of these gaps, judicial officers will need to develop a framework for resolving the dispute between parents on authorizing gender-affirming treatments, particularly as to whether treatment raises concerns of danger and irreparable harm to support emergency orders.	No response required.
			The proposal appropriately addresses the stated purpose, with the edits noted below. Other changes that would be needed to the new procedures proposed in rule 5.151 are as follows:	No response required. See responses below.
			To avoid the appearance that pursuit of gender affirming treatment constitutes an emergency categorically, the new section 6 should actually be a subsection of Section (d)(5) Applications regarding child custody or visitation (parenting time).	The committee appreciates the suggestion that another section would be more appropriate for the new language. The committee does not recommend that the new section in (d)(6) be included under rule 5.151(d)(5) because—unlike applications under (d)(5)—a party does not need to demonstrate compliance with Family Code section 3064 to obtain emergency orders relating gender-affirming health care for the child under SB 107.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
				Further, new section (d)(6) specifies when a request for orders regarding gender-affirming health care or mental health care for a child constitutes an emergency, and thus avoids any appearance that gender-affirming treatment constitutes and emergency categorically. Based on the foregoing, the committee recommends no changes to the rule in response to the comment.
			Rule 5.151 (d)(6) would be changed to (d)(5)(F) and retitled: "When child is in the state for gender-affirming health care or gender-affirming mental health care." The “and” between “gender-affirming health care” and “gender-affirming mental health care” should be replaced with “or” so that the phrase conforms with and is consistent with Family Code sections 3421, 3424, and 3453.5.	For the reasons stated above, the committee does not recommend amending the rule as the commenter suggested. The committee agrees with the commenter and recommends amending the rule, as suggested.
			Proposed subdivision (d)(6)(B) should be revised to state that the application must: "Include the documents listed in subdivision (c)(1) of this rule. Requiring all of subsection (c) is overinclusive as (c)(2) pertains to Requests to reschedule hearing.	The committee appreciates the commenter’s concern that the proposed rule could be overinclusive if all the documents in (c) were required. However, the language in (c) does not actually require that a party or their attorney complete all of the documents. For example, the *Income and Expense Declaration* (form FL-150) specified in (c)(1)B) must be

	Commenter	Position	Comment	Committee Response
			Would this proposal make it easier or more difficult for self-represented litigants and attorneys to seek changes to an out-of-state child custody order to obtain gender affirming health care or gender-affirming mental health care for a child? Yes, out of state parties have a clear basis for applying for custody orders related to this issue.	completed "[w]hen relevant to the relief requested." In addition, the memorandum of points and authorities in (c)(1)E) must be provided "only if required by the court." Further, a Request to Reschedule a hearing under (c)(2) would only apply if the party needed this relief. Therefore, the committee does not recommend changing the proposed rule as the commenter suggested. No response required.
7.	Superior Court of San Bernardino County By Anita Morales, Legal Processing Assistant II	A	No additional comments.	No response required.
8.	Superior Court of San Diego County By Michael M. Roddy Executive Officer	AM	*The proposal appropriately addresses the stated purpose.	No response required.
			No additional changes would be needed to the new procedures proposed in rule 5.151 to assist parties seeking initial or modified orders for child custody and visitation.	No response required.
			The proposal would make it easier for litigants and attorneys by providing specific documents that need to be filed.	No response required.
			The proposal would be easier for courts to make orders in cases involving parties with out-of-state child custody orders who seek to modify the order	No response required.

	Commenter	Position	Comment	Committee Response
			and obtain gender-affirming health care or gender-affirming mental health care for child.	
			The proposal would not provide cost savings.	No response required.
			Regarding implementation requirements for courts, since applicants would be required to either register an existing out-of-state custody order or file a new family case at the time of the request for emergency orders is made, there would be minimal changes to existing processes.	No response required.
			Three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation.	No response required.
			This proposal would work for court of various sizes. Re: proposed rule 5.151(d)(6)(A). Since application for emergency orders must be filed concurrently with or after filing the appropriate Petition or a Registration of Out of Sate Order, it is proposed the language be modified for clarity, as follows: "Be filed with, or ~~include~~ <u>after</u> filing either…"	No response required. The committee agrees with this suggestion and has incorporated it into the revisions being recommended for adoption.

Item number: 16

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Family law: Summary Dissolution Forms

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Revise forms FL-800, FL-810

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

*Staff contact (*name, phone and e-mail*): Gabrielle D.Selden, 415-865-8085 gabrielle.selden@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): November 1, 2022
Project description from annual agenda: Ongoing Projects and Activities. Item 12. FL-800 Joint Petition for Summary Dissolution. Update to reflect change in the Consumer Price Index per Family Code section 2400(b) as a technical change.

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.)
There is an ongoing requirement to revise the summary dissolution forms to reflect a signifcant adjustment in the cost of living. The last adjustment was approved by the Judicial Council on March 19, 2019, as a technical change that did not need to circulate for comment).

The Rules Committee approved this item to circulate for comment even though the Family and Juvenile Law Advisory Committee inadvertently omitted form FL-810 from the description of item 12 in the annual agenda. Form FL-810 requires the same changes in the dollar limitations for summary dissolutions that are shown in form FL-800. In addition, form FL-810 provides instructions for completing form FL-800 and includes information to self-represented litigants about the summary dissolution process in general.

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

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

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

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

Judicial Council *of* California

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-161
For business meeting on: September 18-19, 2023

Title
Family Law: Summary Dissolution Forms

Agenda Item Type
Action Required

Rules, Forms, Standards, or Statutes Affected
Revise forms FL-800 and FL-810

Effective Date
January 1, 2024

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy A. Pellman, Cochair

Date of Report
August 7, 2023

Contact
Gabrielle D. Selden, 415-865-8085
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising two family law summary dissolution forms, which are mandated by Family Code section 2400, to reflect an increase in the California Consumer Price Index. The committee also recommends additional changes to the forms to respond to issues raised by court professionals that will help joint petitioners more accurately complete and file the forms needed to request a summary dissolution judgment.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2024:

1. Revise *Joint Petition for Summary Dissolution* (form FL-800) to increase the limitation on assets from $47,000 to $53,000, and increase the $6,000 limit for unpaid community debts to $7,000.

2. Revise the instructional booklet titled *Summary Dissolution Information* (form FL-810) to reflect the dollar increases made in form FL-800, update instructions to the parties to be

consistent with statute and court procedures, and reflect the policies of using gender-neutral terms in statewide forms and keeping forms updated.

The revised forms are attached at pages 8–31.

Relevant Previous Council Action

The maximum dollar limits for a summary dissolution proceeding are adjusted biannually. Most recently, effective September 1, 2021, the Judicial Council revised forms FL-800 and FL-810 to reflect an increase solely in the maximum limits for community and separate property assets under Family Code section 2400(a)(7), from $45,000 to $47,000. No adjustment was required for community debts, which remained at $6,000.

Analysis/Rationale

A summary dissolution is a simplified way to get a divorce or end a domestic partnership, as it does not require as much paperwork as the regular divorce process. Under Family Code section 2400, the summary dissolution process is only available for couples who have been married (or registered domestic partners) for less than five years, have no children together, own or owe property whose value does not exceed the dollar limitations that are specified by law, do not want spousal or domestic partner support, and who agree on how to divide any property and liabilities.

Mandated revisions

Family Code section 2400(b) requires that on January 1 of each odd-numbered year, the dollar limitations on items indicated in Family Code section 2400(a)(6) and (a)(7) be adjusted to reflect any change in the value of the dollar.[1] Section 2400(b) requires that the Judicial Council compute and publish the adjusted amounts. The adjustments are computed by multiplying the base amount by the percentage change in the California Consumer Price Index (the calculation is attached at page 6). The results are then rounded to the nearest thousand dollars and published in summary dissolution forms FL-800 and FL-810.

According to the calculation shown on page 8, increases in the annual averages of the California Consumer Price Index between 2020 and 2022 require a $6,000 increase in the total fair market value of community and separate property assets for summary dissolution actions and a $1,000 increase in the limit for unpaid community debts. Currently, to use the summary dissolution process, the parties' community property and separate property assets must not exceed $47,000 each, and the limit for unpaid community debt must not exceed $6,000. Those limits will increase to $53,000 and $7,000, respectively, to reflect an increase in the cost of living. To reflect these changes:

[1] Because the California Department of Industrial Relations published the annual average figures on February 14, 2023, these biannual modifications are made effective January 1, 2024.

- *Joint Petition for Summary Dissolution* (form FL-800) would be modified to increase the limitation on assets from $47,000 to $53,000, and increase the $6,000 limit for unpaid community debts to $7,000.
- The instructional booklet titled *Summary Dissolution Information* (form FL-810) would be revised to reflect the changes in form FL-800.
- Both forms would also be translated into standard Chinese, Korean, Spanish, and Vietnamese.

Other proposed revisions

The committee also recommends a number of additional changes to *Summary Dissolution Information* (form FL-810). Specifically, the committee recommends that the form be revised to:

- Reflect the dollar increases made in form FL-800;
- Reformat the separate property worksheets to be consistent with the format of community property worksheets;
- Update various pages with instructions for parties who do not have community property assets or liabilities;
- Make the instructions consistent with the language in the joint petition (form FL-800) by providing that the petitioners must either declare that they have no community property assets or liabilities or attach a community property settlement agreement to the judgment;
- Specify that the joint petitioners must attach their community property settlement agreement to the judgment, not to the joint petition (form FL-800);
- Replace the term "pension plan benefits" in the Sample Worksheets with "retirement plan benefits" to be consistent with the language in Family Code section 2400, which does not specifically reference "pensions";
- Specify in the sample property settlement agreement that (1) the parties can divide the items any way they want, even if one person receives a higher amount of the community assets, as long as they both agree; and (2) Family Code section 2550 permits parties to agree to an unequal division of community assets;
- Make global updates to terms and names so that they reflect current usage and are gender neutral, as highlighted throughout the form;
- Update information about division of community property debts and provide a link to current information on the *Self-Help Guide to California Courts*; and

- Update the dates of marriage and separation, as well as the model years of property listed in the sample worksheets and settlement agreement so that they are more current.

Policy implications

There was no controversy within the committee on the proposal or the recommendations made after considering public comments. The committee's complete recommendations to revise forms FL-800 and FL-810 are supported by the policies of independence and accountability in the Judicial Council's strategic plan, as they make forms legally accurate and easier to understand. [2] The recommendations also promote the policies of access, fairness, diversity, and inclusion in the Judicial Council's strategic plan by ensuring that references within the forms are gender neutral.

Comments

The invitation to comment was circulated for public comment from March 31, 2023, to May 12, 2023, as part of the regular spring comment cycle. The committee received a total of eight comments. Commenters included five courts (the Superior Courts of Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties); two organizations (Orange County Bar Association (OCBA) and California Lawyer's Association, Family Law Section Executive Committee (FLEXCOM)); and one individual.

Five commenters agreed with the proposal. One commenter agreed if the forms were modified. One commenter did not indicate a position but did identify a section of form FL-810 that needed to be improved. Another commenter did not indicate a position but did not disagree with the proposal nor indicate any changes were needed to improve the forms.

Comment about form FL-800

The Superior Court of Los Angeles County suggested removing "minor" from "There are no minor children who were born..," to maintain consistency with the booklet, which does not include the word "minor" (see booklet, page 1, item 1; booklet, page 3, section III, item #3).

The committee appreciates this comment and considered replacing the term "minor" on form FL-800. However, the committee decided that the joint petition should maintain the same term ("minor") as used in the regular divorce petition (form FL-100). Instead, the committee recommends revising the instruction booklet to use the term "minor" and notes that it means "a child under the age of 18 years."

Comments about form FL-810

The Superior Court of Los Angeles County suggested the following changes:

[2] The Strategic Plan for California's Judicial Branch may be found at: *https://www.courts.ca.gov/documents/Strategic_Plan_Companion_2022.pdf*

- Updating page 5, section V, "classified ads in the newspaper," to include "classified ads or listings online."

- On page 16, section IX, item 5, including the template for the Property Settlement Agreement in this section (or a link to the template: *https://www.courts.ca.gov/documents/propagreement.pdf*), because it is difficult for litigants to find online, and because litigants often pick up the printed Summary Dissolution Packet from the clerk's office or self-help centers, which can include the template.

- On page 12, section VII, item III (1), replacing "and whom he or she must pay it to" with "and whom they must pay it to" to be gender neutral.

In response, the committee agrees with the court's suggestion and has incorporated them, with alterations, into the revisions being recommended for adoption.

An individual, Tanya Both, commented about the division of community property debts and student loan debt on page 15. The commenter stated that the note regarding the student loan example is "very confusing and seems likely to mislead litigants as to the general rule regarding community property as well as the exceptions that are applied to student loans." The commenter's concern is with the following note: "A general rule for dividing debts is to give the debt over to the person who benefitted from the item. In the sample agreement, because Chris received the education, Chris should pay off the loan."

The committee agrees with the commenter that the statement is oversimplified and could be confusing. For example, there are different actions that parties can consider when dividing community property assets and debts. Further, it is possible that the nonstudent spouse of domestic partner could be responsible for repaying the student loan, especially if the nonstudent's name appears on the loan. Because the language in the note does not account for this situation, the language should be deleted and replaced.

The committee recommends that the language in note 8 be replaced with two new sections, and that the new language reflect the information that is found on the *Self-Help Guide to the California Courts*, along with appropriate links to the online information.[3] Because the revised language will be more substantial, the committee recommends that notes 6, 7, 8, and 9 be moved to the bottom of the page, instead of on the right side of the page.

Alternatives considered

The committee considered developing a report to the Judicial Council to recommend nonsubstantive, technical changes to forms FL-800 and FL-810 without circulating the forms for

[3] The Self-Help Guide to the California Courts may be found at *https://selfhelp.courts.ca.gov/*

public comment because, under rule 10.22(d)(2) of the California Rules of Court, the adjustments proposed to forms FL-800 and FL-810 would not have likely created controversy. However, after considering the number of changes that would be needed to update form FL-810, the committee decided to seek comment about the substantive changes it proposed.

The committee also considered revoking *Request for Judgment, Judgment of Dissolution of Marriage and Notice of Entry of Judgment* (form FL-820) either without seeking public comment or incorporating it into the proposal with forms FL-800 and FL-810. Form FL-820 is the judgment used in summary dissolution cases filed before January 1, 2011. The committee thought that public comment may not be necessary because it has been more than 11 years since the law changed and *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) was adopted for summary dissolution cases filed after January 1, 2011, and more than five years have passed since the committee first proposed revoking form FL-820. Despite the passage of time, the committee believed it would be important to give courts another opportunity to indicate if they still use the form before taking further action with respect to the form.

Fiscal and Operational Impacts

Implementation requirements

The committee recognizes that implementation of the revisions will require courts to incur standard reproduction costs for the forms, and update forms packets that courts make available to parties in their self-help centers. In addition, courts responded that implementation will require (1) that courts update their internal procedures and packets, and notify and train court staff; (2) written communications to staff; (3) updating online content to include all new forms for self-help centers; and (4) that court clerks be trained about the allowed increase in valuation of assets and obligations so that the Summary Dissolution Petition is not rejected. No courts indicated that the proposal would have any negative fiscal or operational impacts.

Attachments and Links

1. *Asset and Debt Limits in Summary Dissolution Proceedings (Fam. Code, § 2400)*, at page 7
2. Forms FL-800 and FL-810, at pages 8–31
3. Chart of Comments, at pages 32–36
4. Attachment A: Consumer Price Index Tables
5. Link A: Family Code section 2400, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=2400*

Asset and Debt Limits in Summary Dissolution Proceedings (Fam. Code, § 2400)

Formula

Under Family Code section 2400(b), the dollar limits for community property debts and community and separate property assets in actions for summary dissolution shall be adjusted by multiplying the base amount by the percentage change in the California Consumer Price Index as compiled by the Department of Industrial Relations, with the result rounded to the nearest thousand dollars.

$$\textit{Adjusted limit} = \left[\frac{\textit{CCPI(AA) 2022} - \textit{CCPI(AA) 2020}}{\textit{CCPI(AA) 2020}} + 1 \right] \times \textit{Published limit}$$

Definition

CCPI(AA) is the California Consumer Price Index, Annual Average, as established by the California Department of Industrial Relations.

February 14, 2023, calculation and adjustment for community debts

Under Family Code section 2400(a)(6), effective January 1, 2024, there is a $1,000 increase to the maximum dollar amount for unpaid obligations incurred by either or both of the parties after their date of marriage, excluding the amount of any unpaid obligation with respect to automobile community debts. The calculation is as follows:

$$\$\mathbf{6,713.08} = \left[\frac{319.224 - 285.315}{285.315} + 1 \right] \times \$6{,}000.00$$

The adjusted limit under Family Code section 2400(b), when rounded to the nearest thousand dollars, increases the current published limit to $7,000.

February 14, 2023, calculation and adjustment for community and separate property assets

Under Family Code section 2400(a)(7), effective January 1, 2024, there is a $6,000 increase in the total fair market value of community and separate property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan. The calculation is as follows:

$$\mathbf{\$52{,}585.83} = \left[\frac{319.224 - 285.315}{285.315} + 1 \right] \times \$47{,}000.00$$

The adjusted limit under Family Code section 2400(b), when rounded to the nearest thousand dollars, increases the current published limit to $53,000.

PARTY WITHOUT ATTORNEY OR ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : EMAIL ADDRESS: ATTORNEY FOR (*Name*):	***FOR COURT USE ONLY*** ***DRAFT*** ***NOT APPROVED BY THE JUDICIAL COUNCIL*** ***8/07/2023***
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
MARRIAGE OR DOMESTIC PARTNERSHIP OF PETITIONER 1: PETITIONER 2:	
JOINT PETITION FOR SUMMARY DISSOLUTION ☐ MARRIAGE ☐ DOMESTIC PARTNERSHIP	CASE NUMBER:

We petition for a summary dissolution of marriage, registered domestic partnership, or both and declare that all the following conditions exist on the date this petition is filed with the court:

1. We have read and understand the *Summary Dissolution Information* booklet (form FL-810).
2. a. ☐ We were married on *(date):*
   b. ☐ We registered as domestic partners on *(date):*
3. ☐ We separated on *(date):*
4. Less than five years have passed between the date of our marriage and/or registration of our domestic partnership and the date of our separation.
5. a. ☐ One of us has lived in California for at least six months and in the county of filing for at least the three months preceding the date of filing. Or we are only asking to end a domestic partnership registered in California.
   b. ☐ We are the same sex and were married in California but are not residents of California. Neither of us lives in a place that will allow us to divorce. We are filing this case in the county in which we married.
6. There are no minor children who were born of our relationship before or during our marriage or domestic partnership or adopted by us during our marriage or domestic partnership. Neither one of us, to our knowledge, is pregnant.
7. Neither of us has an interest in any real property anywhere. **(You may have a lease for a residence in which one of you lives. It must terminate within a year from the date of filing this petition. The lease must not include an option to purchase.)**
8. Except for obligations with respect to cars, on obligations incurred by either or both of us during our marriage or domestic partnership, we owe no more than $7,000.
9. The total fair market value of community property assets, not including what we owe on those assets and not including cars, is less than $53,000.
10. Neither of us has separate property assets, not including what we owe on those assets and not including cars, in excess of $53,000.
11. We each have filled out and given the other an *Income and Expense Declaration* (form FL-150).
12. We have complied with the preliminary disclosure requirements as follows:
    a. We each have disclosed information about the value and division of our property by filling out and giving each other copies of the documents listed in (1) or (2) below (specify):
       (1) ☐ The worksheets on pages 7, 9, and 11 of the *Summary Dissolution Information* booklet (form FL-810).
       (2) ☐ A *Declaration of Disclosure* (form FL-140), a *Schedule of Assets and Debts* (form FL-142), or *Property Declaration* (form FL-160), and all attachments to these forms.
    b. We have told each other in writing about any investment, business, or other income-producing opportunities that came up after we were separated based on investments made or work done during the marriage or domestic partnership and before our separation.
    c. We have exchanged all tax returns each of us has filed within the two years before disclosing the information described in 12a.

Form Adopted for Mandatory Use
Judicial Council of California
FL-800 [Rev. January 1, 2024]

PETITIONER 1: PETITIONER 2:	CASE NUMBER:

13. *(Check whichever statement is true.)*
    a. ☐ We have no community assets or liabilities.
    b. ☐ We have signed an agreement listing and dividing all our community assets and liabilities and have signed all the papers necessary to carry out our agreement. A copy of our agreement is attached to the *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825).
14. Irreconcilable differences have caused the irremediable breakdown of our marriage and/or domestic partnership, and each of us wishes to have the court dissolve our marriage and/or domestic partnership without our appearing before a judge.
15. a. ☐ Petitioner 1 desires to have a former name restored. That name is *(specify):*
    b. ☐ Petitioner 2 desires to have a former name restored. That name is *(specify):*
16. We each give up our rights to appeal and to move for a new trial after the effective date of our *Judgment of Dissolution*.
17. **Each of us forever gives up any right to spousal or domestic partner support from the other.**
18. We each agree to keep the court and each other informed of any change of mailing address or phone number occurring within six months from the filing of this joint petition using the *Notice of Change of Address or Other Contact Information* (form MC-040).
19. We are submitting the original and three copies of the proposed *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) and two stamped envelopes together with this petition. One envelope is addressed to Petitioner 1 and the other to Petitioner 2.
20. We agree that this matter may be determined by a commissioner sitting as a temporary judge.
21. **Mailing address of Petitioner 1**

    Name:
    Address:

    City:
    State:
    Zip Code:
22. **Mailing address of Petitioner 2**

    Name:
    Address:

    City:
    State:
    Zip Code:
23. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attached documents are true and correct.

Date:

▶ _____
(SIGNATURE OF PETITIONER 1)

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attached documents are true and correct.

Date:

▶ _____
(SIGNATURE OF PETITIONER 2)

NOTICES

Your marriage and/or domestic partnership will end six months from the date of filing this joint petition. Both petitioners will receive a stamped copy from the court of the *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) stating the effective date of your dissolution. Until the effective date specified on form FL-825 for the dissolution of your marriage and/or domestic partnership, either one of you can stop this joint petition by filing a *Notice of Revocation of Petition for Summary Dissolution* (form FL-830). If you stop this joint petition, you will STILL be married or in a domestic partnership.

Dissolution may automatically cancel the rights of a spouse or domestic partner under the other spouse's or domestic partner's will, trust, retirement plan, power of attorney, pay-on-death bank account, transfer-on-death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar instrument. It does not automatically cancel the rights of a spouse or domestic partner as beneficiary of the other spouse's or domestic partner's life insurance policy. You should review these matters, as well as any credit card accounts, other credit accounts, insurance policies, and credit reports to determine whether they should be changed or whether you should take any other actions. However, some changes may require the agreement of your spouse or domestic partner or a court order. (See Fam. Code, §§ 231–235.)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

DRAFT -- NOT APPROVED BY THE JUDICIAL COUNCIL 8.07.2023)

SUMMARY DISSOLUTION INFORMATION

This booklet is available in English and Spanish from the office of the court clerk in the superior court of each county in California, or at *www.courts.ca.gov/documents/fl810.pdf* and *www.courts.ca.gov/documents/fl810s.pdf*.

Este folleto puede obtenerse en inglés y en español en la Dirección de Registro Público del Condado (Office of the Court Clerk) o en la Corte Superior (Superior Court) de cada condado en el estado de California o en el sitio *www.courts.ca.gov/documents/fl810.pdf* y *www.courts.ca.gov/documents/fl810s.pdf*.

CONTENTS

I . WHAT IS THIS BOOKLET ABOUT?

This booklet describes a way to end a marriage, a domestic partnership, or both through a kind of divorce called **summary dissolution.**

The official word for **divorce** in California is **dissolution.** There are two ways of getting a divorce, or dissolution, in California. The usual way is called a **regular dissolution.**

Summary dissolution is a shorter and easier way. But not everybody can use it. Briefly, a summary dissolution is possible for couples who

1. have no children together who are minors (a minor is a child who is under 18 years of age);
2. have been married and/or in a domestic partnership five years or less (this means that the time between the date you married or registered your domestic partnership and the date you separated from your spouse or domestic partner is five years or less);
3. do not own very much;
4. do not owe very much;
5. do not want spousal or domestic partner support from each other; and
6. have no disagreements about how their belongings and their debts are going to be divided up once they are no longer married to or in a domestic partnership with each other.

With this procedure, you will not have to appear in court. You may not need a lawyer, but it is in your best interest to see a lawyer about the ending of your marriage or domestic partnership. See page 19 for more details about how a lawyer can help you.

For a summary dissolution, you prepare and file *Joint Petition for Summary Dissolution* (form FL-800) with the superior court clerk in your county. You will also prepare and turn in *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) , together with a property settlement agreement.* Your divorce, ending your marriage and/or your domestic partnership, will be final six months after you file your *Joint Petition for Summary Dissolution*. During the six months while you wait for your divorce to become final, either of you can stop the process of summary dissolution if you change your mind. One of you can file *Notice of Revocation of Petition for Summary Dissolution* (form FL-830), and that will stop the divorce. If either one of you still wants to get divorced, then that person will have to file for a regular dissolution with a *Petition—Marriage/Domestic Partnership* (form FL-100) unless you both agree to start a new summary dissolution process.

IMPORTANT! Domestic partners who qualify for a summary dissolution can choose to use the process described in this booklet OR a special summary dissolution for domestic partners through the California Secretary of State. You can find the California Secretary of State forms at *www.sos.ca.gov*. **There is no filing fee for this process.** If you choose to file to terminate your domestic partnership through the Secretary of State, do not use this guide.

This booklet will tell you

1. who can use the summary dissolution procedure;
2. what steps you must take to get a summary dissolution;
3. when it would help to see a lawyer; and
4. what risks you take when you use this procedure rather than the regular dissolution procedure.

If you wish to use the summary dissolution procedure, you must, at the time you file the joint petition, sign a statement that says you have read and understood this booklet. It is important for you to read the whole booklet very carefully.

Save this booklet for at least six months if you decide to start a summary dissolution. If you decide you want to stop the summary dissolution process and revoke your petition, it will tell you how to do that.

SPECIAL WARNING

If you are an undocumented person who became a lawful permanent resident on the basis of your marriage to a U.S. citizen or to a lawful permanent resident, obtaining a dissolution within two years of your marriage may lead to your deportation. You should consult a lawyer before obtaining a divorce.

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* A property settlement agreement is an agreement that the two of you write or have someone write for you after you fill out the worksheets in this booklet. The agreement spells out how you will divide what you own and what you owe.

II. SOME TERMS YOU NEED TO KNOW

In the following pages, you will often see the terms *community property, separate property,* and *community obligations.* Those terms are explained in this section.

As a married couple or domestic partners, the two of you are, in the eyes of the law, a single unit. There are certain things that you **own together** rather than separately. And there may be certain debts that you **owe together.** If one of you borrows money or buys something on credit, the other one can be made to pay.

If your marriage or domestic partnership breaks up, you become two separate individuals again. Before that can happen, you have to decide what to do with the things you *own* as a couple and the money you *owe* as a couple.

The laws that cover these questions contain the terms *community property, separate property,* and *community obligations.* To understand what these terms mean, you should have a clear idea of the **length of time you lived together as spouses or domestic partners.** This is the period between the day you married or registered your domestic partnership and the day you separated.

It may not be easy to decide exactly when you separated. In most cases, the day of the separation is the day the couple stopped living together. However, you may want to choose the day when you definitely decided to get a divorce and took some action to show this (like telling your spouse or domestic partner that you wanted a divorce).

Community Property

Community property is everything spouses or registered domestic partners **own together.**

In most cases that includes

1. money you now have that either of you earned during the time you were living together as spouses or domestic partners; and
2. anything either of you bought with money earned during that period. It does not matter if only one of you earned or spent the money.

Separate Property

Separate property is everything spouses or registered domestic partners **own separately from each other.**

In most cases that includes

1. anything either of you owned before you got married or registered your domestic partnership;
2. anything either of you earned or received after your separation; and
3. anything either of you received, as a gift or by inheritance, at any time.

Community Obligations

Community obligations are the debts spouses or registered domestic partners **owe together.**

In most cases that includes anything you still owe on any debts either of you acquired during the time you were living together as spouses or registered domestic partners. (For instance, if you bought furniture on credit while you were married or domestic partners and living together, the unpaid balance is a part of your community obligations.) It usually does not matter if the debt was in the name of one spouse or domestic partner only, like on a credit card.

NOTE: If you have any questions about your separation date or about your property, it would be good to see a lawyer as these issues can be complicated. Also, if you lived together before your marriage or domestic partnership, you may wish to see a lawyer about possible additional rights either of you may have. For more information, read page 19 "*Should You See a Lawyer?"*

III. WHO CAN USE THE SUMMARY DISSOLUTION PROCEDURE?

You can use the summary dissolution procedure only if **all** of the following statements are true about you at the time you file *Joint Petition for Summary Dissolution* (form FL-800). Check this list very carefully. If even *one* of these statements is not true for you, you cannot get a divorce in this way.

_____ 1. We have both read this booklet, and we both understand it.

_____ 2. We have been married or registered as domestic partners five years or less between the date that we got married and/or registered our domestic partnership and the date we separated. *(Note that if you are trying to end both a marriage AND a domestic partnership at the same time through a summary dissolution, both your marriage and domestic partnership must have lasted five years or less.)*

_____ 3. No children were born to the two of us together before or during our marriage and/or domestic partnership.

_____ 4. We have no adopted children under 18 years of age.

_____ 5. Neither one of us is pregnant.

_____ 6. Neither of us owns any part of any land or buildings.

_____ 7. Our community property is not worth more than $53,000. (Do not count cars in this total.)

_____ 8. Neither of us has separate property worth more than $53,000. (Do not count cars in this total.)

_____ 9. The total of our community obligations (other than cars) is $7,000 or less.

For deciding on statements 7, 8, and 9, use the guide on pages 5–11.

_____ 10. a. At least one of us has lived in California for the past six months or longer *and* has lived in the county where we are filing for dissolution for the past three months or longer; or

b. We are only asking to end a domestic partnership registered in California; or

c. We are the same sex and were married in California but are not residents of California. Neither of us lives in a place that will allow us to divorce. We are filing this case in the county in which we married.

_____ 11. We have prepared and signed an agreement that states how we want our community assets and debts to be divided between us (or declared in the joint petition that we do not have community assets and debts).

_____ 12. We have both signed the joint petition and all other papers needed to carry out this agreement.

_____ 13. Together with the joint petition, we will turn in to the clerk of the superior court the judgment of dissolution forms and property settlement agreement, along with two self-addressed stamped envelopes.

_____ 14. We both want to end the marriage and/or domestic partnership because of serious, permanent differences.

_____ 15. We have both agreed to use the summary dissolution procedure rather than the regular dissolution procedure.

_____ 16. We are both aware of the following facts:

a. There is a six-month waiting period, and either of us can stop the divorce at any time during this period.

b. The date that appears on *Judgment of Dissolution of Marriage and Notice of Entry of Judgment* (form FL-825) we receive from the court as the "effective date" of the dissolution is the date our divorce will be final, unless one of us has asked to stop the divorce prior to that effective date.

c. After the dissolution becomes final, neither of us has any right to expect money or support from the other except that which is included in the property settlement agreement.

d. By choosing the summary dissolution procedure, we give up certain legal rights that we would have if we had used the regular dissolution procedure. These rights are explained on page 4.

IV. AN IMPORTANT DIFFERENCE BETWEEN SUMMARY DISSOLUTION AND REGULAR DISSOLUTION

With a regular dissolution, either spouse or domestic partner can ask for a court hearing or trial. And with a regular dissolution, if either spouse or domestic partner is unhappy with the judge's final decision, it is possible to challenge that decision. This can be done, for example, by asking for a new trial. It is also possible to **appeal** the decision by taking the case to a higher court.

With a summary dissolution, there is no trial or hearing. Couples who choose this method of getting a divorce do not have the right to ask for a new trial (since there is no trial) or the right to appeal the case to a higher court.

There are, however, some cases in which a divorce agreement under a summary dissolution can be challenged. You will have to see a lawyer about this. The court *may* have the power to set aside the divorce if you can show that one of the following things happened:

1. **You were treated unfairly in the property settlement agreement.**
   This is possible if you find out that the things you agreed to give your spouse or domestic partner were much more valuable than you thought at the time of the dissolution.

2. **You went through the dissolution procedure against your will.**
   This is possible if you can show that your spouse or domestic partner used threats or other kinds of unfair pressure to get you to go along with the divorce.

3. **There are serious mistakes in the original agreement.**
   Some kinds of mistakes can make the dissolution invalid, but you will have to go to court to prove the mistakes. It may be that one or both of you had a lot of property that you had forgotten about when you drew up the property settlement agreement. Or maybe a bank account mentioned in the agreement had much more money or much less money in it than your agreement states.

4. **Neither of you complied with preliminary disclosure requirements.**
   California law requires that you fully share all information about your property and debts as well as your income. You have to share this information before you sign your property settlement agreement.

   In summary dissolution cases, this means that you and your spouse or domestic partner must each complete and exchange (1) *Income and Expense Declaration* (form FL-150), (2) all tax returns you filed in the last two years, and (3) the property worksheets on pages 7, 9, and 11 (or *Declaration of Disclosure* (form FL-140) and either *Schedule of Assets and Debts* (form FL-142) or *Property Declaration* (form FL-160)).

   In addition, each spouse or domestic partner must complete and give to the other spouse or domestic partner a written statement about any investment opportunity, business opportunity, or other income-producing opportunity that developed since the date you separated which was based on any investment made, significant business done, or other income-producing opportunity that was presented to you between the date you married or became domestic partners and the date you separated.

Correcting mistakes and unfairness in a summary dissolution proceeding can be expensive, time-consuming, and difficult. It is very important for both of you to be honest, cooperative, and careful when you or your lawyers do the paperwork for the dissolution.

V. HOW DO YOU FIGURE OUT THE VALUE OF YOUR PROPERTY AND THE AMOUNT OF YOUR DEBTS?

Section III, page 3, lists statements that must be true if you want to use the summary dissolution procedure.

Statement 7 reads: "Our community property is not worth more than $53,000."

Your community property is the money and things you own jointly as spouses or domestic partners. This was explained on page 2. The value of your community property is determined by adding together (1) the amount of **money** you have as community property and (2) the "fair market value" of the **possessions** you have as community property.

The **fair market value** is an estimate of the amount of money you could get if you sold these items to a stranger—for example, through a classified ad in the newspaper or listings on the internet (online). It does **not** mean what you paid for it originally, and it does **not** mean how much it would cost you to replace it if you lost it.

One way of estimating the fair market value of your goods is to use prices for equivalent items in other people's classified ads in newspapers or online for secondhand goods.

Three kinds of items go into figuring out your community property:

1. Money (as in bank accounts and credit union accounts);
2. Things you own outright (furniture that is already paid for, for example); and
3. Things you are buying on credit.

When you include things you still owe money on, subtract the amount of money you still owe on them from the fair market value.

You should not include the value of a car in this list.

Statement 8 reads: "Neither of us has separate property worth more than $53,000."

Separate property is property that each spouse or domestic partner owns separately. The term is explained on page 2. Separate property includes the same kinds of things used in determining community property. And again, you should not include cars in this list.

Statement 9 reads: "The total of our community obligations (other than cars) is $7,000 or less."

Your community obligations are the debts that you and your spouse or domestic partner owe jointly. The term is explained on page 2. List all the debts you have that you took on while you were living together as spouses or domestic partners. If you borrowed money before you got married or registered your domestic partnership, you do **not** have to include that in your community obligations. If you bought furniture on credit after you got married or registered your domestic partnership but before you separated, you **have to** include the amount of money you still owe on the furniture. If you bought a stereo after you separated, you do **not** have to include that.

Do not include car loans in this list.

NOTICE: The law for summary dissolution allows you to leave out cars when you figure out whether you are **eligible** for this kind of divorce. But if you do have cars as part of your community property, you still have to decide who is going to own them (and who is going to pay for them) after your divorce. You must include them in your property settlement agreement.

Worksheets to help you figure out these amounts are found on pages 6–11. You may use the following forms in this booklet to figure out the total of your community and separate property assets and obligations: (1) the worksheet on page 7 (Value of Separate Property), (2) the worksheet on page 9 (Value and Division of Community Property), and (3) the worksheet on page 11 (Community Obligations and Their Division). Sample forms showing how to fill out those worksheets are on pages 6, 8, and 10.

PETITIONER 1: Sam PETITIONER 2: Alex	CASE NUMBER:

VI. SAMPLE WORKSHEET FOR DETERMINING VALUE OF SEPARATE PROPERTY

This worksheet will help you determine whether you are eligible to use the summary dissolution procedure. The total fair market value of the **separate property of one spouse/domestic partner** cannot be more than $53,000. The total fair market value of the **separate property of the other spouse/domestic partner** cannot be more than $53,000. Separate property is anything that either of you owned or earned before you got married or registered your domestic partnership, anything you earned or bought after your separation, and anything that was given to just one of you as a gift during your marriage or domestic partnership. Do not include cars.

Note: The information on this form is for an imaginary couple, Sam and Alex, who are married. (When you fill out your worksheet, use your own information.)

A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc.

Item	Sam's Property—Fair Market Value	Alex's Property—Fair Market Value
Credit union savings—Sam (before marriage)	$420.00	
Savings bonds—Alex (bought before marriage)		$250.00
Retirement plan—Sam (before marriage and after separation)	$1,500.00	
Retirement plan—Alex (before marriage and after separation)		$1,300.00

B. Items owned outright

Item	Sam's Property—Fair Market Value	Alex's Property—Fair Market Value
Clothes—Sam (bought before marriage)	$350.00	
Stocks—Sam (birthday present from father)	$375.00	
Furniture—Sam (owned before marriage)	$460.00	
Camera—Alex (owned before marriage)		$229.00
Smartwatch—Alex (bought after separation)		$142.00
Clothes—Alex (bought after separation)		$250.00

C. Items being bought on credit

Item	Fair Market Value	Minus Amount Owed	= Net Fair Market Value	Sam's Property—Fair Market Value	Alex's Property—Fair Market Value
Television—Sam (after separation)	$400.00	$350.00	$50.00	$50.00	
Clothes—Sam (after separation)	$220.00	$170.00	$50.00	$50.00	
GRAND TOTALS: Sam and Alex SEPARATE PROPERTY				$3,205.00	$2,171.00

PETITIONER 1: PETITIONER 2:	CASE NUMBER:

VI. WORKSHEET FOR DETERMINING VALUE OF SEPARATE PROPERTY

This worksheet will help you determine whether you are eligible to use the summary dissolution procedure. The total fair market value of the **separate property of one spouse/domestic partner** cannot be more than $53,000. The total fair market value of the **separate property of the other spouse/domestic partner** cannot be more than $53,000. Separate property is anything that either of you owned or earned before you got married or registered your domestic partnership, anything you earned or bought after your separation, and anything that was given to just one of you as a gift during your marriage or domestic partnership. Do not include cars.

A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc.

Item	PETITIONER 1 Property—Fair Market Value (FMV)	PETITIONER 2 Property—Fair Market Value (FMV)

B. Items owned outright

Item		

C. Items being bought on credit

Item	Fair Market Value	Minus Amount Owed	= Net Fair Market Value		
GRAND TOTALS: PETITIONER 1'S AND PETITIONER 2'S SEPARATE PROPERTY					

PETITIONER 1: Sam PETITIONER 2: Alex	CASE NUMBER:

VI. SAMPLE WORKSHEET FOR DETERMINING VALUE AND DIVISION OF COMMUNITY PROPERTY

Note: The information on this form is for an imaginary couple, Sam and Alex, who are married. (When you fill out your worksheet, use your own information.)

This side of the sheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The grand total value of your community property cannot be more than $53,000.

This side of the sheet will help you decide on a fair division of your property. It will help you prepare your property settlement agreement.

A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc.

Item	Amount	Sam Receives	Alex Receives
Home Savings Credit Union savings account	$150.00	$150.00	
Life insurance (cash value)	$250.00	$250.00	
Retirement Plan—Sam	$600.00	$600.00	
Retirement Plan—Alex	$500.00		$500.00
Home Savings Credit Union checking account	$180.00		$180.00
Subtotal A	$1,680.00	$1,000.00	$680.00

B. Items you own outright (for example, stocks and bonds, sports gear, furniture, household items, tools, interests in businesses, jewelry; do not include cars)

Item	Fair Market Value	Sam Receives	Alex Receives
Furniture & furnishings—Sam's apartment	$775.00	$775.00	
Furniture & furnishings—Alex's apartment	$300.00		$300.00
Terriers season tickets	$285.00		$285.00
Savings bonds	$200.00	$200.00	
Jewelry—Sam	$200.00	$200.00	
Pet parrot and cage	$40.00		$40.00
Subtotal B	$1,800.00	$1,175.00	$625.00

C. Items you are buying on credit (for example, audio equipment, appliances, furniture, tools; do not include cars)

Item	Fair Market Value	Minus Amount Owed	= Net Fair Market Value	Sam Receives	Alex Receives
Home entertainment system	$305.00	$150.00	$155.00		$155.00
Television	$400.00	$100.00	$300.00		$300.00
Golf clubs	$350.00	$50.00	$300.00		$300.00
Subtotal C			$755.00	$0.00	$755.00
Grand total value of community property = A + B + C			$4,235.00	$2,175.00	$2,060.00

PETITIONER 1: PETITIONER 2:	CASE NUMBER:

VI. WORKSHEET FOR DETERMINING VALUE AND DIVISION OF COMMUNITY PROPERTY

This side of the sheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The grand total value of your community property cannot be more than $53,000.

This side of the sheet will help you decide on a fair division of your property. It will help you prepare your property settlement agreement.

A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc.

Item	Amount	PETITIONER 1 Receives	PETITIONER 2 Receives
Subtotal A			

B. Items you own outright (for example, stocks and bonds, sports gear, furniture, household items, tools, interests in businesses, jewelry; do not include cars)

Item	Fair Market Value	PETITIONER 1 Receives	PETITIONER 2 Receives
Subtotal B			

C. Items you are buying on credit (for example audio equipment, appliances, furniture, tools; do not include cars)

Item	Fair Market Value	Minus Amount Owed	= Net Fair Market Value	PETITIONER 1 Receives	PETITIONER 2 Receives
Subtotal C					
Grand total value of community property = A + B + C					

PETITIONER 1: Sam PETITIONER 2: Alex	CASE NUMBER:

VI. SAMPLE WORKSHEET FOR DETERMINING COMMUNITY OBLIGATIONS AND THEIR DIVISION

Note: The information on this form is for an imaginary couple, Sam and Alex, who are married. (When you fill out your worksheet, use your own information and make sure you indicate if you are married, in a domestic partnership, or both.)

This side of the worksheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The total amount of your community obligations (debts) cannot be more than $7,000. Do not include car loans. Be sure you include any other debts you took on while you were living together as spouses or domestic partners. List the amount you owe on the items from your **Worksheet for Determining Value and Division of Community Property**. Then add all other debts and bills, including loans, charge accounts, medical bills, and taxes you owe.

This side of the worksheet will help you decide on a fair way to divide up your community obligations. You will use this information in preparing a **property settlement agreement.**

Item	Amount Owed	Sam Will Pay	Alex Will Pay
Audio equipment	$150.00		$150.00
Television	$100.00		$100.00
Golf clubs	$50.00		$50.00
Dr. R.C. Himple	$74.00		$74.00
Richardson Drug Store	$32.00		$32.00
College loan	$500.00		$500.00
Cogwell's charge account	$275.00	$275.00	
Mister Charge account	$68.00		$68.00
Green's Furniture	$123.00	$123.00	
Dr. S. Roberts	$37.00	$37.00	
Sam's parents	$150.00	$150.00	
TOTAL	$1,559.00	$585.00	$974.00
		Sam's Share of Community Obligations	**Alex's Share of Community Obligations**

PETITIONER 1: PETITIONER 2:	CASE NUMBER:

VI. WORKSHEET FOR DETERMINING COMMUNITY OBLIGATIONS AND THEIR DIVISION

This side of the worksheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The total amount of your community obligations (debts) cannot be more than $7,000. Do not include car loans. Be sure you include any other debts you took on while you were living together as spouses or domestic partners. List the amount you owe on the items from your **Worksheet for Determining Value and Division of Community Property**. Then add all other debts and bills, including loans, charge accounts, medical bills, and taxes you owe.

This side of the worksheet will help you decide on a fair way to divide up your community obligations. You will use this information in preparing a **property settlement agreement.**

Item	Amount Owed	Petitioner 1 Will Pay	Petitioner 2 Will Pay
TOTAL			
		Petitioner 1 Share of Community Obligations	**Petitioner 2 Share of Community Obligations**

VII. WHAT SHOULD BE INCLUDED IN THE PROPERTY SETTLEMENT AGREEMENT?

NOTE:
If after reviewing the community property worksheets on the previous pages you and your spouse or domestic partner agree that you do not have community assets or liabilities, you do not need to complete a property settlement agreement. Skip to page 16.

A property settlement agreement should contain at least five parts:

I. **Preliminary Statement**
This part identifies the spouses or domestic partners, states that the marriage and/or domestic partnership is being ended, and states that both spouses or domestic partners agree on the details of the agreement.

II. **Division of Community Property**
This part has two sections:
1. What the one spouse or domestic partner receives; and
2. What the other spouse or domestic partner receives.

III. **Division of Community Obligations**
This part has two sections:
1. The amount one spouse or domestic partner must pay and to whom the amount must be paid.
2. The amount the other spouse or domestic partner must pay and to whom the amount must be paid.

IV. **Waiver of Spousal Support**
This part states that each spouse or domestic partner gives up all rights of financial support from the other.

V. **Date and Signature**
Both spouses or domestic partners must write the date and sign the agreement.

An example of a property settlement agreement is found on pages 13–15.

VIII. SAMPLE PROPERTY SETTLEMENT AGREEMENT

Go to page 19 *if you have questions about debt and liability, or potential bankruptcy, and want to find free or low-cost legal help or hire a lawyer to prepare or review your property settlement agreement.*

Below is a sample of an acceptable **property settlement agreement.** You may use it as a model for your own agreement or you may complete another version of the agreement found at *https://www.courts.ca.gov/documents/propagreement.pdf*

- The parts that are underlined will fit most cases. You can copy these parts for your own agreement. Since many of the words have special meanings in the law, you may wish to talk to a lawyer if you want to change the words.
- The parts printed in regular type (not underlined) are based on an imaginary couple. You will need to replace these parts with items that apply to your situation.
- The numbered notes in *italics* in the right-hand column or at the bottom of the page are **not** part of the agreement. They are there to help you understand it. (Do not include the references to notes 1 and 2 in your agreement.)
- The sample below is for a married couple, so it refers to marriage. If you are ending a domestic partnership, you should say that in your agreement. If you are ending both a marriage and a domestic partnership with the same person, say both and write in the dates of both your marriage and the registration of your domestic partnership.

Remember
- You can divide the items any way you want (even if one of you receives more of the marital assets).
- As long as you both agree, the court will accept it.*
- If you cannot agree about the division of your property and debts, you should file a regular divorce.

SAMPLE PROPERTY SETTLEMENT AGREEMENT

I. We are Alex P. Smedlap, hereafter called Alex, and Sam T. Smedlap, hereafter called Sam.[1] We were married on October 7, 2018, and separated on December 5, 2022. Because irreconcilable differences[2] have caused the permanent breakdown of our marriage, we have made this agreement together to settle once and for all what we owe to each other and what we can expect from each other. Each of us states here that nothing has been held back and that we have honestly included everything we could think of in listing the money and goods that we own; and each of us states here that we believe the other has been open and honest in writing this agreement. Each of us agrees to sign and exchange any papers that might be needed to complete this agreement.

[1] *If you prefer, you can also write "hereafter called Spouse A [or Spouse B]" or "hereinafter called Partner A [or Partner B]," whichever applies. Just make sure it is clear to whom you are referring.*

[2] *This means there are problems in your marriage or domestic partnership that you think can never be solved.* ***Irreconcilable differences*** *is the only legal grounds for getting a* ***summary dissolution.***

* See Family Code section 2550. At the trial in a regular dissolution, a judge would set a value on and divide community property and debts into two approximately equal parts as provided by the Family Code.

Each of us also understands that even after *Joint Petition for Summary Dissolution* is filed, this entire agreement will be canceled if either of us revokes the dissolution proceeding.[3]

II. Division of Community Property[4]

We divide our community property as follows:

1. Alex transfers to Sam as Sam's sole and separate property:

   A. All household furniture and furnishings located at the apartment at 180 Needlepoint Way, San Francisco.[5]

   B. All rights to cash in savings account at Home Savings Credit Union.

   C. All cash value in life insurance policy insuring life of Sam through Sun Valley Life Insurance.

   D. All retirement plan benefits earned by Sam during marriage.

   E. Two U.S. Savings Bonds, Series E.

   F. Sam's jewelry.

   G. 2015 Chevrolet 4-door sedan.

2. Sam transfers to Alex as Alex's sole and separate property:

   A. All household furniture and furnishings located at the apartment on 222 Bond Street, San Francisco.

   B. All retirement plan benefits earned by Alex during marriage.

   C. Season tickets to Golden State Terriers basketball games.

   D. Home entertainment system.

   E. One set of golf clubs.

   F. One television.

   G. 2014 Ford Explorer SUV.

   H. One pet parrot named Nikki, plus cage and parrot food.

   I. All rights to cash in checking account at Bank of America.

[3] *This means that the property agreement is a part of the dissolution proceeding. If either of you decides to stop the dissolution proceeding by turning in* Notice of Revocation of Petition for Summary Dissolution *(form FL-830) (see page 18), this entire agreement will be canceled.*

[4] *Community property is property that you own as a couple (see page 2).*

If you have no community property, replace Part II with the simple statement ***"We have no community property."***

[5] *If the furniture and household goods in one apartment are to be divided, they may have to be listed item by item.*

III. Division of Community Property (Debts)[6]

1. Alex will pay the following debts and will not at any time hold Sam responsible for them:[7]

   A. Mister Charge account.

   B. Debt to Dr. R.C. Himple.

   C. Debt to Richardson Drug Store.

   D. Debt to UC Berkeley for college education loan to Alex.[8]

   E. Debt to Golf Store for golf clubs.

   F. Debt to Everything Electronics for TV and audio equipment.

   G. Debt to Used Ford Store for 2014 Ford Explorer SUV.

2. Sam will pay the following debts and will not at any time hold Alex responsible for them:[7]

   A. Cogwell's charge account.

   B. Debts to Sam's parents.

   C. Debt to Green's Furniture.

   D. Debt to Dr. S. Roberts.

   E. Debt to Friendly Finance Company for 2015 Chevrolet 4-door sedan.

IV. Waiver of Spousal/Partner Support[9]

Each of us waives any claim for spousal/domestic partner support now and for all time.

V. Dated: Dated:

_____ _____

Alex P. Smedlap Sam T. Smedlap

6 *If you have no unpaid debts, replace Part III with the statement* ***"We have no unpaid community obligations."***

7 *A challenge when dividing community debt is that a company you both owe money to, like a credit card company or mortgage company, does not have to honor your agreement. If the person who agreed to pay the joint debt doesn't pay or misses a payment, the company may seek payments from you both and it may hurt both of your credit ratings.*

You may consider options other than splitting the joint debt, like (1) paying off the debt, if possible; (2) selling items to pay off the debt; (3) taking out a line of credit to pay off the joint debt; or (4) having the person most able to pay the joint debt take over the payments, but give them more property. For more information, click here *or go to: https://selfhelp.courts.ca.gov/divorce/property-debts.*

8 *Even though California is a community property state, if a spouse or domestic partner is not named on a student loan taken out during a marriage or domestic partnership, and if the couple gets a divorce within 10 years of marriage or registration of the domestic partnership, then the spouse or domestic partner who is not the student-borrower will usually not be responsible for repaying the loan.*

9 *"Waives" means that you each give up the right to have your spouse or domestic partner support you financially.*

IX. WHAT STEPS DO YOU HAVE TO TAKE TO GET A SUMMARY DISSOLUTION?

If after reviewing the information in this booklet, you feel your marriage or your domestic partnership will qualify for a summary dissolution, you should carefully go through the following 15 steps. You can fill out the forms, worksheets, and agreements in the summary dissolution section

- online, for free, at *https://selfhelp.courts.ca.gov/divorce-california/summary-dissolution/* ; or
- with neat printing.

1. _____ Complete and give your spouse or domestic partner a list of community and separate property assets and obligations. This information is needed to comply with the requirement to exchange a preliminary declaration of disclosure in summary dissolution cases. Use the forms listed below in 1a or 1b for this purpose.

   a. _____ *Declaration of Disclosure* (form FL-140) and *Schedule of Assets and Debts* (form FL-142) (or *Property Declaration* (form FL-160)). These forms are not included in this booklet. You may find them online at *www.courts.ca.gov/forms.htm.* Give one copy to your spouse or domestic partner and keep one for your records; or

   b. _____ The worksheets in this booklet on pages 7, 9, and 11.

      (1) _____ Turn to page 7 and complete the Worksheet for Determining Value of Separate Property. See page 6 for an example. Make one extra copy of your worksheet after it has been completed. Give one copy to your spouse or domestic partner and keep one for your records.

      (2) _____ Turn to page 9 and complete the Worksheet for Determining Value and Division of Community Property. See page 8 for an example. Make one extra copy of your worksheet after it has been completed. Give one copy to your spouse or domestic partner and keep one for your records.

      (3) _____ Turn to page 11 and complete the Worksheet for Determining Community Obligations and Their Division. See page 10 for an example. Make one extra copy of your worksheet after it has been completed. Give one copy to your spouse or domestic partner and keep one for your records.

2. _____ Along with the documents listed in step 1, give your spouse or domestic partner all tax returns you filed in the last two years. Give one copy to your spouse or domestic partner and keep one copy for your records.

3. _____ Fill out *Income and Expense Declaration* (form FL-150). You each need to fill out this form and give it to your spouse or domestic partner before you sign your property settlement agreement or complete your divorce. Make one extra copy of your form after it has been completed. Give one copy to your spouse or partner and keep one for your records.

4. _____ Complete a written statement about business and investments opportunities and give it to your spouse or domestic partner before you sign a property settlement agreement or complete your divorce. Keep a copy for your records.

   Note: The written statement must describe any investment opportunity, business opportunity, or other income-producing opportunity that developed since the date you separated that was based on any investment made, significant business done, or other income-producing opportunity that was presented to you between the date you married or became domestic partners and the date you separated (there is no specific form for this purpose).

5. _____ Do you have community assets or debts?

   a. _____ Yes. Complete your property settlement agreement. Both of you must date and sign it. Make two extra copies. See pages 12–15 for an example and instructions.

   Note: You can find a version of a property settlement agreement that you can fill out online at: *https://www.courts.ca.gov/documents/propagreement.pdf*

   b. _____ No. Check box 13a on *Joint Petition for Summary Dissolution* (form FL-800) if you have no community assets or liabilities. No separate agreement is needed, but you must complete steps 1 through 4 above.

6. ____ Fill out *Joint Petition for Summary Dissolution* (form FL-800). *Both* of you must sign and date this petition. Make two extra copies of this form. (This is the form you need to ***START*** the process.)

> ***Note:*** *When signing your joint petition and your property settlement agreement, you are signing these documents under penalty of perjury under the laws of the State of California, which is the same as being sworn to testify in court.* ***You may not sign each other's name.***

7. ____ Make three sets of forms that include copies of your property settlement agreement and a copy of your *Joint Petition for Summary Dissolution* (form FL-800).

8. ____ Fill out the *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) as noted below and make three copies of it.
   a. ____ Fill out the caption (top part of the judgment form).
   b. ____ Check item 1b or 1c if either of you wants your name restored. Specify the name to be restored.
   c. ____ Fill in the address of Petitioner 1 and Petitioner 2 on page 2.

9. ____ If you have a property settlement agreement, staple it to the *Judgment* (form FL-825). Make three sets.

10. ____ Make one extra copy of a blank *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) so each of you has one, and hold on to it. This is the form you would need to **STOP** the process. You may wish to use it during the waiting period if you change your mind and want to stop the process. You should keep one copy. See page 18 for more information.

11. ____ Take your *Joint Petition for Summary Dissolution* (form FL-800), *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825), and all of your copies to the superior court clerk's office together with two self-addressed, stamped envelopes (one addressed to each spouse or domestic partner). The location of your superior court clerk's office can be found in the phone book or online at *www.courts.ca.gov/find-my-court.htm.* The clerk will stamp the date on all copies, will keep one copy of each document, and will return the other two to you. One copy is for each spouse or domestic partner.

12. ____ Pay the superior court clerk's filing fee. If you cannot afford to pay the filing fee, you may qualify for a fee waiver based on your income. If one of you qualifies for a fee waiver but the other one does not, the one who does not qualify will have to pay the filing fee. To request a fee waiver, see *Information Sheet on Waiver of Court Fees and Costs* (form FW-001-INFO). You will need to prepare a *Request to Waive Court Fees* (form FW-001) and an *Order on Court Fee Waiver* (form FW-003).

13. ____ The clerk will file your joint petition and return the copies to you and your spouse or partner. The court may also process the *Judgment of Dissolution* at that time, in the next few weeks, or after the six-month waiting period has expired and give or mail it to you and your spouse or domestic partner. The *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) will have a date on which the dissolution ending your marriage, domestic partnership, or both will be final. That is the effective date of your dissolution and it will be six months from the date you file your joint petition. The six-month waiting period is mandated by law.

14. ____ Put your copies of all documents in a safe place.

15. ____ Wait for six months. If either one of you wants to stop the summary dissolution case, fill out and file a *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) before the six months run out.

16. ____ On the day that appears on your *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) as the effective date of your dissolution:
   a. Your marriage or domestic partnership (or both) is ended;
   b. The agreements you made in your property settlement agreement are binding—you will then own the property assigned to you, and you will have to pay the bills assigned to you;
   c. Except for those agreements, you and your spouse or domestic partner have no further obligations to each other; and
   d. You are legally free to remarry or register a new domestic partnership.

REMEMBER: Either of you can stop the process by filling out *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) and bringing it to the superior court clerk during the six-month waiting period before the date your dissolution is effective according to the *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) that you received from the court.

X. WHAT YOU SHOULD KNOW ABOUT REVOCATION

It is important to realize that the *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) is not just another form you are supposed to fill out and turn in.

Do not fill it out and do not bring it to the superior court clerk unless you want to stop the divorce!

What is the notice of revocation for?

This is the form you need if you want to stop the divorce. **Revoking** the agreement is canceling or stopping it.

What reasons are there for revoking?

There are three reasons you might have for wanting to stop the summary dissolution:

1. You have decided to return to your spouse or domestic partner and continue the marriage or domestic partnership;
2. You want to change over to the regular dissolution as a better way of getting your divorce; or
3. You learn that one of you is pregnant.

Why might you want to change over to the regular dissolution?

You may come to believe that you will get a better settlement if you go to court than with the agreement you originally made with your spouse or domestic partner. (Maybe, after thinking it over, you feel you are not receiving a fair share of the community property.)

How do you do it?

At the time you picked up the joint petition forms, you and your spouse or partner also received a blank *Notice of Revocation of Petition for Summary Dissolution* (form FL-830). Fill out the form, sign it, make two copies, and bring them to the superior court clerk's office. You must also send a copy of form FL-830 to your spouse or domestic partner by first-class mail, postage prepaid, to their last known address. You can do this alone. This form does not need your spouse's or partner's signature.

If you do this at any time during the six-month waiting period, before the effective date of your dissolution, you will stop this divorce proceeding.

Can the dissolution be stopped once the waiting period is over?

NO. After the date the court wrote on your *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) as the date your marriage or domestic partnership is ended (the date the divorce is effective), you can no longer revoke the dissolution by filing the revocation form. You may have other legal options, but you will need to talk to a lawyer about them.

If you change over to a regular dissolution, what happens to the part of the waiting period that has passed? You can apply the amount of time you waited on the summary dissolution to your regular dissolution. For example, if four months went by before you decided to revoke the summary dissolution, the waiting period for the regular dissolution will be shortened by four months.

However, you can save this time **only** if you file for a regular dissolution within 90 days of revoking the summary dissolution.

XI. SHOULD YOU SEE A LAWYER?

Must you have a lawyer to use the summary dissolution procedure?

No. You can do the whole thing by yourselves. But it would be wise to see a lawyer before you decide to do it yourselves. You should not rely on this booklet only. It is not intended to take the place of a lawyer.

If you want legal advice, does that mean you have to hire a lawyer?

No. You may hire a lawyer, of course, but you can also just visit a lawyer once or twice for advice on how to carry out the dissolution proceeding. Do not be afraid to ask the lawyer in advance what fee will be charged. It may be surprisingly inexpensive to have a lawyer review your papers, help you with a part of your divorce, or handle all of your divorce.

Do you have to accept your lawyer's advice?

No, you do not. And if you are not pleased with what one lawyer advises, you can feel free to go to another one.

How can a lawyer help you with the summary dissolution procedure?

First, a lawyer can advise you, on the basis of your personal situation, whether you ought to use the regular dissolution procedure rather than the summary dissolution procedure.

Second, a lawyer can read your property settlement agreement to help you figure out if you have thought of everything you should have. (It is easy to forget things you do not see very often, such as savings bonds and safe deposit boxes.)

Third, in many situations it is not easy to figure out what should count as community property and what should count as separate property. Suppose one of you had money before the marriage (or domestic partnership) and put it into a bank account in both of your names and then both of you used money from that account. It may not be easy to decide how the money remaining in that account should be divided. A lawyer can advise you on how to make these decisions.

Fourth, there may be special situations in which your property settlement is not covered by the sample agreement on pages 13–15 or the fillable agreement online.

A lawyer can help you put the agreement in words that are legally precise and cannot be challenged or misinterpreted later.

Where can you find a lawyer?

You can locate organizations that can help you find a lawyer online or in your telephone directory under "Attorneys," "Attorney Referral Service," or "Lawyer Referral Service." In many cases you will be able to find an attorney who will charge only a small fee for your first visit.

You can find information about free or low-cost services through the county bar association in your county. The California Lawyer's Association website *calawyers.org/bar-relations/california-bar-associations-and-organizations/.* can help you find bar associations in your county.

You can find information about certified lawyer referral services on the *Self-Help Guide to California Courts* at *https://selfhelp.courts.ca.gov/getting-legal-help.*

You can also find information about certified lawyer referral services at the State Bar website *www.calbar.ca.gov..*

XII. SOME GENERAL INFORMATION

What about income taxes?
If you have filed a joint tax return, both of you will still be responsible for paying any unpaid taxes even after your divorce.

If you are receiving a tax refund, you should agree in the property settlement agreement on how it should be divided.

The amount of money that you will owe, or that will be taken out of your paycheck, for income taxes may be greater after you are single again. If that is the case, you should prepare yourself for a bigger tax obligation.

It would be a good idea to consult the Internal Revenue Service or a tax expert on how the divorce is going to affect your taxes. You should probably do this before you make your property settlement agreement.

What about bank accounts and credit cards?
If you have a joint bank account, it may be a good idea to close it when you separate and get two individual bank accounts. That way it will be easier to keep your money separate.

If you have credit card accounts that you both have been using, you should destroy the cards and take out separate accounts.

What about cars?
If both of your names are on a title to a car and you agree that one of you is going to own the car, you need to take action to change the ownership. You should call or visit the Department of Motor Vehicles to find out how to do that. You should also talk to the lender to get the debt into one person's name and change the insurance coverage after both the title and debt are transferred.

What if your spouse or domestic partner does not pay the debts as agreed?
If your spouse or domestic partner does not pay a debt as agreed, the person who loaned the money may be able to collect it from you. But then a court may order your spouse or domestic partner to reimburse you. If you have any reason to worry about this, a lawyer can explain your rights to you.

Can you take back your former name?
If you changed your name when you were married or registered your domestic partnership, you have the right to give up that name and get your former name back. You can do this by requesting it in the joint petition. If you do not request this in the joint petition, you can file a form called *Ex Parte Application for Restoration of Former Name After Entry of Judgment and Order* (form FL-395). Your spouse or domestic partner cannot make you change your name.

What if I am not happy with my final judgment?
When your divorce is final, all your rights and duties connected with your marriage or domestic partnership have ended and you cannot appeal. But if you decide later that you were cheated or pressured by your spouse or domestic partner, or if you believe that a mistake was made in the paperwork connected with the divorce, the court may be able to set aside the divorce. A lawyer can explain your rights.

SPR23-15
Family Law: Summary Dissolution Forms (revise forms FL-800 and FL-810)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Tanya Both Redwood City	NI	One page 15 of the Summary Disso Packet (ITC, page 24), under section III Division of Community Property (Debts), item 1D the note regarding the example student loan is very confusing and seems likely to mislead litigants as to the general rule regarding community property as well as the exceptions that are applied to student loans.	The commenter's concern is with the current language in the booklet, which provides that: "A general rule for dividing debts is to give the debt over to the person who benefitted from the item. In the sample agreement, because Chris received the education, Chris should pay off the loan." The committee agrees with the commenter that the statement is oversimplified and could be confusing. For example, there are different actions that parties can consider when dividing community property assets and debts. Further, it is possible that the non-student spouse of domestic partner could be responsible for repaying the student loan, especially if the non-student's name appears on the loan. Because the language in the note does not account for alternatives, the language should be deleted and replaced. The committee recommends that the language in note 8 be replaced with two new sections, and that the new language reflect the information that is found on the Self-Help Guide to the California Courts, along with appropriate links to the online information. Because the revised language will be more substantial, the committee recommends that notes 6, 7, 8 and 9 be moved to the bottom of the page, instead of on the right side of the page.
2.	California Lawyer's Association,	A	No additional comments.	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
	Family Law Section Executive Committee (FLEXCOM)By: Saul Bercovitch, Associate Executive Director, Governmental Affairs Sacramento			
3.	Orange County Bar Association By: Michael A. Grepp, President Newport Beach	A	The proposal addresses the stated purpose adequately	No response required.
			Unknown cost savings, but it does put more couples into the "Summary Dissolution" category with the raise in values of assets and obligations.	No response required.
			Court clerks MUST be trained about the allowed increase in valuation of assets and obligations so that the Summary Dissolution Petition is not rejected.	No response required.
			Since the forms do not take effect until 1/1/2024 more than six months training time is suggested.	No response required.
			Because this brings more potential cases into the Summary Dissolution process it would impact smaller courts in processing more cases.	No response required.
4.	Superior Court of Los Angeles County By Bryan Borys Director of Research and Data Management	AM	Regarding FL-800, Joint Petition for Summary Dissolution form: Page 1, Section 6: Suggest removing "minor" from "There are no minor children who were born..," to maintain consistency with the Booklet, which does	The committee appreciates this comment and considered replacing the term "minor" on form FL-800. However, the committee decided that the joint petition should maintain the same term ("minor") as used in the regular divorce petition

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			not include the word "minor" (see Booklet, page 1, Item 1; Booklet, page 3, Section III, Item #3)	(form FL-100). Instead, the committee recommends revising the instruction booklet to use the term "minor" and note that it means "a child under the age of 18 years."
			Regarding Summary Dissolution Information Booklet:	
			Page 5, Section V: Suggest updating "classified ads in the newspaper" to include "classified ads or listings online."	The committee agrees with this suggestion and has incorporated it, with alterations, into the revisions being recommended for adoption.
			Page 12, Section VII, Item III (1): Suggest replacing "and whom he or she must pay it to" with "and whom they must pay it to" to be inclusive of the three genders that California law recognizes.	The committee agrees with this suggestion and has incorporated it, with alterations, into the revisions being recommended for adoption.
			Page 16, Section IX, Item 5: Suggest including the template for the Property Settlement Agreement in this section (or a link to the template: https://www.courts.ca.gov/documents/propagreement.pdf), because it is difficult for litigants to find online, and because litigants often pick up the printed Summary Dissolution Packet from the Clerk's Office or Self-Help Centers, which can include the template.	The committee agrees with this suggestion and has incorporated it into the revisions being recommended for adoption.
5.	Superior Court of Orange County By: Family and Juvenile Law Divisions	NI	The proposal addresses the reasons why modifications to forms FL800 and FL810 must be revised according to legislation.	No response required.
			The proposal would not provide cost savings.	No response required

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			Implementing this proposal would require written communication to staff.	No response required
			Three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation	No response required
			Our court is a large court, and this proposal could work for Orange County.	No response required
6.	Superior Court of Riverside County By: Susan Ryan, Chief Deputy of Legal Services	A	The proposed changes would ensure compliance with Family Code section 2400 and makes the forms more current in the use of dates and names and provides some clarity to issues that were problematic such as attaching the MSA to the Judgment and clarifying that assets and debts need not be divided equally when both parties sign the paperwork.	No response required.
			There would no real cost savings, but the only real fiscal impact is the courts will incur standard reproduction costs for the forms.	No response required.
			As for Self Help, implementation requires updating online content to include all new forms	No response required.
			Three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation	No response required.

	Commenter	Position	Comment	Committee Response
			There is no significant variation in impact between different court sizes.	No response required.
7.	Superior Court of San Bernardino County, Barstow District By Anita Morales Legal Processing Assistant II	A	No additional comments.	No response required.
8.	Superior Court of San Diego County By: Michael M. Roddy Executive Officer	A	*The proposal appropriately addresses the stated purpose.	No response required.
			*The implementation requirements would be updating the court's internal procedures and packets, and notifying and training court staff.	No response required.
			*Three months from Judicial Council approval of this proposal until its effective date would provide sufficient time for implementation, as long as the final versions of the forms are provided to the court at that time. This will ensure that the court is able to provide training to staff and update its internal procedures.	No response required.
			It appears that the proposal would work for courts of various sizes.	No response required
			The proposal would not provide cost savings.	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

ATTACHMENT A

State of California
Department of Industrial Relations
http://www.dir.ca.gov/OPRL

Office of the Director- Research Unit
P.O. Box 420603, San Francisco, California 94142

CALIFORNIA CONSUMER PRICE INDEX (1955-2022)

ALL ITEMS (1982 - 1984 = 100)

Year	Month	All Urban Consumers	Urban Wage Earners and Clerical Workers
2022	**Annual**	**319.224**	**310.424**
2022	December	323.148	313.159
2022	October	324.819	315.900
2022	August	322.275	313.374
2022	June	322.043	313.931
2022	April	316.847	308.468
2022	February	311.048	302.122
2021	**Annual**	**297.371**	**288.595**
2021	December	306.109	297.426
2021	October	302.793	294.211
2021	August	299.815	291.317
2021	June	297.447	288.784
2021	April	294.274	285.139
2021	February	289.632	280.644
2020	**Annual**	**285.315**	**275.568**
2020	December	287.367	277.885
2020	October	286.843	277.443
2020	August	286.388	276.751
2020	June	284.835	274.921
2020	April	283.006	273.050
2020	February	284.886	274.917

Item number: 17

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Family and Juvenile Law: Implementation of Assembly Bill 2495

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Rule 5.451, ADOPT-050-INFO, ADOPT-200, ADOPT-215, ADOPT-310, ADOPT-330

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

*Staff contact (*name, phone and e-mail*): Diana Glick, 916-643-7012, diana.glick@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): November 1, 2022
Project description from annual agenda: 1. As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration and will take action only where necessary to allow courts to implement the legislation efficiently.

1h. AB 2495 (Patterson) The parent and child relationship (Stats. 2022, ch.159)
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.

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

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

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

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

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

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

Judicial Council *of* California

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: SPR23-18
For business meeting on September 19, 2023

Title
Family and Juvenile Law: Implementation of Assembly Bill 2495

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.451; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-215, ADOPT-310, and ADOPT-330

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 14, 2023

Contact
Diana Glick, 916-643-7012
diana.glick@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending one rule of the California Rules of Court and revising five forms to conform with recent statutory changes enacted by Assembly Bill 2495 (Patterson; Stats. 2022, ch. 159) regarding various topics related to adoptions, including when to display a child's preadoption name on the adoption request and order forms, procedures for filing a postadoption contact order, and venue for adoption requests. The committee also recommends technical changes to the forms to correct errors and respond to partner and stakeholder feedback.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2024:

1. Amend California Rules of Court, rule 5.451 to delete provisions of the rule that restate statutory text and retain sections that provide court operations information and guidance.

2. Revise *How to Adopt a Child in California* (form ADOPT-050-INFO) to clarify and make more legally precise the explanation of the required steps in a stepparent adoption to confirm parentage and to make technical revisions primarily to conform to Judicial Council style;

3. Revise *Adoption Request* (form ADOPT-200) to respond to new legislation and to make technical revisions primarily to conform to Judicial Council style;

4. Revise *Adoption Order* (form ADOPT-215) to respond to new legislation and to make technical revisions primarily to conform to Judicial Council style;

5. Revise *Contact After Adoption Agreement* (form ADOPT-310) to correct an erroneous code citation, to reconfigure a table to make it more accessible, and to make technical revisions primarily to conform to Judicial Council style; and

6. Revise *Request for Appointment of Confidential Intermediary* (form ADOPT-330) to correct an erroneous phone number and make technical revisions primarily to conform to Judicial Council style.

The proposed amended rule and revised forms are attached at pages 10–31.

Relevant Previous Council Action

The *Adoption Request* (form ADOPT-200), *Adoption Agreement* (form ADOPT-210), and *Adoption Order* (form ADOPT-215) were adopted by the Judicial Council in October 1998 as part of a proposal for mandatory uniform adoption forms for all minor children subject to adoption proceedings.

Also in 1998, the Judicial Council adopted a rule of court and several forms, including what is now styled as California Rules of Court, rule 5.451 and *Contact After Adoption Agreement* (form ADOPT-310) to implement procedures for "kinship" adoption agreements, which allowed for ongoing contact between adopted children and their birth relatives. All references to "kinship adoption agreement" were revised to "postadoption contact agreement" based on legislative changes in 2001. Forms ADOPT-200 and ADOPT-215 were revised in April 2001 to provide information on postadoption contact. In 2002, form ADOPT-310 was updated with a table employing icons to signify the types of postadoption contact agreed upon by the parties.

The council adopted the information sheet *How to Adopt a Child in California* (form ADOPT-050-INFO) in 1999 to provide basic information on the adoption process. This information sheet was revised in 2010, 2016 and 2021 to incorporate information on new and amended adoption processes and procedures.

California Rules of Court, rule 5.410, *Request for Appointment of Confidential Intermediary* (form ADOPT-330) and *Order for Appointment of Confidential Intermediary* (form ADOPT-331) were adopted with an effective date of January 1, 2008, to facilitate contact between adoptees and their siblings in accordance with amendments to Family Code section 9205. In 2012, California Rules of Court, rule 5.410 was renumbered to rule 5.460 based on recommendations made by the Elkins Family Law Implementation Task Force.

On January 1, 2021, the Judicial Council revised several adoption forms and approved a new form in response to two important pieces of legislation affecting international adoptions and adoptions of children born to gestational surrogates in states that do not recognize both intended parents on the child's birth certificate. These legislative changes were implemented with revisions to forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215; the approval of new form ADOPT-206; and revisions to California Rules of Court, rule 5.493.

Analysis/Rationale

Statutory changes prompting proposal

California law sets forth a statutory scheme in the Family Code that organizes adoptions into four major categories:

1. Agency Adoptions (Fam. Code, § 8700 et seq.), including Relative Caregiver/Foster Parent Adoptions and Agency Joinder Adoptions (Fam. Code, §§ 8714.5, 8730–8736)
2. Independent Adoptions (Fam. Code, § 8800 et seq.)
3. Intercountry (International) Adoptions (Fam. Code, § 8900 et seq.)
4. Stepparent Adoptions (Fam. Code, § 9000 et seq.), including Stepparent Adoptions to Confirm Parentage (Fam. Code, § 9000.5)

Assembly Bill 2495 made statutory changes affecting a variety of processes and procedures related to each of these types of adoptions. The committee recommends amendments to rule 5.451 and revisions to ADOPT forms based on the statutory changes described below.

Venue for the filing of an adoption request

AB 2495 expands the possible counties in which an adoption request may be filed by authorizing an adoption request for a nondependent minor to be filed with the court in the county in which an office of the agency that is filing the adoption request is located. This expansion of venue requires a revision to the *Adoption Request* (form ADOPT-200).

Postadoption contact agreements, filing requirements, and authorized relatives

AB 2495 attempts to standardize provisions for four types of adoptions to consistently refer to Family Code section 8616.5 for information about the process for developing and filing, enforcing, modifying, and terminating a postadoption contact agreement. These changes provide an opportunity to streamline rule 5.451 of the California Rules of Court.

Adoption request and order: listing of child's name before adoption
Before the enactment of AB 2495, the child's name before the adoption was listed only on the adoption request for independent, stepparent, or tribal customary adoptions. With the bill's amendment of Family Code section 8912(b), intercountry adoptions are added to this list. This addition requires a change to the *Adoption Request* (form ADOPT-200).

Similarly, before AB 2495, the child's name before the adoption was not listed on the adoption order. With the bill's amendments to Family Code sections 8714(f), 8802(f), 8912(d), and 9000(e), the child's name before the adoption must now be listed on the adoption order for agency adoptions, independent adoptions, intercountry adoptions, and stepparent adoptions. This new requirement necessitates a change to *Adoption Order* (form ADOPT-215).

The committee further recommends technical and nonsubstantive revisions to the forms to respond to concerns expressed by courts and stakeholders and to correct erroneous citations and an incorrect phone number.

Proposed changes to rule and forms
California Rules of Court, rule 5.451
This rule of court was adopted in 1998 as a description of the process related to "kinship adoption agreements" and postadoption contact agreements that were authorized only in relative agency adoptions. In 1998, access to statutory materials via electronic devices and online resources was far less available to judicial officers and the public than at present. To ensure that courts and the public had comprehensive information about the requirements in these situations, the original drafters of the rules paraphrased or directly included extensive sections of the relevant underlying statutes in the rules.

Since that time, the law surrounding postadoption contact agreements has been applied to other types of adoptions. The rule amendments frequently lag the underlying statutory amendments by a year or more because of the time needed for the Judicial Council rule-making process. At the same time, the growth of online legal resources such as the California Legislative Information website allows judicial officers and the public to access up-to-date statutory materials easily at no cost.

These changes in the information infrastructure for courts warrant a reexamination of the role of the rules of court in these proceedings. The committee, therefore, recommends deleting those provisions of the rule that restate statutory text and retaining those sections of the rule that provide court operations information and guidance. These changes would streamline the rule and reduce the frequency with which the rule needs to be amended to reflect changes in the statutory text.

A detailed description of recommended revisions can be found in Attachment A at pages 9-10.

How to Adopt a Child in California *(form ADOPT-050-INFO)*
Concerns have been raised regarding a lack of clarity and legal precision in this information sheet in the explanation of the required steps in a stepparent adoption to confirm parentage. To address these concerns, the committee recommends the following:

- On page 1, remove references to the specific steps required for a stepparent/domestic partner adoption and for a stepparent adoption to confirm parentage.
- On page 2, add a note under the first item 2 to explain that in a stepparent adoption to confirm parentage, a home investigation and a hearing are required only if the court orders them for good cause.

Based on a comment received regarding inquiry under the Indian Child Welfare Act (ICWA), the committee recommends changing the fourth paragraph on page 4 from "If, after additional inquiry, there is **reason to know** that the child is an Indian child…" to "If, at any time during the proceeding, there is **reason to know** that the child is an Indian child…."

The committee also recommends technical revisions to conform to Judicial Council style. All recommended revisions are listed in Attachment A at pages 9-10.

Adoption Request *(form ADOPT-200)*
In response to legislative language expanding venue to include the county in which an office of the agency that files the request for adoption is located, the committee recommends the addition of this language to item 2.

In item 5, the committee recommends the inclusion of intercountry adoptions on the list of adoptions for which the child's name before adoption must be listed on the request. To make this information fit, the committee recommends rewording the instructions slightly and removing capitalization.

To address concerns about the explanation of the required steps in a stepparent adoption to confirm parentage, the committee recommends the addition of a check box option to item 12e. The new option would read, "This is an adoption to confirm parentage. No investigation is required unless court ordered for good cause."

The committee also recommends technical revisions to conform to Judicial Council style. All recommended revisions are listed in Attachment A at pages 9-10.

Adoption Order *(form ADOPT-215)*
AB 2495 requires the name of the child before adoption to be listed on the adoption order for the following types of adoptions: nonrelative agency, independent, intercountry, and stepparent adoption. For an adoption of a dependent child by a relative filed under Family Code section 8714.5(g), the child's name before adoption should be listed on the order only upon request by the adopting relative or by the minor child, if that child is 12 years of age or older. Therefore, the committee recommends rewording item 7 to allow for the child's name before adoption to be

listed for nonrelative agency, independent, intercountry, and stepparent adoptions, and in cases of adoption of a dependent child by a relative, only in the specified circumstances.

The committee also recommends technical revisions to conform to Judicial Council style. All recommended revisions are listed in Attachment A at pages 9-10.

Contact After Adoption Agreement *(form ADOPT-310)*
With the enactment of SB 182 (Stats. 2003, ch. 251), the provision of the Family Code governing and describing procedures for postadoption contact agreements was renumbered from 8714.7 to 8616.5. The committee recommends updating the reference to this code section in item 2d.

In addition, the committee recommends reconfiguring the table in item 3, which collects information about the types of postadoption contact that have been agreed on by the parties. Currently, the table cannot be used when the form is filled out online and it is not screen-reader accessible. The committee also recommends changing "party(ies)" to "party/parties" in item 3.

The committee also recommends technical revisions to conform to Judicial Council style. All recommended revisions are listed in Attachment A at pages 9-10.

Request for Appointment of Confidential Intermediary *(form ADOPT-330)*
The Department of Social Services provided feedback indicating that the phone number on the front page of this form, directing an adoptee seeking contact with a sibling to contact the Adoption Support Unit for assistance, was incorrect. In addition, the department has changed the name of this unit to the "Adoption Services Branch." The committee recommends updating both the name and phone number on this form, in addition to technical revisions to conform to Judicial Council style. Because these changes are nonsubstantive corrections, the committee recommends that the council make this revision without circulating the form for comment, in accordance with California Rules of Court, rule 10.22(d)(2).

All recommended revisions are listed in Attachment A at pages 9-10.

Policy implications
California law presents a statutory scheme in the Family Code that organizes adoptions into four major categories. AB 2495 made statutory changes affecting a variety of processes and procedures related to each of these types of adoptions, including venue for independent adoptions, requirements surrounding postadoption contact agreements, and the listing of the child's name before the adoption on request and order forms. The committee's recommendations are designed to ensure that court rules, forms, and processes are consistent with the legislative requirements presented in the Family Code.

Comments
The proposal was circulated for public comment from March 31 through May 12, 2023. A total of 8 comments were received from stakeholders and courts. Four commenters agreed with the proposal, two agreed with modifications, and two commenters did not indicate a position.

Several commenters provided feedback leading to improvements to the clarity of proposed language on the forms. The superior courts that submitted comments provided helpful information regarding the operational impacts on courts of the new process.

The substantive comments and feedback focused principally on the most efficient and appropriate way to populate the child's name before adoption on the Adoption Order. Changes were made to incorporate these helpful suggestions. One superior court recommended a number of changes to items on the forms that address compliance with ICWA inquiry and notice. Some of these recommendations were adopted; others fell outside the scope of the current proposal but will be included for consideration in the upcoming overhaul of the adoption form series.

The chart of comments and committee responses is attached at pages 32–41.

Alternatives considered

The committee is developing a proposal to reorganize and redesign the ADOPT forms, to be brought forward in the winter 2023–2024 cycle. The reorganization effort will potentially result in a streamlined form ADOPT-200 that solicits information applicable to all types of adoptions, and the development of attachments corresponding to the various types of adoptions, which will each solicit information relative only to that specific type of adoption. Consideration was given to incorporating items in the current proposal into this larger effort; however, it was determined that because AB 2495 took effect on January 1, 2023, the committee needed to act quickly to make the forms and rules of court consistent with the law.

The failure to update Judicial Council forms to comply with legislative changes could result in confusion among courts, stakeholders, and families involved in adoption proceedings. Therefore, the option of waiting to incorporate these changes with the more extensive revamping of the forms planned for a future cycle was considered and discarded. Because the legislative changes affected a rule of court and several forms, it was determined that technical and clarifying changes to the forms should also be made at this time.

Fiscal and Operational Impacts

According to the comments received from superior courts, training for court staff would be minimal, and no required changes are anticipated to court case management systems. It will be important to communicate changes on the forms to bench officers. Courts that maintain paper versions of the forms will incur the costs of replacing old forms with the revised forms. Because there are revisions to forms ADOPT-050-INFO and ADOPT-200, which have been translated into four languages, and to form ADOPT-215, which has been translated into Spanish, the Judicial Council would incur costs in updating these translated versions, should the forms be revised by the Judicial Council.

Attachments and Links

1. Attachment A: Detailed Description of Recommended Changes, at pages 9-10
2. Cal. Rules of Court, rule 5.541, at pages 11–16

3. Forms ADOPT-050-INFO, ADOPT-200, ADOPT-215, ADOPT-310, and ADOPT-330, at pages 17–32
4. Chart of comments, at pages 33–42
5. Link A: Assem. Bill 2495, *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2495*

Attachment A: Detailed Description of Recommended Changes

California Rules of Court, rule 5.451

- Amend subdivision (a) to properly reflect the applicability of Family Code section 8616.5 to all types of adoptions and delete language that restates provisions of Family Code section 8714.5.
- Delete subdivision (b), which restates provisions of Family Code section 8616.5.
- Amend and reletter subdivision (c) as (b), provide information about the use of mandatory *Contact After Adoption Agreement* (form ADOPT-310), and delete remaining language on court approval, which restates statutory provisions.
- Delete subdivision (d) and reletter as (c) with the new title, "Enforcement, modification, or termination of the agreement," and include the language of subdivisions (h) and (i) describing which court retains jurisdiction to enforce these agreements, the mandatory use of form ADOPT-315 to enforce an agreement, and the mandatory use of form ADOPT-315 to modify or terminate an agreement.
- Delete subdivision (e) and reletter as (d) with the new title, "Costs and fees," and include the language of subdivision (j) with information about limits on the filing fee for form ADOPT-315.
- Delete subdivision (f), which restates provisions of Family Code section 8616.5.
- Delete subdivision (g), which restates provisions of Family Code section 8715.
- Delete the remaining language of subdivisions (h), (i), and (j), which restates provisions of Family Code section 8616.5.
- Delete subdivision (k), which restates provisions of Family Code section 8616.5.

How to Adopt a Child in California (form ADOPT-050-INFO)

- Throughout the document, remove underlining of section headers.
- Page 1, remove references to the specific steps required for a stepparent/domestic partner adoption and for a stepparent adoption to confirm parentage.
- Page 1, first paragraph, update the name of the California Courts self-help web resource.
- Page 1, second paragraph, rearrange bullet points in order of appearance in the form.
- Page 1 footer, add a citation to the Family Code.
- Page 2, add a note under the first item 2 to explain that in a stepparent adoption to confirm parentage, a home investigation and a hearing are required only if the court orders them for good cause.
- Page 2, substitute the word "form" for "the" immediately before "ADOPT-210".
- Page 2, include the full title of the Family Code in the reference to section 8617(b).
- Page 4, fourth paragraph, change "If, after additional inquiry, there is **reason to know** that the child is an Indian child…" to "If, at any time during the proceeding, there is **reason to know** that the child is an Indian child…."
- Page 4, text assigned to first check box, correct apostrophe in "child's".
- Page 4, add "(form ADOPT-200)" and "(form ADOPT-215)" to references to the adoption request and order, respectively.

***Adoption Request* (form ADOPT-200)**

- Item 1, change "e-mail" to "email".
- Item 2, add venue option of the county in which an office of the agency that files the request for adoption is located.
- Item 5, include intercountry adoptions on the list of adoptions for which the child's name before adoption must be listed on the request. To make this information fit, reword the instructions slightly and remove capitalization.
- Item 10a, change "might" to "may".
- Item 11a, change "Independent Adoptive Placement Agreement" to "Independent Adoption Placement Agreement" to conform with the correct title of this document, produced by the California Department of Social Services.
- Items 11d and 12f, reword the first check box options for plain language.
- Item 12e, reword the first check box option for clarity and plain language.
- Item 12e, add a check box option to read, "This is an adoption to confirm parentage. No investigation is required unless court ordered for good cause."
- Substitute the full title of the Family Code for the abbreviated instances.
- Abbreviate the titles of codes cited in the form's footer.

***Adoption Order* (form ADOPT-215)**

- Item 1, change "e-mail" to "email."
- Item 4, add a check box option next to the instructions for an attachment and revise the instructions to conform to the standard language for attachments.
- Item 7, allow for the child's name before adoption to be listed for nonrelative agency, independent, intercountry, and stepparent adoptions, and in cases of adoption of a dependent child by a relative, only in the specified circumstances.
- Item 9, add the word "form" before two references to form ADOPT-310.
- Substitute the full title of the Family Code for the abbreviated instances in the text.
- Abbreviate the titles of codes cited in the form's footer.

***Contact After Adoption Agreement* (form ADOPT-310)**

- Item 2c, reword instructions and change "#" to "number".
- Item 2d, reword item and update code citation from 8714.7 to 8616.5.
- Item 3, reconfigure the table that collects information about the types of postadoption contact that have been agreed on by the parties, change "party(ies)" to "party/parties".
- Page 2, Notice box, change the spelling of "canceled" and add the word "form" in front of ADOPT-315.
- Abbreviate the titles of codes cited in the form's footer.

***Request for Appointment of Confidential Intermediary* (form ADOPT-330)**

- Page 1, update phone number of the Adoption Services Branch.
- Page 1, change reference to "Adoption Support Unit" to "Adoption Services Branch."
- Page 1, footer, correct reference to California Rules of Court.
- Abbreviate the titles of codes cited in the form's footer.

Rule 5.451 of the California Rules of Court is amended, effective January 1, 2024, to read:

Rule 5.451. Contact after adoption agreement

(a) Applicability of rule

This rule applies to any adoption of a child filed under Family Code section 8714, 8714.5, 8802, 8912, or 9000. ~~The adoption petition must be filed under Family Code sections 8714 and 8714.5. If the child is a dependent of the juvenile court, the adoption petition may be filed in that juvenile court and the clerk must open a confidential adoption file for the child, and this file must be separate and apart from the dependency file, with an adoption case number different from the dependency case number. For the purposes of this rule, a "relative" is defined as follows:~~

~~(1) An adult related to the child or the child's sibling or half-sibling by blood or affinity, including a relative whose status is preceded by the word "step," "great," "great-great," or "grand"; or~~

~~(2) The spouse or domestic partner of any of the persons described in (1) even if the marriage or domestic partnership was terminated by dissolution or the death of the spouse related to the child.~~

~~**(b) Contact after adoption agreement**~~

~~An adoptive parent or parents; a birth relative or relatives, including a birth parent or parents or any siblings of a child who is the subject of an adoption petition; or an Indian tribe that the child is a member of and the child may enter into a written agreement permitting postadoption contact between the child and birth relatives, including the birth parent or parents or any siblings, or an Indian tribe. No prospective adoptive parent or birth relative may be required by court order to enter into a contact-after-adoption agreement.~~

~~**(c)**~~**(b)** ~~**Court approval; time of decree**~~ **Preparing the agreement**

Any agreement must be prepared and submitted on *Contact After Adoption Agreement* (form ADOPT-310) and include all terms required under section 8616.5.

~~If, at the time the adoption petition is granted, the court finds that the agreement is in the best interest of the child, the court may enter the decree of adoption and grant postadoption contact as reflected in the approved agreement.~~

Rule 5.451 of the California Rules of Court is amended, effective January 1, 2024, to read:

~~(d)~~(c) ~~Terms of agreement~~ Enforcement, modification, or termination of the agreement

(1) The court that grants the petition for adoption and approves the contact after adoption agreement retains jurisdiction over the agreement.

(2) Any petition for enforcement of an agreement must be filed on *Request to: Enforce, Change, End Contact After Adoption Agreement* (form ADOPT-315).

(3) Any petition for modification or termination of an agreement must be filed on *Request to: Enforce, Change, End Contact After Adoption Agreement* (form ADOPT-315).

~~The terms of the agreement are limited to the following, although they need not include all permitted terms:~~

~~(1) Provisions for visitation between the child and a birth parent or parents;~~

~~(2) Provisions for visitation between the child and other identified birth relatives, including siblings or half-siblings of the child;~~

~~(3) Provisions for contact between the child and a birth parent or parents;~~

~~(4) Provisions for contact between the child and other identified birth relatives, including siblings or half-siblings of the child;~~

~~(5) Provisions for contact between the adoptive parent or parents and a birth parent or parents;~~

~~(6) Provisions for contact between the adoptive parent or parents and other identified birth relatives, including siblings or half-siblings of the child;~~

~~(7) Provisions for the sharing of information about the child with a birth parent or parents;~~

~~(8) Provisions for the sharing of information about the child with other identified birth relatives, including siblings or half-siblings of the child; and~~

~~(9) The terms of any contact after adoption agreement entered into under a petition filed under Family Code section 8714 must be limited to the sharing~~

Rule 5.451 of the California Rules of Court is amended, effective January 1, 2024, to read:

~~of information about the child unless the child has an existing relationship with the birth relative.~~

~~(e)~~(d)~~Child a party~~ Costs and fees

The fee for filing *Request to: Enforce, Change, End Contact After Adoption Agreement* (form ADOPT-315) must not exceed the fee assessed for the filing of an adoption petition.

~~The child who is the subject of the adoption petition is a party to the agreement whether or not specified as such.~~

~~(1) Written consent by a child 12 years of age or older to the terms of the agreement is required for enforcement of the agreement, unless the court finds by a preponderance of the evidence that the agreement is in the best interest of the child and waives the requirement of the child's written consent.~~

~~(2) If the child has been found by a juvenile court to be described by section 300 of the Welfare and Institutions Code, an attorney must be appointed to represent the child for purposes of participation in and consent to any contact after adoption agreement, regardless of the age of the child. If the child has been represented by an attorney in the dependency proceedings, that attorney must be appointed for the additional responsibilities of this rule. The attorney is required to represent the child only until the adoption is decreed and dependency terminated.~~

~~(f) Form and provisions of the agreement~~

~~The agreement must be prepared and submitted on *Contact After Adoption Agreement* (form ADOPT-310) with appropriate attachments.~~

~~(g) Report to the court~~

~~The department or agency participating as a party or joining in the petition for adoption must submit a report to the court. The report must include a criminal record check and descriptions of all social service referrals. If a contact after adoption agreement has been submitted, the report must include a summary of the agreement and a recommendation as to whether it is in the best interest of the child.~~

Rule 5.451 of the California Rules of Court is amended, effective January 1, 2024, to read:

(h) Enforcement of the agreement

The court that grants the petition for adoption and approves the contact after adoption agreement must retain jurisdiction over the agreement.

(1) Any petition for enforcement of an agreement must be filed on *Request to: Enforce, Change, End Contact After Adoption Agreement* (form ADOPT-315). The form must not be accepted for filing unless completed in full, with documentary evidence attached of participation in, or attempts to participate in, mediation or other dispute resolution.

(2) The court may make its determination on the petition without testimony or an evidentiary hearing and may rely solely on documentary evidence or offers of proof. The court may order compliance with the agreement only if:

(A) There is sufficient evidence of good-faith attempts to resolve the issues through mediation or other dispute resolution; and

(B) The court finds enforcement is in the best interest of the child.

(3) The court must not order investigation or evaluation of the issues raised in the petition unless the court finds by clear and convincing evidence that:

(A) The best interest of the child may be protected or advanced only by such inquiry; and

(B) The inquiry will not disturb the stability of the child's home to the child's detriment.

(4) Monetary damages must not be ordered.

(i) Modification or termination of agreement

The agreement may be modified or terminated by the court. Any petition for modification or termination of an agreement must be filed on *Request to: Enforce, Change, End Contact After Adoption Agreement* (form ADOPT-315). The form must not be accepted for filing unless completed in full, with documentary evidence attached of participation in, or attempts to participate in, mediation or other appropriate dispute resolution.

(1) The agreement may be terminated or modified only if:

Rule 5.451 of the California Rules of Court is amended, effective January 1, 2024, to read:

~~(A) All parties, including the child of 12 years or older, have signed the petition or have indicated on the *Answer to Request to: Enforce, Change, End Contact After Adoption Agreement* (form ADOPT-320) their consent or have executed a modified agreement filed with the petition; or~~

~~(B) The court finds all of the following:~~

~~(i) The termination or modification is necessary to serve the best interest of the child;~~

~~(ii) There has been a substantial change of circumstances since the original agreement was approved; and~~

~~(iii) The petitioner has participated in, or has attempted to participate in, mediation or appropriate dispute resolution.~~

~~(2) The court may make its determination without testimony or evidentiary hearing and may rely solely on documentary evidence or offers of proof.~~

~~(3) The court may order modification or termination without a hearing if all parties, including the child of 12 years or older, have signed the petition or have indicated on the *Answer to Request to: Enforce, Change, End Contact After Adoption Agreement* (form ADOPT-320) their consent or have executed a modified agreement filed with the petition.~~

~~(j) Costs and fees~~

~~The fee for filing a *Request to: Enforce, Change, End Contact After Adoption Agreement* (form ADOPT-315) must not exceed the fee assessed for the filing of an adoption petition. Costs and fees for mediation or other appropriate dispute resolution must be assumed by each party, with the exception of the child. All costs and fees of litigation, including any court-ordered investigation or evaluation, must be charged to the petitioner unless the court finds that a party other than the child has failed, without good cause, to comply with the approved agreement; all costs and fees must then be charged to that party.~~

~~(k) Adoption final~~

~~Once a decree of adoption has been entered, the court may not set aside the decree, rescind any relinquishment, modify or set aside any order terminating parental rights, or modify or set aside any other orders related to the granting of the~~

Rule 5.451 of the California Rules of Court is amended, effective January 1, 2024, to read:

~~adoption petition, due to the failure of any party to comply with the terms of a postadoption contact agreement or any subsequent modifications to it.~~

General Information on Adoptions

Seek legal advice about your family's options before beginning any adoption. Every family is different and adoption may not be necessary for some families. Visit the Self-Help Guide to the California Courts adoption page to get copies of adoption forms, look for organizations that provide legal help with adoptions, and learn how to complete the adoption process on your own if you do not have a lawyer: ***www.courts.ca.gov/selfhelp-adoption.htm.*** You can also get copies of adoption forms at your local court clerk's office.

In California there are several kinds of adoption. This information sheet provides steps for the following types:

- Stepparent/domestic partner adoptions
- Stepparent/domestic partner confirmation of parentage
- Independent or agency adoptions in the United States
- Intercountry adoptions

Page 4 also has information about open adoptions and special requirements for the adoption of Indian (Native American) children.

Stepparent/Domestic Partner Adoptions

If you wish to adopt the child of your spouse or domestic partner, you may be eligible for a stepparent adoption. There are two types of stepparent adoptions. Answer these questions to figure out which process is right for you:

→ Were you in a union with the child's legal parent **at the time the child was born** and are you **still in a union** with the legal parent? (A "union" means a marriage, a California registered domestic partnership, or a registered domestic partnership or civil union from another state that is legally equivalent to a marriage.)

→ Did your **spouse or domestic partner give birth to the child** or was the child born through a **gestational surrogacy process** brought about by one or both of you?

If you answered no to **either** question, complete the items below for a **stepparent/domestic partner adoption**.
If you answered yes to **both** questions, complete the items below for a **stepparent adoption to confirm parentage**.

1 Fill out court forms

☐ ADOPT-200	*Adoption Request*	This tells the judge about you and the child you are adopting.
☐ ADOPT-210	*Adoption Agreement*	This tells the judge that you and the child, if over 12, agree to the adoption. Fill it out, but do not sign it until the judge asks you to sign it.
☐ ADOPT-215	*Adoption Order*	The judge signs this form if your adoption is approved.
☐ ICWA-010(A)	*Indian Child Inquiry Attachment*	This lets the judge know that you have asked whether the child may be an Indian child.
☐ ICWA-020	*Parental Notification of Indian Status*	One form is required for each birth parent. This shows that the child's parents have been asked about potential Indian status.

Additional Forms for Stepparent Adoption to Confirm Parentage

☐ ADOPT-205 (or an equivalent declaration)	*Declaration Confirming Parentage in Stepparent Adoption*	This tells the court how you conceived your child and whether there are any other parents. Only use this if you are seeking a stepparent adoption to confirm parentage. See above for more information on this type of adoption. Both the birth parent and the adopting parent must complete a separate declaration.
-OR-		
☐ ADOPT-206 (or an equivalent declaration)	*Declaration Confirming Parentage in Stepparent Adoption: Gestational Surrogacy*	This tells the court how you conceived your child and whether there are any other parents. Only use this if you are seeking a stepparent adoption to confirm parentage because the child was conceived through a gestational surrogate and was born outside of California, and the state where the child was born only allowed one intended parent to be named as a legal parent on the child's birth certificate.

2 Take your forms to court

Take the completed forms to the court clerk in the county where you live. The court will charge a filing fee. Or take the forms to your lawyer or adoption agency, if you are using one. If there is no hearing, form ADOPT-210 must be signed in front of the court clerk or a notary.

Note: In a **stepparent adoption to confirm parentage**, no home investigation or hearing is required unless ordered by the court for good cause. Sign form ADOPT-210 in front of a notary or the court clerk when you file the forms and a judge will review your request. If the paperwork is complete and you meet the requirements, the judge will sign the Adoption Order and the adoption is complete. If the judge orders an investigation and hearing, go to the next steps.

3 The social worker writes a report

In most adoptions, a social worker writes a report. This report gives important information to the judge about the adopting parents and the child. The social worker will ask you questions. You may have to fill out forms. You may be required to pay a fee for this report. The social worker will file the report with the court and send you a copy. When you get the report, ask the clerk for a date for your adoption hearing.

4 Go to court on the date of your hearing

Bring: ☐ The child you are adopting ☐ Form ADOPT-210 ☐ Form ADOPT-215
☐ A camera, if you want a photo of you and your child with the judge *(optional)* ☐ Friends/relatives *(optional)*

Independent or Agency Adoptions in the United States

If this is an independent or agency adoption in the United States, complete items 1 through 4 below.
Note: The rights of the existing parents usually terminate with adoptions. In an independent adoption, if the existing and adopting parents agree, the rights of the existing parent(s) do not have to be terminated. See Family Code section 8617(b).

1 Fill out court forms

☐ ADOPT-200	*Adoption Request*	This tells the judge about you and the child you are adopting.
☐ ADOPT-210	*Adoption Agreement*	This tells the judge that you and the child, if over 12, agree to the adoption. Fill it out, but do not sign it until the judge asks you to sign it.
☐ ADOPT-215	*Adoption Order*	The judge signs this form if your adoption is approved.
☐ ADOPT-230	*Adoption Expenses*	This lets the judge know what payments were made that relate to the child you are adopting.
☐ ICWA-010(A)*	*Indian Child Inquiry Attachment*	This lets the judge know that the required questions have been asked to determine whether the child may be an Indian child.
☐ ICWA-020*	*Parental Notification of Indian Status*	One form is required for each birth parent. This shows that the child's parents have been asked about potential Indian status.

*The agency or adoption service provider is responsible for getting these forms completed and making them part of the adoption file.

2 Take your forms to court

Take the completed forms to the court clerk in the county where you live. The court will charge a filing fee. Or take the forms to your lawyer or adoption agency, if you are using one.

3 The social worker writes a report

In most adoptions, a social worker writes a report. This report gives important information to the judge about the adopting parents and the child. The social worker will ask you questions. You may have to fill out forms. You may be required to pay a fee for this report. The social worker will file the report with the court and send you a copy. When you get the report, ask the clerk for a date for your adoption hearing.

4 Go to court on the date of your hearing

Bring: ☐ The child you are adopting ☐ Form ADOPT-210 ☐ Form ADOPT-215 ☐ Form ADOPT-230
☐ A camera, if you want a photo of you and your child with the judge *(optional)* ☐ Friends/relatives *(optional)*

Intercountry Adoptions

If this is an intercountry (international) adoption, complete items 1 through 6 below.
Note: You must follow this process to adopt your child under California law, even if the adoption was previously finalized in a foreign country. If the child's adoption was finalized in a foreign country, you must file the *Adoption Request* within the earlier of 60 days of the child's entry to the United States, or the child's 16th birthday.

1 Fill out court forms

☐ ADOPT-200	*Adoption Request*	This tells the judge about you and the child you are adopting.
☐ ADOPT-210	*Adoption Agreement*	This tells the judge that you and the child, if over 12, agree to the adoption. Fill it out, but do not sign it until the judge asks you to sign it.
☐ ADOPT-215	*Adoption Order*	The judge signs this form if your adoption is approved.
☐ ADOPT-230	*Adoption Expenses*	This lets the judge know what payments were made that relate to the child you are adopting.
☐ ICWA-010(A)	*Indian Child Inquiry Attachment*	This lets the judge know that you have asked whether the child may be an Indian child.
☐ ICWA-020	*Parental Notification of Indian Status*	One form is required for each birth parent. This shows that the child's parents have been asked about potential Indian status.

2 Postadoption or postplacement visits and reports

If the child's adoption was finalized in a foreign country, there will be at least one postadoption visit provided by the international adoption agency. The report of this visit must be submitted to the court as described below. If the child was born in a foreign country and placed with a California family for adoption in this state, the adoption agency must provide postplacement supervision with up to four visits. These reports are also provided to the court.

3 Attach documentation

If the child's adoption was finalized in a foreign country, you must attach the following documents to your *Adoption Request*:

- ☐ A certified or otherwise official copy of the foreign decree, order, or certification of adoption that reflects finalization of the adoption in the foreign country;
- ☐ A certified or otherwise official copy of the child's foreign birth certificate;
- ☐ A certified translation of all required documents that are not written in English;
- ☐ Proof that the child was granted lawful entry into the United States as an immediate relative of the adoptive parent or parents;
- ☐ A report from at least one postplacement home visit by an intercountry adoption agency or a contractor of that agency licensed to provide intercountry adoption services in the state of California; and
- ☐ A copy of the home study report previously completed for the international finalized adoption by an adoption agency authorized to provide intercountry adoption services, in accordance with Family Code section 8900.

4 Take your forms to court

Take the completed forms and any required documents to the court clerk in the county where you live. The court will charge a filing fee. Or take the forms to your lawyer or adoption agency, if you are using one.

5 Provide a copy of the forms and documents

If the child's adoption was finalized in a foreign country, provide a copy of the forms and documentation you filed with the court to any adoption agency that provided services to you for your international adoption.

6 Go to court on the date of your hearing

Bring: ☐ The child you are adopting ☐ Form ADOPT-210 ☐ Form ADOPT-215 ☐ Form ADOPT-230
☐ A camera, if you want a photo of you and your child with the judge *(optional)* ☐ Friends/relatives *(optional)*

Inquiry and Notice Under the Indian Child Welfare Act

- ☐ The child and other people in the child's life must be asked specific questions in order to determine whether the child may be an Indian child. The *Indian Child Inquiry Attachment* (form ICWA-010(A)) should be attached to the *Adoption Request*. In agency adoptions, it is the responsibility of the agency to ensure that this inquiry is conducted and that the form is made part of the adoption file. In independent adoptions, the adoption service provider, CDSS Regional Office, or delegated county adoption agency is responsible. For more information about the duty of inquiry, see form ICWA-005-INFO
- ☐ A completed version of *Parental Notification of Indian Status* (form ICWA-020) for each birth parent should be attached to the *Adoption Request*, OR it should be shown that a good faith attempt was made to provide the form to each birth parent, the Indian custodian, or guardian of the child and inform them that they are required to complete and submit the form to the court. In agency adoptions, it is the responsibility of the agency to ensure that this form is provided to the birth parents and made part of the adoption file. In independent adoptions, the adoption service provider, CDSS Regional Office, or delegated county adoption agency is responsible.
- ☐ If there is **reason to believe** that the child is or may be an Indian child, additional inquiry is required. For more information about the duty of inquiry, see form ICWA-005-INFO.
- ☐ If, at any time during the proceeding, there is **reason to know** that the child is an Indian child, notice must be provided of the adoption request to the child's tribe or tribes, parents, Indian custodian, and the Bureau of Indian Affairs, using *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030). This form must be served by registered or certified mail, with return receipt requested.
- ☐ If it is determined that the child **is an Indian child** or this is a tribal customary adoption, see Adoption of an Indian Child, below.

Adoption of an Indian Child

If you are adopting an Indian child, fill out and bring to court the following additional forms:

- ☐ *Adoption of Indian Child* (form ADOPT-220); and
- ☐ *Parent of Indian Child Agrees to End Parental Rights* (form ADOPT-225).

If this is a tribal customary adoption, a copy of the tribal customary adoption order must be attached to the petition (form ADOPT-200) and the order (form ADOPT-215).

"Open" Adoption

If you want your child to have contact with their birth family, use *Contact After Adoption Agreement* (form ADOPT-310) to describe the kind of contact the birth family will have with your child. Fill out this form and bring it to your hearing.

ADOPT-200 Adoption Request

Clerk stamps date here when form is filed.

DRAFT 6.21.2023
NOT APPROVED BY THE JUDICIAL COUNCIL

If you are adopting more than one child, fill out an adoption request for each child.

1 Adopting parent(s)

a. Name: _____

b. Name: _____

Relationship to child: _____

Street address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Lawyer (if any) *(name, address, telephone numbers, email address, and State Bar number):*

_____

_____

_____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

2 County of filing

This *Adoption Request* is filed in this court because *(check all that apply):*

- ☐ The adopting parent or parents live in this county;
- ☐ The child was born in or the child now lives in this county;
- ☐ An office of the agency that placed the child or is filing the request for adoption is located in this county;
- ☐ An office of the department or public adoption agency that is investigating the request is located in this county;
- ☐ The placing birth parent or parents lived in this county when the adoptive placement agreement, consent, or relinquishment was signed;
- ☐ The placing birth parent or parents lived in this county when the request was filed;
- ☐ The child was freed for adoption in this county.

(To be completed by the clerk of the superior court if a hearing date is available.)

Hearing Date ➡ Hearing is set for:

Date: _____

Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

To the person served with this request: If you do not come to this hearing, the judge can order the adoption without your input.

(Note: If the child is a dependent of the court, the *Adoption Request* must be filed in the county where the child was freed for adoption or the county where the adopting parent or parents reside. See Family Code section 8714.)

3 Type of adoption

Check one of the following:

- ☐ Agency *(name):* _____ ☐ Relative ☐ Nonrelative
  - ☐ Tribal customary adoption *(attach tribal customary adoption order)*
- ☐ Independent: ☐ Relative ☐ Nonrelative ☐ Additional Parent(s)
- ☐ Intercountry *(name of agency):* _____
- ☐ Stepparent adoption
- ☐ Stepparent adoption to confirm parentage. See form ADOPT-050-INFO to determine whether you are eligible for the stepparent adoption to confirm parentage process.

Joinder:

- ☐ Joinder is being filed at same time as this *Adoption Request.* ☐ Joinder will be filed.

Your name: _____ **Case Number:**

4 Information about the child

a. The child's new name will be: _____

b. Sex: ☐ Female ☐ Male ☐ Nonbinary

c. Date of birth: _____ Age: _____

d. Child's address (*if different from address of adopting parent or parents*):
Street: _____ City: _____ State: _____ Zip: _____

e. Place of birth (*if known*): City: _____ State: _____ Country: _____

f. If the child is 12 or older, does the child agree to the adoption? ☐ Yes ☐ No

g. Date child was placed in the physical care of the adopting parents: _____

h. ☐ The child was conceived by assisted reproduction in compliance with Family Code section 7613.

i. ☐ The child is a dependent of the court. Juvenile Case No. _____ County: _____

5 Child's name before adoption (only for independent, intercountry, stepparent, or tribal customary adoption)

Child's name before adoption: _____

6 Birth parents

Names of birth parents, if known: _____

7 Legal guardian

Does the child have a legal guardian? ☐ Yes ☐ No (If yes, attach *Letters of Guardianship* and fill out below.)

a. Date guardianship ordered: _____ c. Case number: _____

b. County: _____

8 Inquiry and notice under the Indian Child Welfare Act

a. ☐ The inquiry required under law to determine whether the child may be an Indian child has been made, and a completed *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.
Note: In agency adoptions, it is the responsibility of the agency to ensure that this inquiry is conducted and the form is made part of the file. In independent adoptions, the adoption service provider, CDSS Regional Office, or delegated county adoption agency is responsible.

b. ☐ A completed version of *Parental Notification of Indian Status* (form ICWA-020) is attached OR a good faith attempt has been made to provide the form to the parents, Indian custodian, or guardian of the child and inform them that they are required to complete and submit the form to the court.
Note: In agency adoptions, it is the responsibility of the agency to ensure that these forms are made part of the file. In independent adoptions, the adoption service provider, CDSS Regional Office, or delegated county adoption agency is responsible.

c. ☐ There is **reason to know** that this child is an Indian child. Notice of the adoption request will be provided to the child's tribe or tribes, parents, Indian custodian, and the Bureau of Indian Affairs, using *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030).

9 Adoption of an Indian child

a. ☐ This is an adoption of an Indian child. The adopting parents have filled out and attached *Adoption of Indian Child* (form ADOPT-220) and will bring *Parent of Indian Child Agrees to End Parental Rights* (form ADOPT-225) to the hearing.

b. ☐ This is a tribal customary adoption under Welfare and Institutions Code section 366.24. Parental rights have been modified under and in accordance with the attached tribal customary adoption order, and the child has been ordered placed for adoption.

10 Agency adoption questions

a. ☐ I/We have received information about the Adoption Assistance Program, the Regional Center, mental health services available through Medi-Cal or other programs, and federal and state tax credits that may be available.

b. All persons with parental rights agree that the child should be placed for adoption by the California Department of Social Services or a county adoption agency or a licensed adoption agency (Family Code section 8700) and have signed a relinquishment form approved by the California Department of Social Services, and the time to revoke the relinquishment has expired or been waived. ☐ Yes ☐ No
If no, list the name and relationship to child of each person who has not signed the relinquishment form or whose time to revoke the relinquishment has not expired or been waived:

_____

11 Independent adoption questions

a. ☐ A copy of the Independent Adoption Placement Agreement from the California Department of Social Services is attached. (This is required in most independent adoptions; see Family Code section 8802.)

b. All persons with parental rights agree to the adoption and have signed the Independent Adoptive Placement Agreement or consent on the appropriate California Department of Social Services form. ☐ Yes ☐ No
(If no, list the name and relationship to child of each person who has not signed the agreement form):

_____

c. ☐ I/We will file promptly with the department or delegated county adoption agency the information required by the department in the investigation of the proposed adoption.

d. ☐ This is an independent adoption involving additional parent(s):
- ☐ All persons with existing parental rights agree to this adoption and will keep those parental rights.
- ☐ An agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s) is attached.

12 Stepparent adoption and confirmation of parentage questions

a. The birth parent *(name):* _____ ☐ has signed a consent ☐ will sign a consent.

b. The birth parent *(name):* _____ ☐ has signed a consent ☐ will sign a consent.

c. The adopting parent married or entered into a registered domestic partnership with the legal parent on *(date)*:
_____ *(For court use only. This does not affect social worker's recommendation. There is no waiting period.)*

d. ☐ I am seeking a stepparent adoption to confirm my parentage. At the time the child was born, I was married to or in a state-registered domestic partnership with the parent who gave birth or whose parentage was established through a gestational surrogacy process, and we remain in that union. See attached:
- ☐ Form ADOPT-205, *Declaration Confirming Parentage in Stepparent Adoption*
- ☐ Form ADOPT-206, *Declaration Confirming Parentage in Stepparent Adoption: Gestational Surrogacy*
- ☐ Declaration describing the circumstances of the child's conception.

e. The investigation or written report will be completed as follows *(choose one):*
- ☐ I will choose someone to do an investigation or written report and will pay them directly. I understand that this person must be a licensed clinical social worker, a licensed marriage and family therapist, or work for a licensed private adoption agency.
- ☐ I would like the court to choose someone to do an investigation. I understand that the court can charge me money for this investigation.
- ☐ This is an adoption to confirm parentage. No investigation is required unless court ordered for good cause.

f. ☐ This is a stepparent adoption involving an additional parent:
- ☐ All persons with existing parental rights agree to this adoption and will keep those parental rights.
- ☐ An agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s) is attached.

13 Intercountry adoption questions

a. ☐ This adoption may be subject to the Hague Adoption Convention (*form* ADOPT-216 *must be filed with this request*).

b. ☐ This is an adoption conducted under the requirements of the Hague Adoption Convention and the child has already moved with the adopting parent(s) to another Hague Convention member country or will be moving at the conclusion of this adoption.
Child will be moving or has moved to (name of country): _____
Adopting parent(s): ☐ seek(s) a California adoption ☐ will be petitioning for a Hague Adoption Certificate ☐ will be seeking a Hague Custody Declaration.

c. ☐ This is an intercountry adoption that was finalized in another country before the child entered the United States with the adopting parent(s).
Date the child entered the United States: _____
See form ADOPT-050-INFO for a list of documents to attach to this *Adoption Request*.

14 Contact after adoption

Contact After Adoption Agreement (form ADOPT-310) ☐ is attached ☐ will not be used
☐ will be filed at least 30 days before the adoption hearing ☐ is undecided at this time.
☐ This is a tribal customary adoption. Postadoption contact is governed by the attached tribal customary adoption order.

15 Consent for adoption

Complete all sections that apply to your adoption:

a. ☐ The consent of the birth parent is not necessary because *(check the applicable reasons under Family Code section 8606)*:
(1) ☐ The parent has been judicially deprived of the custody and control of the child.
(2) ☐ The parent has voluntarily surrendered the right to custody and control of the child in a judicial proceeding in another jurisdiction, under a law of that jurisdiction providing for the surrender.
(3) ☐ The parent has deserted the child without providing information to identify the child.
(4) ☐ The parent has relinquished the child under Family Code section 8700.
(5) ☐ The parent has relinquished the child for adoption to a licensed or authorized child-placing agency in another jurisdiction.

b. ☐ The child has a presumed parent under Family Code section 7611. The consent of the presumed parent is not required because:
(1) ☐ The presumed parent did not become a presumed parent before the mother's relinquishment or consent became irrevocable or the mother's parental rights were terminated. (Family Code section 8604(a).)
(2) ☐ The presumed parent signed a Waiver of the Right to Further Notice of Adoption Proceedings pursuant to Family Code section 7660.5.

c. ☐ Termination of parental rights of an alleged father is not required because:
(1) ☐ The relationship to the child was previously terminated or determined not to exist by a court.
(2) ☐ The alleged father was served as prescribed in Family Code section 7666 with a written notice of alleged parentage and the proposed adoption, and has failed to bring an action pursuant to Family Code section 7630(c) within 30 days of service of the notice or the birth of the child, whichever is later. (*Attach proof of notice to this* Adoption Request.)
(3) ☐ The alleged father has executed a written form to waive notice, deny parentage, relinquish the child for adoption, or consent to the adoption of the child.

15 d. ☐ A court ended the parental rights of:

Name: _____ Relationship to child: _____ on *(date):* _____
Name: _____ Relationship to child: _____ on *(date):* _____
(Enter the date of the court order ending parental rights and attach a copy of the order.)

e. ☐ The child is the subject of a tribal customary adoption order under Welfare and Institutions Code section 366.24, which has modified the parental rights of *(attach a copy of the order)*:

Name: _____ Relationship to child: _____ on *(date):* _____
Name: _____ Relationship to child: _____ on *(date):* _____
Name: _____ Relationship to child: _____ on *(date):* _____

f. ☐ I/We will ask the court to end the parental rights of *(attach copy of* Petition to Terminate Parental Rights *or* Application for Freedom From Parental Custody, *if filed):*

Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____

g. ☐ Adopting parent has custody of the child by court order or by agreement with the other parent, and each of the following persons with parental rights has not contacted the child and has not paid for the child's care, support, and education for one year or more when able to do so. (Family Code section 8604(b).)

Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____

h. ☐ The child has been abandoned as follows:

(1) ☐ The child has been left by the child's parent or parents with no way to identify the child.

(2) ☐ The child has been left in the custody of another person by both parents or the sole parent for six months without providing for the child's support, or without communication from the parent or parents, with the intent to abandon the child.

(3) ☐ One parent has left the child in the care and custody of the other parent for one year or longer without providing for the child's support or without communication from the parent, with the intent to abandon the child.

(If any of the above boxes are checked, adopting parent must also check item 15f and file an Application for Freedom From Parental Custody. *See Family Code section 7822(a).)*

i. ☐ Each of the following persons with parental rights has died:

Name: _____ Relationship to child: _____
Name: _____ Relationship to child: _____

16 **Suitability for adoption**

Each adopting parent:

a. Is at least 10 years older than the child or meets the criteria in Family Code section 8601(b);
b. Will treat the child as their own;
c. Will support and care for the child;
d. Has a suitable home for the child; *and*
e. Agrees to adopt the child.

Your name: _____ **Case Number:**

17 **Requests to court**

☐ I/We ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all the rights and duties of this relationship, including the right of inheritance.

☐ I/We ask the court to date its order approving the adoption as of an earlier date *(date)*: _____ for the following reason (Family Code section 8601.5):

_____

_____

(Enter a date no earlier than the date parental rights were ended.)

☐ This is a tribal customary adoption. I/We ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all of the rights and duties stated in the attached tribal customary adoption order and in accordance with Welfare and Institutions Code section 366.24.

18 If a lawyer is representing you in this case, the lawyer must sign here:

Date: _____ _____ ▶ _____

Type or print lawyer's name *Signature of lawyer for adopting parent(s)*

19 I declare under penalty of perjury under the laws of the State of California that the information in this form and all its attachments is true and correct to my knowledge. This means that if I lie on this form, I am guilty of a crime.

Date: _____ _____ ▶ _____

Type or print your name *Signature of adopting parent*

Date: _____ _____ ▶ _____

Type or print your name *Signature of adopting parent*

NOTICE—ACCESS TO AFFORDABLE HEALTH INSURANCE: Do you or someone in your household need affordable health insurance? If so, you should apply for Covered California. Covered California can help reduce the cost you pay toward high-quality affordable health care. For more information, visit *www.coveredca.com*. Or call Covered California at 1-800-300-1506 (English) or 1-800-300-0213 (Spanish).

ADOPT-215 Adoption Order

Clerk stamps date here when form is filed.

DRAFT 6.21.2023
NOT APPROVED BY THE JUDICIAL COUNCIL

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Adopting parent(s)

a. Name: _____
b. Name: _____
Relationship to child: _____
Street address: _____
City: _____ State: _____ Zip: _____
Daytime telephone number: _____
Lawyer (if any) *(name, address, telephone number, email address, and State Bar number):* _____

2 Information about the child

Child's name after adoption: _____
First name: _____
Middle name: _____
Last name: _____
Date of birth: _____ Age: _____
Place of birth *(if known):* _____
City: _____ State: _____ Country: _____

3 Name of adoption agency *(if any):* _____

4 Hearing details

Hearing date: _____ Dept.: _____ Div.: _____ Rm.: _____
Judicial officer: _____ Clerk's office telephone number: _____
People present at the hearing:

- ☐ Adopting parent(s)
- ☐ Lawyer for adopting parent(s)
- ☐ Child
- ☐ Child's lawyer
- ☐ Parent keeping parental rights: _____
- ☐ Other people present *(list each name and relationship to child):*
  a. _____
  b. _____
  ☐ *Check here if there are more names. Attach a sheet of paper, write "ADOPT-215, Item 4" at the top, and list the additional names and each person's relationship to child. You may use form MC-025,* Attachment.
- ☐ The hearing is waived pursuant to Family Code section 9000.5 *(Check this box only if this is an adoption confirming parentage of a parent who was married to or in a state-registered domestic partnership, including a registered domestic partnership or civil union from another jurisdiction, with the legal parent at the time the child was born.)*

Judge will fill out section below.

5 The judge finds that the child *(check all that apply):*

a. ☐ Is 12 or older and agrees to the adoption
b. ☐ Is under 12
c. ☐ Is not required to consent because this is a tribal customary adoption.

Your name: _____ **Case Number:**

6 The judge has reviewed the report and other documents and evidence and finds that each adopting parent:

a. Is at least 10 years older than the child or meets the criteria in Family Code section 8601(b);
b. Will treat the child as their own;
c. Will support and care for the child;
d. Has a suitable home for the child; *and*
e. Agrees to adopt the child.

7 Child's name before adoption

Complete for nonrelative agency, independent, intercountry, or stepparent adoption.
If this is an adoption of a dependent child by a relative filed under Family Code section 8714.5, complete only if requested by the adopting relative or by the child being adopted, if 12 years of age or older.

First name: _____ Middle name: _____ Last name: _____

8 ☐ The child is an Indian child. The judge finds that this adoption meets the placement requirements of the Indian Child Welfare Act or that there is good cause to give preference to these adopting parents. The clerk will fill out **13** below.

9 ☐ The judge approves the *Contact After Adoption Agreement* (form ADOPT-310)
☐ As submitted ☐ As amended on form ADOPT-310

10 ☐ This is a tribal customary adoption. The tribal customary adoption order of the _____ tribe dated _____ containing ___ pages and attached hereto is fully incorporated into this order of adoption.

11 ☐ This is an adoption under the Hague Adoption Convention. *Verification of Compliance with Hague Adoption Convention Attachment* (form ADOPT-216) is attached and fully incorporated into this order.

12 ☐ This is an adoption involving an additional parent or parents. ☐ All persons with existing parental rights agreed to this adoption and will maintain their existing parental rights. ☐ An agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s), was filed with the court.

13 The judge believes the adoption is in the child's best interest and orders this adoption.
The child's name after adoption will be:

First name: _____ Middle name: _____ Last name: _____

The adopting parent or parents and the child are now parent and child under the law, with all the rights and duties of the parent-child relationship or, in the case of a tribal customary adoption, all the rights and duties set out in the tribal customary adoption order and Welfare and Institutions Code section 366.24.

☐ The judge believes it will serve public policy and the best interest of the child to grant the request of the adopting parent or parents for the court to make this order effective as of *(date):* _____.

Date: _____ _____
(Date of Signature) *Judge (or Judicial Officer)*

Clerk will fill out section below.

14 **Clerk's Certificate of Mailing**

For the adoption of an Indian child, the clerk certifies:
I am not a party to this adoption. I placed a filed copy of:

☐ *Adoption Request* (form ADOPT-200) ☐ *Adoption of Indian Child* (form ADOPT-220)
☐ *Adoption Order* (form ADOPT-215) ☐ *Contact After Adoption Agreement* (form ADOPT-310)
in a sealed envelope, marked "Confidential" and addressed to:

Chief, Division of Social Services
Bureau of Indian Affairs
1849 C Street, NW
Mail Stop 310-SIB
Washington, DC 20240

The envelope was mailed by U.S. mail, with full postage, from:
Place: _____ on *(date):* _____
Date: _____ Clerk, by: _____, Deputy

ADOPT-310 **Contact After Adoption Agreement**

☐ **Original** ☐ **Change**

Clerk stamps date here when form is filed.

DRAFT 6.21.2023
NOT APPROVED BY THE JUDICIAL COUNCIL

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Your name(s):

a. _____

b. _____

Relationship to child: _____

Your address *(skip this if you have a lawyer)*

Street: _____

City: _____ State: _____ Zip: _____

Your phone number: _____

Your lawyer (if you have one) *(name, address, phone number, and State Bar number):*

_____

_____

_____

2 Information about the child

a. Child's name (after adoption): _____

b. Date of birth: _____ Age: _____

c. Is the child a dependent of Juvenile Court? ☐ No ☐ Yes

If yes, list juvenile court and juvenile case number:

County: _____ Case number: _____

d. Child's Lawyer *(If the child has a lawyer, fill out below. If item 2c is yes, child must have a lawyer. See Family Code section 8616.5(d).)*

Name of child's lawyer: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone number: _____ State Bar number: _____

3 The people below agree with the requesting party/parties in **1** about contact with the child after adoption. *If the agreement is confidential, write "Confidential" instead of the person's name. If you need more space, attach a sheet of paper. Write "ADOPT-310, Item 3—Other Relatives" at the top.*

Name	**Relationship to Child**	**Type of Contact** *(check all that apply):* Visits	Phone	Email	Letter	Share Info	Other*
a.		☐	☐	☐	☐	☐	☐
b.		☐	☐	☐	☐	☐	☐
c.		☐	☐	☐	☐	☐	☐
d.		☐	☐	☐	☐	☐	☐
e.		☐	☐	☐	☐	☐	☐
f.		☐	☐	☐	☐	☐	☐
g.		☐	☐	☐	☐	☐	☐

**Explain type of contact on a sheet of paper. Write "ADOPT-310, Item 3—Other Types of Contact" at the top.*

Number of pages attached: _____

4 *If you have a signed, written agreement about Contact After Adoption, attach a copy.*
Number of pages attached: _____

5 The parties have discussed the reasons for continued contact between the child and the specified relatives or other parties, considering the best interests of the child.

Notice

1. After the judge signs the Adoption Order for this child, the adoption is final. It can never be canceled or changed, even if anyone who signed this agreement:
- **Does not follow the agreement, and/or**
- **Files form ADOPT-315 (to change, end, or enforce this agreement).**

2. Before this agreement can be changed by the court, all of the people who signed it have to try to fix any problems with it through a dispute resolution program, like mediation.

6 *Everyone involved in this agreement must sign below (including the child, if 12 or older, and the child's attorney).*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

Date: _____ _____ ▶ _____
Type or print your name and relationship to child *Sign your name*

If more relatives need to sign, attach a sheet of paper. Write "ADOPT-310, Item 6—Signatures of Other Relatives," at the top.

Number of pages attached: _____

Date: _____ _____
Judge (or Judicial Officer)

ADOPT-330 Request for Appointment of Confidential Intermediary

Clerk stamps date here when form is filed.

Use this form if you are seeking contact with your sibling who is not currently a dependent of the court and one of you has been adopted. If your sibling is currently a dependent of the court, you must follow the procedure in Welfare and Institutions Code section 388(b) instead of using this form.

Before completing this form, you must ask for contact with your sibling from the department or licensed adoption agency that joined in your adoption or your sibling's adoption. If you do not know the name of the department or agency, ask the California Department of Social Services, Adoption Services Branch, 916-651-8089.

After filling out this form, bring it and a blank copy of the proposed Order (ADOPT-331) to the clerk of the court where the adoption was finalized. After the court signs the order, a copy of this Request and the Order will be forwarded to the California Department of Social Services or the adoption agency, as designated by the court, and copies will be given to you.

Fill in court name and street address:

Superior Court of California, County of

Clerk fills in case number when form is filed.

Case Number:

1 I am asking the court to appoint a confidential intermediary to help me get contact information for my sibling.
- a. My name: _____
- b. My address: _____
- c. My phone number: _____

2 a. ☐ The person helping me complete this request for the appointment of a confidential intermediary is:
- (1) Name: _____
  - ☐ My attorney (State Bar No. _____) ☐ My guardian ad litem
- (2) Address: _____
- (3) Phone number: _____

b. ☐ I do not have an attorney or guardian ad litem who is helping me complete this request for the appointment of a confidential intermediary.

3 ☐ An attorney used to represent me.
- a. Name of former attorney: _____
- b. Address of attorney: _____
- c. Phone number of attorney: _____
- d. This attorney used to represent me because: _____

4 The department or the licensed adoption agency that joined in the adoption petition for:
- ☐ me
- ☐ my sibling
- a. Name of agency: _____
- b. Address: _____
- c. Phone number: _____

Your name: _____

Case Number:

5 The sibling whom I would like to contact is:

a. My sibling's name: _____

b. My sibling's current address *(if known)*: _____

c. ☐ My sibling is under the age of 18 years.

(1) My sibling currently lives with (*name and relationship to my sibling, if known):*

_____

(1) My sibling used to live with *(name and relationship to my sibling, if known):*

_____

6 My sibling was adopted in this county: ☐ Yes ☐ No ☐ Unknown

7 My sibling was previously a dependent of the court in this county: ☐ Yes ☐ No ☐ Unknown

8 The following are true *(check all that apply):*

a. ☐ I submitted a written California Department of Social Services waiver form AD 904A or AD 904B to the agency listed in **4** before I completed this form.

b. ☐ The agency in **4** sent a letter to me stating that no waiver for my sibling is in its file. A copy of the letter from the agency is attached to this request.

c. ☐ I am asking the court to appoint a confidential intermediary to help me get contact information for my sibling.

d. ☐ I am under the age of 18 years.

(1) My parent/guardian signed a consent giving me permission to contact my sibling: ☐ Yes ☐ No

(2) The court signed a consent giving me permission to contact my sibling: ☐ Yes ☐ No

e. ☐ My sibling is under the age of 18 years.

f. ☐ To the best of my knowledge, there is not now, and never has been, an order stating that I cannot have contact with the sibling named in **5**.

9 Any other information that would be helpful to the court:

_____

_____

_____

_____

I declare under penalty of perjury under the laws of the State of California that the information in items 1 through 9, and in all attachments, is true and correct, which means that if I lie on this form, I am committing a crime.

Date: _____ _____ ▶ _____

Type or print your name *Sign your name*

Person who helped the applicant complete the form:

Date: _____ _____ ▶ _____

Type or print name *Signature*

☐ Attorney ☐ Guardian ad litem

SPR23-18
Family and Juvenile Law: Implementation of Assembly Bill 2495 (amend Cal. Rules of Court, rule 5.451, and revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-215, ADOPT-310, and ADOPT-330)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Alliance for Children's Rights by Kristin Power, Vice President, Policy & Advocacy Los Angeles, California	NI	**Proposed Changes to Form ADOPT-215** We are pleased with the statutory change that allows the child's name before the adoption to be listed on the adoption order. As a practical matter, it is extremely helpful to have both the child's birth and adoptive names on the adoption order for purposes of showing agencies like the Social Security Administration proof of the name change on one document (previously, the Alliance's attorneys had to instruct adoptive parents to always keep the adoption agreement with the adoption order to show that a name change had occurred).	The Committee appreciates this feedback.
			We recommend the following modification to the revised form ADOPT-215: Revert back to the current format for listing the child's name after adoption in item 2. Currently, the adoption order has a line for the child's adoptive name and, additionally below that line, the child's adoptive name broken down into three lines (first, middle, and last). This is important for purposes of preparing the child's new birth certificate and for clarifying which are the child's last name(s).	The Committee appreciates this feedback and has reverted Item 2 back to its original state, with separate fields for the child's first, middle and last names after adoption.
			Additionally, we understand that AB 2495 amends relevant provisions of the Family Code to require the child's name before adoption to be listed on the adoption order for agency, independent, intercountry, and stepparent adoptions; but that AB 2495 did not amend Family Code 8714.5,	The Committee appreciates these suggestions. Given the explicit mandate in Family Code section 8714.5(g) limiting the appearance of a child's name before adoption on the order to situations in which it is requested by the adopting relative or the child, if 12 years of age or older, the

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			which provides that for adoption of a dependent child by a relative filed pursuant to Family Code 8714.5, the child's name before adoption should only be listed on the adoption order upon request by the adopting relative or by the child, if the child is age 12 or older. This may have been a legislative oversight, but in our view, the requirement to list the child's name before adoption on the order should be uniformly applied as well to relative adoptions filed pursuant to Family Code 8714.5 without the language limiting that to only when requested by the relative or child. That is, we are not aware of the policy or practical reasons why this would continue to be different for only the relative type of adoption. But, given that AB 2495 doesn't make that uniform, we acknowledge the necessity for adding a field at Item 2 to describe the relative adoption exception. However, we found the Committee's solution somewhat awkward and the suggested language confusing and **recommend the following alternative language to describe the relative adoption exemption**: "Name before adoption: _____ (complete for nonrelative agency, independent, intercountry, and stepparent adoption) (italicized) (complete for adoption of a dependent child by a relative filed pursuant to Family Code 8714.5 only if requested by the adopting relative, or by the	Committee has retained this exception language in a reworded version of Item 7, which also incorporates most of these suggested revisions for clarity.

	Commenter	Position	Comment	Committee Response
			child being adopted, if 12 years of age or older) (italicized)	
			And, we suggest deleting Item #7 entirely.	Please see above.
2.	California Lawyers Association, Family Law Section Executive Committee (FLEXCOMM) Sacramento, California	A	FLEXCOM agrees with this proposal.	The Committee appreciates this comment.
3.	Steven Ipson Commissioner Superior Court of California, County of Los Angeles	A	This revision appropriately streamlines the forms.	The Committee appreciates this comment.
4.	Orange County Bar Association by Michael Gregg, President	AM	**Rule 5.451 Contact after adoption agreement** [Agree with proposal] **ADOPT-050-INFO How to Adopt a Child in California** Agree as Modified The proposal would remove at page I, references to the specific steps required for a stepparent/domestic partner adoption and for a stepparent adoption to confirm parentage. These "specific steps" are set forth in corresponding numbered items contained in the form. It is believed that reference to these numbered items	The Committee appreciates this comment. The Committee appreciates this comment and has retained the instruction to "complete the items below" while inserting guidance for differentiating a stepparent adoption to confirm parentage in Step 2.

	Commenter	Position	Comment	Committee Response
			provides guidance and clarity for the user and should be retained. Accordingly, to this extent, the proposal is disagreed with. At the sentence addressing a stepparent adoption to confirm parentage, however, the proposal substitutes "below" for "only" appearing in the current form, which change in wording is agreed with. **ADOPT-200 Adoption Request** Agree as Modified At Item 12e, the proposal contains a new checkbox and new language to address concerns about the explanation of the steps required for a stepparent adoption to confirm parentage. The second sentence of this option reads, "[i]nvestigation not required unless ordered by court for good cause." It is understood that this proposed language is condensed to fit on a single line. More in keeping with the balance of the form's language, however, it is suggested that this second sentence read, "[n]o investigation is required unless court-ordered for good cause." This suggested language is shorter than that proposed and should fit on a single line. **ADOPT-215 Adoption Order** [Agree with proposal, though it is noted that at Item 9, "form" does not appear before either reference to ADOPT-310 and should, perhaps, be added for consistency.]	The Committee appreciates this comment and has made the suggested revision to the language of Item 12e. The Committee appreciates this feedback and has inserted the word "form" in the appropriate places in Item 9.

	Commenter	Position	Comment	Committee Response
			ADOPT-310 Contact After Adoption Agreement Agree as Modified At Item 2d, consistent with the other forms in this series, it is suggested that the period at the end of the second sentence be placed between the two parentheses. **Request for Specific Comments** Yes, the proposal appropriately addresses the stated purpose.	The Committee appreciates this feedback and has updated the instruction and corrected the citation in Item 2d. The Committee appreciates this comment.
5.	Superior Court of California, County of Orange by Jenny Diaz Avendano, Operations Analyst Analyst & Training Team Family Law and Juvenile Divisions	NI	▪ *Does the Proposal appropriately address the stated purpose?* Yes. ▪ *Would the proposal provide cost savings? If so, please quantify.* No. ▪ *What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?* The implementation would require revising procedures, training courtroom and Self-Help Center staff (approximately 1 hour each group) and printing revised	The Committee appreciates these comments regarding the operational impacts of form changes on the courts.

	Commenter	Position	Comment	Committee Response
			information packets for each of the Self-Help Center office locations. ▪ *Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* No. ▪ *How well would this proposal work in courts of different sizes?* Our court is a large court, and this could work for Orange County.	
6.	Superior Court of California, County of Riverside by Susan Ryan, Chief Deputy of Legal Services	A	Does the proposal appropriately address the stated purpose? Yes, the proposal does address the stated purpose of conforming the forms to the recent changes required by AB 2495, namely, making it clear when to place the child's preadoption name on the forms, procedures for filing postadoption contact orders and clarifying the expansion of venue requirements. The updates to the rule address the purpose of removing unneeded statutory references. Would the proposal provide cost savings? If so, please quantify? There will be no cost savings.	The Committee appreciates these comments regarding the operational impacts of form changes on the courts.

	Commenter	Position	Comment	Committee Response
			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? For juvenile courts, there would be minimal staff training needed to make them aware of the changes. It is likely that no changes to the case management system would be required based on these changes. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes How well would this proposal work in courts of different sizes? This proposal should have similar impact for courts of any size.	
7.	Superior Court of California, County of San Bernardino by Anita Morales Legal Processing Assistant II Barstow District	A	No specific comments provided.	The Committee thanks this commenter for taking the time to review the proposal and express agreement.

	Commenter	Position	Comment	Committee Response
8.	Superior Court of California, County of San Diego by Mike Roddy, Executive Officer	AM	Does the proposal appropriately address the stated purpose? **For the most part, yes. It would be helpful to have CRC 5.730(b) and perhaps form ADOPT-215 (item 8) address the need for the court to find that ICWA inquiry and notice requirements have been satisfied and, if applicable, a finding that the child is not an Indian child and ICWA does not apply to the adoption. (See Welf & Inst. Code §§ 224.2, 224.3, which are applicable to adoptions under Fam. Code § 177.) There is already a check box in item 8 of ADOPT-215 for the finding that the child is an Indian child. See below for additional suggested edits.**	The Committee appreciates this comment but finds that this change would be beyond the scope of the current proposal.
			Would the proposal provide cost savings? If so, please quantify. **Probably. The proposal saves the trial courts the time and effort that would be required to develop these forms on their own or to include all the new required findings and orders in their case management systems.**	The Committee appreciates this comment.
			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? **In addition to those already mentioned, courts would need to inform their judicial officers and their justice partners (child welfare agency, adoption**	The Committee appreciates this comment and acknowledges the importance of communication with bench officers and other partners regarding the publication of new and revised forms.

	Commenter	Position	Comment	Committee Response
			attorneys, et al.) of the new rule of court and the new mandatory forms.	
			Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.**	The Committee appreciates this feedback.
			How well would this proposal work in courts of different sizes? **This proposal would work fine in the San Diego Superior Court (a large court).**	The Committee appreciates this feedback.
			Additional suggestions: • **ADOPT-050-INFO, p. 4, par. 4 – consider adding "before or":** "If, before or after additional inquiry, there is reason to know …"	The Committee appreciates this comment and has modified this paragraph to read, "If, at any time during the proceeding, there is reason to know…"
			• **ADOPT-050-INFO, p. 4, last sentence after "Adoption of an Indian Child," consider adding form numbers:** "If this is a tribal customary adoption, a copy of the tribal customary adoption order must be attached to the petition (form ADOPT-200) and the order (form ADOPT-215).	The Committee appreciates this comment and has made the suggested addition of form numbers.
			• **ADOPT-215, p. 2, item 8 – Consider adding text before the current first check box (see (see Welf. & Inst. Code § 224.4(c), which is applicable to adoptions under Fam. Code § 177; CRC rules 5.480, 5.481):**	The Committee appreciates this comment but finds that this change would be beyond the scope of the current proposal.

	Commenter	Position	Comment	Committee Response
			□ Petitioners have satisfied the inquiry and notice requirements of the Indian Child Welfare Act. □ The child is not an Indian child. The Indian Child Welfare Act does not apply to this adoption. • **ADOPT-310, p. 2, item 5, Notice, #2, consider:** 2. Before this agreement can be changed by the court, all of the people who signed it in item 6 must ~~have to~~ try to fix any problems with it through a dispute resolution program, like mediation.	The Committee appreciates this comment but, in the interest of plain language, declines to change this wording.

Item number: 18

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Juvenile Law: Psychiatric Residential Treatment Facility Voluntary Admission

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Adopt Cal. Rules of Court, rule 5.519; adopt forms JV-172, JV-173, JV-174, JV-175, JV-176, and JV-177

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

*Staff contact (*name, phone and e-mail*): Kerry Doyle, 415-865-8791, kerry.doyle@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): November 1, 2022
Project description from annual agenda: Item 1. As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration and will take action only where necessary to allow courts to implement the legislation efficiently.
Item 1o. AB 2317 (Ramos) 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.

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

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

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

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

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

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

Judicial Council *of* California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-19
For business meeting on September 18–19, 2023

Title
Juvenile Law: Psychiatric Residential Treatment Facility Voluntary Admission

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 5.519; adopt forms JV-172, JV-173, JV-174, JV-175, JV-176, and JV-177

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 13, 2023

Contact
Kerry Doyle, 415-865-8791
kerry.doyle@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends adopting one rule of court and six forms to conform to recent statutory changes enacted by Assembly Bill 2317 (Ramos; Stats. 2022, ch. 589) regarding court oversight of the voluntary admission of a child, nonminor, or nonminor dependent to a psychiatric residential treatment facility.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2024:

1. Adopt rule 5.619 to clarify and establish noticing requirements, and to require the use of the forms recommended in this report;

2. Adopt *Ex Parte Application for Voluntary Admission to Psychiatric Residential Treatment Facility* (form JV-172) as a mandatory form for use by the social worker or probation officer

to request a court order authorizing a voluntary admission to a psychiatric residential treatment facility;

3. Adopt *Proof of Notice of Hearing on Application for Voluntary Admission to Psychiatric Residential Treatment Facility* (form JV-173) as a mandatory form for use by the social worker or probation officer to inform the court of the parties who received notice of the hearing on the application for voluntary admission;

4. Adopt *Order on Application for Voluntary Admission to Psychiatric Residential Treatment Facility* (form JV-174) as a mandatory form for the court to make orders regarding the application for voluntary admission;

5. Adopt *Review of Voluntary Admission of Child to Psychiatric Residential Treatment Facility* (form JV-175) as a mandatory form to record the court's findings and orders regarding a child at the hearings held 60 days after the admission, and every 30 days thereafter, to review the placement in the facility based on the medical necessity of that placement;

6. Adopt *Review of Voluntary Admission of Nonminor or Nonminor Dependent to Psychiatric Residential Treatment Facility* (form JV-176) as a mandatory form to record the court's findings and orders regarding a nonminor or nonminor dependent at the hearings held 60 days after the admission, and every 30 days thereafter, to review the placement in the facility based on the medical necessity of that placement;

7. Adopt *Admission to Psychiatric Residential Treatment Facility by Consent of Conservator—Additional Findings and Orders* (form JV-177) as a mandatory form to attach to a local minute order or Judicial Council findings and orders form to document the court's findings and orders regarding the placement at any six-month review hearing when the child has been placed at the facility by the consent of a conservator.

The proposed new rule and forms are attached at pages 7–23.

Relevant Previous Council Action

Assembly Bill 2317 created a new type of treatment facility and established the juvenile court's oversight role of the voluntary admission of a child or youth to this type of facility. As this is a new oversight function of the juvenile court, there is no relevant previous council action in this area.

Analysis/Rationale

Assembly Bill 2317 was a comprehensive bill that made findings and declarations relating to the urgent need to provide alternatives to hospitals for children and youth experiencing severe mental health crises, and the need for psychiatric residential treatment facilities (PRTFs).[1] It

[1] Assem. Bill 2317, § 1.

defines a PRTF as a health facility licensed by the Department of Health Care Services and operated by a public agency or private nonprofit organization that provides inpatient psychiatric services to individuals under 21 years of age in a nonhospital setting.[2] The bill also requires the Department of Health Care Services to set a statewide bed limit for PRTFs,[3] and requires a PRTF to provide the Department of Health Care Services with specific data.[4]

The bill adds sections 361.23 and 727.13 to the Welfare and Institutions Code[5] and establishes ex parte court procedures for when a parent, guardian, or Indian custodian seeks to admit their child who is under the jurisdiction of the juvenile court to a PRTF, for when a nonminor[6] or nonminor dependent under the jurisdiction of the juvenile court has admitted themselves to a PRTF, and for when a child under the jurisdiction of the juvenile court seeks to voluntarily admit themselves to a PRTF.[7]

The law now requires the court—for a child, nonminor, or nonminor dependent admitted to a PRTF—to hold a hearing 60 days after the admission, and every 30 days thereafter, to review the placement in the facility based on the medical necessity of that placement.[8] If the court finds at the review hearing that the parent, child, or nonminor dependent continues to consent; that the child or nonminor dependent continues to suffer from a mental disorder that may be reasonably expected to be cured or ameliorated by treatment at the PRTF; and that there is no other available less restrictive setting to serve the patient's medical need, the bill allows the court to authorize the continued admission at the PRTF.[9] There is a rebuttable presumption that, if the child or nonminor dependent has been at a PRTF for over 30 days, the facility is not the least restrictive alternative available to meet the patient's needs and best interests.[10]

If the court finds at the hearing that the parent, child, or nonminor dependent no longer consents; that the child or nonminor dependent no longer suffers from a mental disorder that may reasonably expected to be cured or ameliorated by treatment at the PRTF; or that there is another available less restrictive setting to serve the patient's medical needs, the bill requires the social

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[2] Health & Saf. Code, § 1250.10(a)(1).

[3] Health & Saf. Code, § 1250.10(a)(4).

[4] Health & Saf. Code, § 1250.10(d). The data includes the total number of patients admitted, certain demographics and treatment information about the patients served, durations of stay for each patient, and certain information about the use of restraints.

[5] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated. All further rule references are to the California Rules of Court unless otherwise indicated.

[6] §§ 303(a), 361.23(k), 727.13(k); rule 5.502(25).

[7] §§ 361.23(b), 727.13(b).

[8] §§ 361.23(f)(1)(A), 727.13(f)(1)(A).

[9] §§ 361.23(f)(1)(D), 727.13(f)(1)(D).

[10] *Id.*

worker to immediately work with the PRTF to arrange for the child's or nonminor dependent's discharge to a different setting with the appropriate services and supports.[11]

Whenever a child or nonminor dependent is discharged due to revocation of consent to admission, within two days of learning of the revocation of consent, the bill requires a county child welfare agency or county probation office, as appropriate, to file a petition with the court requesting an order vacating the court's order authorizing the child or nonminor dependent's admission to the PRTF.[12] This provision does not require a court order for the discharge of a child when consent has been withdrawn.[13]

When a child or nonminor dependent has been admitted to a PRTF pursuant to the consent of a conservator, the court must review the placement at any six-month review hearing and may make any orders necessary to ensure that the child or nonminor dependent is discharged in a timely manner and with all the services and supports necessary for a successful transition to a less restrictive setting. The court may direct the social worker or probation officer to work with the facility and, where appropriate, with the conservator, to ensure the child or nonminor dependent is receiving all necessary child welfare services and to develop the aftercare plan.[14]

Policy implications

There are no direct policy implications of this proposal, and the proposal was not controversial within the committee. The proposal will assist the public and the courts in implementing AB 2317.

Comments

This proposal circulated for comment as part of the spring 2023 invitation-to-comment cycle from March 31 through May 12, 2023, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, trial court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, Court Appointed Special Advocates (CASA) programs, and other juvenile and family law professionals. One individual and six organizations, including two superior courts, provided comment: four agreed with the proposal, one agreed with the proposal if modified, and two did not indicate a position.

One large advocacy organization commented that the forms as circulated for public comment did not include nonminors. AB 2317 is clear that the court oversight requirements apply to the voluntary admission of a child, nonminor, or nonminor dependent to a PRTF. To reflect the requirement in sections 361.23(k) and 727.13(k) that the provisions regarding nonminor

[11] §§ 361.23(f)(1)(E), 727.13(f)(1)(E).

[12] §§ 361.23(g), 727.13(g)(2).

[13] *Id.*

[14] §§ 361.23(h), 727.13(h).

dependents equally apply to foster children who remain under juvenile court jurisdiction even if they do not meet the definition of "nonminor dependent," the committee has revised form JV-176 to include "nonminor" in all the items that refer to "nonminor dependents" and has added "Nonminor" to the title of the form. Proposed rule 5.619(a) would cross reference rule 5.502, which has the following simplified definition: " 'Nonminor' means a youth at least 18 years of age and not yet 21 years of age who remains subject to the court's dependency, delinquency, or general jurisdiction under section 303 but is not a 'nonminor dependent.' "

The committee received a comment from the Joint Rules Subcommittee of the Judicial Council's Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee that six months, rather than the proposed three months, would be sufficient for implementation. The committee appreciates the concerns around an effective date three months from Judicial Council approval of this proposal but has determined that implementation of the statutory provisions by January 1, 2024, is needed to ensure that courts are effectively performing their new oversight role.

The committee received some comments that suggested repeating statutory text in proposed rule 5.619. As the committee has done since the spring of 2016, to enhance the brevity and accuracy of the rules and to reduce the frequency with which the rules need to be amended to reflect changes in the statutory text, the committee decided to use references to the relevant code sections in most of the rule and to repeat statutory text only when necessary. Because this is a new oversight function for the court, the committee concluded it was appropriate to repeat the statutory requirements for the timing of the setting of a hearing on a request authorizing admission and the setting of a review hearing on the authorization of admission. Additionally, since the new statutes are silent on the requirements for notice of the hearing to review a voluntary admission, the committee concluded the rule should specify who is entitled to notice and listed the same parties as those who are statutorily required to receive notice of the request.[15]

The committee received several comments suggesting minor edits for clarity such as adding blank lines to certain items, clarifying applicable code sections, and minor changes to improve readability and grammar. The committee agreed with most of those suggestions and has incorporated them into the revisions that it is recommending for adoption by the council.

A chart with the full text of the comments received and the committee's responses is attached at pages 24–55.

Alternatives considered

The committee considered proposing the adoption of the forms only, but since the new statutes are not clear on the requirements for notice, the committee is proposing that a rule of court be adopted to provide clarity and guidance regarding hearing notice requirements, and to require the use of the Judicial Council forms proposed by the committee.

[15] §§ 361.23(b)(3) & (e)(3), 727.13(b)(3) & (e)(3).

Fiscal and Operational Impacts

This proposal contains new procedures, hearings, and notice requirements, but these are required by statute.

The committee anticipates that this proposal will require courts to train court staff and judicial officers on the newly approved forms. Courts will also incur costs to incorporate the forms into the paper or electronic processes.

Attachments and Links

1. Cal. Rules of Court, rule 5.619, at pages 7–9
2. Forms JV-172, JV-173, JV-174, JV-175, JV-176, and JV-177, at pages 10–23
3. Chart of comments, at pages 24–55
4. Link A: Assem. Bill 2317, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2317*

Rule 5.619 of the California Rules of Court is adopted, effective January 1, 2024, to read:

Chapter 7. Intercounty Transfers; Out-of-County Placements; Interstate Compact on the Placement of Children

Rule 5.619. Voluntary placement in psychiatric residential treatment facility (Welf. & Inst. Code, §§ 361.23, 727.13)

(a) Applicability

This rule applies to the court's review under section 361.23 or 727.13 when a voluntary admission into a psychiatric residential treatment facility is sought for a child, nonminor, or nonminor dependent, as defined in rule 5.502.

(b) Notice and setting of hearing on application

(1) The social worker or probation officer must use *Ex Parte Application for Voluntary Admission to Psychiatric Residential Treatment Facility* (form JV-172) to request an order authorizing the voluntary admission into a psychiatric residential treatment facility.

(2) After receiving an ex parte application for an order, the court must set a hearing under section 361.23 or 727.13 for the next judicial day. The court must immediately notify the social worker or probation officer and the child, nonminor, or nonminor dependent's counsel of the date, time, and location of the hearing.

(3) The social worker or probation officer must orally notify the parties identified in section 361.23(b)(3), 361.23(e)(3), 727.13(b)(3), or 727.13(e)(3) of the date, time, and location of the hearing.

(4) The social worker or probation officer must complete and file *Proof of Notice of Hearing on Application for Voluntary Admission to Psychiatric Residential Treatment Facility* (form JV-173).

(c) Conduct of hearing on application

(1) The court must consider all evidence required by section 361.23(c)(1), 361.23(e)(4), 727.13(b)(1), or 727.13(e)(4), and all evidence relevant to the court's determinations required under section 361.23(d), 361.23(e)(5), 727.13(d), or 727.13(e)(5).

(2) The court must use *Order on Application for Voluntary Admission to Psychiatric Residential Treatment Facility* (form JV-174) to document its findings and orders.

(3) If the court authorizes the admission of the child, nonminor, or nonminor dependent, the court must set a hearing to review the placement in the facility no later than 60 days following the admission.

(d) Notice of hearing on review of placement

At least 10 days before the hearing, the child welfare agency or probation department must provide notice of the date, time, and location of the hearing to review the placement to all parties identified in section 361.23(b)(3), 361.23(e)(3), 727.13(b)(3), or 727.13(e)(3).

(e) Conduct of hearing on review of placement

(1) The court must consider all evidence required by section 361.23(f)(1)(C), 361.23(f)(2)(C), 727.13(f)(1)(C), or 727.13(f)(2)(C) and all evidence relevant to the court's determinations required under section 361.23(d), 361.23(e)(5), 727.13(d), or 727.13(e)(5).

(2) The court must use *Review of Voluntary Admission of Child to Psychiatric Residential Treatment Facility* (form JV-175) or *Review of Voluntary Admission of Nonminor or Nonminor Dependent to Psychiatric Residential Treatment Facility* (form JV-176) to document its findings and orders.

(3) If the court authorizes the continued admission of the child, nonminor, or nonminor dependent, the court must set a review hearing on the child's placement in the facility no later than 30 days from the date of the review hearing.

(4) If the court does not authorize the continued admission of the child, nonminor, or nonminor dependent, the court must set a hearing in no later than 30 days to verify that the child, nonminor, or nonminor dependent has been discharged.

(f) Placement by consent of conservator

(1) At any review hearing under section 364, 366.21, 366.22, 366.3, or 366.31, if a child or nonminor dependent has been admitted to a psychiatric residential treatment facility by the consent of a conservator, the court must review the child's case plan. The court must make findings and orders as required by section 361.23(h).

(2) The court must use *Admission to Psychiatric Residential Treatment Facility by Consent of Conservator—Additional Findings and Orders* (form JV-177) to document its findings and orders, and attach the form to the findings and orders document used for the review hearing.

JV-172 Ex Parte Application for Voluntary Admission to Psychiatric Residential Treatment Facility

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
JV-172.v17.071023.jh

This form must be used to request an order authorizing the voluntary admission into a psychiatric residential treatment facility. The application must be filed within 48 hours of being informed of the request for voluntary admission or, if the courts are closed for more than 48 hours after being informed of the request, on the first judicial day after being informed of the request.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's/nonminor's name and date of birth:

Child's/Nonminor's name:

Child's/Nonminor's date of birth:

Court fills in case number when form is filed.

Case Number:

1 Agency requesting admission: _____
Name and title of person filing form: _____
Address: _____
Phone: _____

2 a. ☐ The child resides with ☐ parent ☐ guardian ☐ Indian custodian ☐ Other *(specify):* _____ and that person wants to have the child admitted to a psychiatric residential treatment facility.

b. ☐ The child ☐ the nonminor dependent ☐ the nonminor requests to make a voluntary admission to a psychiatric residential treatment facility under Welfare and Institutions Code section 6552.

3 The social worker or probation officer requests a court order authorizing the voluntary admission.

4 The child, nonminor, or nonminor dependent's mental disorder is *(describe):* _____

5 The proposed psychiatric residential treatment facility is *(specify name and address):* _____

6 The mental disorder may reasonably be expected to be cured or ameliorated by the treatment offered by the proposed facility because *(describe):* _____

7 a. ☐ The proposed facility is the least restrictive setting for care and there are no other available hospitals, programs, or facilities that might better serve the child's medical needs and best interests because *(describe):*

b. ☐ The nonminor or nonminor dependent believes admission to a less restrictive facility would not adequately address their mental disorder because *(describe):* _____

Case Number:

8 The child, nonminor, or nonminor dependent's case plan is attached to this form.

9 a. ☐ The parent, guardian, or Indian custodian is seeking the child's admission to the proposed facility. The basis of their belief that the child's admission to a psychiatric residential treatment facility is necessary is *(describe):* _____

b. ☐ The child ☐ does ☐ does not agree with the parent, guardian, or Indian custodian's request for admission.

c. ☐ The child is seeking admission to the facility and the parent, guardian, or Indian custodian ☐ does ☐ does not agree with the child's request for admission.

10 a. ☐ The mental health services, including community-based mental health services, that were offered or provided to the child, nonminor, or nonminor dependent were *(describe):* _____

b. ☐ The services in item 10a were not sufficient because *(describe):* _____

c. ☐ No community-based services were provided because *(describe):* _____

11 ☐ The child, nonminor, or nonminor dependent was given a chance to confer privately with their attorney about the admission *(describe how):* _____

12 a. ☐ All members of the Child and Family Team ☐ do ☐ do not agree to the admission.

b. 1. ☐ The following members of the Child and Family Team object to the admission *(specify):* _____

2. ☐ The reason the member objects to the admission is *(describe)*: _____

Date: _____

_____ ▶ _____

Type or print your name *Signature*

JV-173 Proof of Notice of Hearing on Application for Voluntary Admission to Psychiatric Residential Treatment Facility

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
JV-173.v12.071323.jh

The social worker or probation officer must provide notice of the hearing on the application for voluntary admission to a psychiatric residential treatment facility to all parties in the proceeding and their counsel of record, the child's tribe in the case of an Indian child, the court-appointed special advocate, if applicable, and any person designated as the educational or developmental representative.

The social worker or probation office must arrange for the child to be transported to the hearing. The social worker or probation officer must arrange for the nonminor or nonminor dependent to be present at the hearing.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's/nonminor's name and date of birth:

Child's/Nonminor's name:

Child's/Nonminor's date of birth:

Court fills in case number when form is filed.

Case Number:

1 The hearing on the application for voluntary admission to a psychiatric residential treatment facility set for:
(date): _____ at *(time):* _____
in Department: _____ of the superior court at *(address):* _____
_____
_____

2 Notice of the hearing in **1** was given to:

a. ☐ Parent/legal guardian/Indian custodian *(name):* _____ Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____

b. ☐ Parent/legal guardian/Indian custodian *(name):* _____ Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____

c. ☐ Attorney for parent/legal guardian/Indian custodian *(name):* _____
Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____

d. ☐ Attorney for parent/legal guardian/Indian custodian *(name):* _____
Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____

e. ☐ Child, nonminor, or nonminor dependent *(name):* _____
Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____

(2) f. ☐ Attorney for child, nonminor, or nonminor dependent *(name):* _____
Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____

g. ☐ The Indian child's tribe *(name):* _____ Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____

h. ☐ Attorney or representative for the Indian child's tribe *(name):* _____
Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____

i. ☐ The court-appointed special advocate *(name):* _____
Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____

j. ☐ The educational or developmental representative *(name):* _____
Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____

k. ☐ Attorney for the child welfare agency *(name):* _____
Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____

l. ☐ District Attorney *(name):* _____ Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____

m. ☐ De facto parent *(name):* _____ Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____

n. ☐ Attorney for de facto parent *(name):* _____
Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____

o. ☐ Other *(name):* _____ Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____
(3) Relationship to child *(specify):* _____

p. ☐ Other *(name):* _____ Date notified: _____
(1) ☐ In person
(2) ☐ By phone at *(specify):* _____
(3) Relationship to child *(specify):* _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

_____ ▶ _____
Type or print your name *Sign your name*

JV-174 Order on Application for Voluntary Admission to Psychiatric Residential Treatment Facility

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
JV-174.v16.071023.jh

Fill in court name and street address:

Superior Court of California, County of

Fill in child's/nonminor's name and date of birth:

Child's/Nonminor's name:

Child's/Nonminor's date of birth:

Court fills in case number when form is filed.

Case Number:

1 a. Hearing date: _____ Time: _____ Dept.: _____ Room: _____

b. Judicial officer: _____

c. Parties and attorneys present:

_____

_____

_____

2 The court has read and considered the following:

a. ☐ The report from the ☐ social worker ☐ probation officer filed on *(date):* _____

b. ☐ CASA report dated: _____

c. ☐ Other *(specify):* _____

d. ☐ Other *(specify):* _____

e. ☐ Other *(specify):* _____

THE COURT FINDS AND ORDERS

3 a. ☐ Notice requirements were met. The people requiring notice in Welfare and Institutions Code section 361.23(b)(3), 361.23(e)(3), 727.13(b)(3), or 727.13(e)(3) were notified as required by California Rules of Court, rule 5.619.

b. ☐ Notice requirements were not met. The following people were not noticed as required by law:

_____

_____

_____

4 ☐ The parent, guardian, or Indian custodian seeks to give voluntary consent to the child's admission. The court ☐ has ☐ has not inquired into the child's position on admission. The child's position is *(specify):* _____

5 ☐ The request for voluntary admission of a child to the psychiatric residential treatment facility identified in the placing agency's request is *(check one):*

a. ☐ granted.

(1) The court finds by clear and convincing evidence all of the following:

(a) The child suffers from a mental disorder that may reasonably be expected to be cured or ameliorated by a course of treatment offered by the hospital, facility, or program in which the child wishes to be placed.

(b) The psychiatric residential treatment facility is the least restrictive setting needed to treat the child's mental disorder.

(c) There is no other available hospital, program, or facility that might better serve the child's medical needs and best interests, including community-based mental health services.

(d) The child has given knowing and intelligent consent to admission to the facility, and the consent was not made under fear of detention or initiation of conservatorship proceedings.

(e) The child, and where appropriate, the parent, legal guardian, or Indian custodian have been advised of the nature of inpatient psychiatric services, patient's rights, and their right to contact a patient rights advocate.

(2) To ensure that the ☐ child welfare agency ☐ probation department promptly makes all necessary arrangements to ensure the child is discharged in a timely manner and with all services and supports in place as necessary for a successful transition into a less restrictive setting, the court orders the following *(specify):* _____

_____

_____

(3) A court order is not needed to discharge a child if the parent, guardian, Indian custodian, or child subsequently withdraws their consent for admission.

b. ☐ not granted. The request is not granted becuase *(specify):* _____

_____

_____

6 ☐ The request for voluntary admission of a ☐ nonminor or ☐ nonminor dependent to the psychiatric residential treatment facility identified in the placing agency's request is:

a. ☐ granted.

(1) ☐ The court finds that the nonminor or nonminor dependent has given knowing and intelligent consent to admission. A court order is not needed to discharge the nonmiror or nonminor dependent if the nonminor or nonminor dependent subsequently withdraws their consent.

(2) ☐ To ensure that the ☐ child welfare agency ☐ probation department promptly makes all necessary arrangements to ensure the nonminor or nonminor dependent is discharged in a timely manner and with all services and supports in place as necessary for a successful transition into a less restrictive setting, the court orders the following *(specify):* _____

_____

_____

b. ☐ not granted.

(1) ☐ The nonminor or nonminor dependent has not given knowing and intelligent consent to admission. The ☐ social worker ☐ probation officer is ordered to inform the facility of this finding, direct the facility to discharge the nonminor dependent in accordance with the nonminor dependent's aftercare plan, and ensure that the aftercare plan is implemented to ensure integration with the nonminor dependent's family, school, and community upon discharge.

6 b. (2) A hearing to verify that the nonminor dependent has been discharged is scheduled on *(specify date no later than 30 days from today's hearing date):* _____ *(specify time):* _____ in dept. *(specify):* _____

7 ☐ The ☐ parent's ☐ legal guardian's ☐ Indian custodian's conduct may have contributed to the deterioration of the child's mental disorder.

a. ☐ The child welfare agency must take appropriate action including but not limited to taking the child into protective custody and filing a petition under Welfare and Institutions Code section 342 or 387.

b. ☐ The probation department must asses the child pursuant to Welfare and Institutions Code section 241.1, making a report to the county child welfare services agency's suspected child abuse and neglect hotline, or proceeding to modify court orders pursuant to Article 20 (commencing with Welfare and Institutions Code section 775).

8 ☐ A review hearing on the child's, nonminor's, or nonminor dependent's placement in the facility based on the medical necessity of that placement is scheduled on (*specify date that is no later than 60 days after the admission of the child, nonminor, or nonminor dependent to the psychiatric residential treatment facility):* _____ at *(specify time):* _____ in dept. *(specify):* _____

Date: _____

_____
Judicial Officer

JV-175 Review of Voluntary Admission of Child to Psychiatric Residential Treatment Facility

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
JV-175.v16.071023.jh

Fill in court name and street address:

Superior Court of California, County of

Fill in child's/nonminor's name and date of birth:

Child's/Nonminor's name:

Child's/Nonminor's date of birth:

Court fills in case number when form is filed.

Case Number:

1 a. Hearing date: _____ Time: _____ Dept.: _____ Room: _____

b. Judicial officer: _____

c. Parties and attorneys present: _____

_____

_____

_____

2 The court has read and considered the following:

a. ☐ The report from the ☐ social worker ☐ probation officer filed on *(date):* _____

b. ☐ CASA report dated: _____

c. ☐ Other *(specify):* _____

d. ☐ Other *(specify):* _____

e. ☐ Other *(specify):* _____

THE COURT FINDS AND ORDERS

3 a. ☐ Notice requirements were met. The people requiring notice under Welfare and Institutions Code section 361.23(b)(3) or 727.13(b)(3) were notified as required by California Rules of Court, rule 5.619.

b. ☐ Notice requirements were not met. The following people were not noticed as required by law:

_____

_____

4 The ☐ parent ☐ guardian ☐ Indian custodian ☐ does ☐ does not continue to consent to the voluntary admission to a psychiatric residential treatment facility.

5 a. ☐ The child continues to consent to the voluntary admission to a psychiatric residential treatment facility.

b. ☐ The child does not continue to consent to the voluntary admission to a psychiatric residential treatment facility.

(1) The ☐ social worker ☐ probation officer must work immediately with the facility for discharge to a different setting with the appropriate and necessary supports in place.

(2) ☐ The court makes the following orders to ensure that the ☐ child welfare agency ☐ probation department makes all necessary arrangements for the child's discharge promptly and that all services and supports are in place for the child's successful transition to a different setting: _____

_____

_____

_____

5 b. (3) The ☐ social worker ☐ probation officer must work with the facility on the child's aftercare plans as appropriate based on the child's progress.

(4) The ☐ child welfare agency ☐ probation department must file a ☐ section 388 ☐ section 778 petition within two court days of notice of the revocation of consent, requesting an order vacating the court's authorization of the child's admission to the facility.

(5) A hearing to verify that the child has been discharged is scheduled on (*specify date that is no later than 30 days from today):* _____ at *(specify time):* _____ in dept. *(specify):* _____

6 a. ☐ The child does continue to suffer from a mental disorder that may reasonably be expected to be cured or ameliorated by a course of treatment offered by the facility.

b. ☐ The child does not continue to suffer from a mental disorder that may reasonably be expected to be cured or ameliorated by a course of treatment offered by the facility.

(1) The ☐ social worker ☐ probation officer must work immediately with the facility for discharge to a different setting with the appropriate and necessary supports in place.

(2) ☐ The court makes the following orders to ensure that the ☐ child welfare agency ☐ probation department makes all necessary arrangements for the child's discharge promptly and that all services and supports are in place for the child's successful transition to a different setting: _____

_____

_____

_____

_____

_____

_____

_____

(3) ☐ The ☐ social worker ☐ probation officer must work with the facility on the child's aftercare plans as appropriate based on the child's progress.

(4) A hearing to verify that the child has been discharged is scheduled on (*specify date that is no later than 30 days from today)*: _____ at *(specify time)*: _____ in dept. *(specify)*: _____

7 a. ☐ There are no other available less restrictive hospital, program, facility, or community-based mental health services that might better serve the child's medical needs and best interests. ☐ The child has been at the facility for over 30 days. The court finds that the following facts overcome the presumption that the facility is not the least restrictive alternative to serve the child's medical needs and best interests: _____

_____

_____

b. ☐ There are other available less restrictive hospital, program, facility, or community-based mental health services that might better serve the child's medical needs and best interests.

(1) ☐ The ☐ social worker ☐ probation officer must work immediately with the facility for discharge to a different setting with the appropriate and necessary supports in place.

Case Number:

7 b. (2) ☐ The court makes the following orders to ensure that the ☐ child welfare agency ☐ probation department makes all necessary arrangements for the child's discharge promptly and that all services and supports are in place for the child's successful transition to a different setting: _____

(3) ☐ The ☐ social worker ☐ probation officer must work with the facility on the child's aftercare plans as appropriate based on the child's progress.

(4) A hearing to verify that the child has been discharged is scheduled on *(specify date that is no later than 30 days from today):* _____ at *(specify time):* _____ in dept. *(specify):* _____

(5) A hearing to ensure that other services have been provided to the child is scheduled on *(specify date that is no later than 60 days from the child's discharge):* _____ at *(specify time):* _____ in dept. *(specify):* _____

8 ☐ As indicated in items 5-7 above the child continues to consent to admission, continues to suffer from a mental disorder that may reasonably be expected to be cured or ameliorated by a course of treatment offered by the facility, and there are no other available less restrictive hospital, program, facility, or community-based mental health services that might better serve the child's medical needs and best interests. The court authorizes the child's continued admission to the psychiatric residential treatment facility.

A review hearing on the child's placement in the facility based upon the medical necessity of that placement is scheduled on (*specify date that is no later than 30 days from today):* _____ at *(specify time):* _____ in dept. *(specify):* _____

9 ☐ The psychiatric residential treatment facility has failed to meet its legal obligation to provide services to the child *(describe):* _____

a. ☐ The ☐ social worker ☐ probation officer must engage with the facility to ensure the child is receiving all necessary services.

b. ☐ The court has issued *Notice of Hearing on Joinder—Juvenile* (form JV-540).

Date: _____

_____
Judicial Officer

JV-176

Review of Voluntary Admission of Nonminor or Nonminor Dependent to Psychiatric Residential Treatment Facility

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
JV-176.v15.062823.jh

Fill in court name and street address:

Superior Court of California, County of

Fill in child's/nonminor's name and date of birth:

Child's/Nonminor's name:

Child's/Nonminor's date of birth:

Court fills in case number when form is filed.

Case Number:

1 a. Hearing date: _____ Time: _____ Dept.: _____ Room: _____

b. Judicial officer: _____

c. Parties and attorneys present: _____

_____

_____

_____

2 The court has read and considered the following:

a. ☐ The report from the ☐ social worker ☐ probation officer filed on *(date):* _____

b. ☐ CASA report dated: _____

c. ☐ Other *(specify):* _____

d. ☐ Other *(specify):* _____

e. ☐ Other *(specify):* _____

THE COURT FINDS AND ORDERS

3 a. ☐ Notice requirements were met. The people requiring notice in Welfare and Institutions Code section 361.23(e)(3) or 727.13(e)(3) were notified as required by California Rules of Court, rule 5.619.

b. ☐ Notice requirements were not met. The following people were not noticed as required by law:

_____

_____

4 a. The ☐ nonminor ☐ nonminor dependent ☐ continues ☐ does not continue to meet the medical necessity for care and treatment in the psychiatric residential facility.

b. There ☐ is ☐ is not an available less restrictive setting sufficient to meet the nonminor or nonminor dependent's needs, including a less restrictive facility or community-based care.

5 a. ☐ The ☐ nonminor ☐ nonminor dependent continues to consent to the voluntary admission to a residential psychiatric treatment facility, and the evidence supports the nonminor dependent's need for care and treatment at the facility.

(1) The ☐ social worker ☐ probation officer must transmit this form to the facility or the nonminor or nonminor dependent's interdisciplinary team.

(2) ☐ The ☐ social worker ☐ probation officer must work with the facility on the nonminor or nonminor dependent's aftercare plan as appropriate based on the nonminor or nonminor dependent's need to achieve independence.

Case Number:

5 a. (3) A hearing to review the nonminor or nonminor dependent's placement in the facility based on the medical necessity of that placement is scheduled on *(specify date that is no later than 30 days from today):* _____ at *(specify time):* _____ in dept. *(specify):* _____

b. ☐ The ☐ nonminor ☐ nonminor dependent does not continue to consent to the voluntary admission to a residential psychiatric treatment facility.

(1) The ☐ social worker ☐ probation officer must notify the facility and immediately work with the nonminor or nonminor dependent and the facility for discharge to a less restrictive setting with the appropriate and necessary services and supports in place.

(2) ☐ The court makes the following orders to ensure that the ☐ child welfare agency ☐ probation department makes all necessary arrangements for the nonminor or nonminor dependent's discharge promptly and that all services and supports are in place for the nonminor or nonminor dependent's successful transition to a different setting: _____

_____

_____

_____

_____

(3) The ☐ child welfare agency ☐ probation officer must file a ☐ section 388 ☐ section 778 petition within two court days of notice of the revocation of consent, requesting an order vacating the court's authorization of the nonminor or nonminor dependent's admission to the facility.

(4) A hearing to verify that the nonminor or nonminor dependent has been discharged is scheduled on *(specify date that is no later than 30 days from today):* _____ at *(specify time):* _____ in dept. *(specify):* _____

(5) ☐ The nonminor or nonminor dependent should receive treatment through another hospital, program, facility, or community-based mental health service. A hearing to ensure that the other services have been provided is scheduled on *(specify date that is no later than 60 days from discharge date):* _____ at *(specify time):* _____ in dept. *(specify):* _____

6 ☐ The psychiatric residential treatment facility has failed to meet its legal obligation to provide services to the nonminor or nonminor dependent *(describe):* _____

a. ☐ The ☐ social worker ☐ probation department must engage with the facility to ensure the nonminor or nonminor dependent is receiving all necessary services.

b. ☐ The court has issued *Notice of Hearing on Joinder—Juvenile* (form JV-540).

Date: _____

_____
Judicial Officer

JV-177

Admission to Psychiatric Residential Treatment Facility by Consent of Conservator—Additional Findings and Orders

Case Number:

This form is attached to *(check one):* ☐ local court minute order ☐ JV-425 ☐ JV-426 ☐ JV-430 ☐ JV-435 ☐ JV-440 ☐ JV-445 ☐ JV-446 ☐ JV-462 ☐ Other *(specify):* _____

THE COURT FINDS AND ORDERS

1 The court has reviewed the child's, nonminor's, or nonminor dependent's case plan.

2 ☐ The court makes the following orders to ensure that the ☐ child welfare agency ☐ probation department promptly makes all necessary arrangements to ensure that the child, nonminor, or nonminor dependent is discharged from the psychiatric residential treatment facility in a timely manner and with all services and supports in place as necessary for a successful transition to a less restrictive setting *(specify):* _____

3 ☐ The ☐ social worker ☐ probation department must work with ☐ the facility ☐ the child's, nonminor's, or nonminor dependent's conservator to ensure the child, nonminor, or nonminor dependent is receiving all necessary child welfare services and to develop an appropriate aftercare plan based on the evidence of the child's, nonminor's, or nonminor dependent's progress.

Date: _____

_____
Judicial Officer

SPR 23-19

Juvenile Law: Psychiatric Residential Treatment Facility Voluntary Admission (adopt Cal. Rules of Court, rule 5.519; adopt forms JV-172, JV-173, JV-174, JV-175, JV-176, and JV-177)

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

	Commenter	Position	Comment	Committee Response
1.	Hon. Stephen Ipsom, Commissioner of the Superior Court of Los Angeles County	A	No specific comments.	No response required.
2.	Judicial Council of California TCPJAC/CEAC Joint Rules Subcommittee by Corey Rada, Senior Analyst	A	The JRS notes the following impact to court operations: • Impact on existing automated systems. • Results in additional training, which requires the commitment of staff time and court resources.	The committee appreciates this information. No response required.
			The JRS also notes that six months is sufficient for implementation.	The committee appreciates the concerns around an effective date three months from Judicial Council approval of this proposal, but has determined that implementation of the statutory provisions by January 1, 2024, is needed to ensure that courts are effectively performing their new oversight role.
3.	Riverside County Probation Department by LaVonda Davis, Senior Probation Officer	A	I think access for long term services at a PRTF would be very beneficial for the rise in clients in need of mental health services and treatment. We have several youth who exhibit and display behaviors that require 24-hour long term treatment. STRTP's are unable to provide any services as their mental health needs continue to exceed what STRTP's are able to provide and disrupt their milieu's. We have youth attempting suicide weekly that we are unable to stabilize and based on these behaviors not allowed us to locate appropriate STRTP placement as the mental health necessity has grown beyond what they feel they can provide.	The committee appreciates this information. No response required.

Juvenile Law: Psychiatric Residential Treatment Facility Voluntary Admission (adopt Cal. Rules of Court, rule 5.519; adopt forms JV-172, JV-173, JV-174, JV-175, JV-176, and JV-177)

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

	Commenter	Position	Comment	Committee Response
			Also, if they do go to a PRTF, would there be an option to go to one out of state or just in state?	Psychiatric residential treatment facilities are allowed under federal law. It is unknown at this time whether another state's PRTF will meet the definitions and requirements in AB 2317.
4.	Orange County Bara Association by Michael A. Gregg, President	A	The above listed proposals appropriately addresses the stated purpose.	No response required.
5.	Superior Court of Orange County by Jenny Diaz Avendano, Operations Analyst	NI	**Cal. Rules of Court, Rule 5.619(b)(3) and (d):** Reference "727.13(a)(3)" to be revised to 727.13(b)(3) as subdivision (a) paragraph (3) does not exist, as the noticing requirements for probation is reflected in subdivision (b) paragraph (3).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Form JV-172: Add language after the form title, but before section 1 as follows: The request for admission must be served on all parties and Proof of Notice (JV-173) must be filed with Ex Parte Application.	As required by the rule recommended in this report, the social worker or probation officer must orally notify all parties of the date, time, and location of the hearing after the court has set the hearing.
			Form JV-172: Modify section 1 to read as follows: Replace "Child or nonminor dependent's" with "Party/Agency Requesting Admission for child or nonminor dependent"	The committee agrees with this suggestion and has changed item 1 to read: "Agency requesting admission:"
			Form JV-172: In item #1(a) replace "Name" with "Name of person filing form"	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. To be consistent with other forms, the item will ask for "Name and title of person filing the form:'

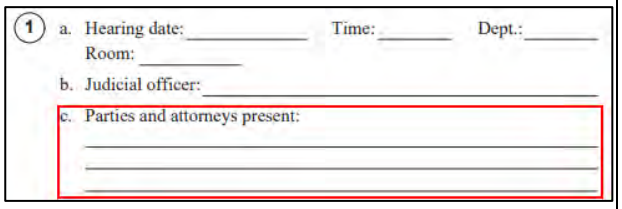
Juvenile Law: Psychiatric Residential Treatment Facility Voluntary Admission (adopt Cal. Rules of Court, rule 5.519; adopt forms JV-172, JV-173, JV-174, JV-175, JV-176, and JV-177)

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

	Commenter	Position	Comment	Committee Response
			Form JV-172: Add option " ☐ Other:" in section 2 to accommodate for those instances where none of the options listed apply.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Form JV-172: Replace the word "wants" with "requests" in section 2b to read " ☐ The child ☐ the nonminor dependent requests to make a voluntary admission…"	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Form JV-172: Require the address of the PRTF in section 5.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Form JV-172: Add "do" and "do not" boxes in section 12a to read: Members of the child's Child and Family Team ☐ do ☐ do not agree to the admission."	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Form JV-173: Modify section 1 to read as follows: 1. The Court will hold a hearing for the request of voluntary admission into a psychiatric residential treatment facility (hearing must be set for the next judicial day). a. Hearing date: _____ b. Time: _____ c. Dept.: _____Cou	As required by the rule recommended for adoption in this report, this form would be used as a proof of notice of the hearing, not as a notice of the hearing. To be consistent with other juvenile forms, the committee continues to recommend that the potential parties be listed as options on the form.

Juvenile Law: Psychiatric Residential Treatment Facility Voluntary Admission (adopt Cal. Rules of Court, rule 5.519; adopt forms JV-172, JV-173, JV-174, JV-175, JV-176, and JV-177)

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

	Commenter	Position	Comment	Committee Response
			rt Address: _____ I served a copy to: _____	
			Forms JV-174, JV-175, JV-176, and JV-177: Strike "Judge's Signature" and "Judge or", see below.  	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. This would make the forms consistent with the signature blocks on the recently revised juvenile dependency findings and orders forms.
			Form JV-175: Add lines in section 1c (Parties and attorney's present:) to be consistent with JV-174 and JV-176 as shown below.  	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Does the Proposal appropriately address the stated purpose? Yes.	No response required.
			What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please	The committee appreciates this information. No response required.

Juvenile Law: Psychiatric Residential Treatment Facility Voluntary Admission (adopt Cal. Rules of Court, rule 5.519; adopt forms JV-172, JV-173, JV-174, JV-175, JV-176, and JV-177)

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	Commenter	Position	Comment	Committee Response
			describe), changing docket codes in case management systems, or modifying case management systems? The implementation would require adding new event codes for all 6 new forms, create new procedures, and provide brief training for staff.	
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No response required.
			How well would this proposal work in courts of different sizes? Our court is a large court, and this could work for Orange County.	No response required.
6.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	Does the proposal adequately address the stated purpose? **Yes.**	No response required.
			Would the proposal provide cost savings? If so, please quantify. **Probably. The proposal saves the juvenile courts the time and effort that would be required to develop these forms on their own or to include all the new required findings and orders in their case management systems.**	The committee appreciates this information. No response required.

Juvenile Law: Psychiatric Residential Treatment Facility Voluntary Admission (adopt Cal. Rules of Court, rule 5.519; adopt forms JV-172, JV-173, JV-174, JV-175, JV-176, and JV-177)

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

	Commenter	Position	Comment	Committee Response
			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? **In addition to those already mentioned, courts would need to inform their judicial officers and their justice partners (child welfare agency, probation department, attorney offices, CASA offices, et al.) of the new rule of court and the new mandatory forms.**	The committee appreciates this information. No response required.
			Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.**	No response required.
			How well would this proposal work in courts of different sizes? **This proposal would work fine in the San Diego Superior Court (a large court).**	No response required.
			CRC 5.619(b)(3) – Consider adding "section" and changing 727.13(a)(3) to (b)(3): The social worker or probation officer must orally notify the parties identified in section 361.23(b)(3), 361.23(e)(3), 727.13(~~a~~b)(3), or	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			727.13(e)(3) of the date, time, and location of the hearing.	
			CRC 5.619(c)(1) - Consider whether the rule should anticipate clean up legislation amending the mislabeled subdivision (b) of § 727.13, and whether the reference to § 366.21(e)(1) should be to (e)(4) instead: The court must consider all evidence required by section 361.23(c)(1), 366.21(e)(1), 727.13(~~b~~c)(1), or 727.13(e)(4), and all evidence relevant to the court's determinations required under section 361.23(d), 361.23(e)(5), 727.13(d), or 727.13(e)(5).	
			CRC 5.619(d) – Consider changing reference to 727.13 from (a)(3) to (b)(3): … parties identified in section 361.23(b)(3), 361.23(e)(3), 727.13(~~a~~b)(3), or 727.13(e)(3).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-172, item 6, 7a, and 9a – consider adding "proposed" before "facility."	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-173, item 1.h. - consider adding "or representative": Attorney or representative for the Indian child's tribe …	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-174, item 3.a. – consider adding "or 727.13(b)(3)" after "section 361.23(b)(3)"; consider whether this item should be changed to "as required by law" as in the JV-175, item	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee has changed the citation to the California Rules of Court, rule 5.619.

	Commenter	Position	Comment	Committee Response
			3.a., or whether the JV-175, item 3.a., should be changed to cite CRC rule 5.619: The people requiring notice in Welfare and Institutions Code section 361.23(b)(3) or 727.13(b)(3) were notified as required by California Rules of Court, rule 5.619.	
			JV-174, item 4.a.(5) – is "parent's rights" supposed to be "patient's rights"?	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-174, item 5 and several other places on the forms– consider transposing "residential" and "psychiatric": The request for voluntary admission of a nonminor dependent to the ~~residential~~ psychiatric residential treatment facility identified in the placing agency's request is:	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-174, item 5.a.(1) and 5.b(a) – consider adding "to admission" after "consent" (see §§361.23(e)(5)(A), 727.13(e)(5)(A)): … consent to admission.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-174, item 5.b(1) - Should "nonminor or" be inserted before "nonminor dependent" for consistency with item 5.a.(1)?	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-174, item 6 – consider adding language from § 727.13(d)(3) for wards. … taking the child into protective custody and filing a petition under Welf. & Inst. Code section 342 or 387 or assessing the minor pursuant to Welf. & Inst. Code section 241.1, making a report	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee has revised the form to separate out into separate subitems what the child welfare agency must do and what the probation department must do.

	Commenter	Position	Comment	Committee Response
			to the county child welfare services agency's suspected child abuse and neglect hotline, or proceeding to modify court orders pursuant to Article 20 (commencing with Welf. & Inst. Code section 775).	
			JV-174, item 7 – consider adding "residential" after "psychiatric." … (specify date that is no later than 60 days after the admission of the child or nonminor dependent to the psychiatric residential treatment facility):	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-175, items 4, 5.a., 5.b. – Transpose "residential" and "psychiatric." … to consent to the voluntary admission to a ~~residential~~ psychiatric residential treatment facility.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-176 item 3.a. – Should 361.23(b)(3) be 361.23(e)(3); should 727.13(e)(3) be added before "were notified" (and should this item be changed to "as required by law" as in the JV-175, item 3.a., or should form JV-175, item 3.a. be changed to cite CRC rule 5.619?): The people requiring notice in Welfare and Institutions Code section 361.23(~~b~~e)(3) or 727.13(e)(3) were notified as required by California Rules of Court, rule 5.619.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee continues to recommend adoption of this form with the citation to California Rules of Court, rule 5.619.
			JV-176, item 4.a.(1) – consider adding "the facility or" after "must transmit this form to" (see §§ 361.23(f)(2)(D) and 727.13(f)(2)(D)):	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			The □ social worker □ probation officer must transmit this form to <u>the facility or</u> the nonminor dependent's interdisciplinary team.	
			JV-176, item 4.b.(1) – consider that the statutes do not require immediate notification of the facility (see §§ 361.23(f)(2)(E)(i) and 727.13(f)(2)(E)(i) ["… shall notify the facility and immediately work with the nonminor dependent and the facility…"]): The □ social worker □ probation officer must ~~immediately~~ notify the facility and immediately work with the nonminor dependent and the facility …	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-176, items 5 and 5.a. – consider replacing "child" with "nonminor dependent."	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
6.	Youth Law Center by Lauren E. Brady, Director of Legal Advocacy	NI	**Rule 5.619 (a) Applicability** Define the terms "child," "nonminor," and "nonminor dependent." Alternatively, the use of "child, nonminor, or nonminor dependent" throughout the Rule could be changed to "child, nonminor dependent, or other nonminor still under the jurisdiction of the juvenile court" to provide more clarity. The forms only refer to "child" and "nonminor dependent," so the use of the term "nonminor" may be confusing without the additional context provided in Sections 361.23(k) and 727.13(k).	These terms are defined in California Rules of Court, rule 5.502. The committee recommends adding a cross reference to rule 5.502 in rule 5.619(a).

	Commenter	Position	Comment	Committee Response
			Rule 5.619(b) (1) The social worker or probation officer must use *Ex Parte Application for Voluntary Admission to a Psychiatric Residential Treatment Facility* (form JV-172) to request ~~a hearing~~ **an order authorizing the voluntary admission into a psychiatric residential treatment facility. The application must be filed within 48 hours of being informed of the request for voluntary admission or, if the courts are closed for more than 48 hours after being informed of the request, on the first judicial day after being informed of the request.** (2) After receiving ~~a request for a hearing~~ **an ex parte application for an order**, the court must set a hearing under section 361.23 or 727.13 for the next judicial day. The court must immediately notify the social worker or probation officer and the child, nonminor, or nonminor dependent's counsel of the date, time, and location of the hearing. More detail and exact language from the law can be useful to inform parties of the specific requirements.	The committee agrees with the suggestion to replace "hearing" with "an order authorizing the voluntary admission into a psychiatric residential treatment facility" and has incorporated it into the revisions that it is recommending for adoption. The committee does not agree with the suggestion to repeat the statutory text here. Beginning in the Spring of 2016, the committee had several proposals to condense the rules in title 5 of the California Rules of Court that set forth the procedures to be followed during dependency court hearings. The committee deleted repetitions of statutory text or replaced them with references to the relevant code sections. These amendments enhanced the brevity and accuracy of the rules while also consolidating some shorter rules where appropriate and reduces the frequency with which the rules need to be amended to reflect changes in the statutory text. The committee will revise *Ex Parte Application for Voluntary Admission to a Psychiatric Residential Treatment Facility* (form JV-172) with an instruction about the statutory mandate for the timing of the application. The committee concluded that the information would be more accessible to the person filling out the form if the requirements were on the form itself, rather than in the rule.
			Rule 5.619(b) (3) The social worker or probation officer must orally notify the **following** parties**,** identified in	The committee agrees with the suggestion to change the subdivision and has incorporated it into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			361.23(b)(3), 361.23(e)(3), 727.13~~(a)~~**(b)**(3), or 727.13(e)(3)**,** of the date, time, and location of the hearing~~.~~**:** **(A) All parties to the proceeding and their counsel of record;** **(B) The child's parent or guardian, if not already a party to the proceeding, such as in the case of a child who is subject to a petition pursuant to Section 601 or 602;** **(C) In the case of an Indian child, the child or nonminor dependent's tribe;** **(D) The child or nonminor dependent's court-appointed special advocate, if applicable;** **(E) Any person designated as the child or nonminor dependent's educational or developmental representative pursuant to subdivision (a) of Section 361 or subdivision (b) of Section 726.** More detail and exact language from the law can be useful to inform parties of the specific requirements. Some citations need to be corrected.	To enhance the brevity and accuracy of the rules and reduce the frequency with which the rules need to be amended to reflect changes in the statutory text, the committee declines the suggestion to repeat the statutory text here. The committee also concluded that the information is more accessible for the person filling out the form by keeping the requirements on the mandatory *Proof of Notice of Hearing on Application for Voluntary Admission to a Psychiatric Residential Treatment Facility* (form JV-173), as currently proposed.
			Rule 5.619(c) (1) The court must consider all evidence required by section 361.23(c)(1), ~~366.21(e)(1),~~ **361.23(e)(4),** 727.13(b)**[*sic*]**(1), or 727.13(e)(4), and all evidence relevant to the court's determinations required under section 361.23(d), 361.23(e)(5), 727.13(d), or 727.13(e)(5).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			The second citation should be corrected to reference Section 361.23(e)(4). Please also note that Section 727.13 contains an error in the law. Section (b) is repeated and there is no section (c). This citation references the second section (b).	
			Rule 5.619(d) At least 10 days before the hearing, the child welfare agency or probation department must provide notice of the date, time, and location of the hearing to review the placement to ~~all~~ **the following** parties**,** identified in section 361.23(b)(3), 361.23(e)(3), 727.13~~(a)~~**(b)**(3), or 727.13(e)(3)~~.~~**:** **(A) All parties to the proceeding and their counsel of record, including the child or youth's parent or guardian;** **(B) The child's parent or guardian, if not already a party to the proceeding, such as in the case of a child who is subject to a petition pursuant to Section 601 or 602;** **(C) In the case of an Indian child, the child or nonminor dependent's tribe;** **(D) The child or nonminor dependent's court-appointed special advocate, if applicable;** **(E) Any person designated as the child or nonminor dependent's educational or developmental representative pursuant to subdivision (a) of Section 361 or subdivision (b) of Section 726.**	The committee agrees with the suggestion to change the subdivision and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with the suggestion to repeat the statutory text here. The new statutes are silent on the requirements for notice of the review hearing, so the committee concluded the rule should list out who is entitled to notice and listed the same parties as those who must receive notice of the request as required by sections 361.23(b)(3), 361.23(e)(3), 727.13(b)(3), or 727.13(e)(3).

	Commenter	Position	Comment	Committee Response
			More detail and exact language from the law can be useful to inform parties of the specific requirements. Some citations need to be corrected.	
			JV-172-New section at top of form **<u>The following form may be used for children and nonminor dependents under the jurisdiction of the juvenile court pursuant to Sections 300, 601, or 602, including nonminors who remain under juvenile court jurisdiction pursuant to Section 303(a) even if they do not meet the definition of "nonminor dependent" contained in Section 11400(v).</u>** The forms only refer to "child" and "nonminor dependent," but Sections 361.23(k) and 727.13(k) state that these provisions equally apply "to foster children who remain under juvenile court jurisdiction pursuant to subdivision (a) of Section 303 after reaching the age of majority even if they do not meet the definition of 'nonminor dependent' contained in subdivision (v) of Section 11400."	To reflect the requirement in sections 361.23(k) and 727.13(k) that the provisions regarding nonminor dependents equally apply to foster children who remain under juvenile court jurisdiction pursuant to subdivision (a) of Section 303 after reaching the age of majority even if they do not meet the definition of 'nonminor dependent' contained in subdivision (v) of Section 11400, the committee has revised form JV-176 to include "nonminor" in all the items that refer to "nonminor dependents" and has added "Nonminor" to the title of the form. Proposed rule 5.619(a) would cross reference rule 5.502 which has the following simplified definition: "Nonminor" means a youth at least 18 years of age and not yet 21 years of age who remains subject to the court's dependency, delinquency, or general jurisdiction under section 303 but is not a "nonminor dependent."
			JV-172 (1) Child**<u>, nonminor,</u>** or nonminor dependent's The term "nonminor" should be added to reflect Sections 361.23(k) and 727.13(k).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

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	Commenter	Position	Comment	Committee Response
			JV-172 (2) b. The □ child □ **the nonminor** □ the nonminor dependent wants to make a voluntary admission to a psychiatric residential treatment facility under Welfare and Institutions Code section 6552. The term "nonminor" should be added to reflect Sections 361.23(k) and 727.13(k), and checkboxes should be added to make clear who the young person is.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-172 (4) The child**, nonminor,** or nonminor dependent's mental disorder is (*describe*): The term "nonminor" should be added to reflect Sections 361.23(k) and 727.13(k).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-172 (7) b. The **nonminor or** nonminor dependent believes admission to a less restrictive facility would not adequately address their mental disorder because (*describe*): The term "nonminor" should be added to reflect Sections 361.23(k) and 727.13(k).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-172 (8) The child**, nonminor,** or nonminor dependent's case plan is attached to this form.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			The term "nonminor" should be added to reflect Sections 361.23(k) and 727.13(k).	
			JV-172 (9) a. The parent, guardian, or Indian custodian is seeking the child's admission to the facility. The basis of their belief that the child's admission to a psychiatric residential treatment facility is necessary is (*describe*): _____ b. **The child □ does □does not agree with the parent, guardian, or Indian custodian's request for admission.** **c.** The child is seeking admission to the facility and the parent, guardian, or Indian custodian □ does □ does not agree with the child's request for admission. Although the statute does not require this information be included in a child's ex parte application, the court is required to inquire at the hearing about the child's position on the admission, and including that information in the application can ensure that information is provided to the court. *See* WIC § 361.23(c)(2)(A); § 727.13(b)[*sic*](2)(A). Please also note that Section 727.13 contains an error in the law. Section (b) is repeated and there is no section (c). The citation above references the second section (b).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

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	Commenter	Position	Comment	Committee Response
			JV-172 (10) a. The mental health services, including community-based mental health services, that were offered or provided to the child**, nonminor, or nonminor dependent** (*describe*): This requirement also applies to nonminors and nonminor dependents. *See* WIC §§ 361.23(e)(1)(D), 361.23(k), 727.13(e)(1)(D), 727.13(k).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-172 (11) The child, **nonminor, or nonminor dependent** was given a chance to confer privately with their attorney about the admission (d*escribe how*): This requirement also applies to nonminors nonminor dependents. *See* WIC §§ 361.23(e)(1)(F), 361.23(k), 727.13(e)(1)(F), 727.13(k).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-172 (12) a. All members of the child's **or nonminor dependent's** Child and Family Team agree to the admission. b.1. The following members of the child's **or nonminor dependent's** Child and Family Team objects to the admission *(specify*):	The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			Although the statute does not require this information be included in a nonminor dependent's ex parte application, the court is required to consider evidence at the hearing regarding how the possible voluntary admission was addressed with the child and family team, whether any member of the team objects to voluntary admission, and the reasons for the objection. The evidence can be presented in the form of oral testimony under oath, affidavit, or declaration, or other admissible evidence, so it does not necessarily need to be included in the application, but some context regarding this evidence requirement should be included. *See* WIC § 361.23(e)(4)(E); § 727.13(e)(4)(E).	
			JV-173-New section at top of form **<u>The following form may be used for children and nonminor dependents under the jurisdiction of the juvenile court pursuant to Sections 300, 601, or 602, including nonminors who remain under juvenile court jurisdiction pursuant to Section 303(a) even if they do not meet the definition of "nonminor dependent" contained in Section 11400(v).</u>** The forms only refer to "child" and "nonminor dependent," but Sections 361.23(k) and 727.13(k)	See response above regarding the requirements in section 361.23(k) and 727.13(b).

	Commenter	Position	Comment	Committee Response
			state that these provisions equally apply "to foster children who remain under juvenile court jurisdiction pursuant to subdivision (a) of Section 303 after reaching the age of majority even if they do not meet the definition of 'nonminor dependent' contained in subdivision (v) of Section 11400."	
			JV-173 (1) m. **De facto parent *(name)*: Date notified:** **(1) In person** **(2) By phone at (specify):** n. **Attorney for the de facto parent, if applicable *(name)*: Date notified:** **(1) In person** **(2) By phone at (specify):** **o.** Other *(name)*: Date notified: (1) In person (2) By phone at (specify): (3) Relationship to child (specify): **p.** Other *(name)*: Date notified: (1) In person (2) By phone at (specify): (3) Relationship to child (specify): Because de facto parents have been found by the court to have assumed the role of a parent and to	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. De facto parents are parties to the proceeding and the statutes require notice to all parties.

	Commenter	Position	Comment	Committee Response
			have provided for the child's needs for a substantial period of time, they should also receive notice of any hearing regarding admission into a psychiatric residential treatment facility.	
			JV-174-New section at top of form **<u>The following form may be used for children and nonminor dependents under the jurisdiction of the juvenile court pursuant to Sections 300, 601, or 602, including nonminors who remain under juvenile court jurisdiction pursuant to Section 303(a) even if they do not meet the definition of "nonminor dependent" contained in Section 11400(v).</u>** The forms only refer to "child" and "nonminor dependent," but Sections 361.23(k) and 727.13(k) state that these provisions equally apply "to foster children who remain under juvenile court jurisdiction pursuant to subdivision (a) of Section 303 after reaching the age of majority even if they do not meet the definition of 'nonminor dependent' contained in subdivision (v) of Section 11400."	See response above regarding the requirements in section 361.23(k) and 727.13(b).
			JV-174 (3) a. Notice requirements were met. The people requiring notice in Welfare and Institutions Code section 361.23(b)(3), **<u>361.23(e)(3), 727.13(b)(3), or 727.13(e)(3)</u>** were notified as required by California Rules of Court, rule 5.619	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			Since this form applies to children and nonminor dependents subject to petitions under Section 300 and also Sections 601 or 602, the additional citations should be included to reflect each relevant population.	
			JV-174 (4) new section **The court □ has □ has not inquired into the child's position on admission. The child's position is *(specify):*** The court is required to inquire at the hearing about the child's position on the admission, so this should be documented in the order before the court's findings. *See* WIC § 361.23(c)(2)(A); § 727.13(b)[*sic*](2)(A).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-174 (5) [updated n umbering; originally (4)] The request for voluntary admission of a child to the psychiatric residential treatment facility identified in the placing agency's request is: a. □ granted. **(1)** The court finds by clear and convincing evidence all of the following: □ ~~(1)~~ **(a)** The child suffers from a mental disorder that may reasonably be expected to be cured or ameliorated by a course of treatment offered by the hospital, facility, or program in which the child wishes to be placed.	Checkboxes are only placed before items that are optional. All of these findings are required to grant a request for voluntary admission, so checkboxes should not be added before them.

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	Commenter	Position	Comment	Committee Response
			□ ~~(2)~~ **(b)** The psychiatric residential treatment facility is the least restrictive setting needed to treat the child's mental disorder. □ ~~(3)~~ **(c)** There is no other available hospital, program, or facility that might better serve the child's medical needs and best interests, including community-based mental health services. □ ~~(4)~~ **(d)** The child has given knowing and intelligent consent to admission to the facility, and the consent was not made under fear of detention or initiation of conservatorship proceedings. □ ~~(5)~~ **(e)** The child, and where appropriate, the parent, legal guardian, or Indian custodian have been advised of the nature of inpatient psychiatric services, parent's rights, and their right to contact a patient rights advocate. Adding checkboxes allows for better review and data collection of the court's findings.	
			JV-174 (5) [updated n umbering; originally (4)] **(2) To ensure that the □ child welfare agency □ probation department promptly makes all necessary arrangements to ensure the nonminor dependent is discharged in a timely manner and with all services and supports in place as necessary for a successful transition into a less restrictive setting, the court orders the following (specify): .**	The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			(3) A court order is not needed to discharge a child if the parent, guardian, Indian custodian, or child subsequently withdraws their consent for admission. b. □ not granted. **The request is not granted because *(specify)*:_____.** Adding an explanation of why the request was denied also helps document which requirements were not met. WIC Sections 361.23(d)(2)(A) and 727.13(d)(2)(A) allow the court to make any orders necessary to ensure that the child welfare services agency promptly makes all necessary arrangements to ensure that the minor is discharged in a timely manner and with all services and supports in place as necessary for a successful transition into a less restrictive setting. That provision is already included in the section authorizing admission for a nonminor dependent, so it should also be included in the section authorizing admission of a child. (Note that Section 727.13(d)(2)(A) references child welfare, but that larger section applies to youth subject to 601 or 602 petitions, so it should match the language in Section 727.13(e)(5)(B) for nonminors under 601 or 602 petitions.) Finally, WIC Section 361.23(d)(2)(B) states that a court order is not required to discharge a child	

	Commenter	Position	Comment	Committee Response
			who withdraws consent, or whose parent withdraws consent. That provision is included for nonminor dependents in the form and should also be reflected for children.	
			JV-174 (5) The request for voluntary admission of a □ **nonminor** □ nonminor dependent to the residential psychiatric treatment facility identified in the placing agency's request is: The term "nonminor" should be added to reflect Sections 361.23(k) and 727.13(k), and checkboxes should be added here to clarify the young person's status.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-174 (5)a (1) The court finds that the nonminor or nonminor dependent has given knowing and intelligent consent. A court order is not needed to discharge the **nonminor or** nonminor dependent if the **nonminor or** nonminor dependent subsequently withdraws their consent. (2) To ensure that the □ child welfare agency □ probation department promptly makes all necessary arrangements to ensure the **nonminor or** nonminor dependent is discharged in a timely manner and with all services and supports in place as necessary for a successful transition into a less restrictive setting, the court orders the following (*specify*):	The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			The term "nonminor" should be added to reflect Sections 361.23(k) and 727.13(k).	
			JV-174 (5)b. (1) The **nonminor or** nonminor dependent has not given knowing and intelligent consent. The □ social worker □ probation officer is ordered to **immediately** inform the facility of this finding, direct the facility to discharge the **nonminor or** nonminor dependent in accordance with the **nonminor or** nonminor dependent's aftercare plan, and ensure that the aftercare plan is implemented to ensure integration with the **nonminor or** nonminor dependent's family, school, and community upon discharge. (a) A hearing to verify that the **nonminor or** nonminor dependent has been discharged is scheduled on (*specify date no later than 30 days from today's hearing date*): The term "nonminor" should be added to reflect Sections 361.23(k) and 727.13(k).	The committee declines to include the word "immediately" because the statutes do not require immediate notification to the facility (see §§ 361.23(e)(5)(a) and 727.13(e)(5)(a) ["… shall direct the social worker to convey its finding to the facility, and direct the facility to discharge the nonminor dependent…"]): The committee agrees with the suggestion to add "nonminor" and has incorporated it into the revisions that it is recommending for adoption.
			JV-174 (6) The □ parent's □ legal guardian's □ Indian custodian's conduct may have contributed to the deterioration of the child's mental disorder. The □ child welfare agency **□ probation department** must investigate whether the child may be safely returned to that person's custody when discharged from the facility and must take appropriate action including, but not limited to, taking the child into protective custody	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			and filing a petition under Welf. & Inst. Code section 342 or 387**, or , assessing the minor pursuant to Section 241.1, making a report to the county child welfare services agency's suspected child abuse and neglect hotline, or proceeding to modify court orders pursuant to Article 20 (commencing with Section 775)**. The probation department has a similar role to child welfare when the parent or guardian's conduct contributed to the child's mental disorder. *See* WIC 727.13(d)(3).	
			JV-174 (7) A review hearing on the child~~'s~~**, nonminor, or nonminor dependent's** placement in the facility based upon the medical necessity of that placement is scheduled on (*specify date that is no later than 60 days after the admission of the child**, nonminor,** or nonminor dependent to the psychiatric treatment facility*): This requirement also applies to nonminors nonminor dependents. *See* WIC §§ 361.23(f)(2)(A), 361.23(k), 721.23(f)(2)(A), 727.13(k).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-175(3) a. Notice requirements were met. The people requiring notice in Welfare and Institutions	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			Code section 361.23(b)(3) or ~~727.13(a)(3)~~ **727.13(b)(3)** were notified as required by law. The citation needs to be corrected.	
			JV-175 (9) The psychiatric residential treatment facility has failed to meet its legal obligation to provide services to the child ***(specify)*:** ~~.~~ How the psychiatric residential treatment facility failed to meet its legal obligation to provide services should be specified for documentation purposes and to assist the social worker or probation officer in their subsequent engagement with the facility regarding those services.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-176-New section at top of form **The following form may be used for children and nonminor dependents under the jurisdiction of the juvenile court pursuant to Sections 300, 601, or 602, including nonminors who remain under juvenile court jurisdiction pursuant to Section 303(a) even if they do not meet the definition of "nonminor dependent" contained in Section 11400(v).** The forms only refer to "child" and "nonminor dependent," but Sections 361.23(k) and 727.13(k)	See response above regarding the requirements in section 361.23(k) and 727.13(b).

	Commenter	Position	Comment	Committee Response
			state that these provisions equally apply "to foster children who remain under juvenile court jurisdiction pursuant to subdivision (a) of Section 303 after reaching the age of majority even if they do not meet the definition of 'nonminor dependent' contained in subdivision (v) of Section 11400."	
			JV-176 (3) a. Notice requirements were met. The people requiring notice in Welfare and Institutions Code section ~~361.23 (b)(3)~~ **361.23(e)(3) or 727.13(e)(3)** were notified as required by California Rules of Court, rule 5.619. The citation needs to be corrected to reflect the provisions related to nonminor dependents.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-176 (4) [new section] **a. The □ nonminor □ nonminor dependent □ continues □ does not continue to meet medical necessity for care and treatment in the psychiatric residential treatment facility.** **b. There □ is □ is not an available less restrictive setting sufficient to meet the nonminor dependent's needs, including a less restrictive facility or community-based care.** Information about medical necessity and any available less restrictive settings is critically important to ensuring that young people are not staying in psychiatric residential treatment	The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			facilities any longer than necessary and should be added per WIC Sections 361.23(f)(2)(C) and 727.13(f)(2)(C).	
			JV-176 (4)a. [original numbering] The □ **nonminor** □ nonminor dependent continues to consent to the voluntary admission to a residential psychiatric treatment facility, and the evidence supports the nonminor dependent's need for care and treatment at the facility. (1) The □ social worker □ probation officer must transmit this form to the **nonminor or** nonminor dependent's interdisciplinary team. (2) The □ social worker □ probation officer must work with the facility on the **nonminor or** nonminor dependent's aftercare plan as appropriate based on the **nonminor or** nonminor dependent's need to achieve independence. (3) A hearing to review the **nonminor or** nonminor dependent's placement in the facility based upon the medical necessity of that placement is scheduled for (*specify date that is no later than 30 days from today*): The term "nonminor" should be added to reflect Sections 361.23(k) and 727.13(k).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			JV-176 (4)b. [original numbering] The □ **nonminor** □ nonminor dependent does not continue to consent to the voluntary admission to a residential psychiatric treatment facility.	The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.

Juvenile Law: Psychiatric Residential Treatment Facility Voluntary Admission (adopt Cal. Rules of Court, rule 5.519; adopt forms JV-172, JV-173, JV-174, JV-175, JV-176, and JV-177)

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

	Commenter	Position	Comment	Committee Response
			(1) The □ social worker □ probation officer must immediately notify the facility and immediately work with the **nonminor or** nonminor dependent and the facility for discharge to a less restrictive setting with the appropriate and necessary services and supports in place. (2) The court makes the following orders to ensure that the □ child welfare agency □ probation department makes all necessary arrangements for the **nonminor or** nonminor dependent's discharge promptly and that all services and supports are in place for the **nonminor or** nonminor dependent's successful transition to a different setting: (3) The □ child welfare agency □ probation department must file a Welf. & Inst. Code □ section 388 □ section 778 petition within two court days of notice of the revocation of consent, requesting an order vacating the court's authorization of the **nonminor or** nonminor dependent's admission to the facility. (4) A hearing to verify that the **nonminor or** nonminor dependent has been discharged is scheduled on (*specify date that is no later than 30 days from today*): (5) The **nonminor or** nonminor dependent should receive treatment through another hospital, program, facility, or community-based mental health service. A hearing to ensure that the other services have been provided is scheduled on (*specify date that is no later than 60 days from discharge date*):	

	Commenter	Position	Comment	Committee Response
			The term "nonminor" should be added to reflect Sections 361.23(k) and 727.13(k).	
			JV-176 (5) The psychiatric residential treatment facility has failed to meet its legal obligation to provide services to the ~~child~~ □ **nonminor** □ **nonminor dependent** ***(specify)*:**~~.~~ a. The □ social worker □ probation department must engage with the facility to ensure the ~~child~~ **nonminor or nonminor dependent** is receiving all necessary services. The term "nonminor" should be added to reflect Sections 361.23(k) and 727.13(k). How the psychiatric residential treatment facility failed to meet its legal obligation to provide services should be specified for documentation purposes and to assist the social worker or probation officer in their subsequent engagement with the facility regarding those services.	The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.
			JV-177-New section at top of form **The following form may be used for children and nonminor dependents under the**	See response above regarding the requirements in section 361.23(k) and 727.13(b).

	Commenter	Position	Comment	Committee Response
			jurisdiction of the juvenile court pursuant to Sections 300, 601, or 602, including nonminors who remain under juvenile court jurisdiction pursuant to Section 303(a) even if they do not meet the definition of "nonminor dependent" contained in Section 11400(v). The forms only refer to "child" and "nonminor dependent," but Sections 361.23(k) and 727.13(k) state that these provisions equally apply "to foster children who remain under juvenile court jurisdiction pursuant to subdivision (a) of Section 303 after reaching the age of majority even if they do not meet the definition of 'nonminor dependent' contained in subdivision (v) of Section 11400."	

Item number: 19

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 08/22/2023

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

Title of proposal: Juvenile Dependency Law: Counsel Collections Program Guidelines

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

Committee or other entity submitting the proposal:
Family & Juvenile Law Advisory Committee

*Staff contact (*name, phone and e-mail*): Daniel Richardson, 415-865-7619, daniel.richardson@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): 11/02/2022
Project description from annual agenda: Item 10: Juvenile Dependency Law: Counsel Collections Program Guidelines

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.

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.)
Appendix F requires that amendments to the Guidelines take effect no sooner than 30 days after the council meeting at which they are adopted (Cal. Rules of Court, App. F, item 2). However, rather than the regular Spring cycle effective date of January 1st, the committee is proposing an effective date of April 1, 2024 to coincide with technical changes conforming the form to th 2024 federal poverty update. Prior to the proposal's consideration by the Family and Juvenile Law Advisory Committee and after gathering additional input on the fiscal impact the proposed change, the proposal was reviewed by the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee's Joint Rules Subcommittee on January 19, 2023. The Joint Rules Subcommittee supported the proposed change to Appendix F.

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.: 23-20
For business meeting on September 20, 2022

Title
Juvenile Law: Counsel Collections Program Guidelines

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, Appendix F

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair

Agenda Item Type
Action Required

Effective Date
April 1, 2024

Date of Report
July 6, 2023

Contact
Daniel Richardson, 415-865-7619
daniel.richardson@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending *Guidelines for the Juvenile Dependency Counsel Collections Program* (*Guidelines*), Appendix F of the California Rules of Court, which addresses reimbursement to the court for the cost of appointed counsel in dependency matters, including setting an income level below which responsible persons are presumed unable to pay for this cost. The income level is based on the statute that addresses eligibility for a fee waiver, which was recently amended to increase the threshold income for a fee waiver from 125 percent of the federal poverty guidelines to 200 percent. Amending the *Guidelines* would maintain consistency with this statute.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective April 1, 2024, amend Appendix F to the California Rules of Court, item 6(d)(1), to incorporate by reference the fee waiver eligibility income limits in Government Code 68632(b)(1) to establish the presumptive inability to pay for dependency counsel.

The proposed amended appendix is attached at page 6.

Relevant Previous Council Action

Welfare and Institutions Code section 317[1] requires the juvenile court to appoint counsel to represent all children in dependency proceedings[2]—absent a finding that a particular child will not benefit from the appointment—as well as all indigent parents of children who have been placed out of the home or for whom out-of-home placement is recommended. Section 317 also authorizes the court to appoint counsel for all other indigent parents. Legislation in 2009, Assembly Bill 131 (Stats. 2009, ch. 413), required the Judicial Council to establish a program to collect monetary reimbursements from parents and other responsible persons, to the extent they are able to pay, for the court cost of providing legal services to these persons and their children in juvenile dependency proceedings. Effective January 1, 2013, the Judicial Council adopted the *Guidelines* as Appendix F to the California Rules of Court. As required by the statute, the *Guidelines* include a statewide standard for determining an obligated person's ability to pay reimbursement, as well as policies and procedures to allow courts to recover costs associated with implementing the counsel collections program. (§ 903.47(a)(1).)

The *Guidelines* include a two-step process for determining a person's inability to pay, stated in item 6(d). First, a responsible person who meets the income or benefits standards that automatically qualify an applicant for a fee waiver under Government Code section 68632(a) and (b) as they existed before recent amendments is presumed unable to pay and eligible for a waiver of liability:

> If a responsible person receives qualifying public benefits or has a household income *125 percent or less of the threshold established by the federal poverty guidelines* in effect at the time of the inquiry, then he or she is presumed to be unable to pay reimbursement and is eligible for a waiver of liability.

(Cal. Rules of Court, App. F, item 6(d)(1), italics added.)[3]

In the second step, the *Guidelines* permit a local court to determine that the person is unable to pay, ending the inquiry, or to make a policy determination that circumstances in its jurisdiction warrant further inquiry into the financial condition of a person who meets these threshold requirements.

---

[1] All unspecified statutory references are to the Welfare and Institutions Code.

[2] Each child "who is the subject of a dependency proceeding is a party to that proceeding." (§ 317.5(b).)

[3] Qualifying benefits are those under Government Code section 68632(a), which are incorporated by reference in item 6(d)(1)(A) of Appendix F. These qualifying benefits are (1) Supplemental Security Income and State Supplementary Payment (Welf. & Inst. Code, § 12200 et seq.); (2) California Work Opportunity and Responsibility to Kids Act (*id.*, § 11200 et seq.) or a federal Tribal Temporary Assistance for Needy Families grant program (*id.*, § 10553.25); (3) Supplemental Nutrition Assistance Program (7 U.S.C. § 2011 et seq.) or the California Food Assistance Program (Welf. & Inst. Code, § 18930 et seq.); (4) County Relief, General Relief, or General Assistance (*id.*, § 17000 et seq.); (5) Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (*id.*, § 18937 et seq.); (6) In-Home Supportive Services (*id.*, § 12300 et seq.); (7) Medi-Cal (*id.*, § 14000 et seq.); (8) California Special Supplemental Nutrition Program for Women, Infants, and Children (Health & Saf. Code, § 123275 et seq.); and (9) Unemployment compensation (Unemp. Ins. Code, § 1251 et seq.).

Analysis/Rationale

In its original adoption of the *Guidelines*, the Judicial Council chose to use the income level at which a responsible person qualifies for a fee waiver, then 125 percent of the federal poverty guidelines in Government Code section 68632(b), as the income level at which a responsible person is presumed unable to pay the cost of dependency counsel.[4] Recently, Assembly Bill 199 (Stats. 2022, ch. 57) amended Government Code section 68632(b) to increase the qualifying income level in that statute to 200 percent of the federal poverty guidelines:

> An applicant whose monthly income is 200 percent or less of the current poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of paragraph (2) of Section 9902 of Title 42 of the United States Code or a successor statute or regulation.

(Gov. Code, § 68632(b)(1).)

To maintain consistency with the statute, the committee recommends referencing Government Code section 68632(b)(1) in the *Guidelines* rather than changing the number 125 to 200. Doing so would avoid having to update the *Guidelines* whenever the statute is changed.

Changing the presumption of inability to pay from 125 percent of the federal poverty guidelines to 200 percent would result in the following income figures based on the current federal poverty guidelines:

Number in Family	2023 Federal Poverty Guidelines (A)	200% of Poverty Guidelines (B) (B = A x 2)	2023 California Monthly Income (C) (C = B / 12)*
1	$14,580.00	$29,160.00	$2,430.00
2	19,720.00	39,440.00	3,286.67
3	24,860.00	49,720.00	4,143.33
4	30,000.00	60,000.00	5,000.00
5	35,140.00	70,280.00	5,856.67
6	40,280.00	80,560.00	6,713.33
For each additional person, add:	5,140.00	10,280.00	856.67

The proposed change to the *Guidelines* would also require revisions to *Financial Declaration—Juvenile Dependency* (form JV-132), the optional form a responsible person can use to support a request to be found unable to pay for the cost of counsel. The form contains a chart with income

[4] Cal. Rules of Court, App. F, item 6(d)(1); see Judicial Council of Cal., Advisory Com. Rep., *Juvenile Dependency: Counsel Collections Program* (Sept. 14, 2012), p. 5, *www.courts.ca.gov/documents/jc-20121026-itemA20.pdf*. The federal poverty guidelines are issued by the U.S. Department of Health and Human Services and typically updated every year in January. See 42 U.S.C. § 9902.

figures based on 125 percent of the current federal poverty guidelines. The numbers in the chart would be updated to 200 percent.

Typically, the federal poverty guidelines are adjusted in January of each year, and the numbers on this form are updated annually to reflect that adjustment.[5] To avoid iterative changes, the committee recommends that the form be revised once, in early 2024, to reflect both the 2024 federal poverty guidelines and the increase from 125 to 200 percent as the income level establishing a presumption of inability to pay.

In addition, amendments to the *Guidelines* can take effect "no sooner than 30 days after the council meeting at which they are adopted" (Cal. Rules of Court, App. F, item 2). To accommodate this requirement, the committee recommends an effective date of April 1, 2024, for modifications to both the *Guidelines* and the form.

Policy implications

Increasing the fee waiver income eligibility level to 200 percent of the federal poverty guidelines reflects the Legislature's intent to reduce the financial burden that individuals face when they are involved in court proceedings. Mirroring this change by amending the income level at which a person is presumed unable to pay the cost of counsel in juvenile dependency proceedings furthers this policy. It also will result in fewer individuals responsible for the payment of counsel, which will result in a marginal decrease in funding to courts (addressed further in the Fiscal and Operational Impacts section of this report). The committee determined this tradeoff was worth making to promote a more equitable approach for individuals with low incomes involved in dependency proceedings.

Incorporating Government Code section 68632(b) into the *Guidelines* by reference will also maintain alignment with the statutory fee waiver eligibility set by the Legislature.

Comments

The proposal circulated for public comment from March 31 to May 12, 2023, as part of the regular spring comment cycle. Three comments were received, from a bench officer, a bar association and on behalf of a superior court. All commenters agreed with the proposal. No substantive comments were received except the comment on behalf of the superior court noted, without further comment, that the proposal would not affect the court financially. The names of the commenters and the full comments received are in the attached comment chart.

Alternatives considered

The committee considered not recommending any change and so leaving the income eligibility for a presumption of inability to pay for attorney's fees by a parent at 125 percent of the federal poverty guidelines. The committee, however, determined that the *Guidelines*' income levels should continue to match the statutory fee waiver income eligibility levels and further the Legislature's intent of reducing the financial burden that individuals face when they are involved

[5] These updates are minor, noncontroversial changes that are not circulated for public comment under rule 10.22(d).

in court proceedings. The committee noted that this involvement is most often involuntary. In addition, under the *Guidelines*, courts still have the ability to order a parent to pay if the court determines, after further inquiry, that the parent is able to pay, notwithstanding the presumption to the contrary.

The committee also considered whether Government Code section 68632(b) should be incorporated into the *Guidelines* by reference, or if the income level should simply be changed from 125 percent to 200 percent. The committee decided to incorporate Government Code section 68632(b)(1) by reference to ensure that the *Guidelines* remain aligned with statutory fee waiver eligibility and to conserve the resources that would be expended to update the *Guidelines* and form JV-132 when the Legislature adjusts the eligibility for a court fee waiver.

Fiscal and Operational Impacts

By statute, reimbursement money collected by the courts must be transmitted to the Judicial Council and deposited into the Trial Court Trust Fund. (§§ 903.1, 903.47.) Section 903.47(a)(2) adds a mandate that, "[e]xcept as otherwise authorized by law, the money collected under this program shall be utilized to reduce caseloads, for attorneys appointed by the court, to the caseload standard approved by the Judicial Council. Priority shall be given to those courts with the highest attorney caseloads that also demonstrate the ability to immediately improve outcomes for parents and children as a result of lower attorney caseloads." Increasing the threshold requirement for inability to pay to 200 percent of the federal poverty guidelines may result in a decrease in funds available in the Trial Court Trust Fund because more individuals will meet the presumption of an inability to pay.

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee reviewed the proposal on January 19, 2023. The Joint Rules Subcommittee supported the proposed change to the *Guidelines*, reasoning that making the collections program consistent with fee waiver eligibility criteria promotes consistency for courts making these income determinations. In addition, the subcommittee believed that the fiscal impacts on courts would be very limited.

Attachments and Links

1. Cal. Rules of Court, Appendix F, at page 6
2. Chart of comments, at pages 7–8
3. Link A: Assem. Bill 199 (Stats. 2022, ch. 57), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB199*

Appendix F to the California Rules of Court is amended, effective April 1, 2024, to read:

Appendix F

Guidelines for the Juvenile Dependency Counsel Collections Program (JDCCP)

1.–5. * * *

6. * * *

(a)–(c) * * *

(d) Standard for Determining Ability to Pay

The FEO will determine the responsible person's ability to reimburse the cost of legal services using the following standard:

(1) *Presumptive Inability to Pay; Waiver*

If a responsible person receives qualifying public benefits or qualifies for a fee waiver under the criteria of Government Code section 68632(b)(1) ~~has a household income 125 percent or less of the threshold established by the federal poverty guidelines in effect~~ at the time of the inquiry, then the person ~~he or she~~ is presumed to be unable to pay reimbursement and is eligible for a waiver of liability.

(A) *Qualifying public benefits* include benefits under any of the programs listed in Government Code section 68632(a).

(2)–(3) * * *

(e)–(h) * * *

7.–15. * * *

SPR23-20
Juvenile Law: Counsel Collections Program Guidelines (amend Cal. Rules of Court, Appendix F)

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

	Commenter	Position	Comment	Committee Response
1.	Hon. Stephen Ipson Commissioner Los Angeles Superior Court	A		No response required.
2.	Orange County Bar Association By Michael A. Gregg President	A		No response required.
3.	Superior Court of Orange County	A	▪ *Does the Proposal appropriately address the stated purpose?* No comment. ▪ *Would the proposal provide cost savings? If so, please quantify.* This proposal does not impact Orange County financially. ▪ *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?* N/A ▪ *Would an effective date of April 1, 2024,*	No response required. The committee appreciates this information.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

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

	Commenter	Position	Comment	Committee Response
			one hundred and eighty-seven days from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? No comment. ▪ *How well would this proposal work in courts of different sizes?* No comment.	

Item number: 20

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Child Support: Implementing Amendments to Family Code section 4007.5

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Revise forms FL-192, FL-490, FL-676, and FL-676-INFO

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

*Staff contact (*name, phone and e-mail*): John Henzl, 5-7607, john.henzl@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*): 11/1/2023
Project description from annual agenda: tem 1: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration and will take action only where necessary to allow courts to implement the legislation efficiently.

(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

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.

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REPORT TO THE JUDICIAL COUNCIL

Item No. ____

For business meeting on September 18–19, 2023

Title

Child Support: Implementing Amendments to Family Code Section 4007.5

Rules, Forms, Standards, or Statutes Affected

Revise forms FL-192, FL-490, FL-676, and FL-676-INFO

Recommended by

Family and Juvenile Law Advisory Committee

Hon. Stephanie E. Hulsey, Cochair

Hon. Amy M. Pellman, Cochair

Agenda Item Type

Action Required

Effective Date

January 1, 2024

Date of Report

July 14, 2023

Contact

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Executive Summary

The Family and Juvenile Law Advisory Committee proposes revising several forms in order to provide court users and the public with updated information regarding relief available to incarcerated or involuntarily institutionalized child support obligors. The proposed revisions are necessary to reflect recent amendments made to Family Code section 4007.5.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council revise the following forms, effective January 1, 2024, to provide court users and the public with updated information regarding relief available to incarcerated or involuntarily institutionalized child support obligors:

- *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order* (form FL-192);
- *Application to Determine Arrears* (form FL-490);
- *Request for Determination of Support Arrears* (form FL-676); and
- *Information Sheet: Request for Determination of Support Arrears* (form FL-676-INFO).

The proposed revised forms are attached at pages 8–14.

Relevant Previous Council Action

Effective July 1, 2011, the Judicial Council revised forms FL-530, FL-615, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, and FL-692 in response to Senate Bill 1355 (Wright; Stats. 2010, ch. 495), which enacted Family Code section 4007.5[1] and provided a process for formerly incarcerated or involuntarily institutionalized obligors to petition the court for forgiveness of child support arrears that accrued during their incarceration or involuntary institutionalization. Section 4007.5 contained a sunset date and expired accordingly on June 30, 2015.

Effective January 1, 2017, the Judicial Council revised those same forms, along with forms FL-342, FL-350, FL-490, and FL-688, in response to Assembly Bill 610 (Jones-Sawyer; Stats. 2015, ch. 629), which enacted a new version of section 4007.5 that revived and expanded the relief previously available to child support obligors.

Effective January 1, 2020, the Judicial Council again revised those same forms to remove references to relief formerly available to child support obligors under section 4007.5, as the statute sunsetted effective January 1, 2020.

Effective January 1, 2022, the Judicial Council revised forms FL-192, FL-350, FL-490, FL-676, FL-676-INFO, and FL-688, as section 4007.5 was reenacted by Assembly Bill 2325 (Carrillo; Stats. 2020, ch. 217). Instead of listing the relief available to incarcerated or involuntarily institutionalized obligors on multiple child support order and judgment forms as the council had done in the past, these forms were revised so they all would indicate that form FL-192 is attached, with the relief available being listed on that form instead.[2]

Analysis/Rationale

Section 4007.5 (see Link A), which provides that, by operation of law, any money judgment or order for child support is automatically suspended for the time period an obligor is confined if they are incarcerated or involuntarily institutionalized for more than 90 consecutive days, was recently amended by Assembly Bill 207 (Stats. 2022, ch. 573). Because this legislation was enacted as a budget trailer bill without a delayed implementation date, the amendments were effective on September 27, 2022, the day Governor Newsom signed the bill into law. This section was originally put into place effective July 1, 2011, but was then sunsetted and later reenacted multiple times.

[1] All further statutory references are to the Family Code.

[2] Judicial Council of Cal., Advisory Com. Rep., *Family Law: Reenactment of Family Code Section 4007.5* (Sept. 3, 2021), *https://jcc.legistar.com/View.ashx?M=F&ID=9785555&GUID=9292043B-3626-4778-9FB5-5F961FFE02A4*.

AB 207 made several amendments to section 4007.5, including:

- Removing the January 1, 2023, sunset date;
- Removing the exceptions for relief if a child support obligor was incarcerated or involuntarily institutionalized for failing to pay child support or domestic violence against the other parent or child;
- Expanding relief for child support orders entered or modified before the effective date of the amendments (prior versions only allowed for relief from support orders entered or modified after the law's effective date); and
- Declaring relief may still be requested from the court if an obligor qualified for relief during the time frame the prior versions of the statute granting relief by operation of law were in effect (i.e., October 8, 2015, to December 31, 2019, and January 1, 2021, to September 26, 2022).

To comply with recent amendments to section 4007.5, the committee proposes revising forms FL-192, FL-490, FL-676, and FL-676-INFO so they accurately reflect the current law.

Including relief for prior confinement

These forms were last revised effective January 1, 2022, and when that proposal went out for public comment as part of the invitation to comment process, an issue arose of whether the forms should include information indicating that relief was still available for obligors who qualified for relief while the prior version of the statute was in effect (October 8, 2015, to December 31, 2019), prior to it sunsetting, as obligors were entitled to this relief by operation of law.[3] Although one commenter suggested the forms should include this information, based on the legal analysis conducted and the lack of clarity surrounding this issue, the committee instead recommended that the forms indicate that relief *may* be available and to allow a mechanism for that relief to be granted. Specifically, at that time the committee recommended that:

- Forms FL-192 and FL-676-INFO be revised to include the following language, with instructions to talk to the family law facilitator for more information: "If your child support order was entered or modified between October 8, 2015, and December 31, 2019, and you were confined against your will for more than 90 days in a row during the same time frame, you may also qualify for relief"; and

- Forms FL-490 and FL-676 be revised to include the following language that would allow a way for obligors to request this relief: "The child support order entered on *(date):*_____ was stopped (suspended) because [ ] the order says it would stop [ ] **by operation of law**" (emphasis added).[4]

[3] *Id.* at pp. 6–8.

[4] This proposed language was also responsive to another comment received that relief may be available based on other terms included in a child support judgment or order, as many counties use local forms or attachments that

The council approved these recommendations and adopted the revised forms as proposed. However, with the passage of AB 207, this issue has now been resolved by the Legislature by adding the following language to section 4007.5(i):

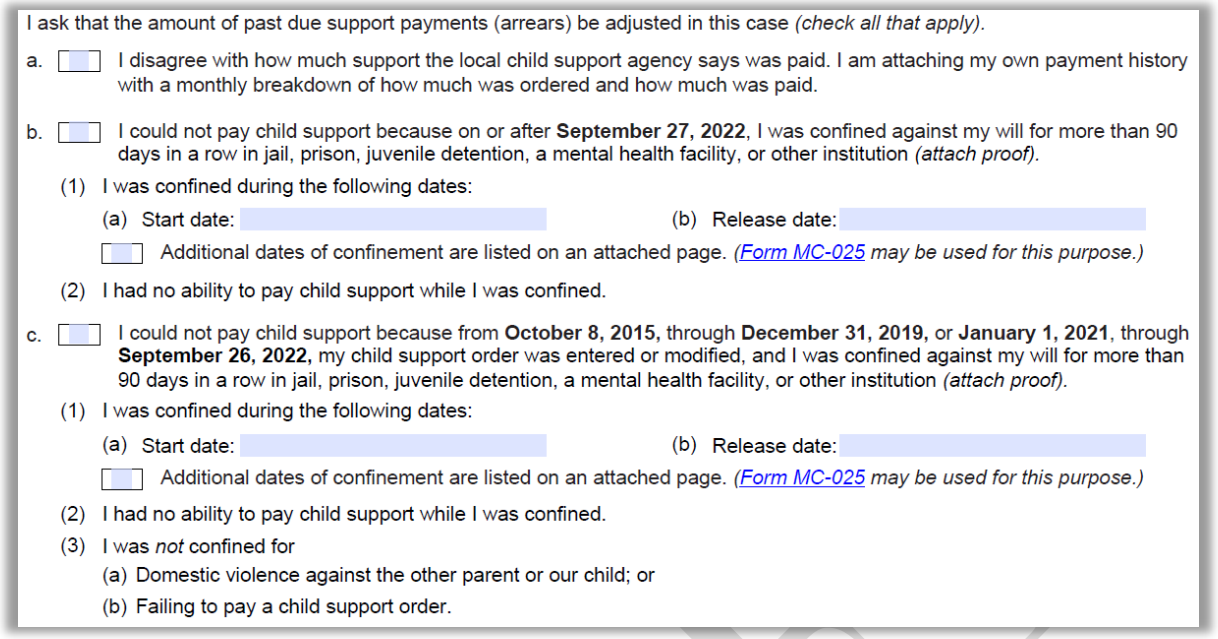
> It is the intent of the Legislature to ensure qualified persons are provided the support suspension by operation of law for qualified periods of incarceration or involuntary institutionalization that existed during the operative terms of the earlier versions of this statute regardless of whether the judicial or administrative determination of arrears is made before or after the repeal of the statute, if the earlier version of the statute provided for the money judgment or order for support to be suspended by operation of law. This subdivision is declarative of existing law.

Consequently, because the Legislature has made it clear that relief can still be requested by an obligor who then qualified for relief under a prior version of the statute where relief was granted by operation of law, these sections of the forms must be revised. Specifically, relief is still available while the last two versions of the statute were in effect during the following time frames (prior to the adoption of AB 207): October 8, 2015, to December 31, 2019, and January 1, 2021, to September 26, 2022.

As stated above, AB 207 removed the exceptions for relief if an obligor was incarcerated for failing to pay child support or for domestic violence against the other parent or their child. However, this change only applies to obligors requesting relief for incarceration that occurred on or after the effective date of the amendments: September 27, 2022. In other words, these two exceptions to relief would still apply for obligors requesting relief for incarceration that occurred prior to adoption of AB 207 under the prior two versions of the statute.

It is now proposed that the first page of forms FL-192 and FL-676-INFO be revised to include information about relief still being available for these two time frames. Additionally, it is proposed that forms FL-490 and FL-676 be revised to include two separate check boxes to request relief under section 4007.5; one check box for requesting relief under the current statute and a separate check box for requesting relief under the prior two versions of the statute as shown in the screenshot below:

include certain standard orders in cases with local child support agency involvement (e.g., an order stating that child support will automatically be suspended if an obligor starts receiving Supplemental Security Income).


I ask that the amount of past due support payments (arrears) be adjusted in this case *(check all that apply)*.

a. ☐ I disagree with how much support the local child support agency says was paid. I am attaching my own payment history with a monthly breakdown of how much was ordered and how much was paid.

b. ☐ I could not pay child support because on or after **September 27, 2022**, I was confined against my will for more than 90 days in a row in jail, prison, juvenile detention, a mental health facility, or other institution *(attach proof)*.

(1) I was confined during the following dates:

(a) Start date: (b) Release date:

☐ Additional dates of confinement are listed on an attached page. *(Form MC-025 may be used for this purpose.)*

(2) I had no ability to pay child support while I was confined.

c. ☐ I could not pay child support because from **October 8, 2015,** through **December 31, 2019,** or **January 1, 2021**, through **September 26, 2022,** my child support order was entered or modified, and I was confined against my will for more than 90 days in a row in jail, prison, juvenile detention, a mental health facility, or other institution *(attach proof)*.

(1) I was confined during the following dates:

(a) Start date: (b) Release date:

☐ Additional dates of confinement are listed on an attached page. *(Form MC-025 may be used for this purpose.)*

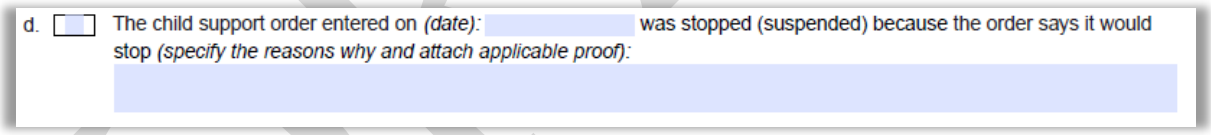
(2) I had no ability to pay child support while I was confined.

(3) I was *not* confined for

(a) Domestic violence against the other parent or our child; or

(b) Failing to pay a child support order.

Finally, it is proposed that form FL-676 (a governmental child support form) still include the check box shown below, but that the language "by operation of law" be removed. That language was specifically added to allow obligors a way to request their arrears be adjusted if they qualified for relief while the prior version was in effect; however, it is no longer necessary with the new proposed check box in item 5c, shown above. (The remaining language on form FL-676 would still allow obligors to request relief if their order contains one of the standard orders used in cases with local child support agency involvement, as referenced in footnote 4 of this report.)


d. ☐ The child support order entered on *(date)*: was stopped (suspended) because the order says it would stop *(specify the reasons why and attach applicable proof)*:

Policy implications

This proposal has no major implications to any policies. It aligns with the Judicial Council's policy to keep forms consistent with related statutes.

Comments

This proposal circulated for comment as part of the spring 2023 invitation-to-comment cycle, from March 30 to May 12, 2023, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, and other family law professionals. The proposal also went to the California Department of Child Support Services, the Legal Practices committee chair of the Child Support Directors Association of California, the Judicial Council's Trial Court Presiding Judges Advisory

Committee and Court Executives Advisory Committee Joint Rules Subcommittee, and child support commissioners.

In total, the following nine organizations submitted comments: the Superior Court of Los Angeles, the Superior Court of Orange County, the Superior Court of San Bernardino, the Superior Court of San Diego, the California Department of Child Support Services, the California Child Support Directors Association, the California Lawyers Association, Family Law Section Executive Committee, the Trial Court Presiding Judge Advisory Committee and Court Executives Advisory Committee Joint Rules Subcommittee, and the Orange County Bar Association. Commenters made thoughtful suggestions to improve the clarity of the forms with the use of more simplified language, where possible. The committee incorporated many of the suggested revisions. For example, three of the forms in the proposal initially used the term "after September 26, 2022" to describe the effective date of the most recent revisions to section 4007.5. However, multiple commenters suggested that it would be more clear and easier to understand if this phrase was changed to "on or after September 27, 2022." Another suggestion made by multiple commenters was to allow litigants using forms FL-490 and FL-676 the ability to request relief for more than one period of confinement. The proposed revised versions of those forms now include checkboxes to indicate that "[a]dditional dates if confinement are listed on an attached page." In conclusion, all nine commenters either agreed with the entire proposal, agreed if certain modifications were made, or did not indicate their position.

Alternatives considered

The committee considered not revising any forms as legislation is currently pending that would amend section 4007.5 and cause various forms to be revised yet again.[5] However, the committee instead proposes revising the forms described above in order to provide information to court users—including self-represented litigants—and the public about the relief available to child support obligors if they are or were incarcerated or involuntarily institutionalized for longer than 90 days.

Fiscal and Operational Impacts

As with any revisions to forms, the committee anticipates that courts would incur some costs to revise forms and add them to their case management systems, train court staff about the revised forms included in this proposal, and possibly revise local court rules and forms so they are consistent with the changes adopted by the Judicial Council.

Attachments and Links

1. Forms FL-192, FL-490, FL-676, and FL-676-INFO, at pages 8–14
2. Chart of comments, at pages 15–27

[5] See Assem. Bill 1148 (2023–2024 Reg. Sess.), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1148*.

3. Link A: Fam. Code, § 4007.5, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=4007.5*

NOTICE OF RIGHTS AND RESPONSIBILITIES

DRAFT
Not approved by Judicial Council

Health-Care Costs and Reimbursement Procedures

If you have a child support order that includes a provision for the reimbursement of a portion of the child's or children's health-care costs and those costs are not paid by insurance, the **law says**:

1. Notice. You must give the other parent an itemized statement of the charges that have been billed for any health-care costs not paid by insurance. You must give this statement to the other parent within a reasonable time, but no more than 30 days after those costs were given to you.

2. Proof of full payment. If you have already paid all of the uninsured costs, you must (1) give the other parent proof that you paid them and (2) ask for reimbursement for the other parent's court-ordered share of those costs.

3. Proof of partial payment. If you have paid only your share of the uninsured costs, you must (1) give the other parent proof that you paid your share, (2) ask that the other parent pay his or her share of the costs directly to the health-care provider, and (3) give the other parent the information necessary for that parent to be able to pay the bill.

4. Payment by notified parent. If you receive notice from a parent that an uninsured health-care cost has been incurred, you must pay your share of that cost within the time the court orders; or if the court has not specified a period of time, you must make payment (1) within 30 days from the time you were given notice of the amount due, (2) according to any payment schedule set by the health-care provider, (3) according to a schedule agreed to in writing by you and the other parent, or (4) according to a schedule adopted by the court.

5. Going to court. Sometimes parents get into disagreements about health-care costs. If you and the other parent cannot resolve the situation after talking about it, you can request that the court make a decision.

a. **Disputed charges.** If you dispute a charge made by the other parent, you may file a request for the court to resolve the dispute, but only if you pay that charge before filing your request.

b. **Nonpayment.** If you claim that the other parent has failed to pay you back for a payment, or they have failed to make a payment to the provider after proper notice, you may file a request for the court to resolve the dispute. The court will presume that if uninsured costs have been paid, those costs were reasonable.

c. **Attorney's fees.** If the court decides one parent has been unreasonable, it can order that parent to pay the other parent's attorney's fees and costs.

d. **Court forms.** Use forms FL-300 and FL-490 to get a court date. See form FL-300-INFO for information about completing, filing, and serving your court papers.

6. Court-ordered insurance coverage. If a parent provides health-care insurance as ordered by the court, that insurance must be used at all times to the extent that it is available for health-care costs.

a. **Burden to prove.** The parent claiming that the coverage is inadequate to meet the child's needs has the burden of proving that to the court.

b. **Cost of additional coverage.** If a parent purchases health-care insurance in addition to that ordered by the court, that parent must pay all the costs of the additional coverage. In addition, if a parent uses alternative coverage that costs more than the coverage provided by court order, that parent must pay the difference.

7. Preferred health providers. If the court-ordered coverage designates a preferred health-care provider, that provider must be used at all times consistent with the terms of the health insurance policy. When any parent uses a health-care provider other than the preferred provider, any health-care costs that would have been paid by the preferred health provider if that provider had been used must be the sole responsibility of the parent incurring those costs.

Information About Child Support for Incarcerated or Detained Parents

1. Child support. As of September 27, 2022, child support automatically stops if the parent who has to pay is confined against their will for more than 90 days in a row in jail, prison, juvenile detention, a mental health facility, or other institution.

Exception. Child support does not automatically stop if the parent who has to pay has money available to pay child support.

2. Past confinement. Child support also stops during past confinement if it was ordered from October 8, 2015, through December 31, 2019, or January 1, 2021, through September 26, 2022, and the parent who has to pay was confined for more than 90 days in a row during the same time frame.

Exceptions for past confinement. Child support does not automatically stop if the parent who has to pay was in jail or prison for failing to pay child support or for domestic violence against the other parent or the child, or if they had money available to pay support.

3. Timing. Child support automatically restarts the first day of the first full month after the parent is released. If you need to change your child support order, see page 2.

4. More info. For more information about child support and incarcerated parents, see Family Code section 4007.5 or go to *https://selfhelp.courts.ca.gov/child-support/incarcerated-parent*.

NOTICE OF RIGHTS AND RESPONSIBILITIES

Information Sheet on Changing a Child Support Order

General Info
The court has made a child support order in your case. This order will remain the same unless one of the parents requests that the support be changed (modified). An order for child support can be modified by filing a request to change child support and serving the other parent. If both parents agree on a new child support amount, they can complete, sign, and file with the court a *Stipulation to Establish or Modify Child Support and Order* (form FL-350). (**Note:** If the local child support agency is involved in your case, it must be served with any request to change child support and approve any agreement.)

Online Self-Help Guide
For more information about how child support works, visit: *https://selfhelp.courts.ca.gov/child-support*.

When a Child Support Order May Be Changed
The court considers several things when ordering the payment of child support.

- First, the number of children is considered, along with the percentage of time each parent has physical custody of the children.
- Next, the net disposable incomes of both parents are determined (which is how much money is left each month after taxes and certain other items like health insurance, union dues, or other child support ordered and paid are subtracted from a parent's paycheck). The court can also look at earning ability if a parent is not working.
- The court considers both parents' tax filing status and may consider hardships, such as the cost of raising a child of another relationship who lives with a parent.

A parent can request to change an existing order for child support when circumstances change significantly. For example if the net disposable income of one of the parents changes, parenting time changes, or a new child is born.

Examples

- You have been ordered to pay $500 per month in child support. You lose your job. You will continue to owe $500 per month, plus 10 percent interest on any unpaid support, unless you file a motion to modify your child support to a lower amount and the court orders a reduction.
- You are currently receiving $300 per month in child support from the other parent, whose net income has just increased substantially. You will continue to receive $300 per month unless you file a motion to modify your child support to a higher amount and the court orders an increase.
- You are paying child support based upon having physical custody of your children 30 percent of the time. After several months it turns out that you actually have physical custody of the children 50 percent of the time. You may file a motion to modify child support to a lower amount.

How to Change a Child Support Order
To change a child support order, you must file papers with the court. *Remember:* You must follow the order you have now.

What forms do I need?
If you are asking to change a child support order, you must fill out one of these forms:

- Form FL-300, *Request for Order* **or**
- Form FL-390, *Notice of Motion and Motion for Simplified Modification of Order for Child, Spousal, or Family Support*

You must also fill out one of these forms, and attach proof of income for the past two months (like your paycheck stubs):

- Form FL-150, *Income and Expense Declaration* **or**
- Form FL-155, *Financial Statement (Simplified)*

What if I am not sure which forms to fill out?
Contact the family law facilitator in your county. You can find them here: *https://www.courts.ca.gov/selfhelp-facilitators.htm*.

After you fill out the forms, file them with the court clerk and ask for a hearing date. Write the hearing date on the form. The clerk may ask you to pay a filing fee. If you cannot afford the fee, fill out these forms, too:

- Form FW-001, *Request to Waive Court Fees* **and**
- Form FW-003, *Order on Court Fee Waiver (Superior Court)*

You must serve the other parent. If the local child support agency is involved, serve it too.

- This means someone 18 or over—not you—must deliver copies of your filed court forms to the other parent, at least **16 court days** before the hearing. Add **5 calendar days** if delivered by mail within California (see Code of Civil Procedure section 1005 for other situations).
- **Court days** are weekdays when the court is open for business (Monday through Friday except court holidays). **Calendar days** include all days of the month, including weekends and holidays. To find court holidays, go to *www.courts.ca.gov/holidays.htm*.

Blank copies of both of these forms must also be served:

- Form FL-320, *Responsive Declaration to Request for Order*
- Form FL-150, *Income and Expense Declaration*

Then the server fills out and signs a *Proof of Service* Take this form, plus one copy, to the clerk and file it at least one week before your hearing.

Go to your hearing and ask the judge to change the support. Bring your tax returns from the last two years and your last two months' pay stubs. The judge will look at your information, listen to both parents, and make an order. After the hearing, fill out:

- Form FL-340, *Findings and Order After Hearing* **and**
- Form FL-342, *Child Support Information and Order*

Need help?
Contact the family law facilitator in your county or call your county's bar association and ask for an experienced family lawyer.

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER: **DRAFT**

APPLICATION TO DETERMINE ARREARS

Attachment to *Request for Order* (form FL-300)

Not approved by the Judicial Council

☐ **Child support** ☐ **Spousal or partner support** ☐ **Family support** ☐ **Medical support**
☐ **Unreimbursed expenses** ☐ **Unreimbursed medical expenses** ☐ **Other *(specify):***

1. I ask that the amount of past due support payments (arrears) be decided in this case because *(check all that apply):*
   a. ☐ I have already paid ☐ some ☐ all of the support ordered. Proof of payment is attached.
   b. ☐ The children for whom support is to be paid were living with me full time for the period from: to: . I provided all of their support during that period. I am attaching a detailed declaration explaining these facts and supporting documentation, including any proof that the children were living with me.
   c. ☐ I could not pay child support because on or after **September 27, 2022**, I was confined against my will for more than 90 days in a row in jail, prison, juvenile detention, a mental health facility, or other institution *(attach proof).*
      (1) I was confined during the following dates:
         (a) Start date: (b) Release date:
         ☐ Additional dates of confinement are listed on an attached page. *(Form MC-025 may be used for this purpose.)*
      (2) I had no ability to pay child support while I was confined.
   d. ☐ I could not pay child support because from **October 8, 2015,** through **December 31, 2019,** or **January 1, 2021**, through **September 26, 2022,** my child support order was entered or modified, and I was confined against my will for more than 90 days in a row in jail, prison, juvenile detention, a mental health facility, or other institution *(attach proof).*
      (1) I was confined during the following dates:
         (a) Start date: (b) Release date:
         ☐ Additional dates of confinement are listed on an attached page. *(Form MC-025 may be used for this purpose.)*
      (2) I had no ability to pay child support while I was confined.
      (3) I was *not* confined for
         (a) Domestic violence against the other parent or our child; or
         (b) Failing to pay a child support order.
   e. ☐ Other *(specify):*
2. ☐ I have previously asked the other parent for payment and provided the other parent with an itemized statement of the unreimbursed ☐ childcare expense ☐ medical expense. *(Attach copies of all bills being claimed and proof of any payments that you have made on these bills.)*
3. ☐ I request the other person pay my attorney's fees and costs. My *Income and Expense Declaration* (form FL-150) is attached.
4. I have attached *(check all that apply):*
   a. ☐ a *Declaration of Payment History* (form FL-420).
   b. ☐ a *Payment History Attachment* (form FL-421).
   c. ☐ Other *(specify):*
5. Facts in support of the relief requested are *(specify):*

   ☐ contained in the attached declaration.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

NOTICE: This form must be attached to *Request for Order* (form FL-300).
For help completing this form, talk to the family law facilitator or self-help center in your county.

NOT A COURT ORDER

Form Adopted for Mandatory Use
Judicial Council of California
FL-490 [Rev. January 1, 2024]

Family Code, §§ 4007.5, 4720–4732
www.courts.ca.gov

PARTY WITHOUT ATTORNEY OR ATTORNEY *(name, state bar number, and address)*:	FOR COURT USE ONLY
NAME: STATE BAR NO.: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARTY:	
REQUEST FOR DETERMINATION OF SUPPORT ARREARS	CASE NUMBER:

INSTRUCTIONS

- Use this form if you disagree with the local child support agency about how much back support (arrears) is owed.
- Complete items 4–7. For more information about completing this form, see *Information Sheet: Request for Determination of Support Arrears* (form FL-676-INFO).
- After you fill out the request and any attachments, take the originals plus three copies to the court clerk to file.
- After you file, copies of your court papers must be "served" on the local child support agency and the other party in the case, and you must file a proof of service with the court. See form FL-676-INFO for more information about serving the request.
- Make sure you go to the court hearing listed in item 1.
- For help completing this form, talk to the family law facilitator in your county.

NOTICE OF HEARING

1. A hearing on this application will be held as follows:
   a. Date: Time: Dept: Div: Room:
   b. The address of the court is ☐ same as noted above ☐ Other *(specify)*:

2. **WARNING to the person served with this request:** The court may make the requested orders without you if you do not file a *Response to Governmental Notice of Motion or Order to Show Cause* (form FL-685) and appear at the hearing. See form FL-676-INFO for more information about filing a response.

3. The local child support agency is providing support enforcement services in this case.

4. Person making this request
   a. My name is:
   b. I am the:
      (1) ☐ Petitioner
      (2) ☐ Respondent
      (3) ☐ Other *(specify)*:

5. a. I ☐ did ☐ did not request an administrative review of support received by the local child support agency.
   b. A printout listing support payments received by the local child support agency ☐ is ☐ is not attached.

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

6. I ask that the amount of past due support payments (arrears) be adjusted in this case *(check all that apply).*

a. ☐ I disagree with how much support the local child support agency says was paid. I am attaching my own payment history with a monthly breakdown of how much was ordered and how much was paid.

b. ☐ I could not pay child support because on or after **September 27, 2022**, I was confined against my will for more than 90 days in a row in jail, prison, juvenile detention, a mental health facility, or other institution *(attach proof).*

(1) I was confined during the following dates:

(a) Start date: (b) Release date:

☐ Additional dates of confinement are listed on an attached page. *(Form MC-025 may be used for this purpose.)*

(2) I had no ability to pay child support while I was confined.

c. ☐ I could not pay child support because from **October 8, 2015,** through **December 31, 2019,** or **January 1, 2021**, through **September 26, 2022,** my child support order was entered or modified, and I was confined against my will for more than 90 days in a row in jail, prison, juvenile detention, a mental health facility, or other institution *(attach proof).*

(1) I was confined during the following dates:

(a) Start date: (b) Release date:

☐ Additional dates of confinement are listed on an attached page. *(Form MC-025 may be used for this purpose.)*

(2) I had no ability to pay child support while I was confined.

(3) I was *not* confined for

(a) Domestic violence against the other parent or our child; or

(b) Failing to pay a child support order.

d. ☐ The child support order entered on *(date):* was stopped (suspended) because the order says it would stop *(specify the reasons why and attach applicable proof):*

e. ☐ Other *(specify):*

7. I have attached *(check all that apply):*

a. ☐ a *Declaration of Payment History* (form FL-420).

b. ☐ a *Payment History Attachment* (form FL-421).

c. ☐ a printout listing support payments received by the local child support agency.

d. ☐ proof of incarceration or confinement.

e. ☐ Other *(specify):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) (SIGNATURE)

This case may be referred to a court commissioner for hearing. By law, court commissioners do not have the authority to issue final orders and judgments in contested cases unless they are acting as temporary judges. The court commissioner in your case will act as a temporary judge unless, *before the hearing*, you or any other party objects to the commissioner's acting as a temporary judge. If a party objects, the court commissioner may still hear your case to make findings and a recommended order to a judge. If you do not like the recommended order, you must object to it within **10 court days** in writing (use *Notice of Objection* (form FL-666)); otherwise, the recommended order will become a final order of the court. If you object to the recommended order, a judge will make a temporary order and set a new hearing.

FL-676-INFO Information Sheet: Request for Determination of Support Arrears

When do I use form FL-676?

Use this form if the local child support agency is involved in your child support case and you:

- Disagree with how much in back support (arrears) the agency says is owed; or
- The agency refused to adjust the back support (arrears) for the time you were incarcerated or confined against your will for longer than 90 days and couldn't pay child support.

Do *NOT* use form FL-676 to change the order

If you want to change the support order, you need to file a *Request for Order* (form FL-300) and an *Income and Expense Declaration* (form FL-150). See form FL-300-INFO for more information.

How do I get a court date?

Step 1: Fill out the form (in black or blue ink)

❶ Put your name, address, and contact information at the top of the form. Next, enter the court name and address. Then insert the names of the Petitioner, Respondent, and Other Party, and the case number. (You can find this information on your child support order.)

❷ Tell the court why you want the back child support (arrears) changed.

- *Item 1:* Leave blank. The court will fill this out.
- *Item 5a:* Tell the court if you asked for the local child support agency to conduct an administrative review of support payments received.*
- *Item 5b:* Tell the court if you've attached a printout listing payments received by the local child support agency.*

  (***Note:** You can file this request without first asking for an administrative review or attaching a printout from the local child support agency.)
- *Item 6a:* Attach your own support payment history, breaking down how much was owed and how much was paid each month. (You can use forms FL-420 and FL-421 for this purpose.)
- *Item 6b:* Tell the court if on or after **September 27, 2022,** you were confined against your will for more than 90 days in a row and had no money available to pay child support.
- *Item 6c:* Tell the court if from **October 8, 2015,** through **December 31, 2019,** or from **January 1, 2021,** through **September 26, 2022**:
  (1) your child support order was made or modified,
  (2) you were confined against your will for more than 90 days in a row during that time frame,
  (3) you had no ability to pay support, AND
  (4) you were *not* confined for failing to pay child support or domestic violence against the other parent or the child.
- *Items 6b & 6c:* List the start and release dates of your confinement. If you have additional dates of confinement, check the box and list the dates on an attached page. (You can use Form MC-025 for this purpose.) Attach proof for each time period. If you have questions about getting proper proof or concerns about presenting sensitive information to the court, talk to the facilitator in your county.
- *Item 6d:* Tell the court if the order gives other reasons for stopping (suspending) child support.
- *Item 6e:* If the other items don't apply, tell the court why the back support should be adjusted.
- *Item 7:* Tell the court what paperwork (evidence) you have attached to your request.

❸ Enter the date, print your name, and sign the form to tell the court that everything in your paperwork is true and correct.

Step 2: Make copies of your court papers

Make three sets of copies of your request, including any attachments, and keep the signed originals.

Step 3: File your request with the court

❶ Take your originals, plus the three sets of copies, and file them with the court clerk. Find your court here: *www.courts.ca.gov/find-my-court.htm*

❷ The court clerk will fill out item 1 with information about your court hearing date and return the three sets of copies to you with a "filed" stamp in the top right corner.

Tip: Check your local court's website to see if you can file your request electronically (e-file).

❸ You will *not* be charged a fee to file this request.

Step 4: Have someone "serve" your request

1. Service is the act of giving your court papers to the local child support agency and the other party in the case. Service can be done in person or by U.S. mail.
2. A "server" (someone else 18 years or older) must serve your request. You can *not* serve your own court papers.
3. Give two sets of copies of your request, plus any attachments, to your server.
4. There are two options for service:

Option 1	Option 2
Your server must hand-deliver or mail both sets of copies to the local child support agency, which will then send one set to the other party. To do this option, your server must deliver the papers at least **30 days** before the court date.	Your server must hand-deliver or mail one set of copies to the local child support agency and one set to the other party. To do this option, your server must deliver the papers at least **16 court days** before the court date. (Add **5 more days** if served by mail.)

5. Your server must then complete, sign, and date a *Proof of Service* form to tell the court where and when your request was delivered.

In person: Have your server fill out form FL-330.	By mail: Have your server fill out form FL-335.

6. Double check the *Proof of Service* form to make sure your server correctly completed and signed the form. File the original form, plus one copy, with the court at least one week before your court date.

Go to your court hearing

1. You must appear at your court hearing or else your request can be denied. Check your local court's website to see if the court is conducting hearings in person or remotely (by videoconference). Complete and file form RA-010 if you want to appear remotely.
2. For information about what to expect at the hearing: *https://selfhelp.courts.ca.gov/request-for-order/LCSA/hearing*.

How can I get free help?

Every county has a family law facilitator that can:

- Explain the legal process;
- Give you free legal forms; and
- Help you fill out court papers.

Depending on your county, the facilitator may help you in person, online, or by phone. You can find the facilitator in your county here: *https://www.courts.ca.gov/selfhelp-facilitators.htm*.

Ask for a *Disability Accommodation Request*

If you have a disability and need an accommodation while you are at court, you can use form MC-410 to make your request. For more information, see form MC-410-INFO.

What if I need a court interpreter?

If you don't speak or understand English very well, you may need a court interpreter to help you in court. You can use form INT-300 to request an interpreter for your court hearing. Ask the court clerk or family law facilitator in your county for more information.

I got served with a *Request for Determination of Support Arrears*. Now what?

If you disagree with the requests made by the other party in form FL-676, you need to:

- File and serve your own court papers, at least **9 court days** before the court date; and
- Appear at the court hearing.

To respond to the request, file and serve:

- *Response to Governmental Notice of Motion or Order to Show Cause* (form FL-685); and
- Your own payment history. (You can use forms FL-420 and FL-421 for this purpose.)

See Step 4 for more information about serving court papers and use Option 2.

SPR23-33
Child Support: Implementing Amendments to Family Code Section 4007.5
(revise forms FL-192, FL-490, FL-676, and FL-676-INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Department of Child Support Services by Selis Koker, Chief Counsel Rancho Cordova, CA	NI	The proposal does address the changes in the law and provides that information on the forms accurately. However, the department feels that there are some revisions which may assist individuals completing the forms and improve the effectiveness of the forms by making the information easier to understand [underlined text denotes newly added/revised language]:	No response required.
			Effective Date: All proposed forms use the date of "after September 26, 2022" for relief under the current version of FC §4007.5. While technically correct, the department feels that the language "<u>On or after September 27, 2022</u>" is easier to understand as the statute became effective September 27, 2022.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption on forms FL-490, FL-676, and FL-676-INFO. This change is not needed on form FL-192 as it already uses similar language: "As of September 27, 2022."
			FL-192: Item 4 Past Confinement. The "Additional exception for past confinement" language could be confusing to laypersons. Suggestion: consider explicitly stating that the exception under past confinement is in addition to the exception listed in item 2. Proposed language: Additional exceptions for past confinement. <u>In addition to the exception listed in item 2</u>, child support would not automatically stop if the parent was in jail or prison for not paying child support or for domestic violence against the other parent or the child.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			FL-490:	
			1. While this form is adopted for mandatory use, it is the department's experience that LCSAs do not utilize this form when filing requests to determine arrears. Typically, LCSAs use the standard governmental Notice of Motion form (FL-680) to seek a determination of arrears. Our comments on this form are therefore limited to how an individual may complete the form, not an LCSA.	No response required.
			2. It has been our experience that individuals who have been incarcerated and asking for relief may have multiple periods of incarceration. To accommodate these persons seeking relief, the department suggests having a space for multiple entries of incarceration/institutionalization periods, or otherwise have a box indicating that additional periods are on an attachment. In addition, utilizing the term "Release Date" instead of "End Date" is preferred. Suggested adding under subdivisions 1(c)(1) and 1(d)(1) the following additional lines: (c) Start Date: (d) Release Date: [ ] Additional periods of incarceration or institutionalization are on an attached page. This comment is also applicable to form FL-676.	The committee agrees with these suggestions and has incorporated them, with certain alterations, into the revisions that it is recommending for adoption.
			3. At new proposed paragraphs 1(c)(1) and 1(d)(1) there is a direction to "(attach proof)". While the	The committee appreciates this suggestion. However, proof of confinement is required for the

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			court will require proof of confinement at the time of hearing, it may be difficult for someone who was institutionalized (whether in jail, juvenile detention or a mental health facility) to place this very personal and specific information in the application itself. The direction/mandate to "attach proof" may deter individuals from seeking appropriate relief. Suggestion: Soften the language so that it does not appear required at the application phase but make it strong enough to ensure the participants know they will have to provide proof at the court hearing. Proposed Language: (<u>Proof will be required. Either attach or bring to the hearing.</u>)	court to be able to grant the requested relief, and like other relevant evidence raised in court proceedings, it should be properly served on the other party prior to the hearing. Nevertheless, in order to balance the legitimate privacy concerns raised by the commenter, the following instruction has been added to form FL-676-INFO, "If you have questions about getting proper proof or concerns about presenting sensitive information to the court, talk to the facilitator in your county."
			FL-676:	
			1. While this form is adopted for mandatory use, it is the department's experience that LCSAs do not utilize this form when filing requests to determine arrears. Typically, LCSAs use the standard governmental Notice of Motion form (FL-680) to seek a determination of arrears. Our comments on this form are therefore limited to how an individual may complete the form, not an LCSA.	No response required.
			2. At paragraphs 5(b) and 5(c) there is a direction to "(attach proof)". While the court will require proof of confinement at the time of hearing, it may be difficult for someone who was institutionalized (whether in jail, juvenile detention or a mental	The committee appreciates this suggestion. However, proof of confinement is required for the court to be able to grant the requested relief, and like other relevant evidence raised in court proceedings, it should be properly served on the

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			health facility) to place this very personal and specific information in the application itself. The direction/mandate to "attach proof" may deter individuals from seeking appropriate relief. Suggestion: Soften the language so that it does not appear required at the application phase but make it strong enough to ensure the participants know they will have to provide proof at the court hearing. Proposed Language: (Proof will be required. Either attach or bring to the hearing.)	other party prior to the hearing. Nevertheless, in order to balance the legitimate privacy concerns raised by the commenter, the following instruction has been added to form FL-676-INFO, "If you have questions about getting proper proof or concerns about presenting sensitive information to the court, talk to the facilitator in your county."
			FL-676-INFO: Assuming this suggestion is adopted, Item 6 should be modified as follows: Item 6: Tell the court what paperwork (evidence) you have. You must either attach this to the FL-676 document before filing or bring it to the court hearing.	The committee does not recommend adopting the suggested language as the proposed revision suggested above was not adopted. However, the following instruction was added to the form, "If you have questions about getting proper proof or concerns about presenting sensitive information to the court, talk to the facilitator in your county."
2.	California Lawyers Association, Family Law Section Executive Committee (FLEXCOM)	A	FLEXCOM agrees with this proposal, with the following suggestion. Form FL-490 at item 1.d.(1), Form FL-676 at item 5.c.(1), and in Form FL-676-INFO in the second column, the language is clarified to include the beginning and end dates. For example: On a date from ~~Between~~ October 8, 2015, through ~~and~~ December 31, 2019, or January 1, 2021, through ~~and~~ September 26, 2022…	The committee agrees with these suggestions and has incorporated them, with certain alterations, into the revisions that it is recommending for adoption.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
3.	Child Support Directors Association by Shauna Day, Executive Director Sacramento, CA	NI	The Workgroup generally supports the proposed changes. However, the Workgroup is concerned that the proposed revisions are not clear enough for the general public to understand. The Workgroup believes the following proposed changes will make the forms easier and clearer to understand:	No response required.
			FL-192	
			In page 1, section 4, Past Confinement: Change "between…December 31 2019 or January 1, 2021…" to "between…December 31 2019 and/or January 1, 2021…"	The committee does not recommend using the term "and/or" as this term can be imprecise and can cause confusion. Additionally, the word "or" usually includes the sense of "and" as used in the following sentence: "No food or drink allowed." This warning does not suggest that food or drink by itself is disallowed while food and drink together would be permitted. In other words, the use of "or" in this way encompasses both "or" and "and."
			In page 2, column 1, paragraph 4: Add the underlined text, "A parent can request to change an existing order for child support when there is a material change of circumstances, including…"	The committee agrees with these suggestions and has incorporated them, with certain alterations, into the revisions that it is recommending for adoption.
			In page 2, column 2, paragraph 4: Add or edit the underlined text "**Service** is the act of delivering the court papers to other parties. You must serve the other parent. If the local child support agency is involved, they must also be served This means someone 18 or over-not you-must hand deliver or mail the other parent (and the local	While the committee does not recommend adopting all the suggested language, elements of the proposed verbiage have been incorporated into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			child support agency if they are involved) copies of your filed court forms…"	
			FL-490	
			In item l .c.(1): Add "On or after" before September and change the date "26" to "27" after September.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			In item l.c.(l)(b): Change the word "End" to "Release". Add "(c) Start date:" and "(d) Release date:" below (a) and (b).	The committee agrees with these suggestions and has incorporated them, with certain alterations, into the revisions that it is recommending for adoption.
			In item l.c.(2): Change "I had no money available" to "I had no ability".	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			In item l.d.(l): Add a "check box" and "(a)" between the words "Between" and "October". Replace the word "or" before the word January with a "check box" and "(b)".	While the committee does not recommend adopting the suggested language per se, based on suggestions from multiple commenters, this section has been revised to be clearer and easier to understand.
			In item l.d.(l)(b): Change the word "End" to "Release". Add "(c) Start date:" and "(d) Release date:" below (a) and (b).	The committee agrees with these suggestions and has incorporated them, with certain alterations, into the revisions that it is recommending for adoption.
			In item l.d.(2) Change "I had no money available" to "I had no ability".	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

	Commenter	Position	Comment	Committee Response
			FL-676	
			In item 4: Remove the word "received" between the words "support" and "by".	The committee does not recommend adopting the suggested language as it could cause confusion.
			In item 5.b.(l): Add "On or after" before September and change the date "26" to "27" after September.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			In item 5.b.(l)(b): Change the word "End" to "Release". Add "(c) Start date:" and "(d) Release date:" below (a) and (b).	The committee agrees with these suggestions and has incorporated them, with certain alterations, into the revisions that it is recommending for adoption.
			In item 5.b.(2): Change "I had no money available" to "I had no ability".	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			In item 5.c.(l): Add a "check box" and "(a)" between the words "Between" and "October". Replace the word "or" before the word January with a "check box" and "(b)".	While the committee does not recommend adopting the suggested language per se, based on suggestions from multiple commenters, this section has been revised to be clearer and easier to understand.
			In item 5.c.(l)(b): Change the word "End" to "Release". Add "(c) Start date:" and "(d) Release date:" below (a) and (b).	The committee agrees with these suggestions and has incorporated them, with certain alterations, into the revisions that it is recommending for adoption.
			In item 5.c.(2): Change "I had no money available" to "I had no ability".	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			In item 6.d.: Change "Other (specify):" to "Proof of involuntary confinement:" and Add a 6.e. with language "Other (specify):".	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

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	Commenter	Position	Comment	Committee Response
			FL-676-INFO	
			In page 1, section 1: Change "They refused to adjust the back support (arrears) for the time you were in jail, prison, juvenile detention, or a mental health facility…" to "They refused to adjust the back support (arrears) for the time you were <u>incarcerated or had an involuntary placement in a</u> mental health facility…"	The committee agrees with this suggestion and has incorporated it, with certain alterations, into the revisions that it is recommending for adoption.
			In page 1, section 3: • Change "Start with item 4 to tell the court why you want the back support (arrears) changed…" to "Tell the court why you want the back support (arrears) changed… <u>Item 1: Leave blank for the court to complete</u>…"	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			• Add "On or after" before September and change the date "26" to "27" after September.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			• Change "had no money available" to "had no ability"	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			• Change "between…December 31 2019 or January 1, 2021…" to "between…December 31 2019 and/or January 1, 2021…"	The committee does not recommend using the term "and/or" as this term can be imprecise and can cause confusion. Additionally, the word "or" usually includes the sense of "and" as used in the following sentence: "No food or drink allowed." This warning does not suggest that food or drink by itself is disallowed while food and drink together would be permitted. In other words, the

	Commenter	Position	Comment	Committee Response
				use of "or" in this way encompasses both "or" and "and."
			• Add "AND" after items (1) to (3) to add emphasis	While the committee does not recommend adopting all the suggested language, elements of the proposed verbiage have been incorporated into the revisions that it is recommending for adoption.
			• Add "Items 5(b) & (c): List the start and release dates of your confinement and attach proof for each period."	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			• Add "Item 5(e): If the other items don't apply, tell the court why the child support arrears should be adjusted."	The committee does not recommend adopting the suggested language as the term "back support" is easier to understand.
			• Add "*Tip:* Check your local court's website to see if you can file your request electronically (e-file) and follow the procedures of your local court."	The committee does not recommend adopting the suggested language as it is not necessary.
4.	Orange County Bar Association by Michael A. Gregg, President	A		No response required.
5.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	AM	Regarding FL-192 Notice of Rights and Responsibilities form:	
			Page 1, Information About Child Support for Incarcerated or Detained Parents, Section 4: Suggest adding "between" before January 1, 2021 to make the language more clear for self-represented litigants	While the committee does not recommend adopting the suggested language per se, based on suggestions from multiple commenters, this section has been revised to be clearer and easier to understand.
			Page 2, Second column, You must serve the other parent: Suggest replacing "it" with "them" when	The committee does not recommend adopting the suggested language. While it may be common to

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	Commenter	Position	Comment	Committee Response
			referring to the child support agency in the sentence "If the local child support agency is involved, serve it too."	refer to a singular, individual agency using "they," the correct grammar calls for the use of "it."
			Regarding FL-490 Application to Determine Arrears form:	
			Page 1, Section 1d(1): Suggest adding "between" before January 1, 2021 to make the language more clear for self-represented litigants	While the committee does not recommend adopting the suggested language per se, based on suggestions from multiple commenters, this section has been revised to be clearer and easier to understand.
			Regarding FL-676 Request for Determination of Support Arrears form:	
			• Page 2, Section 5c(1): Suggest adding "between" before January 1, 2021 to make the language more clear for self-represented litigants	While the committee does not recommend adopting the suggested language per se, based on suggestions from multiple commenters, this section has been revised to be clearer and easier to understand.
			Regarding FL-676-INFO Information Sheet: Request for Determination of Support Arrears form:	
			• Page 1, Second column under 5c: Suggest adding "between" before January 1, 2021 to make the language more clear for self-represented litigants	While the committee does not recommend adopting the suggested language per se, based on suggestions from multiple commenters, this section has been revised to be clearer and easier to understand.
			• Page 1, Second column under 5c(1): Suggest replacing "entered" with "made" to be more understandable for self-represented litigants	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
6.	Superior Court of Orange County by Jenny Diaz Avendano, Operations Analyst, Family Law and Juvenile Divisions	NI	Does the Proposal appropriately address the stated purpose? Yes.	No response required.
			Would the proposal provide cost savings? If so, please quantify. No.	No response required.
			What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? The implementation would require creating a procedure for the Court Child Support Unit (CCSU) to outline the process of form FL-676.	No response required.
			Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No response required.
			How well would this proposal work in courts of different sizes? Our court is a large court, and this could work for Orange County.	No response required.

SPR23-33
Child Support: Implementing Amendments to Family Code Section 4007.5
(revise forms FL-192, FL-490, FL-676, and FL-676-INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
7.	Superior Court of San Bernardino County by Anita Morales, Legal Processing Assistant II	A		No response required.
8.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	A	Does the Proposal appropriately address the stated purpose? Yes.	No response required.
			Would the proposal provide cost savings? If so, please quantify. No.	No response required.
			What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Minimal to none.	No response required.
			Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No response required.
			How well would this proposal work in courts of different sizes?	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commenter	Position	Comment	Committee Response
			It appears the proposal would work for courts of various sizes.	
9.	Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee Joint Rules Subcommittee (JRS)	A	The JRS notes that the proposal is required to conform to a change of law.	No response required.
			The JRS also notes the following: The proposal does address the stated purpose. It would promote cost savings to the court by informing litigants of potential remedies available to them that could streamline or prevent litigation of issues. It does not appear to affect staffing or require additional training because some of the changes have previously been implemented, and then re-implemented after having been "sunsetted".	No response required.

Item number: 21

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Juvenile Law: Family Finding and Engagement

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend Cal. Rules of Court, rules 5.637, 5.695, 5.790, and 5.810; and revise form JV-672.

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair

*Staff contact (*name, phone and e-mail*): Stephanie Lacambra, stephanie.lacambra@jud.ca.gov; Marymichael Smrdeli, Marymichael.Smrdeli@jud.ca.gov, 415-865-4220*

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 1, 2022
Project description from annual agenda: 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 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.

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.: 23-21
For business meeting on September 18–19, 2023

Title
Juvenile Law: Family Finding and Engagement

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.637, 5.695, 5.790, and 5.810; revise form JV-672

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
August 4, 2023

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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending four rules to conform to recent statutory changes clarifying the due diligence that must be used by a social services agency or probation department in performing its family finding obligation when a child is removed from the home. Senate Bill 384 (Stats. 2022, ch. 811) expands the obligation of the placing agency to engage in family finding in dependency and delinquency cases. In addition to the existing duty to ask the child in an age-appropriate manner about parents and adult relatives, due diligence now also requires a social worker or probation officer to use a computer-based search engine to identify relatives and kin to provide family support and possible placement for the child. In the case of an Indian child, the legislation clarifies that the placing agency must contact the child's tribe to help identify relatives and kin. The committee also recommends revising one form to include an item setting forth the court's findings as to whether the probation department exercised due diligence in family finding as required by provisions in Family Code section 7950.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2024:

1. Amend California Rules of Court, rules 5.637, 5.695, 5.790, and 5.810 to conform to recent legislation amending Welfare and Institutions Code sections 309 and 628, and to conform to ongoing family finding duties imposed by Family Code section 7950.

2. Revise *Findings and Orders After Six-Month Prepermanency Hearing—Delinquency* (form JV-672) to include an item for the court to make a finding regarding whether the probation department has evaluated every relative who has come forward requesting placement of the child during the juvenile court proceedings.

The proposed amended rules and revised form are attached at pages 13–26.

Relevant Previous Council Action

The Judicial Council last addressed family finding and engagement requirements in response to Assembly Bill 938 (Stats. 2009, ch. 261), which amended Welfare and Institutions Code[1] sections 309 and 628 to require that when a child is removed from their parents, the child's social worker or probation officer must, within 30 days, identify and locate the child's relatives, and notify located relatives that the child has been removed from their parents and explain the various options to participate in the care and placement of the child or support the child's family. Effective January 1, 2011, the council adopted rule 5.637 of the California Rules of Court; amended rules 5.502, 5.534, 5.695, 5.708, 5.715, 5.720, 5.722, and 5.810; and approved Judicial Council forms JV-130, JV-130(A), JV-285, and JV-287 to implement the mandates and legislative intent of AB 938.

Findings and Orders After Six-Month Prepermanency Hearing—Delinquency (form JV-672) was adopted for optional use in 2012 and was most recently revised effective January 1, 2023.

Analysis/Rationale

Background

When a child is placed in foster care, either because the child's parents or guardians are unable to provide adequate care for the child or after being detained in a juvenile delinquency[2] proceeding, it is crucial that the child and family have a supportive network of people to assist them through the associated juvenile court proceedings. Family finding is an integral part of the duties of the child welfare agency and the juvenile probation department in every foster care case. Since 2010,

[1] All further statutory references are to the Welfare and Institutions Code and all further rule references are to the California Rules of Court unless otherwise indicated.

[2] The committee has previously recommended to the council, and the council has approved, leaving all references to "delinquency" rather than using "juvenile justice" since the Welfare and Institutions Code still uses the term "delinquency."

child welfare agencies and probation departments have been obligated to locate and identify relatives and notify them of their options to participate in a child's care or placement after the child's removal from their parents or guardians and to request to participate in court proceedings regarding the child.[3] At many hearings in a dependency or juvenile delinquency case, the court is required to make a finding that the county agency or probation department has exercised due diligence in family finding to locate a child's relatives and that those relatives have been evaluated to serve as the child's placement or offered other opportunities to participate in the child's care.

In 2015, the Legislature acted again to improve outcomes for children served by child welfare agencies and juvenile probation departments by enacting Continuum of Care Reform (Assem. Bill 403; Stats. 2015, ch. 773) to promote opportunities for them to grow up in permanent and stable homes and reduce the use of congregate care. The preservation of familial ties for foster children is vital: many studies have shown that children placed with family have better behavioral and mental health outcomes than their peers in traditional foster care. Children who are placed in kinship care—broadly defined as relatives or close family friends—have fewer placements and school changes, higher overall satisfaction with their placements, and are more likely to feel loved and "wanted" in these kinship placements.[4]

Senate Bill 384

Effective January 1, 2023, Senate Bill 384 (Cortese; Stats. 2022, ch. 811) revised Welfare and Institutions Code sections 309 and 628 to expand the obligation of the social worker and probation officer to engage in family finding in dependency and delinquency cases. Agencies are now required to exercise due diligence in family finding for dependency and delinquency cases by conducting an investigation with specific required actions to identify relatives and kin and to connect a child or youth, who may be disconnected from their parents, with those relatives and kin in an effort to provide family support and possible placement.

Rule 5.637

Current rule 5.637 addresses family finding as mandated under prior law, providing that the social worker or probation officer must conduct an investigation to identify, locate, and notify all of the child's adult relatives about the child's placement in foster care after removal from the parent or guardian. The rule also states that the social worker or probation officer is not required to notify a "relative whose personal history of family or domestic violence would make notification inappropriate."

The committee recommends amending the rule to incorporate the new statutory provisions regarding the due diligence requirement in family finding to be exercised by the social worker or probation officer in foster care cases and to expand the list of persons required to be notified of a

[3] See Assem. Bill 938 (Com. on Judiciary; Stats. 2009, ch. 261).

[4] See Sen. Rules Com., Off. of Sen. Floor Analyses, Unfinished Business analysis of Sen. Bill 384 as amended Aug. 15, 2022, pp. 5–6, *https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB384*.

child's placement in foster care, including parents or alleged parents. The committee reflected on its general practice of refraining from repeating statutory language in the court rules, but decided it was important to set forth all family finding requirements to clarify the actions the agencies must take and assist the courts in evaluating those efforts and making the required findings.

The committee also recommends including the requirements to notify relatives after the county agency locates them and to disseminate written information to them about how to participate in the child's care or placement. Lastly, the recommended rule amendments would require the social worker or probation officer to notify the court if relatives are not notified because of family or domestic violence history.

Rule 5.637 would be expanded and reorganized, with the addition of new subdivision (a) to define the terms "family finding," "kin," and "nonrelative extended family member" in dependency and delinquency cases.

New subdivision (b) would state the requirement in dependency cases to identify and locate a child's relatives and notify them of a child's foster care placement no later than 30 days after removal from the parent's or guardian's custody. A child's relatives must receive written notification of the child's removal and the available options to participate in the child's care and placement, including becoming a resource family, and information on public monetary aid programs. The relatives must also be provided a copy of *Relative Information* (form JV-285) to provide input to the court and the social worker regarding the child's needs.

New subdivision (c) would state the requirement in delinquency cases to identify and locate a child's relatives and notify them of a child's foster care placement no later than 30 days after placement in foster care or after the child's detention, if the probation officer has reason to believe that the child may be at risk of entering foster care. As in subdivision (b) regarding juvenile dependency cases, this subdivision provides that the relatives must be provided written notification of the child's removal and available options to participate in the child's care and placement, including becoming a resource family or a nonrelative extended family member, and information on public monetary aid programs.

New subdivision (d) would state the ongoing duty of the social worker or probation officer to exercise diligent efforts in family finding throughout the dependency or delinquency case until the child is placed for adoption. Under Family Code section 7950(a)(1) regarding foster care placement considerations:

> Diligent efforts shall be made by an agency or entity … to locate an appropriate relative … . At any permanency hearing … or at any postpermanency hearing for a child not placed for adoption, the court shall find that the agency or entity … has made diligent efforts to locate an appropriate relative and that each relative whose name has been submitted to the agency or entity as a possible caretaker, either by the relative or by other persons, has been evaluated as an appropriate placement resource.

An important goal of this proposal is to include all family finding requirements in one rule to assist courts and litigants. For that reason, the committee recommends that the rule state the ongoing duty to exercise the due diligence requirements set forth in sections 309 and 628 throughout the pendency of the case until the child is returned home or adopted as required by Family Code section 7950.

Subdivision (d) would also list the mandatory activities the county agency must undertake under SB 384 to demonstrate due diligence in family finding. The agency must ask the child in an age-appropriate manner about the identity and location of kin, use computer-based search tools to locate a child's kin, and contact the Indian child's tribe to identify kin if there is reason to know the child is an Indian child, as required under sections 309 and 628. (See proposed rule 5.637(d)(2).) This subdivision would also separately list additional activities that may be undertaken by the county agency beyond those required by statute, that the court may consider in determining whether the county agency has exercised due diligence in family finding. (See proposed rule 5.637(d)(3).)[5]

Current subdivision (b), which provides that a social worker or probation officer is not required to notify kin whose personal history of family or domestic violence would make notification inappropriate, would be renumbered as subdivision (e). In addition, the committee recommends amending the subdivision to require the social worker or probation officer to inform the court about the lack of notification and the reasoning underlying the determination that a relative's history of family or domestic violence would make notification inappropriate.

Rule 5.695

This rule states the statutory findings and orders that the court must make at a disposition hearing in a dependency case. One such finding is that, in cases in which a child has been removed from the custody of their parent or guardian, the county welfare agency exercised due diligence in family finding to locate relatives for the child. The committee recommends amending subdivision (e) to provide cross-references to rule 5.637(d)(2) (the required family finding activities) and (d)(3) (the additional family finding activities) to assist the court in making its determination of whether the agency has exercised due diligence in family finding for the child. Subdivision (f), which contains examples of activities that demonstrate due diligence by county welfare departments for family finding in dependency cases, would be deleted because that content has been moved to rule 5.637(d). Subdivisions (g)–(i) would be re-lettered to (f)–(h).

Rule 5.790

This rule states the statutory findings and orders that the court must make at a disposition hearing in a delinquency case. One such finding is that the juvenile probation officer exercised due

[5] The lists of activities that the court may consider were previously contained in rules 5.695(f) (regarding findings in dependency cases) and 5.790(g) (regarding findings in delinquency cases), but the committee is recommending they be moved into this rule on family finding so that the factors for consideration are all in one place and clearly separated into the two categories of what activities the court must consider and what activities the court may consider in making its determination of due diligence in family finding.

diligence in family finding to locate relatives for the child. Subdivision (f) would be amended to provide that the court must consider the required activities listed in new subdivision (d)(2) of rule 5.637 and may also consider those activities listed in new subdivision (d)(3) of rule 5.637 (previously listed in subdivision (g) of this rule) when making its determination of whether the probation department has exercised due diligence in family finding for the child. Subdivision (g), which contains examples of activities that demonstrate due diligence by county welfare departments for family finding in dependency cases, would be deleted because that content has been moved to rule 5.637(d). Subdivisions (h)–(j)[6] would be re-lettered to (g)–(i).

Rule 5.810

Rule 5.810 governs the court's findings and orders at permanency and postpermanency hearings in delinquency cases. Under Family Code section 7950, one of the required findings is that the juvenile probation department exercised diligent efforts in family finding for the child, and those efforts must be documented in the probation report.[7] As a result of an oversight, the rule does not address the family finding efforts required by Family Code section 7950. The committee recommends correcting this omission by adding the family finding requirements to the list of findings the court must make in the different hearing types. This content is found at subdivisions (b)(2) and (c)(2).

Subdivision (b)(2)(H) would be added to require the court to consider evidence and make a finding of due diligence in family finding at a permanency hearing in a delinquency case. Subdivision (c)(2)(F) would be added to require the court to consider evidence and make a finding of due diligence in family finding at a postpermanency hearing in such a case.

Form JV-672

Findings and Orders After Six-Month Prepermanency Hearing—Delinquency (form JV 672) lists the required findings and orders that the juvenile court must make at a prepermanency hearing in a delinquency case. Family Code section 7950 requires that the juvenile probation department evaluate every relative who comes forward interested in placement for the child during delinquency proceedings.

The committee recommends adding item 15 to the form to allow the court to make a finding of due diligence and whether the probation department has or has not evaluated every relative who has come forward requesting placement of the child during the juvenile court proceedings to ensure parity and consistency with the dependency context, which already includes this finding

[6] Effective July 1, 2023, (i) (California Department of Corrections and Rehabilitation, Division of Juvenile Justice) was deleted and (j) (Fifteen-day reviews) re-lettered as (i).

[7] See Welf. & Inst. Code, §§ 706.5(c)(1)(B)(iii), 727.2(c) (requiring probation to submit a social study report that includes "[d]ocumentation of the intensive and ongoing efforts made by the probation department … to prepare the minor or nonminor dependent to return home or to be placed with a fit and willing relative"). The committee considered cross-referencing these sections but decided to incorporate the requirements from these sections into the rule to have pertinent information in one location.

in *Six-Month Permanency Attachment: Reunification Services Terminated* (form JV-433), item 14.

Policy implications

Any policy implications would result from the enactment of the new law, not from the rules recommended to implement that new law.

Comments

This proposal was circulated for public comment from March 16 to May 12, 2023, as part of the spring 2023 comment cycle. Four superior courts, a probation department, a bar association, two legal advocacy organizations, and one individual submitted comments on this proposal. Two commenters agreed with the proposal. Four agreed if the proposal were modified, and three did not indicate a position but expressed that the proposal appropriately addressed its stated purpose. A chart with the full text of the comments received and the committee's responses is attached at pages 27–50. They are summarized below.

Comments on rule 5.637

Family finding requirements for dual-status child

The committee asked for specific comments on whether rule 5.637 should specifically address family finding requirements for a dual-status child[8] by referencing section 241 and, if so, what should the rule provide. Four superior courts and two organizations agreed that it should address dual-status youth. The Santa Clara County Probation Department disagreed and did not view specifically addressing dual-status youth as necessary because it believes the family finding process should be the same for dual-status youth as it is for other youth. Most commenters who responded to this request for comments opined that the lead placement agency should be tasked with the family finding duty and attendant notice to the court. One court commenter suggested applying the duty and attendant notice requirements to both agencies regardless of whether the county had adopted an on-hold or lead agency model, to ensure that the county probation and child welfare services departments are actively communicating and collaborating on the information from their separate investigations to identify relatives and kin of the child.

The committee decided to refer to section 241.1 instead of specifically assigning the duty to a specific agency or agencies, by amending rule 5.637 to require that the written protocols under section 241.1 be amended to reflect which agency or agencies are responsible for exercising due diligence. This approach would allow for each written protocol to be updated based on local county need and practice.[9]

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[8] A dual-status child is a child who is simultaneously a dependent child and a ward of the court.

[9] CDSS issued All County Letter No. 18-42, entitled Family Finding and Engagement, which detailed suggested family finding practices for county agencies in foster care cases. SB 384 requires each county child welfare agency and juvenile probation department to adopt at least one of the vetted family finding practices found in ACL 18-42 and create a public procedure by which relatives can identify themselves to the county placing agency.

Add "and collaborating with" child's Indian tribe
The Youth Law Center requested to further amend rule 5.637(a)(1), the definition of "family finding," to include "and collaborating with" after "contacting" the child's Indian tribe to identify relatives and kin. The language in the rule as written tracks the statutory language in sections 309(e)(3)(B) and 628(d)(3)(B), which only uses "contacting" and not "collaborating with" the Indian child's tribe to identify relatives and kin. The committee concluded that using "collaborating with" could add a duty that is not currently in statute and was not circulated for public comment. The committee declined to accept this suggestion.

Definition of "kin"
Five organization commenters, including three courts, responded affirmatively to the request for specific comments on whether the definition for "kin" in rule 5.637 of the circulated proposal is accurate and complete. The Superior Court of San Diego County suggested the committee consider including the extended family members of an Indian child in the definition of kin. The committee declined this suggestion as the current definition already incorporates the extended family members of an Indian child by referencing rule 5.502(34).

Replace "relatives" with "kin"
Three commenters requested to amend rule 5.637 to add "and kin" after every instance of "relatives" to be consistent with the statutory language in sections 309(e)(3)(B) and 628(d)(3)(B), which includes both terms. The committee chose to modify its recommendation instead to replace the term "relatives" with "kin" since rule 5.637(a)(2) defines "kin" to include "relatives."

Definition of "nonrelative extended family member"
Two organizations and three courts responded affirmatively to the question of whether the definition for "nonrelative extended family member" (NREFM) in the circulated proposal is accurate and complete. The Superior Court of San Diego County suggested the committee consider including "medical professionals" in the definition of NREFM because section 362.7 includes "medical professionals" in a nonexclusive list of examples. The committee declined this addition as "medical professionals" in section 362.7 refers to a list of third parties that the county welfare department may interview to verify the existence of an established familial or mentoring relationship with the child for purposes of determining whether an individual meets the definition of an NREFM.

Include future NREFM relationships
The Youth Law Center requested to amend rule 5.637(a)(3), the definition of an NREFM, to include future NREFM relationships by defining "nonrelative extended family member" to mean "an adult who has an established <u>or will establish a</u> familial or mentoring relationship with a child." The commenter encourages the inclusion of individuals with whom the child will establish a relationship in the rule because NREFMs who are willing to develop more of an established relationship should also be recognized. The committee declined to accept this suggestion as it does not comply with the current statute.

Apply 30-day notice time limit to "all adult relatives"
The Youth Law Center requested to amend rule 5.637(b) to include the 30-day time limit for notice and apply it to all *adult* relatives specified in section 309(e)(1). The committee concluded that adding "adult" to "kin" would be redundant because subdivision (a) of the rule defines relatives as adults by referring to the definition in rule 5.502, which expressly defines a relative as "[a]n adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship." However, because "no later than 30 days" in subdivisions (b)(1) and (c)(1) of rule 5.637 would include "within 30 days," the committee accepts the suggestion adding the time frame to the duty for notice in those subdivisions.

Incorporate sections 309(e)(1)(B) and 628(d)(2)(B) into rule 5.637(b)(2) and (c)(2)
Two commenters, the Superior Court of San Diego County and the Youth Law Center, requested to include the statutory requirements from section 309(e)(1)(B) in the rule regarding the duty of the social worker to provide an explanation of the various options to participate in the care and placement of the child and support for the child's family, including any options that may be lost by failing to respond. Further, although not specifically raised in the comments, similar statutory language regarding the duty of the probation officer to provide an explanation of options is contained in section 628(d)(2)(B) and could similarly be referenced in the rule. The committee agreed and recommends incorporating section 309(e)(1)(B) by reference in rule 5.637(b)(2)(B) and section 628(d)(2)(B) by reference in rule 5.637(c)(2)(B).

Include "oral notification" at beginning of rule 5.637(b)(2) and (c)(2)
The Superior Court of San Diego County requested to include "oral notification in person or by telephone" in addition to written notification in the list of required notifications at rule 5.637(b)(2) and (c)(2), rather than in a separate paragraph after the list, because section 309(e)(1) requires a social worker to, "whenever appropriate, provide oral notification, in person or by telephone." Section 628(d)(2) requires that probation officers do likewise. However, rule 5.637 already contains the oral notification requirement as a stand-alone provision in subdivisions (b) and (c). The committee declined to move it to the beginning of (b)(2) and (c)(2) because those provisions apply to actions that are always required, such as written notification, and not to oral notification, which is conditioned on appropriateness.

Oral notification followed by written information
The Youth Law Center requested to amend rule 5.637(b)(2) to include that oral notification in person or by telephone of the information may also be provided to the child's relatives when appropriate, "but should be followed by the provision of written information to the extent possible." The committee declined to accept this suggestion as it does not currently comply with statute, which mandates written notice.

Include "Indian custodian"
Two commenters, the Superior Court of San Diego County and the Youth Law Center, requested the committee consider adding "Indian custodian" to subdivision (b)(2)(A) of rule 5.637, and the Superior Court of San Diego County requested adding it to subdivisions (c)(2)(A) and (d)(3)(E) of the rule, in light of the term's inclusion under section 309(e)(1)(A) as a party from which a

child may be removed. This omission appears to be an oversight. The committee agrees and has modified its recommendation in light of these suggestions in the interests of statutory compliance and consistency.

Maintain consistency in recipients of notice
The Youth Law Center requested to amend rule 5.637(c)(1) to be consistent with the language in subdivision (b)(1) by adding "parents with legal custody of the child's siblings, any adult siblings, and in the case of an Indian child, any extended family members of the child's tribe." The committee adopted this recommendation to maintain consistency in family-finding notice requirements.

Clarify "ongoing" duty to exercise due diligence
The Santa Clara County Probation Department requested clarification of the "ongoing" duty to exercise due diligence in family finding by asking if addressing family finding efforts at each prepermanency hearing would meet the obligation to exercise ongoing due diligence. The probation department also asked whether and how the "ongoing" obligation in rule 5.637(d) modifies the probation department's obligation to exercise due diligence as provided in section 628.

The committee noted that the "ongoing responsibility to exercise due diligence to engage in family finding" begins within 30 days of the removal and detention of a child under sections 309(e)(1) and 628(d)(2) and extends "until the time the child is placed for adoption" under subsection (d) of proposed rule 5.637, in keeping with the statutory language of Family Code section 7950. The "ongoing" responsibility to exercise due diligence in family finding under rule 5.637(d) is meant to be co-extensive with the placement agency's diligent efforts duty under Family Code section 7950(a)(1). While the due diligence duty to find relatives is ongoing until adoption, the finding that the court has to make regarding the diligent efforts the placement agency has made occurs at every permenancy or post-permanency hearing until the child is adopted.

Include "reason to know" condition
The Superior Court of San Diego County suggested further amending rule 5.637(d)(2) to include the statutory requirement that if an agency knows or has "reason to know" that a child in a dependency or delinquency proceeding is an Indian child, the agency must contact the tribe. (See §§ 309(e)(3)(B), 628(d)(3)(B).) The committee agreed and modified the proposal accordingly.

Require notice to all parties when relative notification determined inappropriate
The Alliance for Children's Rights and the Youth Law Center suggested further amending rule 5.637(e) to provide notice to all parties when an agency determines that notification of a relative is inappropriate due to their personal history of family or domestic violence. The suggested amendment is meant to provide an opportunity for parties who disagree with the agency's assessment of the relative to provide additional information demonstrating the appropriateness of noticing a relative, or to lodge an objection to the agency's assessment of the relative that is the basis for the failure to notify. The committee concluded this suggestion constitutes a substantive

change that would require circulation for public comment, so chose to defer consideration of this suggestion to a future rules cycle.

Comments on rule 5.790

The Superior Court of San Diego County requested to amend rule 5.790(f)(1) to be consistent with the language in section 628(d)(4) by changing "no later than 30 days after the child's placement into foster care" to "no later than 30 days after the court orders foster care placement." The committee agrees with the idea behind the suggestion. However, section 628(d)(4) requires the probation officer to "conduct the investigation to find and notify relatives within 30 days of the placement order." Accordingly, the committee is modifying recommended rule 5.790(f)(1) to be consistent with the statutory language of section 628(d)(4).

Comments on form JV-672

A few comments were also received on the proposed form revision.

Include "reason to know" condition

The Superior Court of San Diego County requested to revise form JV-672, item 3, to reflect the difference between the "reason to know" and "reason to believe" standards contained in sections 224.2 and 224.3. This suggestion is outside the scope of this proposal, and the committee will consider it in the future as time and resources allow. The committee also notes that the delinquency forms are consistent on this point, and changing this one form would make it inconsistent with the other delinquency forms.

Include "developmental-services" decisions

The Superior Court of San Diego County requested to include "or developmental-services" after "educational" in items 28 and 28a regarding who is to make educational decisions for the child. This suggestion is outside the scope of this proposal, and the committee will consider it in the future as time and resources allow. In the meantime, the committee notes that the item references rule 5.650(e) and (f), which already include "developmental services" as vesting with the educational rights holder.

Replace "in preparing" with "with applications"

The Superior Court of San Diego County requested to revise item 30a(4) by replacing "to assist the child in preparing for postsecondary education" with "to assist the child with applications for postsecondary education" to be consistent with the statutory language of section 16501.1(g)(22). Like the court's other suggestions, this is outside the scope of the current proposal. Since this provision on the form is not legally inaccurate, and making this change would make the form inconsistent with all other status review forms in dependency and delinquency proceedings, the committee chose to defer consideration of this suggestion to a future rules cycle.

Alternatives Considered

The Family and Juvenile Law Advisory Committee considered alternatives in developing the proposal. The committee noted that family finding and engagement is an evolving area of the

law, and the Legislature may continue to add duties and responsibilities to the placing agency. The committee considered recommending no action based on the evolving legislative action in this area, but concluded that the amendments to the rules and a form would be helpful to child welfare agencies and juvenile probation departments in meeting their obligations to identify and locate relatives and notify them of their options to participate in the placement and care of the youth in their systems.

The committee considered expanding rule 5.637 to include more information on the responsibilities of the placing agency regarding relative placement. The committee decided that this alternative would unnecessarily expand the scope and focus of the rule.

The committee discussed the issue of family finding for dual-status youth as referenced in section 241.1. The invitation to comment included specific questions regarding whether placing agencies' family finding obligations for dual-status youth should be included in rule 5.637; the committee's recommendations are described above.

The committee also considered three alternatives in defining the ongoing due diligence efforts in family finding: (1) explicitly state that the obligation continues until the child is returned home or placed for adoption, (2) decline to further define "ongoing" in the rule, or (3) add a definition of "ongoing" in the advisory committee comment. The committee considered elaborating on the definition of "ongoing" to include the language "returned home or" prior to "placed for adoption," but declined to further define the extent of "ongoing" family finding investigations to provide the courts the discretion to make the finding on a case-by-case basis.

Fiscal and Operational Impacts

Based on the legislative change in SB 384, placing agencies may incur minor costs because they were previously not required to conduct a computer search. However, implementing the legislation does not require the court to hold any additional hearings or otherwise burden court resources, and so the costs to the judicial branch are expected to be minimal.

Attachments and Links

1. Cal. Rules of Court, rules 5.637, 5.695, 5.790, and 5.810, at pages 13–22
2. Form JV-672, at pages 23–26
3. Chart of comments, at pages 27–50
4. Link A: All County Letter No. 18-42 (Apr. 6, 2018), Family Finding and Engagement, from Cal. Dept. of Social Services, *www.cdss.ca.gov/Portals/9/ACL/2018/18-42.pdf?ver=2018-04-09-132626-940*
5. Link B: Welf. & Inst. Code, § 309, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=309&lawCode=WIC
6. Link C: Welf. & Inst. Code, § 628, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=628.&lawCode=WIC

Rules 5.637, 5.695, 5.790, and 5.810 of the California Rules of Court are amended, effective January 1, 2024, to read:

Rule 5.637. Family finding (§§ 309(e), 628(d))

(a) Definition

(1) "Family finding" means conducting an investigation to identify kin and connect the child with those kin in an effort to provide family support and possible placement. For an Indian child, family finding also includes contacting the child's Indian tribe to identify kin.

(2) "Kin" means any relative as defined in rule 5.502(34), and any nonrelative extended family member of the child or the child's relatives.

(3) "Nonrelative extended family member" means an adult who has an established familial or mentoring relationship with a child or a familial relationship with a relative of the child. These adults may include but are not limited to the following people: godparents, teachers, clergy, neighbors, parents of a sibling, and family friends.

(b) Juvenile dependency proceedings

(1) ~~Within~~ No later than 30 days ~~of a child's removal~~ after a child is removed from ~~the home of his or her~~ their parent or guardian and detained in a juvenile dependency proceeding, ~~if the child is in or at risk of entering foster care,~~ the social worker ~~or probation officer~~ must use due diligence in conducting family finding, including an investigation to identify, locate, and ~~notify~~ provide notification and information as required in paragraph (2) to the child's parents or alleged parents, all the child's adult ~~relatives~~ kin, parents with legal custody of the child's siblings, any adult siblings, and in the case of an Indian child, any extended family members of the child's tribe.

(2) After locating persons specified in paragraph (1), the social worker must provide to them, within 30 days of removal, the following:

(A) Written notification that the child has been removed from the parent, guardian, or Indian custodian's custody;

(B) An explanation in writing of the available options to participate in the child's care and placement, including the information set forth in section 309(e)(1)(B); and

(C) A copy of *Relative Information* (form JV-285) for providing information to the social worker and the court regarding the child's needs and to request permission to address the court, if desired.

Oral notification in person or by telephone of the information must also be provided to the child's kin, when appropriate.

(c) Juvenile delinquency proceedings

(1) No later than 30 days after a child is detained in a juvenile delinquency proceeding, if the probation officer has reason to believe that the child may be at risk of entering a foster care placement or within 30 days of the court order placing the child into foster care, the probation officer must use due diligence to conduct family finding, including an investigation to identify, locate, and provide notification and information as required in paragraph (2) to the child's parents or alleged parents, all of the child's adult kin, parents with legal custody of the child's siblings, any adult siblings, and in the case of an Indian child, any extended family members of the child's tribe.

(2) After locating the child's kin and other persons specified in paragraph (1), the probation officer must provide within 30 days of the date on which the child is detained, to all kin who are located, the following:

(A) Written notification that the child has been removed from the parent, guardian, or Indian custodian's custody; and

(B) An explanation in writing of the available options to participate in the child's care and placement, including the information set forth in section 628(d)(2)(B).

Oral notification in person or by telephone of the information must also be provided to the child's kin, when appropriate.

(d) Due diligence (§§ 309, 628, Fam. Code, § 7950)

(1) During the time the child is removed from the child's parent, guardian, or Indian custodian, the social worker and probation officer have an ongoing responsibility to exercise due diligence to engage in family finding until the time the child is placed for adoption.

(2) The court must find whether the social worker or probation officer has exercised due diligence in family finding by:

(A) Asking the child, in an age-appropriate manner and consistent with the child's best interests, about the identity and location of kin;

(B) Using a computer-based search engine and internet-based search tools to locate kin identified as support for the child and their family; and

(C) If it is known or there is reason to know the child is an Indian child as defined by section 224.1, contacting the Indian child's tribe to identify kin.

(3) When making the finding of due diligence, the court may also consider other efforts, including whether the social worker or probation officer has done any of the following:

(A) Obtained information regarding the location of the child's kin;

(B) Reviewed the child's case file for any information regarding kin;

(C) Telephoned, emailed, or visited all identified kin;

(D) Asked located kin for the names and locations of other kin; or

(E) Developed tools—including a genogram, family tree, family map, or other diagram of family relationships—to help the child, parent, guardian, or Indian custodian to identify kin.

(4) In cases involving a dual-status child, the duty to exercise due diligence in family finding must be assigned in accordance with the written protocols required by section 241.1(b)(4).

(e) When notification of kin is inappropriate

The social worker or probation officer is not required to notify kin whose personal history of family or domestic violence would make notification inappropriate. A social worker or probation officer who determines that notification of kin is inappropriate under this subdivision must notify the court that kin has not been notified and explain the reasoning underlying that lack of notification.

Advisory Committee Comment

This rule initially restated the original requirements of section 103 of the federal Fostering Connections to Success and Increasing Adoptions Act (Pub.L. No. 110-351, § 103 (Oct. 7, 2008) 122 Stat. 3949, 3956, codified at 42 U.S.C. § 671(a)(29)) as implemented by California Assembly

Bill 938 (Com. on Judiciary; Stats. 2009, ch. 261, codified at Welf. & Inst. Code, §§ 309(e) and 628(d)). These statutes enacted elements of the child welfare practice known as family finding and engagement, which has been recommended to improve outcomes for children by the Judicial Council's California Blue Ribbon Commission on Children in Foster Care and the California Child Welfare Council. (See Cal. Blue Ribbon Com. on Children in Foster Care, *Fostering a New Future for California's Children*, pp. 30–31 (Admin. Off. of Cts., May 2009) (final report and action plan), *www.courts.ca.gov/documents/brc-finalreport.pdf; Permanency Committee Recommendations to the Child Welfare Council*, pp. 1–4 (Sept. 10, 2009), *www.chhs.ca.gov*.)

The rule was amended to reflect Senate Bill 384 (Cortese; Stats. 2022, ch. 811), which revised Welfare and Institutions Code sections 309 and 628 regarding the obligation of the social worker and probation officer to engage in family finding in dependency and delinquency cases.

Rule 5.695. Findings and orders of the court—disposition

(a)–(d) * * *

(e) Family-finding determination (§ 309)

(1) If the child is removed, the court must consider and determine whether the social worker has exercised due diligence in conducting the required investigation to identify, locate, and notify the child's ~~relatives~~ kin. The court ~~may~~ must consider the mandatory activities listed in ~~(f) as examples of due diligence~~ rule 5.637(d)(2) and may consider the additional activities listed in rule 5.637(d)(3) in determining whether the agency has exercised due diligence in family finding. The court must document its determination by making a finding on the record.

If the dispositional hearing is continued, the court may set a hearing to be held 30 days from the date of removal or as soon as possible thereafter to consider and determine whether the social worker has exercised due diligence in conducting the required investigation to identify, locate, and notify the child's ~~relatives~~ kin.

(2) If the court finds that the social worker has not exercised due diligence, the court may order the social worker to exercise due diligence in conducting an investigation to identify, locate, and notify the child's ~~relatives~~ kin—except for any individual the social worker identifies as inappropriate to notify under rule 5.637~~(b)~~(e)—and may require a written or oral report to the court.

~~**(f) Due diligence (§ 309)**~~

~~When making the determination required in (e), the court may consider, among other examples of due diligence, whether the social worker has done any of the following:~~

~~(1) Asked making the determination required in (e), the court may consider, among other examples of due diligence, whether the social worker has done any of the following:~~

~~(2) Obtained information regarding the location of the child's relatives;~~

~~(3) Reviewed the child's case file for any information regarding relatives;~~

~~(4) Telephoned, e-mailed, or visited all identified relatives;~~

~~(5) Asked located relatives for the names and locations of other relatives;~~

~~(6) Used Internet search tools to locate relatives identified as supports; or~~

~~(7) Developed tools, including a genogram, family tree, family map, or other diagram of family relationships, to help the child or parents to identify relatives.~~

~~(g)~~ (f) Provision of reunification services (§ 361.5)

(1)–(10) * * *

~~(h)~~ (g) Information regarding termination of parent-child relationship (§§ 361, 361.5)

* * *

~~(i)~~ (h) Setting a hearing under section 366.26

* * *

Rule 5.790. Orders of the court

(a)–(e) * * *

(f) Family-finding determination (§ 628(d))

(1) If the child is detained ~~or~~ and at risk of entering foster care placement or within 30 days of the court order placing the child into foster care, the court must consider and determine whether the probation officer has exercised due diligence in conducting the required investigation to identify, locate, and ~~notify~~ provide notification and information as required in paragraph (2) of rule 5.637(c) to the child's ~~relatives~~ kin. Due diligence in family finding requires that the probation officer engaged in the mandatory activities listed in rule 5.637(d)(2). The court may also consider the additional activities listed in ~~(g)~~ rule 5.637(d)(3) ~~as examples of due diligence~~. The court must document its determination by making a finding on the record.

If the dispositional hearing is continued, the court may set a hearing to be held 30 days from the date of detention or as soon as possible thereafter to consider and determine whether the probation officer has exercised due diligence in conducting the required investigation to identify, locate, and notify the child's ~~relatives~~ kin.

(2) If the court finds that the probation officer has not exercised due diligence, the court may order the probation officer to exercise due diligence in conducting an investigation to identify, locate, and notify the child's ~~relatives~~ kin—except for any individual the probation officer identifies who is inappropriate to notify under rule 5.637~~(b)~~(e)—and may require a written or oral report to the court.

~~(g) Due diligence~~

~~When making the determination required in (f), the court may consider, among other examples of due diligence, whether the probation officer has done any of the following:~~

~~(1) Asked the child, in an age-appropriate manner and consistent with the child's best interest, about his or her relatives;~~

~~(2) Obtained information regarding the location of the child's relatives;~~

~~(3) Reviewed the child's case file for any information regarding relatives;~~

~~(4) Telephoned, e-mailed, or visited all identified relatives;~~

~~(5) Asked located relatives for the names and locations of other relatives;~~

~~(6) Used Internet search tools to locate relatives identified as supports; or~~

~~(7) Developed tools, including a genogram, family tree, family map, or other diagram of family relationships, to help the child or parents to identify relatives.~~

~~(h)~~ (g) Wardship orders (§§ 726, 727, 727.1, 730, 731)

* * *

~~(i)~~ (h) Fifteen-day reviews (§ 737)

* * *

Rule 5.810. Reviews, hearings, and permanency planning

(a) * * *

(b) Permanency planning hearings (§§ 727.2, 727.3, 11404.1)

A permanency planning hearing for any ward who has been removed from the custody of a parent or guardian and not returned at a previous review hearing must be held within 12 months of the date the ward entered foster care as defined in section 727.4(d)(4). However, when no reunification services are offered to the parents or guardians under section 727.2(b), the first permanency planning hearing must occur within 30 days of disposition.

(1) *Consideration of reports (§ 727.3)*

The court must review and consider the social study report and updated case plan submitted by the probation officer and the report submitted by any CASA volunteer, and any other reports filed with the court under section 727.3(a)(2).

(2) *Findings and orders (§§ 727.2(e), 727.3(a))*

At each permanency planning hearing, the court must consider the safety of the ward and make findings and orders regarding the following:

(A) The continuing necessity for and appropriateness of the placement;

(B) The extent of the probation department's compliance with the case plan in making reasonable efforts to safely return the child to the child's

home and to complete whatever steps are necessary to finalize the permanent placement of the child;

(C) The extent of progress that has been made by the child and parent or guardian toward alleviating or mitigating the causes necessitating placement in foster care;

(D) The permanent plan for the child, as described in (3);

(E) Whether the child was actively involved, as age- and developmentally appropriate, in the development of his or her own case plan and plan for permanent placement. If the court finds that the child was not appropriately involved, the court must order the probation officer to actively involve the child in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child is unable, unavailable, or unwilling to participate; ~~and~~

(F) Whether each parent was actively involved in the development of the case plan and plan for permanent placement. If the court finds that any parent was not actively involved, the court must order the probation department to actively involve that parent in the development of the case plan and plan for permanent placement, unless the court finds that the parent is unable, unavailable, or unwilling to participate; ~~and~~

(G) If sibling interaction has been suspended and will continue to be suspended, that sibling interaction is contrary to the safety or well-being of either child~~.~~; and

(H) Whether the probation officer has exercised due diligence under rule 5.637 in conducting the required investigation to identify, locate, and provide notification and information as required in paragraph (2) of rule 5.637(c) to the child's kin. The court must consider the mandatory activities listed in rule 5.637(d)(2) and may consider the additional activities listed in rule 5.637(d)(3) in determining whether the department has exercised due diligence in family finding. The court must document its determination by making a finding on the record.

(3)–(4) * * *

(c) Postpermanency status review hearings (§ 727.2)

A postpermanency status review hearing must be conducted for wards in placement no less frequently than once every six months.

(1) * * *

(2) *Findings and orders (§ 727.2(g))*

At each postpermanency status review hearing, the court must consider the safety of the ward and make findings and orders regarding the following:

(A) Whether the current permanent plan continues to be appropriate. If not, the court must select a different permanent plan, including returning the child home, if appropriate. If the plan is another planned permanent living arrangement, the court must meet the requirements ~~set forth~~ stated in Welfare and Institutions Code section 727.3(a)(5);

(B) The continuing necessity for and appropriateness of the placement;

(C) The extent of the probation department's compliance with the case plan in making reasonable efforts to complete whatever steps are necessary to finalize the permanent plan for the child;

(D) Whether the child was actively involved, as age appropriate and developmentally appropriate, in the development of his or her own case plan and plan for permanent placement. If the court finds that the child was not appropriately involved, the court must order the probation department to actively involve the child in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child is unable, unavailable, or unwilling to participate; ~~and~~

(E) If sibling interaction has been suspended and will continue to be suspended, sibling interaction is contrary to the safety or well-being of either child~~.~~; and

(F) Whether the probation officer has exercised due diligence under rule 5.637 in conducting the required investigation to identify, locate, and provide notification and information as required in paragraph (2) of rule 5.637(c) to the child's kin. The court must consider the mandatory activities listed in rule 5.637(d)(2) and may consider the additional activities listed in rule 5.637(d)(3) in determining whether the department has exercised due diligence in family finding. The court must document its determination by making a finding on the record.

(3) * * *

(d)–(f) * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR *(name)*:	**DRAFT** **Not approved by the Judicial Council** **JV-672.v5.080223.jh**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
FINDINGS AND ORDERS AFTER SIX-MONTH PREPERMANENCY HEARING—DELINQUENCY	CASE NUMBER:

1. **The court has read and considered and admits into evidence**
   a. ☐ report of probation department dated:
   b. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS

2. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ***For child who is not present,*** ☐ the child received proper notice of their right to attend the hearing and voluntarily gave up that right to attend this hearing.

3. a. ☐ The child ☐ is ☐ may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
   b. ☐ There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

Child returned home

4. ☐ The return of the child to their parent or legal guardian would not create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Out-of-home placement is no longer necessary or appropriate. The probation department has complied with the case plan by making reasonable efforts to return the child safely home and to complete whatever steps are necessary to finalize the permanent placement of the child.

Child remaining in out-of-home placement

5. ☐ By a preponderance of the evidence, the return of the child to their parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

6. ☐ The child's out-of-home placement is necessary.

7. a. ☐ The child's out-of-home placement is appropriate.
   b. ☐ The child's current placement is not appropriate. This hearing is continued for a report by the probation officer on the progress made to locate an appropriate placement.

8. ☐ For a child placed in a short-term residential therapeutic program or community treatment facility, the court has considered the evidence and documentation submitted under Welfare & Institutions Code section 706.5(c)(1)(B) when determining the continuing necessity for and appropriateness of the placement.

CHILD'S NAME:	CASE NUMBER:

9. ☐ The child has left their placement, and their whereabouts are unknown. Out-of-home placement continues to be necessary. The placement ☐ was ☐ was not appropriate. The probation officer ☐ has ☐ has not made reasonable efforts to locate the child.

10. ☐ The child is currently detained in juvenile hall. Out-of-home placement continues to be necessary. The placement ☐ was ☐ was not appropriate.

11. ☐ The child is placed outside the state of California, and that out-of-state placement
    a. ☐ continues to be the most appropriate placement and is in the child's best interest.
    b. ☐ is no longer the most appropriate placement for the child and is not in the best interest of the child. The matter is continued for a report by the probation officer on the progress made toward finding an appropriate placement for the child.

12. ☐ The probation officer ☐ has ☐ has not complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child, and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent plan.

13. ☐ **The child is an Indian child,** and by clear and convincing evidence active efforts ☐ were ☐ were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

14. ☐ **The child has no known Indian heritage.**

15. a. ☐ The probation department ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the child could be placed.

    b. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated.

16. ☐ The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:

	None	Minimal	Adequate	Substantial	Excellent
a. ☐ Child	☐	☐	☐	☐	☐
b. ☐ Mother	☐	☐	☐	☐	☐
c. ☐ Father	☐	☐	☐	☐	☐
d. ☐ Legal guardian	☐	☐	☐	☐	☐
e. ☐ Other *(specify):*	☐	☐	☐	☐	☐
f. ☐ Other *(specify):*	☐	☐	☐	☐	☐

17. ☐ The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, or placed permanently with a fit and willing relative is *(date):*

Case planning and visitation

18. ☐ Child 14 years of age or older:
    a. ☐ The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
    b. ☐ The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
    c. ☐ To assist the child in making the transition to successful adulthood, the probation department must add to the case plan and provide the services
        (1) ☐ stated on the record.
        (2) ☐ as follows:

CHILD'S NAME:	CASE NUMBER:

19. a. ☐ The following were actively involved in the case plan development, including the plan for permanent placement:
☐ Child ☐ Mother ☐ Father ☐ Legal guardian ☐ Tribal representative
☐ Other: ☐ Other:

b. ☐ The following were **not** actively involved in the case plan development, including the plan for permanent placement:
☐ Child ☐ Mother ☐ Father ☐ Legal guardian ☐ Tribal representative
☐ Other: ☐ Other:
The probation officer is ordered to actively involve them and submit an updated case plan within 30 days from today.

c. ☐ The following were **not** actively involved in the case plan development, including the plan for permanent placement:
☐ Child ☐ Mother ☐ Father ☐ Legal guardian ☐ Tribal representative
☐ Other: ☐ Other:
The probation offier is not required to involve them because they are unable, unavailable, or unwilling to participate.

20. ☐ The court finds that the child's
a. developmental needs ☐ are ☐ are not being met.
b. mental health needs ☐ are ☐ are not being met.
c. physical needs ☐ are ☐ are not being met.
d. education needs ☐ are ☐ are not being met.

21. ☐ The additional services, assessments, and/or evaluations the child requires and the persons or agency ordered to take the steps necessary for the child to receive these services, assessments, and/or evaluations are
a. ☐ stated on the record.
b. ☐ as follows:

22. a. ☐ The following are ordered by the court to participate with the child in a counseling or education program as directed by the probation officer: ☐ Mother ☐ Father ☐ Legal guardian
☐ Other *(specify):* ☐ Other *(specify):*

b. ☐ The participation by the following is deemed by the court to be inappropriate or potentially detrimental to the child, and their participation with the child in a counseling or education program is NOT ordered:
☐ Mother ☐ Father ☐ Legal guardian ☐ Other *(specify):*
☐ Other *(specify):*

23. ☐ The child has siblings under the court's jurisdiction, and all of the siblings are **not** placed together in the same home.
a. ☐ Visitation between the child and child's siblings who are not placed together is appropriate and ordered.
b. ☐ The court finds by clear and convincing evidence that visitation between the siblings who are not placed together would be contrary to the safety and well-being of at least one of the children. No visitation is ordered.

24. ☐ Visitation with the child is ordered
a. ☐ as stated in *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
b. ☐ as follows *(specify):*

Health and education

25. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date):*

26. ☐ For a child who is 10 years of age or older; is in junior high, middle, or high school; and has been under the jurisdiction of the juvenile court for a year or longer, *Status Review Attachment: Sexual and Reproductive Health Services* (form JV-459(A)) has been completed and is attached.

CHILD'S NAME:	CASE NUMBER:

27. The ☐ parents ☐ legal guardians ☐ Indian custodian ☐ Other *(specify):*
are ☐ unable ☐ unwilling ☐ unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 739 and vested with the probation department.

28. ☐ A limitation on the ☐ parents ☐ legal guardians ☐ Other *(specify):*
to make educational decisions for the child

a. ☐ is **not** necessary. The parents or legal guardians hold educational rights and responsibilities, including those listed in Cal. Rules of Court, rule 5.650(e) and (f).

b. ☐ is necessary. Those rights are limited as ordered and as stated in *Order Designating Educational Rights Holder* (form JV-535).

29. ☐ The child's school placement has changed since the dispositional hearing.

a. ☐ The child's educational records, including any evaluation regarding a disability, were transferred to the new school placement within two business days.

b. ☐ The child is ☐ enrolled in ☐ attending school.

30. a. ☐ The child is 16 years of age or older, and under the requirements of Welf. & Inst. Code, § 16501.1(g)(22),

(1) ☐ an individual or individuals have been identified to assist the child with applications for postsecondary education, including career and technical education, and related financial aid.

(2) ☐ the name of the support person to assist the child is: .
The support person's relationship to the child is: .

(3) ☐ an individual or individuals have not been identified to assist the child with applications for postsecondary education, including career and technical education, and related financial aid.

(4) ☐ to assist the child in preparing for postsecondary education, the probation department must add to the case plan and provide the services

(a) ☐ stated on the record.

(b) ☐ as follows:

b. ☐ The child is 16 years of age or older and has stated that they do not want to pursue postsecondary education, including career or technical education.

Parentage

31. a. ☐ The court inquired of ☐ the mother ☐ others *(names and relationships):*

as to the identity and address of all presumed or alleged fathers. All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding Parentage* (form JV-505) were provided with and ordered to complete the form and submit it to the court.

b. ☐ The ☐ court clerk ☐ probation department shall provide the notice required by Welf. & Inst. Code, § 726.4 to

(1) alleged father *(name):*

(2) alleged father *(name):*

CHILD'S NAME:	CASE NUMBER:

Advisement

32. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred under Welf. & Inst. Code, § 727.31 to a selection and implementation hearing **that could result in the termination of parental rights and the adoption of the child.**

33. **All prior orders not in conflict with this order remain in full force and effect.**

34. ☐ Other findings and orders
    a. ☐ See attached.
    b. ☐ *(Specify):*

35. ☐ The date the child entered foster care is:

36. ☐ **The next hearing will be**

Date:	Time:	Dept:	Type of hearing:
Date**:**	Time:	Dept:	Type of hearing:

37. ☐ **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved.

38. ☐ The sealing process has been explained to the child, and the child has received any materials relevant to the sealing process and the name of their attorney who can assist with sealing records.

39. Number of pages attached:

Date:

_____
Judicial Officer

SPR23-21

Juvenile Law: Family Finding and Engagement (Amend Cal. Rules of Court, rules 5.637, 5.695, 5.790, and 5.810; revise form JV 672)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
1.	Alliance for Children's Rights by Kristin Power Vice President, Policy and Advocacy	AM	**Proposed Changes to Notification Provision in Rule 5.637(e)** We appreciate and agree with the committee's decision to include a requirement that the court be notified when the placing agency has decided not to notice a relative of placement opportunities due to that relative's personal history of family or domestic violence. **We recommend that the rule also include a requirement to also notify the minor's attorney, parent's attorney, and (if applicable) the child's tribe.** If the attorney for the minor or parent disagrees with the placing agency's assessment of the relative or can provide additional information demonstrating the appropriateness of noticing a relative, it would provide the attorney an opportunity to engage with the placing agency on the issue or, if necessary, raise the issue with the court prior to the next scheduled hearing. **Specifically, we recommend that proposed Rule 5.637(e) read as follows:** "A social worker or probation officer who determines that notification of a relative is inappropriate under this subdivision must	The committee appreciates the commenter's attention to this proposal and the overall support for the notice requirement to the court when the placing agency has decided not to notice a relative of placement opportunities due to that relative's personal history of family or domestic violence. The committee appreciates this feedback, but since this suggestion constitutes a substantive change and would require circulation for public comment, the committee chose to defer consideration of this suggestion to a future rules cycle.

SPR23-21
Juvenile Law: Family Finding and Engagement (Amend Cal. Rules of Court, rules 5.637, 5.695, 5.790, and 5.810; revise form JV 672)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			notify the court, the child's attorney, the parent's attorney and in the case of an Indian child, the child's tribe, that the relative has not been notified and explain the reasoning behind the lack of notification." Any costs to this additional requirement would be minimal as a hearing is not required.	
2.	Steven Ipson Los Angeles County Commissioner	AM	This change may be viewed as non-substantive, but the JV-672 is identified on its heading as a DELINQUENCY form. I believe it should be identified as a JUSTICE form. This will conform with Rule 5.637 which as proposed references JUSTICE. Any definition used in the draft rule appears appropriate.	The committee respectfully declines to amend form JV-672 as requested. The committee has previously recommended to the council, and the council has approved, leaving all references to "delinquency" on the form rather than "juvenile justice" since the Welfare and Institutions Code still uses the term "delinquency".
3.	Orange County Bar Association by Michael A. Gregg, President	A	The proposal adequately addresses the stated purpose. Specific Comments: Should rule 5.637 specifically address family finding requirements for a dual-status child as referenced in Welfare and Institutions Code section 241.1, and if so, what should the rule provide to ensure that	The committee appreciates the attention to this proposal from the commenter's organization and the overall support for the clarification of due diligence in family finding.

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			family finding is carried out as intended by statute? Yes. The task could be assigned to the lead agency under section 241.1.	The committee agrees that the rule should address family finding for dual status children. The proposed amendments require that the duty to exercise due diligence in family finding be assigned in accordance with the written protocols required by section 241.1(b)(4).
			Is the definition for kin in rule 5.637 accurate and complete, or should a different definition be proposed to include as part of the rule? It is accurate and complete.	No response required.
			Is the definition for a nonrelative extended family member (NREFM) in rule 5.637 accurate and complete, or should a different definition be included in the rule? It is accurate and complete.	No response required.
4.	Santa Clara County Probation Dept. Juvenile Division by Nick Birchard, Chief Probation Officer	NI	***Proposed rule 5.637***. Proposed rule 5.637 includes provisions regarding the due diligence required of probation officers and social workers engaging in family finding and certain definitions for terms integral to the family finding process. *Family finding for dual-status youth*. The	No response required. The committee appreciates the commenter's

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			Family and Juvenile Law Advisory Committee requested specific comments on the question of whether rule 5.637 should address dual-status youth. The Probation Department does not view specifically addressing dual-status youth as necessary given that the family finding process should be the same for dual-status youth as it is for other youth. *Definition of kin and NREFM.* The Committee requested specific comments on whether "kin" and "NREFM" are defined in an accurate and complete manner. The Probation Department believes both definitions are clear and supports the inclusion of the definitions in Rule 5.637 so that county agencies are not required to refer to a different rule for relevant definitions (e.g., Rule 5.502). *Ongoing duty to exercise due diligence in family finding*. Subdivision (d) states the ongoing duty of the social worker or probation officer to exercise due diligence in family finding throughout the dependency or delinquency case until the child is placed for adoption. The Probation Department requests	feedback. The committee considered recommending no action based on the evolving legislative action in this area, but concluded that specifically addressing dual-status youth in the rules to be consistent with the written protocols required by section 241.1(b)(4) would be a helpful reminder to child welfare agencies and juvenile probation departments to update their protocols. The committee appreciates the attention to this proposal from the commenter's organization and its support of the proffered definitions of "kin" and "NREFM" in the rule. The committee notes that the "ongoing responsibility to exercise due diligence to engage in family finding" begins within 30 days of the removal and detention of the child under sections 309(e)(1) and 628(d)(2) and extends "until the time the child is

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			clarification on the term "ongoing". For example, would addressing family finding efforts at each prepermanency hearing meet the obligation to exercise ongoing due diligence? It would also be helpful to understand whether and how this statement regarding an "ongoing" obligation in the rules modifies the Probation Department's obligation to exercise due diligence as provided for in Welfare and Institutions Code section 628.	placed for adoption" under subsection (d) of proposed rule 5.637, in keeping with the statutory language of Family Code section 7950. The "ongoing" responsibility to exercise due diligence in family finding under rule 5.637(d) is meant to be co-extensive with the placement agency's diligent efforts duty under Family Code section 7950(a)(1). While the due diligence duty to find relatives is ongoing until adoption, the finding that the court has to make regarding the diligent efforts the placement agency has made occurs at every permenancy or post-permanency hearing until the child is adopted.
5.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	A	[T]he Court agrees that Cal. Rules of Court, rule 5.637 should specifically address family finding requirements for a dual-status child as referenced in Welfare and Institutions Code section 241.1. The rule should provide that either probation or the social worker provide proof/notification to the Court of the specific activities that were taken for due diligence.	The committee appreciates the attention to this proposal specifically for dual-status cases. The committee concluded not to require the placing agency to provide proof/notification to the Court of the specific activities that were taken for due diligence because rules 5.695(e) and 5.810 (b)(2)(H) and (c)(2)(F) as amended would require the court to make specific findings necessarily based on the presentation of evidence of due diligence in family finding at every permanency and post-permanency hearing.

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			The Court finds that the definition for kin and for a nonrelative extended family member (NREFM) in Cal. Rules of Court, rule 5.637 to be accurate and complete, as stated.	The committee appreciates the attention to this proposal from the court and its support of the proffered definitions of "kin" and "NREFM" in the rule.
6.	Superior Court of Orange County Family Law and Juvenile Divisions by Jenny Diaz Avendano, Operations Analyst Analyst & Training Team	NI	*Does the Proposal appropriately address the stated purpose?* Yes. *Should rule 5.637 specifically address family finding requirements for a dual-status child as referenced in Welfare and Institutions Code section 241.1, and if so, what should the rule provide to ensure that family finding is carried out as intended by statute?* It may be helpful to include family finding requirements for a dual-status child to ensure the county probation department and child welfare services department are actively communicating and collaborating the information from their separate investigations to identify relatives and kin of the child. The rule may want to include the due diligence of both agencies in conducting their investigations and	The committee appreciates the attention to this proposal from the commenter's organization and the overall support for the clarification of due diligence in family finding. The committee appreciates this feedback and decided to require that the duty be assigned in accordance with the written protocols required by section 241.1(b)(4) rather than to amend rule 5.637 to specifically assign the family finding duty to both agencies in dual-status child cases because this reserves discretion for the counties to determine how to allocate the family finding investigation responsibilities between placing agencies

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			presenting both of their findings to the court, no matter if the county has adopted the on-hold system or lead court/lead agency system. *Is the definition for kin in rule 5.637 accurate and complete, or should a different definition be proposed to include as part of the rule?* Yes. *Is the definition for a nonrelative extended family member (NREFM) in rule 5.637 accurate and complete, or should a different definition be included in the rule?* Yes. *Would the proposal provide cost savings? If so, please quantify.* No. *What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?*	based on whether there is a lead agency or "on hold" concurrent jurisdiction. No response required. No response required. No response required.

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			The implementation would require case management system updates to include due diligence finding language, and written communication to staff, and judicial officers. *Would three months from the Judicial Council's approval of this proposal until its effective date provide sufficient time for implementation?* Yes. *How well would this proposal work in courts of different sizes?* Our court is a large court, and this could work for Orange County.	No response required. No response required. No response required.
7.	Superior Court of Riverside County by Susan Ryan, Chief Deputy of Legal Services	NI	Does the proposal appropriately address the stated purpose? Yes, the proposed updates to the rules of court and the revision of JV-672 do help to clarify the due diligence requirement for the family finding obligation pursuant to SB384. Should rule 5.637 specifically address family finding requirements for a dual-status child as referenced in Welfare and Institutions Code section 241.1, and if so,	The committee appreciates the attention to this proposal from the commenter's organization and the overall support for the clarification of due diligence in family finding.

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			what should the rule provide to ensure that family finding is carried out as intended by statute? It may alleviate confusion for rule 5.637 to contain a statement that the new requirements apply to dual-status children as defined in WIC 241.1. Is the definition for kin in rule 5.637 accurate and complete, or should a different definition be proposed to include that as part of the rule? The definition for kin proposed in Rule 5.637(a)(2) is accurate and complete. Is the definition for a nonrelative extended family member (NREFM) in rule 5.637 accurate and complete, or should a different definition be included in the rule? The definition for kin proposed in Rule 5.637(a)(3) is accurate and complete. Would the proposal provide cost savings? If so, please quantify. No	The committee recommends amending rule 5.637(d)(1) to include that the family finding duty be assigned in accordance with the written protocols required by section 241.1(b)(4). No response required. No response required. No response required.

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			What would the implementation requirements be for courts-for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? The implementation requirements would be minimal. Some existing minute codes regarding family finding and engagement may need to be updated and some new minute codes may need to be created. Minimal training of court staff would be needed. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. How will would this proposal work in courts of different sizes? The proposals should work well for courts of any size.	The committee appreciates the court's feedback that the implementation measures and additional training required by the proposal would be minimal. No response required. No response required.
8.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	• Does the proposal appropriately address the stated purpose?	The committee appreciates the court's support for the family finding proposal.

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			Yes. • Should rule 5.637 specifically address family finding requirements for a dual-status child as referenced in Welfare and Institutions Code section 241.1, and if so, what should the rule provide to ensure that family finding is carried out as intended by statute? **Yes, if the dual-status child is at risk of entering foster care or placed in foster care. One possible way to approach this is to add a paragraph to rule 5.637(b) like, "(3) If the child has dual status pursuant to section 241.1(e) and the child welfare services department is the lead agency, the provisions of this subdivision apply to the child." Similarly, add a paragraph to rule 5.637(c) like, "(3) If the child has dual status pursuant to section 241.1(e) and the probation department is the lead agency, the provisions of this subdivision apply to the child."** • Is the definition for kin in rule 5.637 accurate and complete, or should a different definition be proposed to include as part of the rule? **Consider including the extended family**	The committee recommends amending rule 5.637(d)(1) to include that the family finding duty be assigned in accordance with the written protocols required by section 241.1(b)(4). The committee thanks the court for its feedback, but notes that as drafted, rule 5.637(a)(2) already incorporates the extended family members of an Indian child by referencing rule 5.502, subdivision (34),

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			members of an Indian child.	which includes "(B) An extended family member as defined by the law or custom of an Indian child's tribe. (25 U.S.C. § 1903(2).)"
			• Is the definition for a nonrelative extended family member (NREFM) in rule 5.637 accurate and complete, or should a different definition be included in the rule? **WIC § 362.7 includes "medical professionals" in the non-exclusive list of examples of an NREFM. Consider including them in rule 5.637 as well.**	The committee concluded that including "medical professionals" in the definition of a NREFM is not accurate because the list of examples at the end of section 362.7 is a list of third parties that the county welfare department may interview to verify the existence of another individual's established familial or mentoring relationship with the child for purposes of verifying a NREFM.
			• Would the proposal provide cost savings? If so, please quantify. **Probably. The proposal saves the juvenile courts the time and effort that would be required to develop these forms on their own or to include all the new required findings and orders in their case management systems**.	The committee appreciates the court's feedback that the proposal would probably provide cost savings to the court.
			• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising	

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			processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **In addition to those already mentioned, courts would need to inform their judicial officers and their justice partners (child welfare agency, probation department, attorney offices, CASA offices, et al.) of the revised rules of court and forms.** • Would three months from the Judicial Council's approval of this proposal until its effective date provide sufficient time for implementation? **Yes.** • How well would this proposal work in courts of different sizes? **This proposal would work fine in the San Diego Superior Court (a large court).** Additional comments: • **CRC 5.637(b)(2)(A) – consider adding "Indian custodian's" (see WIC § 309(e)(1)(A)):** … the child has been removed from the parent, ~~or~~ guardian~~'s~~, or Indian custodian's custody;	The committee appreciates the court's feedback of potential additional implementation education measures necessary for justice partners. No response required. No response required. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

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			WIC § 309(e)(1) also requires oral notification in person or by telephone "whenever appropriate." Would it be better to include that option in paragraphs (A) and (B) here and elsewhere, rather than in a separate paragraph after (C) (especially since it does not apply to paragraph (C))? For example, "(A) Written notification and, whenever appropriate, oral notification that the child has been removed …"	Rule 5.637 already contains the "oral notification" requirement at the end of subsections (b)(2) and (c)(2). The oral notification is only required "when appropriate", whereas the written notification requirement is always required. The committee concluded the rule should remain as it circulated for comment so as not to confuse the different obligations.
			• **CRC 5.637(b)(2)(B) and elsewhere–consider simply referencing WIC § 309(e)(1)(B) to cover all options:** (B) An explanation in writing and, whenever appropriate, oral notification of the available options to participate in the child's care and placement and to support the child's family, including the information ~~on how to become a resource family and information on additional services and support that are available in out-of-home placements, including visitation and public monetary aid programs~~ set forth in section 309(e)(1)(B); and	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee concluded that it was appropriate to incorporate section 309(e)(1)(B) by reference in rule 5.637(b)(2)(B) and section 628(d)(2)(B) by reference in rule 5.637(c)(2)(B).
			• **CRC 5.637(c)(1) – consider replacing "delinquency" with "justice" and other**	The committee considered making this change prior to circulating the proposal for

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			suggested edits: <u>If the probation officer has reason to believe the child may be at risk of entering foster care placement, N</u>no later than 30 days after a the [sic] child is detained in a juvenile ~~delinquency~~ justice proceeding, ~~if the probation officer has reason to believe that the child may be at risk of entering a foster care placement~~ or within 30 days of …	comment. Because the Welfare and Institutions Code still uses the term "delinquency", the committee concluded the rule should also use that term.
			And consider here and in 5.790(f)(1) whether "no later than 30 days after the child's placement into foster care" should be changed to "no later than 30 days after the court orders foster care placement." (See WIC § 628(d)(4).)	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			• **CRC 5.637(d)(2) & (3) – consider adding "and kin" after "relatives" (see WIC §§ 309(e)(3)(B), 628(d)(3)(B) which use both terms) or, since 5.637(a)(2) defines "kin" to include relatives, replace "relatives" with "kin." Also, add (C) to 5.637(d)(2).** e.g., (A) Asked the child, in an age-appropriate manner and consistent with the child's best interests, about the identity and location of relatives <u>and kin</u>; and… <u>(C) If it is known or there is reason to know the child is an Indian child,</u>	The committee agrees with the suggestion to replace "relatives" with "kin" and has incorporated it into the revisions that it is recommending for adoption. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

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			contacted the Indian child's tribe to identify relatives and kin. … (E) Developed tools—including a genogram, family tree, family map, or other diagram of family relationships—to help the child ~~or~~ and parents, guardians, or Indian custodian to identify relatives and kin.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			• CRC 5.695(e)(2) – Consider whether "(b)" should be replaced with "(e)", i.e. "rule 5.637(e)"	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			• JV-672, Title – consider changing "DELINQUENCY" to "JUVENILE JUSTICE" (similar changes would be needed for JV-618C, K, S, V, JV-625, JV-635, JV-640, JV-642, JV-644, JV-645, JV-672, JV-674, JV-678, JV-680, JV-682, JV-683, JV-688, JV-700, JV-816, and JV-817).	The committee has previously recommended to the council, and the council has approved, leaving all references to "delinquency" rather than "juvenile justice" since the Welfare and Institutions Code still uses the term "delinquency".
			• JV-672, item 3 – Should these items be revised to reflect the difference between "reason to believe" and "reason to know" as set forth in WIC §§ 224.2, 224.3? (That is, "reason to believe" requires further	The committee concluded that the suggested revision to item 3 is outside the scope of this proposal. The committee also wants to maintain consistency among the JV forms used in delinquency proceedings. The

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			inquiry; "reason to know" requires ICWA notice.)	committee defers this suggestion to a future cycle.
			• JV-672, item 28 and 28.a – Consider inserting "or developmental-services" after "educational."	The committee concluded that this suggestion is outside the scope of this proposal. In addition, the committee notes the form references rule 5.650(e) and (f), which already includes "developmental services" as vesting with the educational rights holder.
			• JV-672, item 30.a.(1) & (3) – Consider changing "and" to "or" ("career ~~and~~ or technical education") per WIC § 16501.1(g)(22).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			• JV-672, item 30.a.(4) – Consider changing "in preparing" to "with applications" ("to assist the child ~~in preparing~~ with applications for postsecondary education") per WIC § 16501.1(g)(22).	The committee concluded that this suggestion is outside the scope of the current proposal. Since this provision on the form is not legally inaccurate, and making this change would make the form inconsistent with all other status review forms in dependency and delinquency proceedings, the committee chose to defer consideration of this suggestion to a future rules cycle.
			• JV-672, item 31.a. – Consider adding "(Juvenile)" to title of form ("a Statement Regarding Parentage (Juvenile) (form	The committee concluded that the suggested revision is inaccurate because form JV-505's title does not contain "(Juvenile)".

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			JV-505)").	
9.	Youth Law Center by Lauren E. Brady, Director of Legal Advocacy	AM	Good Afternoon, Please find attached the comments of the Youth Law Center regarding Item Number SPR23-21, regarding Juvenile Law: Family Finding and Engagement. We appreciate the opportunity to comment; please do not hesitate to reach out with any further questions. Suggested edit: Add the word kin throughout, following the mention of the word relatives. The definition of family finding includes relatives and kin, yet the rules mention only relatives in each section. This edit is required to make sure all the requirements related to family finding and due diligence include activities related to both relatives and kin. This edit should be made in the related forms as well - forms should state "relatives and kin" at each mention. Suggested edit to 5.637(a) Definitions: (1) "Family finding" means conducting an investigation to identify relatives and kin and connect the child with those relatives	No response required. No response required. The committee appreciates the commenter's helpful suggestion, but rather than adding the word "kin" throughout, the committee decided to recommend further amending rule 5.637(d)(2) and (3) by replacing "relatives" with "kin" since "kin" is defined to include "relatives" and is thus consistent with the statutory language of sections 309(e)(3)(B) and 628(d)(3)(B). The committee concluded that the rule should track the statutory language in sections 309(e)(3)(B) and 628(d)(3)(B), which does not include "collaborating with"

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			and kin in an effort to provide family support and possible placement. For an Indian child, family finding also includes contacting **and collaborating with** the child's Indian tribe to identify relatives and kin." This change would comport with the ongoing affirmative and continuing duties to collaborate on all types of issues at all stages of a case regarding an Indian child (see ACLs on ICWA).	the Indian child's tribe to identify relatives and kin. Although "collaborating with" is not inconsistent with the intent of the statute, it would add a duty that is not currently in the statute and was not circulated for public comment. Since making this change would make the form inconsistent with all other status review forms in dependency and delinquency proceedings, the committee chose to defer consideration of this suggestion to a future rules cycle.
			Suggested edit to 5.637(a) Definitions: (3) "Nonrelative extended family member (NREFM)" means an adult who has an established **or will establish a** familial or mentoring relationship with a child or a familial relationship with a relative of the child. These adults may include, but are not limited to, the following people: godparents, teachers, clergy, neighbors, parents of a sibling **or other extended family members,** and family friends. We recommend that this edit be made so that it is clear that the Rule includes individuals with whom the child <u>will</u> establish a relationship. NREFMs who are willing to develop more of an established relationship should be included.	The committee concluded that the proposed language is inconsistent with the statutory definition of NREFM. The committee concluded that it is unnecessary to insert "or other extended family members" into rule 5.637(a)(3) because extended family members are already included in the definition of kin in paragraph (a)(2).

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			Suggested edit to 5.637(b) Juvenile Dependency Proceedings: (2) After locating the child's relatives and other persons specified in paragraph (1), the social worker must**, within 30 days of removal,** provide to ~~them~~ **all adult relatives** the following:	The committee thanks the commenter for this helpful suggestion, and has modified the recommended rule to be consistent with the statutory notice requirements contained in sections 309(e)(1) and 628(d)(2). The committee agrees with the suggestion to specify the 30 day time frame and has incorporated it into the revisions that it is recommending for adoption. The committee does not recommend adding "adult" to the rule, however, because the term relative is defined to only include adults.
			(A) Written notification that the child has been removed from the parent**,** ~~or~~ guardian~~'s~~**, or Indian custodian's** custody;	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			(B) An explanation in writing of the available options to participate in the child's care and placement~~, and —~~including information on how to become a resource family**, an approved relative, or a nonrelative extended family member (NREFM)—**and information on additional services and support that are available in	The committee concluded that a reference to section 309(e)(1)(B) (which sets out information to be provided) should be in rule 5.637(b)(2)(B).

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			out-of-home placements, including visitation and public monetary aid programs; and … Oral notification in person or by telephone of the information may also be provided to the child's relatives when appropriate, **but should be followed by the provision of written information to the extent possible.** It is important to ensure that all appropriate relatives identified receive the information to which they are entitled and which they need to make appropriate decisions for themselves and their families in as many formats as possible to encourage information sharing and dialogue to meet the needs of the child. Suggested edit to 5.637(c) Juvenile Justice Proceedings: (1) No later than 30 days after a child is detained in a juvenile delinquency proceeding, if the probation officer has reason to believe that the child may be at risk of entering a foster care placement or within 30 days of a child's placement into foster care, the probation officer must use	The committee appreciates this suggestion, but declines to modify the recommended rule because the proposed language does not comply with statute, which mandates written notification.

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Juvenile Law: Family Finding and Engagement (Amend Cal. Rules of Court, rules 5.637, 5.695, 5.790, and 5.810; revise form JV 672)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			due diligence to conduct family finding, including an investigation to identify, locate, and provide notification to the child's parents or alleged parents and all of the child's adult relatives, **parents with legal custody of the child's siblings, any adult siblings, and in the case of an Indian child, any extended family members of the child's tribe.** This section should match the provisions in 5.637(b). Same suggested edits as Section (b)(2) above (except for (B)).	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Suggested edit to 5.637(c) Juvenile Justice Proceedings: Add a new section (3) (3) This section applies to children and nonminor dependents who are involved in both juvenile dependency and juvenile justice proceedings. We recommend this addition to ensure that it is clear the obligations in the Rule are applicable to dual status youth.	The committee agrees that the rule should address family finding for dual status children, and concluded that new section (4) should be added to rule 5.637(d), requiring that the duty be assigned in accordance with the written protocols required by section 241.1(b)(4).
			Suggested edit to 5.637(d): Due diligence: For sections (2)(A) through 3(E). For sections (2)(A) through 3(E) any reference to "relatives" should be revised to state "kin or NREFMs" in order to provide	The committee appreciates the commenter's helpful suggestion, and agrees to recommend amending rule 5.637(d)(2) and (3) to replace "relative" with "kin" to be consistent with the statutory language of sections

SPR23-21
Juvenile Law: Family Finding and Engagement (Amend Cal. Rules of Court, rules 5.637, 5.695, 5.790, and 5.810; revise form JV 672)

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

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
			consistency with the definitions provided above, or the language should state "relatives, including kin or NREFMs." Suggested edit to 5.637(e) When notification of a relative is inappropriate: The social worker or probation officer is not required to notify a relative whose personal history of family or domestic violence would make notification inappropriate. A social worker or probation officer who determines that notification of a relative is inappropriate under this subdivision must notify **all parties and** the court that the relative has not been notified and explain the reasoning underlying that lack of notification. We recommend this change to ensure *all parties* are notified and can raise any concerns if it is believed the relative or kin should be considered or this standard is not met.	309(e)(3)(B) and 628(d)(3)(B). The committee declines to include "or NREFMs" because rule 5.637(a)(2) already includes NREFMs in the definition of kin. The committee appreciates this feedback, but since this suggestion constitutes a substantive change and would require circulation for public comment, the committee chose to defer consideration of this suggestion to a future rules cycle.

Item number: 22

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Civil Practice and Procedure: Appointment of Guardian ad Litem

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Adopt form CIV-011/FL-936; revise forms DE-350/GC-100 and DE-351/GC-101; revise form CIV-010 and renumber as CIV-010/FL-935; revoke form FL-935

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee; Family and Juvenile Law Advisory Committee; Probate and Mental Health Advisory Committee

*Staff contact (*name, phone and e-mail*): Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov; Jenny Grantz, 415-865-4394, jenny.grantz@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 1, 2022
Project description from annual agenda: Civil and Small Claims: 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.

Family and Juvenile Law: 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.

Probate and Mental Health: 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.

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

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

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

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

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

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

Judicial Council *of* California

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-
For business meeting on: September 18–19, 2023

Title
Civil Practice and Procedure: Appointment of Guardian ad Litem

Rules, Forms, Standards, or Statutes Affected
Adopt form CIV-011/FL-936; revise forms DE-350/GC-100 and DE-351/GC-101; revise form CIV-010 and renumber as CIV-010/FL-935; revoke form FL-935

Recommended by
Civil and Small Claims Advisory Committee
Hon. Tamara L. Wood, Chair
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair
Probate and Mental Health Advisory Committee
Hon. Jayne Chong-Soon Lee, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 19, 2023

Contact
Jenny Grantz, 415-865-4394
jenny.grantz@jud.ca.gov
Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee, the Family and Juvenile Law Advisory Committee, and the Probate and Mental Health Advisory Committee propose adopting one form, revising two forms, revising and renumbering one form, and revoking one form to reflect a change in the law and to clarify and modernize the existing forms. The mandatory forms in the proposal are used to apply for and order the appointment of a guardian ad litem in a civil action or proceeding, including a family law proceeding, and in a proceeding under the Probate Code.

Recommendation

The Civil and Small Claims Advisory Committee, the Family and Juvenile Law Advisory Committee, and the Probate and Mental Health Advisory Committee recommend that the Judicial Council, effective January 1, 2024:

1. Adopt *Order Appointing Guardian ad Litem—Civil and Family Law* (form CIV-011/FL-936) for mandatory use to appoint a guardian ad litem in civil and family law proceedings;

2. Revise *Application and Order for Appointment of Guardian ad Litem—Civil* (form CIV-010), retitle it as *Application for Appointment of Guardian ad Litem—Civil and Family Law*, and renumber it as form CIV-010/FL-935 to separate the application from the order, incorporate new statutorily required elements, update its language, and clarify that it is intended for use in family law proceedings;

3. Revise *Petition for Appointment of Guardian ad Litem—Probate* (form DE-350/GC-100) and *Order Appointing Guardian ad Litem—Probate* (form DE-351/GC-101) to incorporate new statutorily required elements and update their language; and

4. Revoke *Application and Order for Appointment of Guardian ad Litem of Minor—Family Law* (form FL-935) because it is now unnecessary.

The proposed new, revised, and revoked forms are attached at pages 8–16.

Relevant Previous Council Action

The forms in this proposal, with the exception of form DE-351/GC-101, were last revised effective January 1, 2008. Form DE-351/GC-101 was adopted effective January 1, 2004, and has not been revised until now.

Analysis/Rationale

Revisions are necessary because the existing forms for requesting and appointing a guardian ad litem in civil, family, and probate proceedings reflect legal requirements modified by Senate Bill 1279 (Stats. 2022, ch. 843). In addition, the current civil and family law forms combine the application and order into a single form. That combination can make it difficult for computerized case management systems to process the form. To address these issues, the committees recommend revising two existing forms, revising, retitling, and renumbering an existing form, adopting a new form, and revoking an existing form.

Language regarding lack of capacity

SB 1279 amended Code of Civil Procedure section 372 and Probate Code section 1003 in several respects. First, SB 1279 updated the language in Code of Civil Procedure section 372 and Probate Code section 1003 to refer to “a person who lacks legal capacity to make decisions” as one category of persons who must appear through a guardian ad litem or for whom a guardian ad

litem may be appointed.[1] This term reflects the current legislative preference for the use of person-centered terms to refer to persons with disabilities. Three forms—*Application and Order for Appointment of Guardian ad Litem—Civil* (form CIV-010), *Petition for Appointment of Guardian ad Litem—Probate* (form DE-350/GC-100), and *Order Appointing Guardian ad Litem—Probate* (form DE-351/GC-101)—use the outdated language "an incompetent person." This recommendation revises all three of these forms to use the new statutory term.

Guardian ad litem for a person who has a guardian or conservator of the estate

Second, SB 1279 amended Code of Civil Procedure section 372 to condition a court's grant of an application for appointment of a guardian ad litem in civil and family law proceedings for a person who already has a guardian or conservator of the estate on (1) the applicant giving notice and a copy of the application to the guardian or conservator of the estate, (2) the application disclosing the existence of the guardian or conservator of the estate, and (3) the application stating reasons why the guardian or conservator of the estate would be inadequate to represent the interests of the proposed ward.[2] The committees recommend revising form CIV-010 to give the applicant the opportunity to comply with these requirements.

Conflicts of interest

Third, SB 1279 added to both Code of Civil Procedure section 372 and Probate Code section 1003 a requirement that, before appointment of a guardian ad litem under either statute, a proposed guardian ad litem must disclose to the court and all parties to the action or proceeding any "known actual or potential conflicts of interest that would or might arise from the appointment" and any "familial or affiliate relationship the proposed guardian ad litem has with any of the parties."[3] In addition, the statutes now require that, after appointment, a guardian ad litem disclose to the court any potential conflict of interest that the guardian ad litem realizes has become an actual conflict of interest and any new actual or potential conflict that has arisen.

The committees recommend revising forms CIV-010 and DE-350/GC-100 to provide space for the required disclosures and to inform the proposed guardian ad litem of the duty to report to the court any conflicts of interest that ripen or arise after appointment. In addition, the committees recommend revising form DE-351/GC-101 to include an order requiring the guardian ad litem to report conflicts of interest to the court.

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[1] Code Civ. Proc., § 372(a)(2)(A), (a)(4); Prob. Code, § 1003(a)(2). The bill also amended section 372 to explain that, for purposes of that section, the term "person who lacks legal capacity to make decisions" refers to a "person who lacks capacity to understand the nature or consequences of the action or proceeding," a "person who lacks capacity to assist the person's attorney in the preparation of the case, and a "person for whom a conservator may be appointed pursuant to Section 1801 of the Probate Code." (Code Civ. Proc., § 372(a)(4).) The statute does not indicate whether the specified references are intended to be exclusive.

[2] *Id.*, § 372(a)(2)(B).

[3] *Id.*, § 372(d); Prob. Code, § 1003(d).

Additional changes

Separate order form

The committees recommend revising form CIV-010 by removing from it the order appointing a guardian ad litem and adopting *Order Appointing Guardian ad Litem—Civil and Family Law* (form CIV-011/FL-936) as a separate form. The combination of an incoming application and an outgoing order in a single form can present a problem for some courts' case management systems. Placing the application and order on separate forms is intended to allow case management systems to process the forms more efficiently. In addition, the recommended new form includes an order requiring the guardian ad litem to report conflicts of interest to the court.

Revocation of family law form

The committees also recommend revoking *Application and Order for Appointment of Guardian ad Litem of Minor—Family Law* (form FL-935) because it is unnecessary. Code of Civil Procedure sections 372–376 supply the procedures for appointment of a guardian ad litem in family law proceedings.[4] Form CIV-010 can be used for this purpose, as it elicits all the information needed to apply for appointment of a guardian ad litem in a family law proceeding. The committees also recommend cross-numbering form CIV-010 as CIV-010/FL-935 and retitling it as *Application for Appointment of Guardian ad Litem—Civil and Family Law* to limit confusion.

Additional information and determinations

The committees recommend revising the existing forms to add space to address issues of fact that, if applicable, require judicial determinations under the law. These revisions include adding space on form CIV-010/FL-935 for applicants to explain, in their own words, the circumstances underlying an assertion that a proposed ward lacks legal capacity to make decisions or is someone for whom a guardian or conservator of the estate has been appointed; revising form DE-350/GC-100 to add space for a petitioner to explain why representation of the person's interest would be inadequate without appointment of a guardian ad litem; and revising form DE-351/GC-101 to allow the court to make a finding to that effect.

Technical and minor substantive changes

In the course of reviewing the existing forms that are included in this recommendation, the committees also identified opportunities to clarify their formatting, simplify their language, and update them to conform to current Judicial Council forms guidelines.

Policy implications

The recommendations are needed to conform to the law as amended by SB 1279. Accordingly, the key policy decisions were made by the Legislature. In addition, the committees were mindful of the ongoing need to improve the quality of justice and service to the public and to modernize court administration when developing their recommendations.

[4] Family Code sections 6223 and 7635 require appointment of a guardian ad litem in specific circumstances, but do not supply alternative procedures.

Comments

The proposal circulated for public comment in the spring 2023 invitation-to-comment cycle. The committees received seven comments, including four from superior courts. One commenter agreed with the proposal as circulated, three commenters agreed and suggested modifications, and three commenters did not indicate a position and suggested modifications. Most commenters suggested minor or technical changes to make the forms simpler and more accessible to self-represented litigants. The committees accepted almost all of these suggestions.

One commenter, the Superior Court of Los Angeles County, suggested several revisions. The committees have incorporated the court's suggested technical revisions into the forms. The committees have also modified their recommendation in response to two of the court's substantive comments. First, the court observed that neither of the grounds in item 5 (renumbered as item 6) on form CIV-010/FL-935 seemed to apply to the appointment of a guardian ad litem for a minor requesting or opposing a request for an injunction or restraining order described in Code of Civil Procedure sections 372(b) and 374(a). The committees agree and have determined that sections 372(b) and 374(a) require appointment of a guardian ad litem regardless of whether the minor has a guardian of the estate. The committees have also determined that Family Code section 7635 requires appointment of a guardian ad litem for a minor party in an action under the Uniform Parentage Act. (UPA; Fam. Code, § 7600–7730.) The committees have therefore modified the forms to add, in item 6 on form CIV-010/FL-935, express options to apply for appointment of a guardian ad litem in restraining order proceedings and UPA actions and corresponding options, in item 5 on form CIV-011/FL-936, for the court to order appointment in those proceedings.

The court also suggested moving items 7 and 8 from the main body of form CIV-010/FL-935, to be completed by the applicant, to the last section of the form, to be completed by the proposed guardian ad litem because the applicant, if different from the proposed guardian ad litem, might not know the information required by those items. Item 7 required specification of the proposed guardian ad litem's relationship to the person to be represented. Item 8 required disclosure of any conflicts of interest between the guardian ad litem and the person to be represented. The committees agree with the suggested change and have moved items 7 and 8, renumbered as items 8 and 9, to the last section of the form, which is retitled "Disclosures and Consent to Act as Guardian ad Litem." Although the court did not specifically suggest it, the committees have made the same change to form DE-350/GC-100 for the same reason.

Another commenter suggested revising the instructions on forms CIV-010/FL-935 and DE-350/GC-100 to clarify that form CIV-010/FL-935 must be used to apply for appointment of a guardian ad litem in a "minor's compromise" proceeding under Probate Code sections 3500–3613. The committees agree that the instructions need clarification, though not in the manner suggested. The committees have revised the instructions on both forms to explain that a new or separate guardian ad litem is not required in a minor's compromise proceeding, and so neither form is appropriate for use in such a proceeding. A guardian of the estate has independent power under Probate Code section 2500 et seq. to compromise a minor's disputed claim without

litigation. In the absence of a guardian of the estate, section 3500 confers that power on a parent and requires the parent to petition the court for approval of the compromise.

If court approval of the compromise of a *pending* action or proceeding or the disposition of judgment proceeds under Probate Code sections 3600–3613 is required on behalf of a person identified in Code of Civil Procedure section 372 and a guardian or conservator of the estate has not been appointed or is inadequate, the court presiding over the pending action will have already appointed a guardian ad litem in that action. The existing guardian ad litem will have standing to petition for approval of the compromise or disposition without further order; a new or separate guardian ad litem is not required.

A different commenter suggested that the committees add a reference on form CIV-010/FL-935, the civil and family law application, to the requirements of Code of Civil Procedure section 372(a)(4), which describes three categories of persons who may require a guardian ad litem because of a lack of legal capacity. The committees do not recommend that addition because they have concluded that the applicant should describe the disability of the person to be represented in their own words and leave to the court the determination whether the disability fits one of the statutory categories of lack of capacity. This commenter also suggested adding items to forms CIV-011/FL-936 and DE-351/GC-101 for the court to specify its findings regarding capacity in more detail. The committees do not recommend these additions. The statutes do not require detailed specification of the findings. And in many cases, the court will take judicial notice of a different court's determination, in a separate proceeding, that the person to be represented lacks legal capacity to make decisions.

A chart of comments and committee responses is attached at pages 17–28.

Alternatives considered

The committees considered taking no action but determined that the changes in the law required corresponding changes to the forms. The committees also considered limiting the proposed changes strictly to those required by the recent legislation but determined that additional clarification and updating were necessary, particularly to make the forms more accessible to self-represented applicants or petitioners. Finally, the committees considered retaining and revising form FL-935 but determined that this form was approved before the adoption of any form application for appointment of a guardian ad litem, that form CIV-010 is intended to apply broadly, and, with minor revisions, form CIV-010 is suitable for use in all the proceedings to which form FL-935 might apply. No commenters objected to this recommendation.

Fiscal and Operational Impacts

The proposal would impose the usual costs for courts to train staff and update their internal procedures and case management systems to reflect the new and revised forms. As noted above, new form CIV-011/FL-936 should allow case management systems to handle the guardian ad litem appointment process more efficiently by separating the order from the application.

Attachments and Links

1. Forms CIV-010/FL-935, CIV-011/FL-936, DE-350/GC-100, DE-351/GC-101, and FL-935, at pages 8–16
2. Chart of comments, at pages 17–28
3. Link A: Sen. Bill 1279 (Stats. 2022, ch. 843), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1279*

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):		**DRAFT 07062023 Not approved by Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:		
APPLICATION FOR APPOINTMENT OF GUARDIAN AD LITEM—CIVIL AND FAMILY LAW ☐ **EX PARTE**		CASE NUMBER:

This form is for use in a civil or family law proceeding in which a party is a minor, a person who lacks legal capacity to make decisions, or a person for whom a conservator has been appointed. A person who seeks the appointment of a guardian ad litem in a proceeding under the Probate Code—other than a proceeding under Probate Code sections 3500–3613 for approval of a compromise, settlement, or disposition of judgment proceeds—should use form DE-350/GC-100. ***NOTE:*** *A person may not act as a guardian ad litem unless the person is represented by an attorney, is an attorney, or, in an action under the Uniform Parentage Act (Family Code, §§ 7600–7730), is an adult relative of a minor party.*

1. I *(applicant's name):*
   am *(check all that apply):*
   a. ☐ the parent of *(name):*
   b. ☐ the guardian of *(name):*
   c. ☐ the conservator of *(name):*
   d. ☐ a party to the suit.
   e. ☐ the minor to be represented *(if the minor is 14 years of age or older).*
   f. ☐ another interested person *(specify capacity):*
2. I am asking the court to appoint the following person as guardian ad litem *(name, address, phone number, and email address):*

3. The guardian ad litem will represent the interest of *(name, address, and, if applicable, phone number and email address):*

4. The person named in item 3 is a party and is *(check all that apply):*
   a. ☐ a minor *(date of birth):*
   b. ☐ a person who lacks legal capacity to make decisions *(explain the basis for claiming lack of capacity):*

   ☐ Continued on Attachment 4b.
   c. ☐ a person for whom a conservator has been appointed *(provide the details of the appointment):*

   ☐ Continued on Attachment 4c.

Form Adopted for Mandatory Use
Judicial Council of California
CIV-010/FL-935 [Rev. January 1, 2024]

Code of Civil Procedure, § 372 et seq.;
Family Code, §§ 6229, 7635
www.courts.ca.gov

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

5. ☐ The person named in item 3 is a minor and is *(check one):*
   a. ☐ a plaintiff or petitioner in this action and the summons has not been issued.
   b. ☐ a defendant or respondent in this action. More than 10 days have passed since service of the summons, and no one has applied for the appointment of a guardian ad litem.

6. I am asking the court to appoint a guardian ad litem because the person named in item 3 *(check all that apply):*
   a. ☐ is a minor who is a party to an action under the Uniform Parentage Act (Family Code, §§ 7600–7730).
   b. ☐ is a minor who is requesting or opposing a request for an injunction or restraining order described in Code of Civil Procedure sections 372(b)(1) and 374(a). *(If the minor is 12 years of age or older, check one of the following):*
      The minor ☐ does ☐ does not object to the appointment of the person named in item 2.
      ☐ I don't know whether the minor objects to the appointment of the person named in item 2.
   c. ☐ has no guardian or conservator of the estate.
   d. ☐ has a guardian or conservator of the estate, but the guardian or conservator is inadequate to represent the person's interest in this action or proceeding because *(explain):*

      ☐ Continued on Attachment 6d.
      The guardian or conservator of the estate is *(name, address, telephone number, and email address):*

      (After filing this application, you must give notice and a copy of the application to the guardian or conservator above.)

7. The proposed guardian ad litem is fully competent and qualified to understand and protect the rights of the person named in item 3.

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ATTORNEY)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF APPLICANT)

DISCLOSURES AND CONSENT TO ACT AS GUARDIAN AD LITEM

8. I have the following relationship with the person named in item 3 *(check one):*
   a. ☐ No relationship
   b. ☐ A familial relationship *(specify):*
   c. ☐ An affiliate (nonfamilial) relationship *(specify):*

9. I am *(check one):*
   a. ☐ not aware of any actual or potential conflicts of interest that would or might arise from the appointment.
   b. ☐ aware of the following actual or potential conflicts that would or might arise from the appointment (*describe the actual or potential conflicts of interest and explain why the proposed guardian should still be appointed):*

      ☐ Continued on Attachment 9b.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I consent to act as guardian ad litem in this action or proceeding. If I become aware that a potential conflict of interest has become an actual conflict, or that a new potential or actual conflict exists, I will promptly disclose the conflict of interest to the court.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PROPOSED GUARDIAN AD LITEM)

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		**DRAFT 07062023 Not approved by Judicial Council**
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PLAINTIFF/PETITIONER:		
DEFENDANT/RESPONDENT:		
OTHER PARENT/PARTY:		
ORDER APPOINTING GUARDIAN AD LITEM—CIVIL AND FAMILY LAW ☐ **EX PARTE**		CASE NUMBER:

1. Applicant *(name):*
   seeks appointment of a guardian ad litem of *(name):*

2. ☐ The application came on regularly for a hearing as follows:
   a. Judicial officer *(name):*
   b. Hearing date: Time: ☐ Dept.: ☐ Room:
   c. The following persons were present at the hearing:
      (1) ☐ Applicant *(name):*
      (2) ☐ Attorney for applicant *(name):*
      (3) ☐ Guardian ad litem named in item 6.
      (4) ☐ Attorney for guardian ad litem *(name):*
      (5) ☐ Plaintiff/Petitioner *(name):*
      (6) ☐ Attorney for Plaintiff/Petitioner *(name):*
      (7) ☐ Defendant/Respondent *(name):*
      (8) ☐ Attorney for Defendant/Respondent *(name):*
      (9) ☐ Other *(names):*

THE COURT FINDS

3. ☐ All notices required by law have been given.

4. The person for whom a guardian ad litem is to be appointed is a party who is
   a. ☐ a minor *(date of birth):*
   b. ☐ a person who lacks legal capacity to make decisions.
   c. ☐ a person for whom a conservator has been appointed.

5. ☐ The person for whom a guardian ad litem is to be appointed
   a. ☐ is a minor who is a party to an action under the Uniform Parentage Act. (Family Code, §§ 7600–7730.)
   b. ☐ is a minor who is requesting or opposing a request for an injunction or restraining order described in Code of Civil Procedure sections 372(b) and 374(a).
   c. ☐ does not have a guardian or conservator of the estate.
   d. ☐ has a guardian or conservator of the estate, but the guardian or conservator is inadequate to represent the person's interest and appointment of a guardian ad litem is expedient.

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

THE COURT ORDERS

6. *(Name):*
   is appointed guardian ad litem of *(name):*

7. The guardian ad litem ☐ is ☐ is ***not*** authorized to waive or disclaim any substantive rights of the represented party without further order of this court.

8. The guardian ad litem must promptly report to the court any potential conflict of interest with the represented person that becomes an actual conflict, as well as any new potential or actual conflict of interest that arises during the course of the representation.

9. ☐ Other *(specify):*

☐ Continued on Attachment 9.

10. Number of pages attached: _____

▶ _____
JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):		**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
MATTER OF *(name):* ☐ DECEDENT ☐ CONSERVATEE ☐ MINOR		CASE NUMBER:
PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM—PROBATE ☐ **EX PARTE**		HEARING DATE AND TIME: DEPT.: TIME:

*Use this form for proceedings under the Probate Code, **except** proceedings to request approval of the (1) compromise of a minor's disputed claim (Probate Code, § 3500), (2) compromise of a pending action or proceeding in which a party is a minor or person with a disability, or (3) disposition of the proceeds of a judgment for a minor or person with a disability. (Probate Code, §§ 3600–3613.) A guardian ad litem is not required in a proceeding under section 3500. A guardian ad litem in a pending action or proceeding may seek approval of a compromise of the action or proceeding or disposition of judgment proceeds without further order. **NOTE:** A guardian ad litem must be an attorney or be represented by an attorney. A guardian ad litem is **not** the same as a guardian of the person or estate.*

1. Petitioner *(name):*
   is *(check one):*
   a. ☐ personal representative of the estate of *(name):*
   b. ☐ guardian of *(name):*
   c. ☐ conservator of *(name):*
   d. ☐ trustee of *(exact name of trust):*
   e. ☐ other interested person *(name and interest):*
2. This petition seeks appointment of the following person as guardian ad litem *(name, address, phone number, and email address):*
3. The guardian ad litem will represent the interest of *(name, address, and, if applicable, phone number and email address):*
4. The person named or described in item 3 is *(check one):*
   a. ☐ A minor *(date of birth):*
   b. ☐ A person who lacks legal capacity to make decisions *(explain basis for claiming lack of capacity):*
   c. ☐ An unborn person.
   d. ☐ An unascertained person or a designated class of persons who are not ascertained or are not in being.
   e. ☐ A person whose identity or address is unknown.
5. Representation of the interest of the person named or described in item 3 would be inadequate without appointment of a guardian ad litem because *(give the reason or reasons below; if necessary, check the box and continue on page 2):*

☐ Continued on next page.

MATTER OF *(name):* ☐ DECEDENT ☐ CONSERVATEE ☐ MINOR	CASE NUMBER:

5. *(continue explanation below if necessary):*

☐ Continued on Attachment 5.

6. ☐ The proposed guardian ad litem is fully competent and qualified to understand and protect the rights of the person named or described in item 3, as explained in Attachment 6.

7. Notice of this proceeding *(check all that apply):*
   a. ☐ Will be given to the persons named in Attachment 7a.
   b. ☐ Should not be given to the persons named below because *(give names and reasons that notice should not be required):*

☐ Continued on Attachment 7b.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ATTORNEY)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PETITIONER)

DISCLOSURES AND CONSENT TO ACT AS GUARDIAN AD LITEM

8. I have the following relationship with the person named or described in item 3 *(check one):*
   a. ☐ No relationship.
   b. ☐ A familial relationship *(specify):*
   c. ☐ An affiliate (nonfamilial) relationship *(specify):*

9. I have *(check one):*
   a. ☐ No known actual or potential conflicts of interest with the person named or described in item 3.
   b. ☐ One or more actual or potential conflicts of interest with the person named or described in item 3. All conflicts of interest are fully described in Attachment 9b.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I consent to the appointment as guardian ad litem in this proceeding. If I become aware that a potential conflict of interest has become an actual conflict, or that a new potential or actual conflict exists, I will promptly disclose the conflict of interest to the court.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PROPOSED GUARDIAN)

☐ **CONSENT OF MINOR 12 YEARS OF AGE OR OLDER *(Optional)***

I, *(name):* , am *(specify age):* years of age. I consent to the appointment of *(name):* as my guardian ad litem to represent my interest in this proceeding for the reasons set forth in item 5 of this petition.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF MINOR 12 YEARS OF AGE OR OLDER)

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):		**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
MATTER OF *(name):* ☐ DECEDENT ☐ CONSERVATEE ☐ MINOR		
ORDER APPOINTING GUARDIAN AD LITEM—PROBATE ☐ **EX PARTE**		CASE NUMBER:

1. The court has considered the petition for appointment of a guardian ad litem for *(name of person to be represented):*

   filed by *(name of petitioner):*
   on (*date):* .

2. The person for whom appointment of a guardian ad litem is requested is *(check one):*
   a. ☐ A minor *(date of birth):*
   b. ☐ A person who lacks legal capacity to make decisions.
   c. ☐ An unborn person.
   d. ☐ An unascertained person or a designated class of unascertained persons or persons who are not in being.
   e. ☐ A person whose identity or address is unknown.

THE COURT FINDS

3. a. ☐ Notice has been given as required by law.
   b. ☐ For good cause, notice does not need to be given to the following persons *(name all):*

4. Representation of the interest of the person to be represented would be inadequate without appointment of a guardian ad litem.

THE COURT ORDERS

5. *(Name):*
   is hereby appointed guardian ad litem for *(name):*

6. The guardian ad litem ☐ is ☐ is ***not*** authorized to waive or disclaim any substantive rights of the represented person without further order of this court.

7. The guardian ad litem must promptly report to the court any potential conflict of interest with the represented person that ripens into an actual conflict as well as any new potential or actual conflict of interest that arises during the course of the representation.

8. ☐ Other orders *(specify):*

☐ Continued on Attachment 8.

9. Number of pages attached: _____

Date:

(SIGNATURE OF JUDICIAL OFFICER)

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Form Adopted for Mandatory Use
Judicial Council of California
DE-351/GC-101 [Rev. January 1, 2024]

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address) or* GOVERNMENTAL AGENCY:	*FOR COURT USE ONLY*
TELEPHONE NO. *(Optional):* FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
PETITIONER: RESPONDENT: OTHER PARENT:	
APPLICATION AND ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM OF MINOR—FAMILY LAW ☐ **EX PARTE**	CASE NUMBER:

NOTE: This form is for use in family law proceedings with the exception of dissolution proceedings. or appointment of a guardian ad litem in civil proceedings, use form CIV-010. For appointment of guardian ad litem in probate proceedings, use form DE-350/GC-100.

1. I *(name):* am the
   a. ☐ attorney for
      (1) ☐ minor.
      (2) ☐ parent of the minor.
      (3) ☐ other interested person *(specify name and relationship)*
   b. ☐ parent of the minor.
   c. ☐ other interested person.
   d. ☐ minor *(answer all that apply to you)*
      (1) My date of birth is *(specify):*
      (2) I live with my ☐ mother ☐ father ☐ legal guardian ☐ other *(specify name and relationship):*
      (3) My mother's name is *(specify):* , and her address is:
      (4) My father's name is *(specify):* , and his address is:
      (5) ☐ I have a legal guardian. My legal guardian's name is *(specify):* , and his address is:
      The guardianship was established in: County, case no. *(if known):*
2. I ask the court to appoint the following person as guardian ad litem for the minor *(state name, address, and telephone no.):*
3. The relationship of the person listed in item 2 to the minor is
   a. ☐ parent
   b. ☐ other *(specify):*
4. Appointment of a guardian ad litem is necessary because *(specify):*

☐ Continued on Attachment 4 *(describe in detail, attach additional pages if necessary).*

Form Approved for Optional Use
Judicial Council of California
FL-935 [Rev. January 1, 2008)

APPLICATION AND ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM OF MINOR—FAMILY LAW

Code of Civil Procedure, § 373;
Family Code, § 7635

CHILD'S NAME: PETITIONER: RESPONDENT: OTHER PARENT:	CASE NUMBERS:

5. The proposed guardian ad litem is fully competent to understand and protect the rights of the minor and has no interests conflicting with those of the minor.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF APPLICANT)

CONSENT TO ACT AS GUARDIAN AD LITEM

I consent to the appointment as guardian ad litem and agree to assume the responsibilities.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PROPOSED GUARDIAN)

CONSENT TO GUARDIAN BY MINOR 14 YEARS OF AGE OR OLDER

I, *(name):* , am *(specify age):* years of age and hereby nominate *(name):* to be my guardian ad litem to represent my interests for the reasons set forth in items 4 and 5 of this application.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PETITIONER)

ORDER ☐ EX PARTE

THE COURT FINDS
It is reasonable and necessary to appoint a guardian ad litem for the person named in the application, as requested above.

THE COURT ORDERS that *(name)* is hereby appointed guardian ad litem of *(name)* for the purposes set forth in item .

Application for Appointment of Guardian ad Litem filed *(date):*
a. ☐ is denied.
b. ☐ is granted.
c. ☐ set for hearing on *(date):* at *(time):*

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

SPR23-22

Civil Practice and Procedure: Appointment of Guardian ad Litem (adopt form CIV-011/FL-936; revise forms DE-350/GC-100 and DE-351/GC-101; revise form CIV-010 and renumber as CIV-010/FL-935; revoke form FL-935)

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

	Commenter	Position	Comment	Committee Response
1.	Family Violence Appellate Project by Jodi Lewis, Senior Managing Attorney, and Cory Hernandez, Senior Staff Attorney Oakland	NI	We support the proposal, and wanted to make additional recommendations below. . . . Mostly the comments focus on making the forms more plain language and reader/user-friendly. **CIV-010/FL-935** • P. 1, item 1 – easier-to-read formatting would be good here. The spacing between "Applicant (name):" and "is" makes it easy to miss the word "is," as we did initially. It may be better to divide this into two items: (1) "Name of person asking for Guardian Ad Litem Appointment: [blank]"; (2) "Person in (1) is: [list checkboxes]." • P. 2, item 5 – the phrase, "expedient, notwithstanding . . ." is not plain language. Perhaps better language could be, "necessary[or useful may be better word to use here], even though the person in item 3 already has a guardian or conservator of the estate." • P. 2, item 6(b) – the word "elapsed" may be unknown to some readers, so "passed" may be better. • P. 2, item 8(b) – instead of "nevertheless," maybe use "still." **CIV-011/FL-936** • P. 1, item 1 – As noted above, the formatting of this item 1, with the spacing, is confusing	The committees appreciate these comments. See below for responses to specific comments. The committees agree and have changed the formatting of item 1 of form CIV-010/FL-935. The word "is" has been moved to the second line and replaced with "am." A parenthetical instruction to "check all that apply" has also been added. The committees have revised item 6 (item 5 as it was circulated for comment) of form CIV-010/FL-935 to remove the reference to the statutory standard and render this comment moot. The committees agree and have changed "elapsed" to "passed" in item 5b of form CIV-010/FL-935. The committees agree and have changed "nevertheless" to "still" in item 9b of form CIV-010/FL-935. The committees agree and have moved "seeks appointment of a guardian ad litem of *(name):*" to

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			and makes the right-justified text easily missed. Perhaps better to divide into two items: (1) "Name of person asking for Guardian Ad Litem Appointment: [blank]"; (2) "Person in (1) is: [list checkboxes]."	the start of line 2 of item 1 of form CIV-011/ FL-936.
			o Alternatively, the blank spaces should have underlines (_____) so it is clear information needs to be added there, and the right-justified text ("seeks appointment of a" and "who is:") should be moved over to left-justified, after a line break, to make it easier to read, so it'd look like: "Applicant (Name): _____ seeks appointment of a guardian ad litem for (name): _____ who is: a. [ ] a minor . . . ."	The committees note that the forms that will be available to users on the courts.ca.gov website will have blue-colored fields for each of the fillable items, which will help users see where they are supposed to provide information. The copies of the forms included with Invitations to Comment can't display these fields, which makes the forms appear harder to read than they will be in practice—at least for users completing them online.
			• P. 2, item 6 – instead of "authorized to waive . . ." maybe: "allowed to waive or say no to any [is there a plainer word for substantive?] rights of the represented party without another court order."	The committees do not adopt this suggestion because it is difficult to translate this item into plain language without losing some of its meaning. In particular, "substantive rights" cannot easily be translated into plain language, and "say no to" does not fully capture the meaning of "disclaim." The committees also believe that judges, not guardians ad litem, will primarily be the ones interpreting this provision and applying it to specific conduct, so it is less important for this item to be in plain language than some others.

SPR23-22

Civil Practice and Procedure: Appointment of Guardian ad Litem (adopt form CIV-011/FL-936; revise forms DE-350/GC-100 and DE-351/GC-101; revise form CIV-010 and renumber as CIV-010/FL-935; revoke form FL-935)

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

	Commenter	Position	Comment	Committee Response
			DE-350/GC-100 • P. 1, item 1 – Same comments as above, in terms of readability. • P. 2, item 9(b) – instead of "should be dispensed with" maybe: "is not needed" or "does not have to be given." **DE-351/GC-101** • P. 1, item 6 – Same comment above for p. 2, item 6 of CIV-110/FL-936	The committees agree and have moved "is *(check one):*" to the beginning of line 2 of item 1. The committees agree and have replaced "should be dispensed with" with "should not be required." The committees do not recommend the suggested change because translating this item into plain language would lead to the loss of too much of its meaning. In particular, "substantive rights" cannot easily be translated into plain language, and "say no to" does not fully capture the meaning of "disclaim" as that term is used in the Probate Code. Judicial officers, not guardians ad litem, will primarily be the ones interpreting this provision and applying it to specific conduct, so it is less important for this item to be in plain language than some others.
2.	Hon. Gus T. May, Judge Superior Court of Los Angeles County	NI	I am writing to request further clarification of the instructions/note included in italics under the caption on each of these forms. The issue that I come across that could use some clarification pertains to GAL applications filed in connection with Petitions for Approval of Compromise of Claim ("Minor's Compromise Petition") (Judicial Council form MC-350) brought under Probate Code sections 3500, 3600–3613.	The committees agree that the instructions would benefit from clarification, though not in the manner suggested. The committees have revised the instructions on both forms to explain that a new or separate guardian ad litem is not required in a minor's compromise proceeding, and so neither form is appropriate for use in such a proceeding. A guardian of the estate has independent power under Probate Code section 2500 et seq. to compromise a minor's disputed claim without litigation. In the absence of a

	Commenter	Position	Comment	Committee Response
			Probate Courts occasionally see Minor's Compromise petitions brought by someone other than a parent or guardian of the estate, e.g., guardian of the person, other relative who is serving as an informal caregiver (e.g., parent resides out of the country) or even a county that has custody of the minor under a dependency court order. The petition seeks to have the settlement proceeds placed into a blocked account to be held for the minor until they turn 18. In those instances, the petitioner will submit an ex parte application to be appointed as the Guardian ad Litem in order to file the Minor's Compromise Petition. The issue is that it's unclear which form they are supposed to use for these purposes. Specifically: CIV-010 directs the litigant who is filing a Minor's Compromise Petition to use the DE-350, since the Petition is technically one brought under the Probate Code. ("This form is for use in civil or family law proceedings in which a party is a minor, a person who lacks legal capacity to make decisions, or a person for whom a conservator has been appointed. A party who seeks the appointment of a guardian ad litem in a proceeding under the Probate Code should use form DE-350/GC-100." (italics added) DE-350 states that it is NOT to be used in connection with a Minor's Compromise	guardian of the estate, section 3500 confers that power on a parent and requires the parent to petition the court for approval of the compromise. No other person is authorized by law to compromise a minor's claim or to petition for approval of that claim. An adult nonparent may petition for appointment as a guardian of the estate for purposes of compromising a minor's claim. A county social services or probation department would need to seek a juvenile court order under Welfare and Institutions Code sections 361(a) and 362(a) specifically limiting parental authority to compromise a dependent child's claim and granting that authority to the department. If court approval of the compromise of a pending action or proceeding or the disposition of judgment proceeds under Probate Code sections 3600–3613 is required on behalf of a person identified in Code of Civil Procedure section 372 and a guardian or conservator of the estate has not been appointed or is inadequate, the court presiding over the pending action will have already appointed a guardian ad litem in that action. The existing guardian ad litem will have standing to petition for approval of the compromise or disposition; a new guardian ad litem is not required except in extraordinary circumstances.

	Commenter	Position	Comment	Committee Response
			Petition. ("This form is for use in proceedings under the Probate Code, except for a request for court approval of (1) the compromise of a minor's disputed claim, (2) the compromise of an action to which a minor or a person with a disability is a party, or (3) disposition of the proceeds of a judgment in favor of a minor or person with a disability. (See Prob. Code, §§ 3600–3613.) A request for appointment of a guardian ad litem in a civil or family law proceeding must use form CIV-010/FL-935.") (italics added) As you can see, the instructions to each form direct the filer to use the other form. If the intention is that a person seeking appointment as a GAL in order to file a Minor's Compromise Petition must use CIV-010, it would be helpful to modify the instruction to add the following underlined words to CIV-010: "… Unless the proceeding is one seeking approval of compromise under Probate Code sections 3600-3613, a party who seeks the appointment of a guardian ad litem in a proceeding under the Probate Code should use form DE-350/GC-100." Similarly, the DE-350 instructions could be modified as follows: "… A request for appointment of a guardian ad litem in a civil, and or family law proceeding or probate	The committees do not recommend the suggested revision. The committee has, however, revised the recommended instruction to read, "A party who seeks the appointment of a guardian ad litem in a proceeding under the Probate Code—other than a proceeding under Probate Code sections 3500–3613 for approval of a compromise, settlement, or disposition of judgment proceeds—should use form DE-350/GC-100." This language does not instruct a person who seeks appointment of a guardian ad litem in a proceeding under Probate Code sections 3500–3613 to use form CIV-010/FL-935 unless one assumes that a new, separate guardian ad litem is required in such a proceeding. To avert that assumption, the committees have added two sentences to the instructions on form DE-350/GC-100 to clarify: "A guardian ad litem is not required in a proceeding under section

	Commenter	Position	Comment	Committee Response
			proceeding under Probate Code sections 3600-3613 must use form CIV-010/FL-935."	3500. A guardian ad litem in a pending action or proceeding may seek approval of a compromise of that action or proceeding or disposition of judgment proceeds without further order."
3.	Orange County Bar Association by Michael A. Gregg, President	AM	The Orange County Bar Association agrees that this proposal appropriately addresses the stated purposes of creating and amending mandatory forms for guardian ad litem appointments due to statutory changes and a need to make them more accessible/usable. However, we recommend that the forms be modified as follows: (1) Form CIV-010/FL-935 at section 4 should reference the requirements of Code of Civil Procedure § 372(a)(4) describing the three (3) types of persons who may require a GAL because of a lack of legal capacity; otherwise self-represented persons will have little guidance; (2) Form CIV-011/FL-936 needs to have a finding under a new section 5 describing which requirement of CCP § 372(a)(4) has been established; (3) Form DE-351/GC-101 should reference at new sub-section 3c the required finding that the person lacks the capacity to make decisions as required by Probate Code	The committees appreciate these comments. See below for responses to specific comments. The committees do not recommend the suggested change. It is preferable for applicants to explain in their own words why the represented person lacks capacity. In many cases, there will be an existing capacity declaration. If there is not, referring to the statutory language might lead an applicant to repeat that language in a conclusory manner instead of giving facts that support their assertion. The committees do not recommend the suggested change. Code of Civil Procedure section 372 does not require a judicial officer to enter a finding as to which subparagraph of section 372(a)(4) applies to the person to be represented. The committees do not recommend the suggested change. The check box in item 2b, if checked, indicates that this determination has been made, either by the appointing court or by another court

SPR23-22

Civil Practice and Procedure: Appointment of Guardian ad Litem (adopt form CIV-011/FL-936; revise forms DE-350/GC-100 and DE-351/GC-101; revise form CIV-010 and renumber as CIV-010/FL-935; revoke form FL-935)

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

	Commenter	Position	Comment	Committee Response
			§ 1003(a)(2). Without these recommended changes then any GAL appointments could be subject to various legal challenges.	in a previous proceeding. If made by the appointing court, the statute does not require that the court specify the basis for its determination.
4.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	AM	*General Comments:* o If litigants are required to schedule a hearing (see CIV-011/FL-936, Section 2), then overall operational costs will increase.	The committees do not recommend a change in response to this comment. The committees do not intend the recommended changes to the forms to affect whether a hearing is required. The captions of existing form CIV-010 and recommended forms CIV-010/FL-935 and CIV-011/FL-936 include check boxes that, if checked, indicate that the application was made and the order was determined *ex parte.* If the *court* wishes to set a hearing on an *ex parte* application, it has that authority. In addition, the check box in item 2 on form CIV-011/FL-936 is intended to indicate that item 2 is to be completed only if a hearing is held. It does not require the court to hold a hearing.
			Additionally, filers are unable to submit on the pleadings without having a hearing, leading to additional delays if a hearing is required.	The committees do not recommend a change in response to this comment, as it addresses matters beyond the scope of the proposal.
			Lastly, will a motion fee be required?	The committees do not recommend a change in response to this comment, as it raises an issue beyond the scope of the proposal.
			Regarding CIV-010/FL-935, Application for Appointment of Guardian Ad Litem-Civil and Family Law form:	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR23-22

Civil Practice and Procedure: Appointment of Guardian ad Litem (adopt form CIV-011/FL-936; revise forms DE-350/GC-100 and DE-351/GC-101; revise form CIV-010 and renumber as CIV-010/FL-935; revoke form FL-935)

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

	Commenter	Position	Comment	Committee Response
			o In Header title, "-Civil and Family Law" is missing, as indicated in the footer	The committees agree and have revised the caption of form CIV-010/FL-935 to add the suggested text.
			o Page 1, in the Note section: The reference to "conservator" does not have the extended definition (eg: "conservator of the estate")	The committees do not recommend a change in response to this comment. The language of the first sentence of the instructions is consistent with the requirement in Code of Civil Procedure section 372(a)(1) that a party for whom a conservator has been appointed must appear in litigation through a conservator of the estate or a guardian ad litem. If a conservator of the person but not of the estate has been appointed for a party to litigation, that party would need to appear through a guardian ad litem.
			o Page 1, Section 2 & 3: Suggest adding email address to the list of contact information types, as more communication is occurring through email addresses, and for consistency with Probate forms	The committees agree with the suggestion and have revised their recommendation accordingly.
			o Page 1, Section 4b and 4c: Suggest adding "(form MC-025)" alongside "Continued on Attachment 4b/4c" to be consistent with the explanation in other Judicial Council forms	The committees do not recommend a change in response to this comment. The suggested addition could require the attachment of multiple separate pages, contrary to Judicial Council policy.
			o Prior versions of FL-935 had a place for "Consent to Guardian by Minor 14 years of Age or Older." No such section is included in the proposed Application	The committees have modified their recommendation to add a line to item 6c on form CIV-010/FL-935 to indicate whether a minor 12 years of age or older objects to the appointment of the proposed guardian ad litem. (See Code Civ. Proc., § 372(b)(1).)

	Commenter	Position	Comment	Committee Response
			o Page 1, Section 5: It is unclear whether this field will stay blank or what options should be picked in Family Law Restraining Order scenarios	The committees recommend revising item 6 to add new subitems 6b and 6c to address appointment of a guardian ad litem for a minor who is a party to an action under the Uniform Parentage Act or who is requesting or opposing a request for an injunction or restraining order described in Code of Civil Procedure sections 372(b)(1) and 374(a). The committees also recommend modifying form CIV-011/FL-936 to incorporate elements addressing appointment of a guardian ad litem for a minor in these situations as items 5b and 5c.
			o Page 2, Section 7 & 8: These sections are in response to the bill requiring a proposed guardian ad litem to disclose to the court and all parties to the action any known actual or potential conflicts of interest. Because another "applicant" may not know this information, it is suggested that these fields be moved below the signature lines for the attorney and applicant, but immediately above the "Consent to Act as Guardian Ad Litem" field—so it is the proposed Guardian Ad Litem who is completing and responsible for those two items.	The committees agree and have revised their recommendation to move the items seeking the disclosures required by Code of Civil Procedure section 372(d) on form CIV-010/FL-935 and on form DE-350/GC-100 to the part of each form to be completed by the proposed guardian ad litem and to rename that part "Disclosures and Consent to Act as Guardian ad Litem."
5.	Superior Court of Orange County Family Law and Juvenile Law Divisions by Jenny Diaz Avendano, Operations Analyst	NI	▪ *Does the Proposal appropriately address the stated purpose?* Yes. ▪ *Would the proposal provide cost savings? If so, please quantify.*	The committees appreciate the court's comments. No further response required.

	Commenter	Position	Comment	Committee Response
			No. ▪ *What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?* The implementation would require minimal training for staff, procedure and case management revisions. ▪ *Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes. ▪ *How well would this proposal work in courts of different sizes?* Our court is a large court, and this could work for Orange County.	
6.	Superior Court of San Bernardino County, Barstow District by Anita Morales, Legal Processing Assistant	A	No specific comment.	The committees appreciate the court's comment. No further response required.
7.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	Does the proposal appropriately address the stated purpose? **Yes.** Would the proposal provide cost savings? If so, please quantify.	The committees appreciate these comments. See below for responses to specific comments.

SPR23-22

Civil Practice and Procedure: Appointment of Guardian ad Litem (adopt form CIV-011/FL-936; revise forms DE-350/GC-100 and DE-351/GC-101; revise form CIV-010 and renumber as CIV-010/FL-935; revoke form FL-935)

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

	Commenter	Position	Comment	Committee Response
			No. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **Revising the court's internal procedures, updating case management entries, and notifying and training court staff.** Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes, provided the final versions of the forms are provided to the court at that time. This will ensure that the court is able to provide training to staff and update its internal procedures and case management systems.** How well would this proposal work in courts of different sizes? **It appears the proposal would work for courts of various sizes.** **General Comments** **CIV-011/FL-936, Item 4.b.(2):** Propose changing "named in item 2 above" to "for whom a guardian ad litem is to be appointed" or to "named in item 1 above."	The committees agree and have modified their recommendation to replace "named in item 2 above" with "to be represented by the guardian ad

SPR23-22

Civil Practice and Procedure: Appointment of Guardian ad Litem (adopt form CIV-011/FL-936; revise forms DE-350/GC-100 and DE-351/GC-101; revise form CIV-010 and renumber as CIV-010/FL-935; revoke form FL-935)

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

	Commenter	Position	Comment	Committee Response
				litem" to match the language in item 4b.
			CIV-011/FL-936, Page 1: Propose including a citation to Fam. Code § 7635 in the right footer.	The committees agree and have revised the form footer accordingly.
			DE-350/GC-100, Item 3: Recommend inserting "proposed" before "guardian ad litem" for consistency (see Items 6, 7, 8).	The committees do not recommend the suggested change. In contrast to items 6, 7, and 8, item 3 does not ask for information specific to the person proposed for appointment as guardian ad litem. Instead, it asks about the person to be represented by a guardian ad litem if one is appointed.
			DE-350/GC-100, Item 6: Propose inserting "(check one)" after "in item 3 [is]."	The committees agree with the suggestion and have modified their recommendation accordingly.
			DE-351/GC-101, Item 4: Propose inserting "first" before "person" because item 1 contains two names: the name of the person to be represented and the name of the petitioner.	The committees agree that the proposed text was confusing and have replaced "person in item 1" with "person to be represented" in item 4.

Item number: 23

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Probate Conservatorship: Less Restrictive Alternatives

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend Cal. Rules of Court, rules 7.1103, 10.468, 10.478; revise form GC-312

Committee or other entity submitting the proposal:
Probate and Mental Health Advisory Committee

*Staff contact (*name, phone and e-mail*): Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): November 1, 2022
Project description from annual agenda: 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. 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.

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

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

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

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

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

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

Judicial Council *of* California

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-
For business meeting on September 18–19, 2023

Title
Probate Conservatorship: Less Restrictive Alternatives

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 7.1103, 10.468, and 10.478; revise form GC-312

Recommended by
Probate and Mental Health Advisory Committee
Hon. Jayne Chong-Soon Lee, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 17, 2023

Contact
Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

Executive Summary

The Probate and Mental Health Advisory Committee recommends amending three rules of court and revising one form in response to recent legislative changes to conservatorship law. The rule amendments implement legislation that requires education on alternatives to conservatorship for judicial officers assigned to probate, probate staff attorneys, probate examiners, court investigators, and counsel appointed in probate conservatorship proceedings. Revisions to the form implement legislation that requires supplemental information provided to the court by the petitioner or proposed conservator to specify clearly and discuss in detail the less restrictive alternatives to a conservatorship that were considered or tried before the filing of the petition. Additional revisions to the form would identify the person completing the form, divide the information to be provided about the reasons for conservatorship into more specific categories, and solicit information about the proposed conservatee's knowledge and opinion of the conservatorship.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2024:

1. Amend California Rules of Court, rules 7.1103, 10.468, and 10.478, to add the less restrictive alternatives to conservatorship stated in Probate Code section 1800.3 to the subject matter of the education required under these rules; and

2. Revise *Confidential Supplemental Information* (form GC-312) to incorporate the changes required by amendments to Probate Code section 1821(a) and to provide more clarity and structure to the information provided on that form.

The proposed amended rules and revised form are attached at pages 6–14.

Relevant Previous Council Action

The Judicial Council adopted rules of court establishing comprehensive educational requirements for judicial officers assigned to hear proceedings under the Probate Code; probate court staff attorneys, examiners, and investigators; and counsel appointed in conservatorships and guardianships effective January 1, 2008, in response to the addition of section 1456 to the Probate Code[1] by Assembly Bill 1363 (Stats. 2006, ch. 493, § 3). The council has amended rules 10.468 and 10.478 several times, most recently effective January 1, 2023. These recent amendments were not related to this proposal. In further in response to the mandate in section 1456, the council adopted rule 7.1101, effective January 1, 2008, which provides education requirements for counsel appointed under section 1470 or 1471 in conservatorship proceedings. Rule 7.1101 was divided and renumbered as rules 7.1101–7.1105, effective January 1, 2020.

Confidential Supplemental Information (form GC-312) was adopted for mandatory use, effective July 1, 1990, by circulating order. The form was last revised effective January 1, 2001.

Analysis/Rationale

Assembly Bill 1663 (Stats. 2022, ch. 894) amended multiple provisions in the Probate Code related to conservatorship proceedings. The bill focused on two principal themes: less restrictive alternatives to conservatorship and the rights retained by a person under conservatorship, also known as the *conservatee*. This report addresses the first of these themes.

Rules requiring education on less restrictive alternatives

Section 1456 requires the Judicial Council to develop a rule of court to address the qualifications and education of judicial officers regularly assigned to hear probate matters; court-employed probate staff attorneys, probate examiners, and court investigators; and counsel appointed under section 1470 or 1471 in guardianship and conservatorship proceedings. Rule 7.1103 provides education requirements for counsel appointed under section 1470 or 1471 in conservatorship proceedings. Rule 10.468 provides education requirements for judges and subordinate judicial officers regularly assigned to probate matters. And rule 10.478 provides education requirements for court-employed probate staff attorneys, probate examiners, and court investigators.

[1] All subsequent statutory references are to the Probate Code unless otherwise specified.

AB 1663 amended section 1456(a)(4) to require that the mandatory subject matter of annual education specified in the rules of court must include, at a minimum, "the less restrictive alternatives to conservatorship set forth in [s]ection 1800.3." The committee therefore proposes amendments to add those less restrictive alternatives to the applicable provisions of rules 7.1103, 10.468, and 10.478.[2]

Less restrictive alternatives in the supplemental information form

Section 1821(a) requires the petitioner or the proposed conservator to file, in addition to the petition, supplemental information explaining why appointment of a conservator is necessary. The supplemental information must be filed on a form separate from the petition form, treated as confidential, and made available only to parties, persons given notice of the petition who have requested the supplemental information or have appeared in the proceedings, their attorneys, and the court. As required by the statute, the Judicial Council adopted a mandatory form, *Confidential Supplemental Information* (form GC-312), to implement these requirements.

Section 1821 specifies five categories of information to be provided in the supplemental information form. AB 1663 amended the provisions addressing each of those categories. Of the four provisions that were amended substantively, three require revisions to form GC-312.[3] First, section 1821(a)(1)(B) requires the information on the form to include, in addition to the location of the proposed conservatee's residence, the nature of that residence. The committee proposes revising renumbered item 5 to add a description of the nature of the proposed conservatee's residence.

Second, section 1821(a)(1)(D) requires supplemental information about the health and social services provided to the proposed conservatee to cover the year *immediately* preceding the filing of the petition when the petitioner or proposed conservator has that information. The committee proposes inserting the word *immediately* into renumbered item 7 to reflect this amendment.

Third, and most significant, section 1821(a)(1)(C) requires the supplemental information form to include more detailed and specific information about the alternatives to conservatorship that the petitioner or proposed conservator considered; reasons those alternatives were not suitable; alternatives tried, if any; and reasons the alternatives do not meet the proposed conservatee's needs. The statute requires that the alternatives considered include at least a supported decisionmaking agreement, as defined in Welfare and Institutions Code section 21001; the designation of a health care surrogate as described in section 4711; an advance health care directive under section 4670 et seq.; and a power of attorney under section 4000 et seq. (§ 1821(a)(1)(C).) The committee therefore proposes revising renumbered item 6 to solicit additional, specific information about the consideration or attempt, if any, of the statutorily

[2] In addition to the substantive amendments, the committee also proposes amending the cross-references to title 7 in rules 10.468 and 10.478 to reflect the anticipated division of title 7, effective September 1, 2023, into two separate divisions, the first for the probate rules and the second for the mental health rules.

[3] The proposed revisions are not highlighted on the attached form because they are extensive and the form has been reorganized, as described below.

specified alternatives and any other alternatives, along with the reasons that each alternative is unsuitable or does not meet the proposed conservatee's needs.

In addition to the statutorily mandated revisions, the committee proposes adding item 2 to specify whether the person completing the form is the petitioner or the proposed conservator; revising items 3 and 4 to provide clearer structure to the presentation, required by section 1821(a)(1)(A) and (E), of the facts and circumstances showing the need for a conservatorship; and adding item 8 to request information, if known, about the proposed conservatee's knowledge and preferences regarding the conservatorship. These revisions are intended to present more relevant information to the court and organize that information in a format that will help the court process it more efficiently.

Policy implications

The recommended action is needed to conform to changes in the law. In addition, the rule amendments and form revisions will improve the quality of justice and service to the public and promote education for branchwide professional excellence.

Comments

The recommended amendments and revisions circulated for public comment in the spring 2023 invitation-to-comment cycle. The committee received four comments. Two commenters agreed with the recommendation as circulated. Two commenters agreed if modified, and one of those commenters suggested additional modifications to form GC-312. The committee has revised the form consistent with this commenter's suggestions and made further revisions in the spirit of those suggestions and the statutory amendments enacted by AB 1663.

A chart of comments is attached at pages 15–17.

Alternatives considered

The committee did not consider taking no action. Sections 1456 and 1821 expressly require implementation through, respectively, rules and a form. The existing rules and form no longer conform to the law and must be updated to satisfy the statutory mandates.

The committee considered implementing other statutory amendments that were enacted by AB 1663 but did not immediately require revisions to existing rules or forms. Unfortunately, the committee lacks the resources to undertake these additional projects at this time. The committee will consider additional action regarding probate conservatorships in the future.

Fiscal and Operational Impacts

The fiscal and operational impacts of the proposal, including updating curricula for judicial branch education, are almost entirely attributable to statute. Petitioners and their attorneys, if they have them, or proposed conservators are now required to specify in more depth the reasons that a conservatorship is needed. In that respect, the proposed form will assist them to do so more completely by reminding them of the issues that they must address. An increased rate of

complete supplemental information forms would, at least in theory, lead to fewer continued hearings or other delays in conservatorship proceedings.

Attachments and Links

1. Cal. Rules of Court, rules 7.1103, 10.468, and 10.478, at pages 6–10
2. Form GC-312, at pages 11–14
3. Chart of comments, at pages 15–17
4. Link A: Assem. Bill 1663 (Stats. 2022, ch. 894), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1663*

Rules 7.1103, 10.468, and 10.478 of the California Rules of Court are amended, effective January 1, 2024, to read:

Rule 7.1103. Qualifications and annual education required for counsel appointed to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity (Prob. Code, §§ 1456, 1470(a), 1471)

Except as provided in rule 7.1104(b), an attorney appointed to represent the interests of a conservatee, proposed conservatee, or person alleged to lack legal capacity must have met the qualifications in (a) or (b) and, in every calendar year after first availability for appointment, must meet the annual education requirements in (c).

(a)–(b) * * *

(c) Annual education

(1) Each calendar year after first availability for appointment, an attorney appointed by the court to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity must complete at least three hours of professional education approved by the State Bar for MCLE credit in the subjects listed in (d).

(2) The annual education in (1) must include at least one hour of instruction on less restrictive alternatives to conservatorship, as specified in (d)(4).

(d) Subject matter and delivery of education

Education in the following subjects—delivered in person or by any State Bar–approved method of distance learning—may be used to satisfy this rule's education requirements:

(1)–(2) * * *

(3) Special considerations for representing an older adult or a person with a disability, including:

(A) * * *

(B) Vulnerability of older adults and persons with disabilities to undue influence, physical and financial abuse, and neglect; and

(C) Effects of aging, major neurocognitive disorders (including dementia), and intellectual and developmental disabilities on a person's ability to perform the activities of daily living~~; and~~.

Rules 7.1103, 10.468, and 10.478 of the California Rules of Court are amended, effective January 1, 2024, to read:

~~(D) Less restrictive alternatives to conservatorship, including supported decisionmaking.~~

(4) The less restrictive alternatives to conservatorship, including supported decisionmaking, stated in Probate Code section 1800.3.

Rule 10.468. Content-based and hours-based education for superior court judges and subordinate judicial officers regularly assigned to hear probate proceedings

(a) Definitions

As used in this rule, the following terms have the meanings stated below:

(1) "Probate proceedings" are decedents' estates, guardianships and conservatorships under division 4 of the Probate Code, trust proceedings under division 9 of the Probate Code, and other matters governed by provisions of that code and by the rules in division 1 of title 7 of the California Rules of Court.

(2) * * *

(b) Content-based requirements

(1) Judicial officers beginning a regular assignment to hear probate proceedings after the effective date of this rule~~,~~ unless they are returning to this assignment after less than two years in another assignment~~,~~ must complete six hours of education on probate guardianships and conservatorships, including court-supervised fiduciary accounting and the less restrictive alternatives to conservatorship stated in Probate Code section 1800.3, within one year of starting the assignment.

(2)–(4) * * *

(c) Hours-based continuing education

(1) In a court with five or more authorized judges, judicial officers regularly assigned to hear probate proceedings must complete 12 hours of continuing education every three-year education cycle on probate guardianships and conservatorships, including court-supervised fiduciary accounting and the less restrictive alternatives to conservatorship stated in Probate Code section 1800.3.

Rules 7.1103, 10.468, and 10.478 of the California Rules of Court are amended, effective January 1, 2024, to read:

(2) In a court with four or fewer authorized judges, judicial officers regularly assigned to hear probate proceedings must complete nine hours of continuing education every three-year education cycle on probate guardianships and conservatorships, including court-supervised fiduciary accounting and the less restrictive alternatives to conservatorship stated in Probate Code section 1800.3.

(3)–(7) * * *

(d)–(e) * * *

Rule 10.478. Content-based and hours-based education for court investigators, probate attorneys, and probate examiners

(a) Definitions

As used in this rule, the following terms have the meanings specified below, unless the context or subject matter otherwise require:

(1)–(2) * * *

(3) A "probate examiner" is a person employed by a court to review filings in probate proceedings in order to assist the court and the parties to get the filed matters properly ready for consideration by the court in accordance with the requirements of the Probate Code, the rules in division 1 of title 7 of the California Rules of Court, and the court's local rules; and

(4) "Probate proceedings" are decedents' estates, guardianships and conservatorships under division 4 of the Probate Code, trust proceedings under division 9 of the Probate Code, and other matters governed by provisions of that code and by the rules in division 1 of title 7 of the California Rules of Court~~;~~.

(b) Content-based requirements for court investigators

(1) Court investigators must complete 12 hours of education within one year of their start date after January 1, 2008. The education must include the following general topics:

(A)–(D) * * *

Rules 7.1103, 10.468, and 10.478 of the California Rules of Court are amended, effective January 1, 2024, to read:

(E) Accessing and evaluating community resources for children and mentally impaired elderly or developmentally disabled adults; ~~and~~

(F) Interviewing children and persons with mental function or communication deficits~~.~~; and

(G) The less restrictive alternatives to conservatorship stated in Probate Code section 1800.3.

(2)–(4) * * *

(c) Content-based education for probate attorneys

(1) Probate attorneys must complete 12 hours of education within six months of their start date after January 1, 2008, in probate-related topics, including guardianships, conservatorships, ~~and~~ court-supervised fiduciary accounting, and the less restrictive alternatives to conservatorship stated in Probate Code section 1800.3.

(2)–(4) * * *

(d) Content-based education for probate examiners

(1) Probate examiners must complete 20 hours of education within one year of their start date after January 1, 2008, in probate-related topics, of which 12 hours must be in guardianships and conservatorships, including court-appointed fiduciary accounting and the less restrictive alternatives to conservatorship stated in Probate Code section 1800.3.

(2)–(4) * * *

(e) * * *

(f) Hours-based education for probate attorneys

(1) Probate attorneys must complete 12 hours of continuing education each two-year education cycle in probate-related subjects, of which six hours per year must be in guardianships and conservatorships, including court-supervised fiduciary accounting and the less restrictive alternatives to conservatorship stated in Probate Code section 1800.3. The education cycle is determined in the same manner as in rule 10.474(c)(3).

(2)–(4) * * *

Rules 7.1103, 10.468, and 10.478 of the California Rules of Court are amended, effective January 1, 2024, to read:

(g) Hours-based education for probate examiners

(1) Probate examiners must complete 12 hours of continuing education each two-year education cycle in probate-related subjects, of which six hours per year must be in guardianships and conservatorships, including court-appointed fiduciary accounting and the less restrictive alternatives to conservatorship stated in Probate Code section 1800.3. The education cycle is determined in the same manner as in rule 10.474(c)(3).

(2)–(4) * * *

(h)–(i) * * *

CONFIDENTIAL (DO NOT ATTACH TO PETITION)

GC-312

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CONSERVATORSHIP OF *(name):* PROPOSED CONSERVATEE		
CONFIDENTIAL SUPPLEMENTAL INFORMATION ☐ **Limited Conservatorship of the** ☐ **Person** ☐ **Estate**		CASE NUMBER:
		HEARING DATE:
		DEPT.: TIME:

1. a. **Proposed conservatee *(name):***
   b. Date of birth: c. Age:
   d. Social security number:
2. I, the person completing this form, am the *(check each that applies)* ☐ petitioner ☐ proposed conservator in this proceeding.
3. ☐ **ABILITY TO PROVIDE PROPERLY FOR PERSONAL NEEDS*** The following facts and circumstances supplement and support the petition's assertions that the proposed conservatee is unable to provide properly for personal needs for physical health, food, clothing, or shelter *(specify in detail, expanding on the reasons in the petition; give specific examples from the proposed conservatee's daily life showing significant, ongoing behavior patterns):*
   a. Physical health *(give examples showing the proposed conservatee's inability to move and exercise, maintain personal hygiene, make and attend routine medical appointments, take medication as prescribed, etc.):*

      ☐ Continued in Attachment 3a.
   b. Food *(give examples showing the proposed conservatee's inability to eat or drink, prepare food, shop for food, etc.):*

      ☐ Continued in Attachment 3b.
   c. Clothing *(give examples showing the proposed conservatee's inability to get dressed, do laundry, shop for clothing, etc.):*

      ☐ Continued in Attachment 3c.
   d. Shelter *(give examples showing the proposed conservatee's inability to pay rent or mortgage, pay utility bills, keep house, etc.):*

      ☐ Continued in Attachment 3d.

***** If any part of item 3 does not apply to the proposed conservatorship, skip it, check box 3 in item 10, and explain why it does not apply.

CONSERVATORSHIP OF *(name)*: PROPOSED CONSERVATEE	CASE NUMBER:

4. ☐ **ABILITY TO MANAGE OWN FINANCIAL RESOURCES*** The following facts and circumstances supplement and support the petition's assertions that the proposed conservatee is substantially unable to manage that person's own financial resources or to resist fraud or undue influence *(specify in detail, expanding on the reasons in the petition; give specific examples from the proposed conservatee's daily life showing significant, ongoing behavior patterns):*

   a. Financial resources *(give examples of the proposed conservatee's substantial inability to manage money or property):*

      ☐ Continued in Attachment 4a.

   b. Fraud or undue influence *(give examples of the proposed conservatee's substantial inability to resist fraud or undue influence):*

      ☐ Continued in Attachment 4b.

* If any part of item 4 does not apply to the proposed conservatorship, skip it, check box 4 in item 10, and explain why it does not apply.

5. **RESIDENCE** *(A "residence" is the place a person would tend to describe as "home," for example, an owned or rented single-family house or an apartment in a multiunit building, or an assisted-living, board-and-care, skilled-nursing, or other long-term care facility.)*

   a. The proposed conservatee's **residence** is a *(nature of residence; see above for examples):*

   b. The proposed conservatee's **residence** is located at *(street address, city, state):*

   c. The proposed conservatee is **currently located** at ☐ the residence in item 5b ☐ other *(street address, city, state):*

   d. The proposed conservatee's **current location** is a *(nature of current location; see above for examples):*

   e. **Ability to live in residence** The proposed conservatee is
      (1) ☐ **living** in the residence, and
         (a) ☐ is able to continue living there unless circumstances change.
         (b) ☐ will need to be moved after a conservator is appointed *(give specific reasons in item 5f).*
         (c) ☐ other *(specify and give reasons in item 5f)*.
      (2) ☐ **not living** in the residence, and
         (a) ☐ will be able to return home by *(date):* *(explain in item 5f).*
         (b) ☐ will not return to live there *(give specific reasons in item 5f).*
         (c) ☐ other *(specify and give reasons in item 5f)*.

   f. Specific reasons supporting the determination in item 5e about the proposed conservatee's ability to live in the residence:

      ☐ Continued in Attachment 5f.

CONSERVATORSHIP OF *(name)*: PROPOSED CONSERVATEE	CASE NUMBER:

6. **ALTERNATIVES TO CONSERVATORSHIP** I have considered the following alternatives to conservatorship. For each alternative below, either (1) I have attempted that alternative for the length of time and in the manner described and have determined for the reasons explained below that it is unsuitable or does not meet the proposed conservatee's needs; or (2) I have not attempted that alternative and have determined for the reasons explained below that it is unsuitable or does not meet the proposed conservatee's needs and therefore should not be attempted.

   a. A supported decisionmaking agreement, as defined in Welfare and Institutions Code section 21001

   ☐ Continued in Attachment 6a.

   b. Designation of a health care surrogate under Probate Code section 4711

   ☐ Continued in Attachment 6b.

   c. An advance health care directive under Probate Code section 4600 et seq.

   ☐ Continued in Attachment 6c.

   d. A power of attorney (general or limited, durable or nondurable) under Probate Code section 4000 et seq.

   ☐ Continued in Attachment 6d.

   e. A trust, as defined in Probate Code section 82

   ☐ Continued in Attachment 6e.

   f. Other alternatives considered or attempted

   ☐ Continued in Attachment 6f.

CONSERVATORSHIP OF *(name)*: PROPOSED CONSERVATEE	CASE NUMBER:

7. **HEALTH OR SOCIAL SERVICES PROVIDED** *(complete all that apply):*
   a. ☐ In the year immediately before the petition was filed, the proposed conservatee received the following **health services,** for example, doctor's visits, medical testing, hospitalizations, surgeries, administration of medication, wound care, or therapy. *(describe the services and the circumstances in which they were provided; if none were provided, state "none"):*

   ☐ Continued in Attachment 7a.

   b. ☐ In the year immediately before the petition was filed, the proposed conservatee received the following **social services,** for example, companionship, assistance with personal hygiene, housekeeping, shopping, cooking, or assistance managing finances. *(describe the services and the circumstances in which they were provided; if none were provided, state "none"):*

   ☐ Continued in Attachment 7b.

   c. ☐ I do not know, and cannot reasonably find out, what, if any, ☐ health services ☐ social services were provided to the proposed conservatee in the year immediately before the petition was filed.

8. **KNOWLEDGE AND PREFERENCES** The proposed conservatee *(check all that apply)*
   a. ☐ knows about ☐ does not know about the proposed conservatorship. ☐ I don't know.
   b. ☐ agrees with ☐ does not agree with the proposed conservatorship. ☐ I don't know. ☐ Not applicable.

9. **SOURCE OF INFORMATION** The facts, circumstances, and conclusions stated on this form are based, *(check all that apply)*
   a. in item 3, on ☐ my own personal knowledge ☐ an affidavit (declaration) by another person, attached as Attachment 3.
   b. in item 4, on ☐ my own personal knowledge ☐ an affidavit (declaration) by another person, attached as Attachment 4.
   c. in item 5, on ☐ my own personal knowledge ☐ an affidavit (declaration) by another person, attached as Attachment 5.
   d. in item 6, on ☐ my own personal knowledge ☐ an affidavit (declaration) by another person, attached as Attachment 6.
   e. in item 7, on ☐ my own personal knowledge ☐ an affidavit (declaration) by another person, attached as Attachment 7.
   f. in item 8, on ☐ my own personal knowledge ☐ an affidavit (declaration) by another person, attached as Attachment 8.

10. **ITEMS THAT DO NOT APPLY** The following items on this form, or parts of those items, do not apply to the proposed conservatorship. *(for each item checked, explain why that item or part of an item does not apply):* ☐ 3 ☐ 4

    ☐ Continued on Attachment 10.

11. Number of pages attached: _____

DECLARATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) (SIGNATURE)

SPR23-23

Probate Conservatorship: Less Restrictive Alternatives (amend Cal. Rules of Court, rules 7.1103, 10.468, and 10.478; revise form GC-312)

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

	Commenter	Position	Comment	Committee Response
1.	Peter S. Stern, Attorney Palo Alto	AM	Form GC-312 as proposed to be modified should be changed in the following areas: Page 2 of 4, item 5a. Should be rewritten: "a. The proposed conservatee's residence is (for example, owned or rented, single-family or apartment in multiunit building, assisted-living, board and care, or skilled nursing facility):" Rationale for change: Section 1821(a)(1)(B) now asks for the "nature" of the proposed conservatee's residence. The form should prompt a response that identifies whether or not the conservatee is in an institutional setting, which is a distinctly different "nature" than a home or apartment setting. Page 3 of 4, item 6 should be rewritten: "ALTERNATIVES TO CONSERVATORSHIP: I have considered the following alternatives to conservatorship and for each alternative described below: (1) I have attempted to implement it for the duration shown and have explained why it was unsuitable or did not meet the proposed conservatee's needs; or (2) I have determined for the reasons described why it was unsuitable or did not meet the proposed conservatee's needs." Rationale for change: Section 1821(a)(1)(C) to my reading requires a more involved and forceful effort by petitioner/proposed conservator to seek out and try alternatives. My	The committee appreciates these comments. The committee agrees that the circulated language was unduly narrow and has revised item 5 on the recommended form to provide additional examples of possible residences. The committee agrees that the heading to item 6 on the circulated form does not fully convey the duties of the petitioner or proposed conservator. The committee has rewritten that heading in the spirit of this suggestion and Probate Code section 1821(a)(1)(C), as amended by AB 1663.

	Commenter	Position	Comment	Committee Response
			suggested version also does away with the clumsy asterisk and required fill ins at item 10 by requiring the person completing the form to address each alternative in the space provided. I should note that even though the statute refers to the "conservatee," GC 312 is to be submitted prior to the appointment hearing and thus applies to a "proposed conservatee."	The committee has also eliminated the cross-references to item 10 in items 5, 6, and 7. As revised, those items apply to every conservatorship, and the petitioner or proposed conservator is expected to complete them.
2.	Orange County Bar Association by Michael A. Gregg, President	A	No specific comment.	The committee appreciates this comment. No further response required.
3.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	AM	Three months is not enough time for implementation, as this type of training is not yet available and will need to be developed. In addition to judicial officer and internal staff, court-appointed counsel will also need the new training, which may take time for the California State Bar to coordinate.	The committee appreciates this comment but does not recommend a change to the proposal in response because the proposed educational requirements and form changes are mandated by legislation.
4.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	Does the proposal appropriately address the stated purpose? **Yes.** Would the proposal provide cost savings? If so, please quantify. **No.** What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case	The committee appreciates these comments. No further response required.

	Commenter	Position	Comment	Committee Response
			management systems, or modifying case management systems? **Other than the specific education requirements for certain court staff, minimal training for Clerks, Probate Examiners, Court Investigators and Judicial Officers would be required.** Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.** How well would this proposal work in courts of different sizes? **It appears the proposal would work for courts of various sizes.** No additional Comments.	

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Trial Courts: Report of Determinations Affecting Voting Rights

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Adopt Cal. Rules of Court, rule 10.970; adopt form MC-600; approve form MC 600A

Committee or other entity submitting the proposal:
Probate and Mental Health Advisory Committee; Criminal Law Advisory Committee

*Staff contact (*name, phone and e-mail*): Corby Sturges, 415-865-4507, Corby.Sturges@jud.ca.gov; Sarah Fleischer-Ihn, 415-865-7702, Sarah.Fleischer-Ihn@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): November 1, 2022
Project description from annual agenda: Probate and Mental Health: 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.
Criminal Law: Develop rules and forms to implement AB 2841 (Stats. 2022, ch. 807), 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.

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

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

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

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

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

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

Judicial Council *of* California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No. 23-039
For business meeting on September 18–19, 2023

Title
Trial Courts: Report of Determinations Affecting Voting Rights

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 10.970; adopt form MC-600; approve form MC-600A

Recommended by
Probate and Mental Health Advisory Committee
Hon. Jayne Chong-Soon Lee, Chair
Criminal Law Advisory Committee
Hon. Brian M. Hoffstadt, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 28, 2023

Contact
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Sarah Fleischer-Ihn, 415-865-7702
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Executive Summary

The Probate and Mental Health Advisory Committee and the Criminal Law Advisory Committee recommend one rule of court and two forms to implement Assembly Bill 2841, which requires the trial courts to report to the Secretary of State judicial determinations under Elections Code sections 2208–2211 disqualifying a person from voting or restoring a person's right to register to vote. The legislation expressly required the Judicial Council to adopt rules and forms, including a mandatory form for the courts to use to furnish the required reports.

Recommendation

The Probate and Mental Health Advisory Committee and the Criminal Law Advisory Committee recommend that the Judicial Council, effective January 1, 2024:

1. Adopt California Rules of Court, rule 10.970 to specify a process for the trial courts to use to submit to the Secretary of State the reports required by Elections Code section 2211.5;

2. Adopt *Confidential Report of Findings and Orders Affecting Voting Rights* (form MC-600) for mandatory use to submit to the Secretary of State the reports required by section 2211.5; and

3. Approve *Attachment to Confidential Report of Findings and Orders Affecting Voting Rights* (form MC-600A) for optional use to submit the information required by section 2211.5(a)(1) and (b).

The recommended rule and forms are attached at pages 7–9.

Relevant Previous Council Action

The Judicial Council has never taken formal action relevant to this report. In 2016 and 2017, however, representatives of the Court Executives Advisory Committee and Judicial Council staff worked with the California Secretary of State's staff to implement the reporting requirements in Elections Code sections 2208–2211.[1] In April 2017, a letter from the Secretary of State containing the final protocols, information requirements, and sample forms was transmitted to the trial courts. Courts have followed those protocols and requirements since then.

Analysis/Rationale

Effective January 1, 2023, and operative January 1, 2024, Assembly Bill 2841 (Stats. 2022, ch. 807) codified many of the requirements in the Secretary of State's 2017 letter. AB 2841 also made a few notable changes. First, the legislation changes, from one case at a time to once a month, the required frequency of the reports of the disqualification of a person from voting or the restoration of a person's right to register to vote, though it authorizes the court clerk to report more frequently. (§ 2211.5(a).) Second, AB 2841 shifts responsibility for notifying county elections officials of judicial determinations under Elections Code sections 2208–2211 away from the court clerk to the Secretary of State. (§ 2211.5(d)(2).) Beginning January 1, 2024, the court will be required to report those determinations only to the Secretary of State.

Background

Section 2208 establishes a presumption that a person is competent to vote regardless of conservatorship status. (§ 2208(a).) A person is deemed mentally incompetent and, therefore, disqualified from voting if a court finds by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process *and* takes one of following actions:

- Appoints a probate conservator of the person or the person and estate (Prob. Code, § 1800 et seq.);

[1] All subsequent statutory references are to the Elections Code unless otherwise specified. These requirements were enacted by Senate Bill 589 (Stats. 2015, ch. 736) and Assembly Bill 1020 (Stats. 2015, ch. 728) and remain operative until January 1, 2024.

- Appoints a conservator of the person or the person and estate under the Lanterman-Petris-Short (LPS) Act (Welf. & Inst. Code, § 5350 et seq.);

- Appoints a conservator under the LPS Act for the person, who has been found incompetent to stand trial and whose trial has been suspended under Penal Code section 1370 (see *id.*, § 5352.5); or

- Finds the person not guilty by reason of insanity and deems the person "gravely disabled" because of chronic alcoholism or substance abuse. (Pen. Code, § 1026; see Welf. & Inst. Code, §§ 5008(h)(2), 5342.)

(Section 2208(a)(1)–(4).)

New requirements

AB 2841 also imposed two new reporting requirements on the court clerk. The clerk must certify, if applicable, that the person has been disqualified based on a finding, by clear and convincing evidence, that the person "cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process."[2] This determination applies to disqualifications ordered under sections 2208 and 2209 (disqualification when or after a probate conservatorship is established) and to contests under section 2210 (challenges to disqualification in LPS).[3] It does not, however, apply to disqualifications under section 2211 (disqualification due to involuntary confinement at a state hospital for specific commitment types).[4]

In addition to the judicial determinations under sections 2208–2211 since the clerk's most recent report, the clerk must also report the total number of proceedings in the court during that period in which the court took one of the actions under section 2208(a)(1)–(4), described above.

The committee intends the recommended rule and forms to fulfill the statutory mandate for the Judicial Council to adopt rules of court to implement section 2211.5 and forms to be used by the

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[2] Section 2208(a) (language of finding), section 2211.5(b)(6) (certification requirement); see section 2209(a)–(c). Certification would be applicable in a particular case if two conditions were satisfied: (1) the law required the court to have made the finding and (2) the order on file indicated that the court actually made the finding in that case. If either of these conditions is not satisfied, the clerk's certification would not apply to that case.

[3] Section 2209 requires the court investigator to review a probate conservatee's capability of communicating, with or without reasonable accommodations, a desire to participate in the voting process at each regular review and to determine whether the conservatee's capability has changed. If the investigator determines that the capability has changed, the court must hold a hearing to determine whether, by clear and convincing evidence, the conservatee cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process and either disqualify the conservatee from voting or restore the conservatee's right to register to vote. Under section 2210, the right of an LPS conservatee to register to vote is restored automatically when the conservatorship terminates after one year; it may also be restored by court order if the conservatee successfully challenges the disqualification or petitions the court to terminate the conservatorship.

[4] Section 2211(a). This statute requires any person who has been found not guilty by reason of insanity, found incompetent to stand trial, found to be a mentally disordered sex offender, or convicted of a felony and sent to a state hospital for treatment to be disqualified from voting when subject to involuntary confinement. The right to register to vote is restored when the person is released. Section 2211(c).

courts to report the information required by section 2211.5 to the Secretary of State.[5] Recommended rule 10.970 specifies that courts are required to use *Confidential Report of Findings and Orders Affecting Voting Rights* (form MC-600) to submit the reports required by Elections Code section 2211.5. (Cal. Rules of Court, rule 10.970(b)(1).)

To detail the information required by section 2211.5(a)(1) and (b), the rule authorizes the courts to use either *Attachment to Confidential Report of Findings and Orders Affecting Voting Rights* (form MC-600A) or a computer-generated printout that presents the required information using the same "clearly identified spaces" as form MC-600A. (Cal. Rules of Court, rule 10.970(b)(2)(B).)

Policy implications

This recommendation is required to implement changes to the law. The committees anticipate that the recommendation will promote judicial branch independence and accountability and contribute to the modernization of management and administration.

Comments

The proposal circulated for public comment in the spring 2023 invitation-to-comment cycle. The committees received seven comments, including three from superior courts and one from the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. One commenter agreed with the proposal, and five commenters agreed and suggested modifications. One commenter did not agree with the proposal based on privacy concerns. The committees note that the specific concern raised by this commenter—that private information might be posted on court websites—is not permitted, let alone required, by the statute or the recommended rule and forms.

One commenter pointed out that the forms circulated for comment used an outdated standard for determining a person's capacity to vote and suggested replacing it with the current standard. The committees have done so. Another commenter noted that the number of proceedings reported in item 2 of form MC-600 would not match the number of disqualifications or restorations reported on form MC-600A or another attached report. That discrepancy is not an error in the forms but is attributable to the difference between the determinations and types of proceedings under section 2211.5(a)(2) to be reported in item 2 of form MC-600 and the determinations under section 2211.5(a)(1) to be attached on form MC-600A or a computer-generated report materially identical to form MC-600A. The committees therefore do not recommend a change to the forms in response to that comment.

[5] "In consultation with the Secretary of State, the Judicial Council shall adopt rules of court to implement this section and Judicial Council forms that shall be used by courts to furnish the notices described in subdivision (a). The forms shall contain clearly identified spaces for" the information specified in section 2211.5(b)(1)–(6)." (§ 2211.5(b).) Although the Judicial Council has full authority to make rules and forms, committee staff have consulted the Secretary of State's staff regarding these rules and forms both before and after the comment period. The Secretary of State's office has expressed agreement with the recommendations in this report.

Another commenter noted that *Order Appointing Probate Conservator* (form GC-340) does not give the court the opportunity to make the predicate finding for a disqualification order by clear and convincing evidence. The committees attribute the absence of the standard of proof from the form to its omission from Probate Code section 1910, which sets out the correct finding but, instead of expressly prescribing the standard of proof, refers to Elections Code sections 2208 and 2209. As required by section 2211.5(a), the clerk would report a finding that a probate conservatee lacked capacity to vote only if the finding met the requirements in sections 2208 and 2209. The Probate and Mental Health Advisory Committee will explore options for adding the correct standard of proof to form GC-340 as part of its ongoing efforts to update the conservatorship forms. In the meantime, if the clerk finds nothing in the record to show that the court made the finding by clear and convincing evidence, then the clerk should not report that the court did so.

The chart of comments and committee responses is attached at pages 10–19.

Alternatives considered

The committees did not consider taking no action. Section 2211.5(b) requires the Judicial Council to adopt implementing rules of court and forms to be used by the courts to report the information required by that section to the Secretary of State. The committees considered proposing two completely separate sets of forms, one to report disqualifications from voting under sections 2208–2210 and another to report disqualifications under section 2211. Because the former requires a judicial determination, by clear and convincing evidence, that the person cannot, with or without reasonable accommodations, communicate a desire to participate in the voting process, whereas the latter does not, developing a single form set presented challenges. The committees determined, however, that the recommended forms could accommodate all the differences among the determinations.

The committees initially included a provision in the recommended rule requiring the statutory reports to be transmitted confidentially to the Secretary of State.[6] Based on comments received and cognizant that the provision simply reflected existing statutory requirements, however, the committees removed the requirement for confidential transmission from the rule.

The committees also considered recommending adoption of form MC-600A for mandatory use. Informed by both internal and external comments, however, the committees determined that a mandatory form for reporting the case-specific information in sections 2211.5(a)(1) and (b), though arguably required by the letter of the statute, would frustrate the statute's purpose by

[6] Several statutory provisions require or strongly imply that the information contained in reports submitted under section 2211.5 must be kept confidential. See §§ 2138.5 and 2194 (confidentiality of information, including California driver's license number and social security number, used for voter registration), Gov. Code, § 7924.000 (confidentiality of information, including California driver's license and social security number used for voter identification or registration), Prob. Code, §§ 1821(a) (confidentiality of information submitted with conservatorship petition) and 1826(c) (confidentiality of court investigator's report), and Welf. & Inst. Code, § 5328 (confidentiality of information and records obtained in the course of providing treatment to persons with mental health disorders or developmental disabilities).

limiting courts' ability to report the required information.[7] The committees considered a series of options suggested by commenters for use to submit the reports, including local forms, comma-separated values (CSV) files, or Excel files, but concluded that none of these options was consistent with the legislative intent that the report be submitted in a form containing "clearly identified spaces" for the required information. (§ 2211.5(b).) The committees nevertheless recommend authorizing courts to report the information required by section 2211.5(a)(1) and (b)(1)–(6) by attaching to mandatory form MC-600, as an alternative to form MC-600A, a computer-generated report that presents the statutorily required information using the same clearly identified spaces as form MC-600A. (See recommended rule 10.970(b)(2)(B).) Expanding the range of computer programs that courts may use to generate the reports is intended to enable courts to comply more efficiently with their statutory duties. At the same time, requiring the attached report to include the same clearly identified spaces as provided in form MC-600A is intended to adhere to the mandate in section 2211.5(b) by precluding any material difference between form MC-600A and other reports.

Fiscal and Operational Impacts

The fiscal and operational impacts of this proposal are almost entirely attributable to the legislation that mandated it. The JRS noted that the recommendation is needed to conform to a change in the law, and "[t]here will be a moderate one-time impact to create the required reports in case management systems." The JRS also noted that "[m]edium and large courts may be more significantly affected by the reporting requirements due to a potentially higher volume of reportable cases." The committees note, on the other hand, that the legislation as implemented by the rule and forms may allow courts to streamline their reporting operations by requiring monthly reports to the Secretary of State because, until January 1, 2024, the law requires case-by-case reporting of each determination under sections 2208–2211 to both the Secretary of State and the county elections official.

Attachments and Links

1. Cal. Rules of Court, rule 10.970, at page 7
2. Forms MC-600 and MC-600A, at pages 8–9
3. Comments chart, at pages 10–19
4. Link A: Assembly Bill 2841 (Stats. 2022, ch. 807), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2841*

[7] The committees initially attempted to expand reporting options by authorizing the use of a "printout generated by the court's case management system that includes the same information as on form MC-600A and presents the information in substantially the same format as form MC-600A." However, commenters indicated that programming a case management system to generate a report that included the required information could be difficult and costly.

Rule 10.970 of the California Rules of Court is adopted, effective January 1, 2024, to read:

Rule 10.970 Reports of findings and orders affecting voting rights (Elec. Code, § 2211.5)

(a) Application

This rule applies to the reports required by Elections Code section 2211.5 regarding findings and orders disqualifying a person from voting or restoring a person's right to register to vote under Elections Code sections 2208–2211.

(b) Forms

(1) The clerk must use *Confidential Report of Findings and Orders Affecting Voting Rights* (form MC-600) to submit each report under this rule.

(2) To report the information required by Elections Code section 2211.5(a)(1) and (b) for the period covered by each report, the clerk must attach to form MC-600 either:

(A) A completed *Attachment to Confidential Report of Findings and Orders Affecting Voting Rights* (form MC-600A) that includes the required information about each applicable determination made by the court in the period covered by the report; or

(B) A computer-generated report that presents the required information for the period covered by the report using the same clearly identified spaces as form MC-600A.

CONFIDENTIAL

MC-600

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
CONFIDENTIAL REPORT OF FINDINGS AND ORDERS AFFECTING VOTING RIGHTS	

Instructions to Clerk

1. *By the first day of each month, and more frequently if the court chooses, submit this form and all attachments to the Secretary of State at votecal.conservatorship@sos.ca.gov or any server or platform approved by the Secretary for that purpose.*

   ***NOTE:** More than one report may be made each month. Each report must cover every day since the last report.*
2. *Report the personal and case information required by Elections Code section 2211.5 for each person whom the court disqualified from voting or whose right to register to vote the court restored under Elections Code sections 2208–2211 since the court's last report.*
3. *Attach* Attachment to Confidential Report of Findings and Orders Affecting Voting Rights (form MC-600A) *or a computer-generated report that presents the required information using the same clearly defined spaces as form MC-600A. Use as many pages as needed, number them consecutively, and attach them all to this form.*
4. *Complete the certification at the bottom of this page only for those disqualification orders under Elections Code sections 2208–2210 that stated that they were based on the court's finding, by clear and convincing evidence, that the person could not communicate, with or without reasonable accommodations, a desire to participate in the voting process.*

1. All findings and orders affecting voting rights made by this court under Elections Code sections 2208–2211 in the period from *(date):* to *(date):* , inclusive, are reported on the attached *(check one)*

   a. ☐ *Attachment to Confidential Report of Findings and Orders Affecting Voting Rights* (form MC-600A).

   b. ☐ computer-generated report that presents the required information using the same clearly defined spaces as form MC-600A.

   Number of pages attached: _____

2. The total number of proceedings in which each action described below occurred in the period specified in item 1 is as follows:

   a. A conservator of the person or the person and estate was appointed under Probate Code section 1800 et seq.

   b. A conservator of the person or the person and estate was appointed under Welfare and Institutions Code section 5350 et seq.

   c. A conservator was appointed in a proceeding initiated under Welfare and Institutions Code section 5352.5 for a person who was found not competent to stand trial and whose trial or judgment was suspended under Penal Code section 1370.

   d. A person pleaded and was found not guilty by reason of insanity under Penal Code section 1026 and was at the time of judgment deemed to be gravely disabled as that term is defined in Welfare and Institutions Code section 5008(h)(2).

[SEAL]

CLERK'S CERTIFICATION

I certify that every time subitem k is checked on the attached form MC-600A—or an equivalent indication is made on the attached report—the applicable order in the case file stated that the court had disqualified the person from voting based on a finding, by clear and convincing evidence, that the person could not, with or without reasonable accommodations, communicate a desire to participate in the voting process.

Date: _____ Clerk, by _____, Deputy

CONFIDENTIAL

MC-600A

ATTACHMENT TO CONFIDENTIAL REPORT OF FINDINGS AND ORDERS AFFECTING VOTING RIGHTS
SUPERIOR COURT OF CALIFORNIA, COUNTY OF

Instructions to Clerk

Complete and attach to Confidential Report of Findings and Orders Affecting Voting Rights *(form MC-600). Use as many copies of this form as are needed to report each person subject to a finding and order under Elections Code sections 2208–2211 made by the court during the reporting period. Provide all applicable information for each person subject to such a finding and order. Number each item and each page consecutively, and attach all pages to form MC-600 for submission.*

Reporting period from *(date):* to *(date):* , inclusive.

__. a. Name *(first, middle, last, suffix):*
b. All other known names:
c. Last known address:

d. Case number: e. Date of order: f. Date of birth:
g. Driver's license or ID # *(if available):* h. Last four digits of social security # *(if available):*
i. The order states that it was a *(check one)* ☐ disqualification from voting ☐ restoration of the right to register to vote.
j. The order states that it was made under Elections Code section *(check one)* ☐ 2208 ☐ 2209 ☐ 2210 ☐ 2211.
k. ☐ The order states that it was based on a judicial finding, by clear and convincing evidence, that the person could not communicate, with or without reasonable accommodations, a desire to participate in the voting process. *(Not applicable to a disqualification order made under section 2211.)*

__. a. Name *(first, middle, last, suffix):*
b. All other known names:
c. Last known address:

d. Case number: e. Date of order: f. Date of birth:
g. Driver's license or ID # *(if available):* h. Last four digits of social security # *(if available):*
i. The order states that it was a *(check one)* ☐ disqualification from voting ☐ restoration of the right to register to vote.
j. The order states that it was made under Elections Code section *(check one)* ☐ 2208 ☐ 2209 ☐ 2210 ☐ 2211.
k. ☐ The order states that it was based on a judicial finding, by clear and convincing evidence, that the person could not communicate, with or without reasonable accommodations, a desire to participate in the voting process. *(Not applicable to a disqualification order made under section 2211.)*

__. a. Name *(first, middle, last, suffix):*
b. All other known names:
c. Last known address:

d. Case number: e. Date of order: f. Date of birth:
g. Driver's license or ID # *(if available):* h. Last four digits of social security # *(if available):*
i. The order states that it was a *(check one)* ☐ disqualification from voting ☐ restoration of the right to register to vote.
j. The order states that it was made under Elections Code section *(check one)* ☐ 2208 ☐ 2209 ☐ 2210 ☐ 2211.
k. ☐ The order states that it was based on a judicial finding, by clear and convincing evidence, that the person could not communicate, with or without reasonable accommodations, a desire to participate in the voting process. *(Not applicable to a disqualification order made under section 2211.)*

__. a. Name *(first, middle, last, suffix):*
b. All other known names:
c. Last known address:

d. Case number: e. Date of order: f. Date of birth:
g. Driver's license or ID # *(if available):* h. Last four digits of social security # *(if available):*
i. The order states that it was a *(check one)* ☐ disqualification from voting ☐ restoration of the right to register to vote.
j. The order states that it was made under Elections Code section *(check one)* ☐ 2208 ☐ 2209 ☐ 2210 ☐ 2211.
k. ☐ The order states that it was based on a judicial finding, by clear and convincing evidence, that the person could not communicate, with or without reasonable accommodations, a desire to participate in the voting process. *(Not applicable to a disqualification order made under section 2211.)*

SPR23-24

Trial Courts: Report of Determinations Affecting Voting Rights (Adopt Cal. Rules of Court, rule 10.970; adopt form MC-600; approve form MC-600A)

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

	Commenter	Position	Comment	Committee Response
1.	ACLU of Northern California by Brittany Stonesifer San Francisco	AM	The clerk instructions in proposed form MC-600 contain an incorrect and outdated standard for disqualification of voting rights. As proposed, step 3 in the clerk instructions currently admonishes to: "Certify that each disqualification order made under Elections Code sections 2208–2210 stated that it was based on the required finding of the person's inability to complete the voter registration affidavit." However, the standard in Elections Code section 2208-2210 is that the "court finds by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process." Please correct this section of proposed for MC-600 to reflect the correct legal standard. Using a standard based on a person's ability to complete a voter registration form violates state and federal law and unfairly restricts access to voting for people with disabilities which do not impair their desire and capacity to participate in the electoral process.	The committees appreciate this comment and have revised their recommendation as suggested.
2.	Dune Buggy Los Angeles	N	Judicial Council has no say in anyone's physical body or any health issues. None of you are licensed medical doctors with the Medical Board of California. Mental health has nothing to do with mental competency. Behavior Health Science has nothing to do with mental competency. Also putting sealed mental health records on any court website is illegal. Have you ever	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR23-24

Trial Courts: Report of Determinations Affecting Voting Rights (Adopt Cal. Rules of Court, rule 10.970; adopt form MC-600; approve form MC-600A)

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

	Commenter	Position	Comment	Committee Response
			heard of the United States Constitution and Bill of Rights all 27 amendments and HIPAA regulations? How about the CA Constitution, Article VI Section 9 through 10? Every Judge claiming to be a mental health/behavior Health Science judge is committing felonies all over the place. Every Judge and Attorney must hold a physical Attorney license number in order to practice law of any kind. Designations of their titles while working in the court system along with their complete legal first, middle, and last name with correct spelling that matches their birth certificates and CA drivers licenses? All attorneys practicing law in the state of CALIFORNIA must have their attorney license up to date each year, including all attorneys in the judicial commission and Attorney General's office, judicial council, and private practice. Also any Attorney in private practice must have a business license from the CA Secretary of State as a corporation doing business in the state of California. Also no corporations are allowed in the courthouses. Especially, when acting as district attorneys for the government. .org endings on email addresses in the district attorney's office are not sdcounty.ca.gov email addresses. Thank you for your help.	Nothing in this proposal authorizes posting of sealed or private mental health records on court websites. No further response required. No response required. No response required.
3.	Joint Rules Subcommittee Trial Court Presiding Judges Advisory Committee and	AM	The JRS notes that the proposal is required to conform to a change of law.	The committees appreciate this comment. No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR23-24

Trial Courts: Report of Determinations Affecting Voting Rights (Adopt Cal. Rules of Court, rule 10.970; adopt form MC-600; approve form MC-600A)

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

	Commenter	Position	Comment	Committee Response
	Court Executives Advisory Committee by Corey Rada, Senior Analyst		***Suggested Modifications*** Proposed rule 10.970 subsection (b) and language stating "in a manner that protects the confidentiality of the information on form MC-600A" on #4 of the instructions to clerk section on form MC-600 should both be removed. Both sets of language introduce confusion as to the required method of transmitting this information to the Secretary of State, which is stated to be sending an email to a designated address. It does not appear that anything other than standard email transmission is required, and the confidentiality language suggests that something else may be. That could result in courts implementing an unnecessarily burdensome process to comply with this requirement. As the Secretary of State has prescribed the method of transmission since 2017, it is reasonable to expect that they will designate a different method in the future if necessary.	The committees agree that the language noted is unnecessary and have deleted it from the recommended rule and form.
			The JRS also notes the following: There will be a moderate one-time impact to create the required reports in case management systems. Medium and large courts may be more significantly affected by the reporting requirements due to a potentially higher volume of reportable cases. The requirement to report aggregate data for the preceding month by the first day of each month pursuant to Elections Code section 2211.5(a) may be impossible to comply with at times.	The committees have modified their recommendation to adhere more strictly to the statutory language requiring courts to report the required information "by the first day of the month and more frequently if the clerk so chooses" in the hope that this language will provide the courts with more flexibility.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR23-24

Trial Courts: Report of Determinations Affecting Voting Rights (Adopt Cal. Rules of Court, rule 10.970; adopt form MC-600; approve form MC-600A)

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

	Commenter	Position	Comment	Committee Response
4.	Orange County Bar Association by Michael Gregg, President	A	No specific comment.	The committees appreciate the comment. No further response required.
5.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	AM	Three months is not enough time for implementation, as new reporting types must be incorporated, which may require analyst work to ensure the mandatory information is included in the monthly Case Management System report.	The committees do not recommend any change in response to this comment. The recommended rules and forms are necessary to fulfill the statutory mandate in Elections Code section 2211.5(b).
6.	Superior Court of Orange County by Iyana Doherty, Courtroom Operations Supervisor	AM	The options listed under section 2 of form MC-600 do not include the findings reflected in ELEC 2211. If this form is mandatory, is the Secretary of State only concerned about instances where the defendant was found not guilty by reason of insanity and found to be gravely disabled at the time judgment is pronounced? This will cause for the number of cases reflected on the cover sheet to not match the number of cases on the report. Rather than require the Court to either utilize MC-600A or a similarly formatted document, it would be best to allow the data to be submitted	The committees do not recommend a change to form MC-600 in response to this comment. The commenter is correct that the number of proceedings reported in item 2 will not include all the proceedings or findings reflected in section 2211, but the committees do not intend it to. Item 2 reports the information required in Elections Code section 2211.5(a)(2): the number of proceedings specified in section 2208(1)–(4) since the clerk's last report. Section 2208(a)(1)–(3) specifies the proceedings covered by sections 2208–2210. Section 2208(a)(4), however, partly overlaps with only one of the four situations addressed by section 2211: when a person whose voting rights are at issue has been found not guilty by reason of insanity. And because form MC-600A is for use to report information required by section 2211.5(a)(1), including determinations under all situations addressed by section 2211, the number of cases reflected on that form or another attachment will not match the number of cases in item 2 of form MC-600. The committees do not recommend a change to the proposal in response to this comment. Elections Code section 2211.5(b) requires the

	Commenter	Position	Comment	Committee Response
			in the form of a CSV or Excel file. This would allow the data to be easily extracted from our case management system and would provide the Secretary of State with a means to filter the information and compare to other counties if applicable.	adoption and use of Judicial Council forms containing "clearly identified spaces" for the information described in section 2211.5(b)(1)–(6). Although it seems likely that transmitting the reports in a comma-separated values (CSV) or Excel file would be simpler for both courts and the Secretary of State, a statutory amendment would be required to authorize transmission in either of those formats.
7.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	Does the proposal appropriately address the stated purpose? **Yes.** Would the proposal provide cost savings? If so, please quantify. **No.** What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **Due to the nature of this impacting multiple case types, courts may have to form a committee to determine how the court will implement this in the most uniform and efficient manner. This will require training for the staff member(s) assigned to this task and a back-up will need to be identified due to the fixed monthly deadline.**	No response required. No response required. The committees do not recommend a change to the proposal in response to this comment. The reporting requirement, the cases subject to it, and the deadline are all imposed by statute. As the court notes below, it already reports these determinations. Elections Code sections 2208–2211 currently require courts to report the same information for the same case types more frequently (i.e., on a case-by-case basis) to more

	Commenter	Position	Comment	Committee Response
				recipients (the county elections official) than does the law as amended by AB 2841.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.**	No response required.
			How well would this proposal work in courts of different sizes? **This will take significant effort, regardless of the size of the court.**	The committees do not recommend a change to the proposal in response to this comment. The burdens identified are due to the statutory requirements, not the recommended rule and forms.
			General Comments	
			Proposed rule 10.970(a)(2): In addition to the optional form MC-600A or printout generated by the court's case management system, it is proposed that the rule also allow a court to develop a comparable local form that includes all the requirements under Elections Code § 2211.5.	The committees do not recommend a change in response to this comment. Elections Code section 2211.5(b), which requires the Judicial Council to adopt and the courts to use forms with "clearly identified spaces" for reporting the information described in section 2211.5(b)(1)–(6), appears to preclude a court from using a local form to report the required information unless that form is materially identical to the Judicial Council form developed for that purpose, form MC-600A. To give courts flexibility within these statutory limits, the committees have modified the recommended rule to authorize courts to use either form MC-600A or a computer-generated document that presents the required information using the same clearly identified spaces as form MC-600A.

SPR23-24

Trial Courts: Report of Determinations Affecting Voting Rights (Adopt Cal. Rules of Court, rule 10.970; adopt form MC-600; approve form MC-600A)

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

	Commenter	Position	Comment	Committee Response
			MC-600: *Instructions to Clerk:* Recommend removing the instruction to complete items 1 and 2 on the form as unnecessary. Also propose allowing a comparable local form, in addition to using optional form MC-600A or a printout generated by the court's case management system.	The committees have removed the instruction to complete items 1 and 2 from form MC-600 but, for the reasons explained above, do not recommend authorizing use of a local form unless that form is a computer-generated report that presents the required information using the same clearly identified spaces as form MC-600A.
			Item 1: Does the word, "inclusive" infer that all orders, whether made under Elections Code 2208, 2209, 2210, or 2211, must be included in the attachment for the specific dates noted here? This can be problematic since some courts will have different staff completing this form, based on the area of law that each of the case types are assigned.	The committees intend the term "inclusive," as used to refer to the date range in form MC-600, item 1, to indicate that the range includes the beginning date and the end date. The *statute* requires each court to notify the Secretary of State of all findings made regarding a person's competency to vote, "as specified in each of *Sections 2208 through 2211, inclusive . . .*." The committees read this use of "inclusive" to require the court to report all specified findings made under the authority of all sections within the range—sections 2208, 2209, 2210, and 2211—not that the court must aggregate all the findings under those sections into a single report.
			Item 1.b.: Again, recommend allowing a comparable local form, in addition to using optional form MC-600A or a printout generated by the court's case management system.	The committees do not recommend authorizing a court to use a local form unless the form is a computer-generated report that presents the required information using the same clearly defined spaces as form MC-600A.
			Item 2: It is unclear whether this form could be completed once for each of the subdivisions a–d	The committees do not recommend a change to the form in response to this comment. As

	Commenter	Position	Comment	Committee Response
			or if it would be acceptable to list the total number of a. on one coversheet and total number of b. on another coversheet, etc. This information might be tracked by different staff members, depending on the court.	discussed above, any uncertainty whether the court must report the information for all case types on the same form or may report the information for each different case type on a separate form is traceable to the statute's lack of clarity on this point.
			Clerk's Certificate: Recommend removing the reference to subitem k in favor of more generic language such as" "I certify that every time a person is disqualified from voting on attached form MC-600A or its equivalent, the order on file stated that the court…"	The committees do not recommend removing the reference to subitem k, but have revised the language to clarify the nature of the certification. The language suggested by the commenter is overbroad because (1) the court is not required to make the certified finding as a condition of disqualifying a person from voting under section 2211 and (2) even if the finding is required as a condition of disqualification, the court might not have made the finding, made the finding using an incorrect standard of proof, or recorded the finding without indicating the proper standard. (For an example of the last, below.)
			Clerks' Certificate: The clerk is required to certify that a finding was made, "by clear and convincing evidence," however for Probate Conservatorships the JC form (GC-340) does not include this language in the findings.	The committees recognize that *Order Appointing Probate Conservator* (form GC-340) does not require the court to make the predicate finding by clear and convincing evidence. This is probably attributable to the terms of Probate Code section 1910, which do not specify an evidentiary standard by which the court must make that finding. In conservatorship proceedings in which the court has, as part of the appointment order, disqualified the conservatee from voting under section 1910, the order may therefore not state that the court made the finding by clear and

	Commenter	Position	Comment	Committee Response
				convincing evidence as required by Elections Code section 2208 and 2209. If the order does not state that the court made the finding using the proper standard of proof, the clerk should not, for that case, check subitem k on form MC-600A or its equivalent.
			MC 600A: Recommend revising the form to accommodate reporting for more individuals. The form only allows for the reporting of 4 individuals per page. The current format used by the San Diego Superior Court accommodates 13 individuals. It is recommended to format the required fields in a table with each row allowing for one individual and the required information being in separate columns.	The committees do not recommend a change to form MC-600A in response to this comment. The form is designed to allow a court to report additional cases as needed in increments of 4 per page, to allow a tailored report. The Judicial Council form standards preclude presenting the required information (see also the response below) in the suggested format. Moreover, at a time when courts are turning increasingly to the use of electronic filing, case management, and recordkeeping, the committees do not see a significant advantage to drafting a form to minimize the number of paper pages needed.
			Recommend removing subitem k. This finding is required by law and does not require a separate entry. Subitem k takes up significant space that could otherwise be used to add additional individuals.	The committees do not recommend the suggested change. Section 2211.5(a)(1) requires reports of determinations under sections 2208–2211, "inclusive." Section 2211 does not require this finding as a condition of disqualification from voting. In addition, the commenter has noted that a court order disqualifying a probate conservatee on form GC-340 might not indicate that the finding was made by the proper evidentiary standard. Because the finding is not required in all cases subject to the reporting requirement and will

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Trial Courts: Report of Determinations Affecting Voting Rights (Adopt Cal. Rules of Court, rule 10.970; adopt form MC-600; approve form MC-600A)

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

	Commenter	Position	Comment	Committee Response
				not necessarily be made or reflected in all cases in which it is required, the committees recommend retaining subitem k with a check box so the report can distinguish the cases in which the records show that the proper finding was made from the cases in which the records do not show that.

Item number: 25

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Probate Conservatorship and Guardianship: Eligibility for County Payment of Cost of Appointed Counsel

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

Committee or other entity submitting the proposal:
Probate and Mental Health Advisory Committee

*Staff contact (*name, phone and e-mail*): Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): November 1, 2022
Project description from annual agenda: 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.

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.

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-
For business meeting on September 18–19, 2023

Title
Probate Conservatorship and Guardianship: Eligibility for County Payment of Cost of Appointed Counsel

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, Appendix E

Recommended by
Probate and Mental Health Advisory Committee
Hon. Jayne Chong-Soon Lee, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 17, 2023

Contact
Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

Executive Summary

The Probate and Mental Health Advisory Committee recommends amending the *Guidelines for Determining Financial Eligibility for County Payment of the Cost of Counsel Appointed by the Court in Proceedings Under the Guardianship-Conservatorship Law (Guidelines)*, Appendix E of the California Rules of Court, to update the criteria for establishing presumptive eligibility for county payment of the cost of court-appointed counsel and to make a minor technical revision. The recommendation maintains the Judicial Council's policy of basing the criteria for presumptive eligibility for county payment on the conditions for granting an initial court fee waiver under Government Code section 68632(a)–(c) by adjusting the criteria in the *Guidelines* to conform to recent amendments to that statute.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2024, amend the California Rules of Court, Appendix E, as follows:

1. Amend paragraph 4A to include two public benefit programs recently added to Government Code section 68632(a); and

2. Amend paragraph 4B to increase the maximum income threshold from 125 percent of the federal poverty guidelines to 200 percent to conform to the recent amendment of Government Code section 68632(b).

The recommended amendments to Appendix E are attached at page 5.

Relevant Previous Council Action

In 2012, the Judicial Council adopted the *Guidelines* in Appendix E to the California Rules of Court to fulfill the mandate in Probate Code section 1470(c)(3) to "adopt guidelines to assist in determining financial eligibility for county payment of counsel appointed by the court pursuant to this chapter."[1] Paragraph 2 of the *Guidelines* outlines the persons statutorily responsible for paying the cost of counsel appointed in guardianships, conservatorships, and proceedings to determine legal capacity under division 4 of the Probate Code.[2] Paragraph 4 then provides criteria for establishing a presumption that a responsible person is unable to pay those costs and thus eligible to have the county to pay them.

Analysis/Rationale

The advisory committee recommends amending paragraphs 4A and 4B of the *Guidelines* to reflect amendments to Government Code section 68632 by Assembly Bill 199 (Stats. 2022, ch. 57, § 6, effective June 30, 2022). Paragraph 4 borrows three criteria for determining a person's eligibility for county payment from the conditions of eligibility for an initial court fee waiver in Government Code section 68632(a)–(c).[3] A responsible person is presumed to be eligible for county payment if the person is eligible to receive public benefits from one or more listed programs, the person's income is at or below a specified percentage of the federal poverty guidelines, or the person would be unable to pay the cost of counsel without using funds that would be normally used to pay for the common necessaries of life.[4] From the adoption of the *Guidelines* until June 30, 2022, Government Code section 68632(a) authorized receipt of public benefits from seven programs to establish eligibility for an initial fee waiver. Government Code section 68632(b) set the income threshold for eligibility for an initial fee waiver at 125 percent of the federal poverty guidelines.

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[1] Judicial Council of Cal., Advisory Com. Rep., *Probate Conservatorship and Guardianship: Financial Eligibility for County Payment for Counsel Appointed by the Court in Proceedings Under the Guardianship-Conservatorship Law* (Aug. 29, 2012), p. 3, *www.courts.ca.gov/documents/jc-20121026-itemA23.pdf*.

[2] See Prob. Code, §§ 1470–1474, 3140(d)(1), 3205. For more detail about the statutory scheme for appointment of counsel in proceedings under division 4 of the Probate Code, see Judicial Council of Cal., Advisory Com. Rep., *supra*, at pp. 2–6.

[3] Cal. Rules of Court, Appendix E, Advisory Com. com.; Judicial Council of Cal., Advisory Com. Rep., *supra*, at p. 7 ("[T]his three-part test is patterned after the standard for an initial court fee waiver under Government Code section 68632").

[4] Cal. Rules of Court, Appendix E, para. 4A–C.

AB 199 added two programs—the California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program) and unemployment compensation—to the list of the public benefit programs in section 68632(a), receipt of which establishes eligibility for an initial court fee waiver. The recommended amendment to paragraph 4A of Appendix E adds those same two programs to the list of those from which eligibility to receive public benefits would establish presumptive eligibility for county payment of the cost of appointed counsel in covered proceedings. The committee also recommends amending paragraph 4A(4) to use the title of the listed program, Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI), that is used in Government Code section 68632(a)(5).

AB 199 also raised the monthly income threshold for eligibility for an initial fee waiver set in section 68632(b) from 125 percent of the federal poverty guidelines to 200 percent. The recommended amendment to paragraph 4B of Appendix E would raise the income threshold in that paragraph from 125 percent to 200 percent of the current federal poverty guidelines.

Policy implications

The recommended amendments promote access to the courts by persons with limited financial resources by loosening the criteria for presumptive eligibility to public payment of the cost of appointed counsel in specified protective proceedings.

Comments

The recommended amendments circulated for public comment in the spring 2023 invitation-to-comment cycle. The committee received two comments. Both commenters agreed with the proposal as circulated.

A chart of comments is attached at page 6.

Alternatives considered

The committee considered not taking action but determined that the Judicial Council's established policy to base the conditions for presumptive eligibility for county payment of the cost of appointed counsel in protective proceedings under division 4 of the Probate Code required some action. As an alternative to following that policy by amending Appendix E to conform to the statutory amendments, the committee considered proposing a change to the policy that would have decoupled the criteria under the *Guidelines* for presumptive eligibility for county payment from the statutory conditions of eligibility for an initial fee waiver. The committee concluded, however, that the legislative and judicial branch policies of promoting access to the courts for persons of limited financial resources would best be served by the proposed amendments.

Fiscal and Operational Impacts

The recommended changes will have minimal fiscal impact on the courts. Although the amendments would increase the number of persons presumptively eligible for county payment of the costs of their appointed counsel, the courts will not bear those costs. The proposed amendments will also have minimal effect on court operations. Once staff is trained and local

forms or online programs are reset to reflect the added benefit programs and higher income threshold, they will operate as before. The amendments do not change paragraphs 4C or 5 of the *Guidelines*, which authorize the court to make an individualized determination of a person's ability to pay the costs of appointed counsel.

Attachments and Links

1. Cal. Rules of Court, Appendix E, at page 5
2. Chart of comments, at page 6
3. Link A: Gov. Code, § 68632 (as amended by Assem. Bill 199; Stats. 2022, ch. 57, § 6, effective June 30, 2022), *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=68632*

Appendix E to the California Rules of Court is amended, effective January 1, 2024, to read:

Appendix E

Guidelines for Determining Financial Eligibility for County Payment of the Cost of Counsel Appointed by the Court in Proceedings Under the Guardianship-Conservatorship Law

1.–3. * * *

4. Presumed eligibility for county payment

Except as provided in paragraph 7, the person responsible for payment of the cost of appointed counsel is presumed to be eligible for payment by the county of that cost if the person satisfies one or more of the following three conditions:

A. The responsible person is eligible ~~for:~~ to receive benefits under one or more of the following programs:

(1)–(3)

(4) Cash Assistance Program for ~~[aged, blind, and disabled legal]~~ Aged, Blind, and Disabled Legal Immigrants (CAPI);

(5) * * *

(6) CalFresh (Supplemental Nutrition Assistance Program (SNAP)) or California Food Assistance Program (CFAP), a California program for immigrants not eligible for federal SNAP; ~~or~~

(7) * * *

(8) California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program); or

(9) Unemployment compensation.

B. The responsible person's income is ~~125~~ 200 percent or less of the current federal poverty guidelines, updated periodically in the Federal Register by the United States Department of Health and Human Services; or

C. * * *

5.–8. * * *

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Probate Conservatorship and Guardianship: Eligibility for County Payment of Cost of Appointed Counsel (amend Cal. Rules of Court, Appendix E)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Michael A. Gregg, President	A	*The proposal appropriately addresses the stated purpose.	The committee appreciates this comment. No further response required.
2.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	Does the proposal appropriately address the stated purpose? **Yes.** Would the proposal provide cost savings? If so, please quantify. **No.** What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **Minimal training for Probate Examiners and Judicial Officers would be required.** Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.** How well would this proposal work in courts of different sizes? **This proposal should work well, regardless of the size of the court.** No additional comments.	The committee appreciates the court's comments. No further response required.

Item number: 26

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Protective Orders: Updated Law Enforcement Information Form and New Request Forms for Continuances

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Adopt forms CH-715, CH-716, EA-715, EA-716, SV-715, SV-716, WV-715, and WV-716; revise form CLETS-001

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee and Family and Juvenile Law Advisory Committee

*Staff contact (*name, phone and e-mail*): Frances Ho; (415) 865-7662; frances.ho@jud.ca.gov*
James Barolo; (415) 865-8928; james.barolo@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): November 1, 2022
Project description from annual agenda:
Family and Juvenile Law Advisory Committee agenda:
Item 15. 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.

Item 16. 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.

Civil and Small Claims Advisory Committee agenda:
Item 4: Work with Protective Order Working Group (under lead of Family and Juvenile Law Advisory Committee) 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.

Item 12: Work with Protective Order Working Group (under lead of Family and Juvenile Law Advisory Committee) 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).

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.

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-156
For business meeting on: September 18–19, 2023

Title
Protective Orders: Updated Law Enforcement Information Form and New Request Forms for Continuances

Rules, Forms, Standards, or Statutes Affected
Adopt forms CH-715, CH-716, EA-715, EA-716, SV-715, SV-716, WV-715, and WV-716; revise form CLETS-001

Recommended by
Civil and Small Claims Advisory Committee
Hon. Tamara L. Wood, Chair
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
August 4, 2023

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Executive Summary

The Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee recommend revising form CLETS-001 to make needed updates and adopting new forms to be used when a request to renew has been filed in a protective order proceeding, and the court or a party wishes to continue a hearing.

Recommendation

The Civil and Small Claims Advisory Committee and Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2024:

1. Adopt eight Judicial Council forms relating to continuances of hearings on requests to renew restraining orders:

- *Request to Reschedule Hearing to Renew Restraining Order* (form CH-715);
- *Order to Reschedule Hearing to Renew Restraining Order* (form CH-716);
- *Request to Reschedule Hearing to Renew Restraining Order* (form EA-715);
- *Order to Reschedule Hearing to Renew Restraining Order* (form EA-716);
- *Request to Reschedule Hearing to Renew Restraining Order* (form SV-715);
- *Order to Reschedule Hearing to Renew Restraining Order* (form SV-716);
- *Request to Reschedule Hearing to Renew Restraining Order* (form WV-715); and
- *Order to Reschedule Hearing to Renew Restraining Order* (form WV-716);

2. Revise *CONFIDENTIAL CLETS Information* (form CLETS-001), retitled as *Confidential Information for Law Enforcement* to update the form.

Relevant Previous Council Action

Form CLETS-001 was adopted for use in 2012, as a universal form to be completed by all litigants requesting a civil restraining order. Before its adoption, many of the civil restraining order forms had separate forms designed for the same purpose. Form CLETS-001 has not been revised since its adoption.

Analysis/Rationale

This proposal is needed to make necessary revisions to form CLETS-001, as described below. The committees also propose adopting new forms that would be used by litigants and courts to continue a hearing on a request to renew a restraining order.

Form CLETS-001

Form CLETS-001 is a confidential form that is turned into the court but does not become part of the court file. The purpose of this form is to provide additional information that could be helpful if law enforcement is called on to enforce a protective order. The committees recommend a number of changes to this form.

First, the form has been reorganized to include information about the proposed restrained party at the very beginning, including the current item about possession of firearms. This reorganization allows petitioners of gun violence restraining orders to skip the remaining items about protected parties that do not apply to their case. Second, all references to gender now include a nonbinary option, consistent with the request and order forms. Third, the committees recommend removing the protected party's address in response to safety concerns raised by advocates. Fourth, several changes are made in response to user-testing results, including retitling the form, revising the instructions at the top of the form to provide a clearer explanation of what the form will be used for, and having the court note the date the form is received rather than having the petitioner indicate whether the form is the initial or an amended version. Finally, the committee recommends removing information that is unlikely to be helpful in enforcing an order (e.g., a protected person's vehicle and license plate number) and information that is already included on the restraining order (e.g., a restrained person's address).

Continuance forms for request to renew restraining order

The committees also recommend adopting a request to continue form and an order for continuance form for each of the CH (civil harassment), DV (domestic violence), GV (gun violence), EA (elder abuse), SV (private postsecondary school violence), and WV (workplace violence) form sets, to be used when a request to renew a restraining order has been filed with the court. The *Request to Reschedule Hearing to Renew Restraining Order* (forms 715 in each series) could be used by either party to ask the court to continue a hearing. The *Order to Reschedule Hearing to Renew Restraining Order* (forms 716) would be used by the court to indicate its decision on a request to continue hearing or to continue a hearing on its own motion. That form, like the order to reschedule the original hearing on a restraining order petition, includes a warning to the restrained person that the current restraining order must be obeyed and an item for the court to use to inform the party requesting a continuance what type of service, if any, is required.[1]

Policy implications

This recommendation helps implement Goal I, "Access, Fairness, Diversity, and Inclusion," of the Judicial Council's strategic plan by helping to make forms easier to complete and understand for self-represented litigants. Additionally, changes to form CLETS-001 were based on user-testing and feedback from service providers, consistent with Goal IV of the strategic plan to provide the highest quality of justice and service to the public.

Comments

This proposal was released for public comment from March 30 through May 12, 2023. Ten commenters responded to the proposal. Five agreed with the proposal, two agreed if modified, and three did not indicate a position; no commenters disagreed with the proposal. Commenters were the Superior Courts of Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties; the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee; Bay Area Legal Aid; the Family Violence Appellate Project; the Orange County Bar Association; and one individual.

The committees thank all commenters for taking the time to respond to this proposal. In general, commenters supported many of the changes. Some of the more significant comments and the committees' responses are provided below. All comments and the committees' responses are provided in the attached chart of comments at pages 26–41.

Retaining information on restrained person's employer on form CLETS-001

Several commenters stated that information regarding the restrained person's employer could be helpful for enforcement purposes. The committees agree and recommend including the name and address of the restrained person's employer.

[1] Because other changes relevant only to the DV and GV form sets are recommended in other proposals, the proposed DV and GV forms 715 and 716 are included with those proposals rather than this proposal, but are substantially similar to the forms included in this proposal.

Updating information on form CLETS-001

One commenter notes that it would place an additional burden on survivors to require them to submit an amended form CLETS-001 whenever information changes. The committees agreed with the commenter's concern and have revised the instruction in the proposed form to make it optional to submit an updated form.

Alternatives considered

For the new continuance forms for renewal proceedings, the committee considered revising the existing request and order (forms 115 and 116). However, the committee decided against this approach as some of the statutory requirements only apply to continuances of the initial request for restraining order (e.g., a respondent is entitled to one continuance, for a reasonable period of time, to respond to the initial petition). Creating a form that would work for both the initial request for restraining order and for a renewal would make the forms more complicated. Instead, the committees decided that a separate continuance form set for renewals would be more user-friendly.

The committees also considered whether to adopt a new information form, similar to forms CH-115-INFO and DV-115-INFO. The committees decided against a separate information form at this time and instead included more instruction on the forms 715, under "Your Next Steps."

Fiscal and Operational Impacts

Commenting courts noted that resources would be needed to provide training, revise internal procedures, and update form packets and case management systems. All courts that responded indicated that three months for implementation would be sufficient.

Attachments and Links

1. Forms CLETS-001, CH-715, CH-716, EA-715, EA-716, SV-715, SV-716, WV-715, and WV-716, at pages 5–25
2. Chart of comments, at pages 26–41

CLETS-001 Confidential Information for Law Enforcement

Instructions: If you are asking for a restraining order, you must complete this form and give it to the court clerk, along with the other court forms required in your case. If the judge grants the restraining order, information you give on this form will be entered into a database (called CLETS) to help law enforcement enforce the order. If information changes later, you may complete this form again and turn it in to the court.

To Court Clerk: Do not file this form. The information on this form must be entered into the protective order registry in CLETS.

Court fills in case number when form is received.

Case Number:

Information that has a star (*) next to it is required. All other information is helpful.

Date received by court: _____

1 Person You Want a Restraining Order Against

***Name**: _____

Other names used: _____

Marks, scars, or tattoos: _____ SSN: _____

Telephone: _____ Driver's license *(number and state):* _____

Vehicle type: _____ Model: _____ Year: _____ Plate number: _____

Name of employer and address: _____

Does the person speak English? ☐ Yes ☐ I don't know ☐ No *(list language):* _____

Does the person have any firearms (guns), firearm parts, or ammunition?

☐ No ☐ I don't know

☐ Yes *(Give any information you have below, like the type, amount, or location of the firearm, if known.)*

_____

_____

2 *Your Name: _____

(Skip 3 and 4 if you are asking for a gun violence restraining order (form GV-100).)

3 Your information

***Age**: _____ Date of Birth *(month, day, year)*: _____ ***Gender**: ☐ M ☐ F ☐ X (nonbinary)

Race: _____ Telephone: _____

Do you speak English? ☐ Yes ☐ No *(list language):* _____

4 Other People You Want Protected

***Name**: _____ ***Gender**: _____ Race: _____ Date of Birth: _____

***Name**: _____ ***Gender**: _____ Race: _____ Date of Birth: _____

***Name**: _____ ***Gender**: _____ Race: _____ Date of Birth: _____

***Name**: _____ ***Gender**: _____ Race: _____ Date of Birth: _____

☐ Check here if you have more people to list. Write them on a separate piece of paper and write "Item 3" at the top and attach it to this form.

This is not a Court Order—Do not place in court file.

CH-715 Request to Reschedule Hearing to Renew Restraining Order

Clerk stamps date here when form is filed.

DRAFT

8/2/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Instructions: Either party may use this form to ask the court to reschedule the hearing (court date) listed on form **CH-710**, *Notice of Hearing to Renew Restraining Order*. Note: If the hearing is rescheduled, the restraining order will be extended until the new court hearing.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 My Information

a. My name is: _____

b. I am the *(check one):*

(1) ☐ Protected party *(skip to 2).*

(2) ☐ Restrained party *(give your contact information below).*

Address where I can receive mail:

This address will be used by the court and by the other party to send you official court dates, orders, and papers. For privacy, you may use another address like a post office box, a Safe at Home address, or another person's address, if you have their permission. If you have a lawyer, give their information.

Address: _____

City: _____ State: _____ Zip: _____

Additional contact information *(optional)*

Telephone: _____ Fax: _____

Email Address: _____

Lawyer's information *(skip if you do not have one)*

Name: _____ State Bar No.: _____

Firm Name: _____

2 Information About Your Case

a. The other party in this case is *(full name):* _____

b. The court date is currently scheduled for *(date):* _____

This is not a Court Order.

Case Number:

3 Why does your court date need to be rescheduled?

a. ☐ I need more time to have the restrained party served.

b. ☐ Other reason:

4 Signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

5 Lawyer's signature *(if you have one)*

Date: _____

_____ ▶ _____

Lawyer's name *Lawyer's signature*

Your Next Steps

- Complete form CH-716, *Order to Reschedule Hearing to Renew Restraining Order* (only items 1 and 2).
- File forms CH-715 and CH-716 with the court. A judge will review your forms and decide whether to reschedule your court date.
- If the judge grants your request to reschedule your court date, you must have someone serve a copy of all forms listed on form CH-716, item 5. Your server can be the sheriff or another adult who is not involved in the case. For more information on how to serve the restrained person, go to *https://selfhelp.courts.ca.gov/CH-restraining-order/renew/sheriff-serves*.
- If the judge denies your request to reschedule, you must go to your court hearing (listed on form CH-710).

CH-716 Order to Reschedule Hearing to Renew Restraining Order

Clerk stamps date here when form is filed.

DRAFT

8/2/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

(Complete ① and ② only. The court will complete the rest of this form.)

① Protected Party: _____

② Restrained Party: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

③ Next Court Date

a. ☐ **Denied:** The request to reschedule the court date is denied

Your court date is: _____

(1) The *Civil Harassment Restraining Order After Hearing* (CH-130) granted in this case stays in full force and effect until your court date.

(2) Your court date is not rescheduled because:

_____

_____

_____

_____

b. ☐ **Granted:** The request to reschedule the court date is granted. Your court date is rescheduled for the day and time listed below. The current restraining order stays in effect until the hearing date below or the original expiration date, whichever is later. See ④–⑦ for more information.

New Court Date →

Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court, if different from above:

_____

_____

_____

Warning and Notice to the Restrained Party:
You must obey the restraining order while it is in effect.

This is a Court Order.

Case Number:

4 Reason Court Date Is Rescheduled

a. ☐ The protected party has not served the restrained party.

b. ☐ Other reason:

5 Serving (Giving) Order to Other Party

The request to reschedule was made by the:

a. ☐ **Protected party**	b. ☐ **Restrained party**	c. ☐ **Court**
(1) ☐ You do not have to serve the restrained party because they or their lawyer were at the court date or agreed to reschedule the court date.	(1) ☐ You do not have to serve the protected party because they or their lawyer were at the court date or agreed to reschedule the court date.	(1) ☐ Further notice is not required.
(2) ☐ You must have the restrained party personally served with a copy of all the forms listed on form CH-710, item 4, by *(date):* _____	(2) ☐ You must have the protected party personally served with a copy of this order by *(date):* _____	(2) ☐ The court will mail a copy of this order to all parties by *(date):* _____
(3) ☐ You must have the restrained party served with a copy of this order. This can be done by mail. You must serve by *(date):* _____	(3) ☐ You must have the protected party served with a copy of this order. This can be done by mail. You must serve by *(date):* _____	(3) ☐ Other: _____
(4) ☐ Other: _____	(4) ☐ Other: _____	

This is a Court Order.

6 No Fee to Serve (Notify) Restrained Person ☐ Ordered ☐ Not Ordered

The sheriff or marshal will serve this order for free because:

a. ☐ The order is based on unlawful violence, a credible threat of violence, or stalking.

b. ☐ The person in 1 is entitled to a fee waiver.

7 ☐ Other Orders

_____

_____

_____

_____

Date: _____

_____
Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms.htm* for *Disability Accommodation Request* (form *MC-410*). (Civ. Code, § 54.8.)

Instructions to Clerk

If the court rescheduled the court date, the court must enter this order into CLETS or send this order to law enforcement to enter into CLETS. This must be done within one business day from the day the order is made.

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order to Reschedule Hearing to Renew Restraining Order* (form CH-716) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by: _____, Deputy

This is a Court Order.

EA-715 Request to Reschedule Hearing to Renew Restraining Order

Clerk stamps date here when form is filed.

DRAFT

8/2/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Instructions: Either party may use this form to ask the court to reschedule the hearing (court date) listed on form EA-710, *Notice of Hearing to Renew Restraining Order*. Note: If the hearing is rescheduled, the restraining order will be extended until the new court hearing.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 My Information

a. My name is: _____

b. I am the *(check one):*

(1) ☐ Protected party *(skip to 2).*

(2) ☐ Person asking for protection for the protected party

(name of elder or dependent adult): _____

(skip to 2).

(3) ☐ Restrained party *(give your contact information below).*

Address where I can receive mail:

This address will be used by the court and by the other party to send you official court dates, orders, and papers. For privacy, you may use another address like a post office box, a Safe at Home address, or another person's address, if you have their permission. If you have a lawyer, give their information.

Address: _____

City: _____ State: _____ Zip: _____

Additional contact information *(optional)*

Telephone: _____ Fax: _____

Email Address: _____

Lawyer's information *(skip if you do not have one)*

Name: _____ State Bar No.: _____

Firm Name: _____

2 Information About Your Case

a. The other party in this case is *(full name):* _____

b. The court date is currently scheduled for *(date):* _____

This is not a Court Order.

3 Why does your court date need to be rescheduled?

a. ☐ I need more time to have the restrained party served.

b. ☐ Other reason:

4 Signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

5 Lawyer's signature *(if you have one)*

Date: _____

_____ ▶ _____

Lawyer's name *Lawyer's signature*

Your Next Steps

- Complete form EA-716, *Order to Reschedule Hearing to Renew Restraining Order* (only items 1 and 2).
- File forms EA-715 and EA-716 with the court. A judge will review your forms and decide whether to reschedule your court date.
- If the judge grants your request to reschedule your court date, you must have someone serve a copy of all forms listed on form EA-716, item 5. Your server can be the sheriff or another adult who is not involved in the case. For more information on how to serve the restrained person, go to *https://selfhelp.courts.ca.gov/EA-restraining-order/renew/sheriff-serves*.
- If the judge denies your request to reschedule, you must go to your court hearing (listed on form EA-710).

EA-716 Order to Reschedule Hearing to Renew Restraining Order

Clerk stamps date here when form is filed.

DRAFT

8/2/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

(Complete ① and ② only. The court will complete the rest of this form.)

① Protected Party: _____

② Restrained Party: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

③ Next Court Date

a. ☐ **Denied:** The request to reschedule the court date is denied.

Your court date is: _____

(1) The *Elder or Dependent Adult Abuse Restraining Order After Hearing* (EA-130) granted in this case stays in full force and effect until your court date.

(2) Your court date is not rescheduled because:

_____

_____

_____

_____

b. ☐ **Granted:** The request to reschedule the court date is granted. Your court date is rescheduled for the day and time listed below. The current restraining order stays in effect until the hearing date below or the original expiration date, whichever is later. See ④–⑦ for more information.

New Court Date →

Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court, if different from above:

_____

_____

_____

Warning and Notice to the Restrained Party:
You must obey the restraining order while it is in effect.

This is a Court Order.

Case Number:

4 Reason Court Date Is Rescheduled

a. ☐ The protected party has not served the restrained party.

b. ☐ Other reason:

5 Serving (Giving) Order to Other Party

The request to reschedule was made by the:

a. ☐ **Protected party**

(1) ☐ You do not have to serve the restrained party because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the restrained party personally served with a copy of all the forms listed on form EA-710, item 4, by *(date):*

(3) ☐ You must have the restrained party served with a copy of this order. This can be done by mail. You must serve by *(date):*

(4) ☐ Other:

b. ☐ **Restrained party**

(1) ☐ You do not have to serve the protected party because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the protected party personally served with a copy of this order by *(date):*

(3) ☐ You must have the protected party served with a copy of this order. This can be done by mail. You must serve by *(date):*

(4) ☐ Other:

c. ☐ **Court**

(1) ☐ Further notice is not required.

(2) ☐ The court will mail a copy of this order to all parties by *(date):*

(3) ☐ Other:

This is a Court Order.

6 No Fee to Serve (Notify) Restrained Person ☐ Ordered ☐ Not Ordered

The sheriff or marshal will serve this order for free because:

a. ☐ The order is based on unlawful violence, a credible threat of violence, or stalking.

b. ☐ The person in 1 is entitled to a fee waiver.

7 ☐ Other Orders

_____

_____

_____

_____

Date: _____ _____

Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms.htm* for *Disability Accommodation Request* (form MC-410). (Civ. Code, § 54.8.)

Instructions to Clerk

If the court rescheduled the court date, the court must enter this order into CLETS or send this order to law enforcement to enter into CLETS. This must be done within one business day from the day the order is made.

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order to Reschedule Hearing to Renew Restraining Order* (form EA-716) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by: _____, Deputy

This is a Court Order.

SV-715 Request to Reschedule Hearing to Renew Restraining Order

Clerk stamps date here when form is filed.

DRAFT

8/2/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Instructions: Either party may use this form to ask the court to reschedule the hearing (court date) listed on form SV-710, *Notice of Hearing to Renew Restraining Order*. Note: If the hearing is rescheduled, the restraining order will be extended until the new court hearing.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 My Information

a. My name is: _____

b. I am the *(check one):*

(1) ☐ **Petitioner** (educational institution officer or employee)

(skip to 2).

(2) ☐ **Restrained Party** *(give your contact information below).*

Address where I can receive mail:

This address will be used by the court and by the other party to send you official court dates, orders, and papers. For privacy, you may use another address like a post office box, a Safe at Home address, or another person's address, if you have their permission. If you have a lawyer, give their information.

Address: _____

City: _____ State: _____ Zip: _____

Additional contact information *(optional)*

Telephone: _____ Fax: _____

Email Address: _____

Lawyer's information *(skip if you do not have one)*

Name: _____ State Bar No.: _____

Firm Name: _____

2 Information About Your Case

a. The other party in this case is *(full name):* _____

b. The court date is currently scheduled for *(date):* _____

This is not a Court Order.

3 Why does your court date need to be rescheduled?

a. ☐ I need more time to have the restrained party served.

b. ☐ Other reason:

4 Signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ _____

Type or print your name *Sign your name*

5 Lawyer's signature *(if you have one)*

Date: _____

_____ _____

Lawyer's name *Lawyer's signature*

Your Next Steps

- Complete form SV-716, *Order to Reschedule Hearing to Renew Restraining Order* (only items 1 and 2).
- File forms SV-715 and SV-716 with the court. A judge will review your forms and decide whether to reschedule your court date.
- If the judge grants your request to reschedule your court date, you must have someone serve a copy of all forms listed on form SV-716, item 5. Your server can be the sheriff or another adult who is not involved in the case. For more information on how to serve the restrained person, go to https://selfhelp.courts.ca.gov/SV-restraining-order/renew/sheriff-serves.
- If the judge denies your request to reschedule, you must go to your court hearing (listed on form SV-710).

SV-716 Order to Reschedule Hearing to Renew Restraining Order

Clerk stamps date here when form is filed.

DRAFT

8/2/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

(Complete ① and ② only. The court will complete the rest of this form.)

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

① Petitioner (Educational Institution Officer or Employee):

_____

② Restrained Party: _____

③ Next Court Date

a. ☐ **Denied:** The request to reschedule the court date is denied.

Your court date is: _____

(1) The *Private Postsecondary School Violence Restraining Order After Hearing* (SV-130) granted in this case stays in full force and effect until your court date.

(2) Your court date is not rescheduled because:

_____

_____

_____

_____

b. ☐ **Granted:** The request to reschedule the court date is granted. Your court date is rescheduled for the day and time listed below. The current restraining order stays in effect until the hearing date below or the original expiration date, whichever is later. See ④–⑦ for more information.

New Court Date →

Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court, if different from above:

_____

_____

_____

Warning and Notice to the Restrained Party:
You must obey the restraining order while it is in effect.

This is a Court Order.

4 Reason Court Date Is Rescheduled

a. ☐ The petitioner has not served the restrained party.

b. ☐ Other reason:

5 Serving (Giving) Order to Other Party

The request to reschedule was made by the:

a. ☐ **Petitioner**	b. ☐ **Restrained party**	c. ☐ **Court**
(1) ☐ You do not have to serve the restrained party because they or their lawyer were at the court date or agreed to reschedule the court date.	(1) ☐ You do not have to serve the petitioner because they or their lawyer were at the court date or agreed to reschedule the court date.	(1) ☐ Further notice is not required.
(2) ☐ You must have the restrained party personally served with a copy of all the forms listed on form SV-710, item 5, by *(date):*	(2) ☐ You must have the petitioner personally served with a copy of this order by *(date):*	(2) ☐ The court will mail a copy of this order to all parties by *(date):*
(3) ☐ You must have the restrained party served with a copy of this order. This can be done by mail. You must serve by *(date):*	(3) ☐ You must have the petitioner served with a copy of this order. This can be done by mail. You must serve by *(date):*	(3) ☐ Other:
(4) ☐ Other:	(4) ☐ Other:	

This is a Court Order.

Case Number:

6 No Fee to Serve (Notify) Restrained Person ☐ Ordered ☐ Not Ordered

The sheriff or marshal will serve this order for free because:

a. ☐ The order is based on unlawful violence, a credible threat of violence, or stalking.

b. ☐ The person in 1 is entitled to a fee waiver.

7 ☐ Other Orders

_____

_____

_____

_____

Date: _____

_____
Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms.htm* for *Disability Accommodation Request* (form MC-410). (Civ. Code, § 54.8.)

Instructions to Clerk

If the court rescheduled the court date, the court must enter this order into CLETS or send this order to law enforcement to enter into CLETS. This must be done within one business day from the day the order is made.

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order to Reschedule Hearing to Renew Restraining Order* (form SV-716) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by: _____, Deputy

This is a Court Order.

WV-715 Request to Reschedule Hearing to Renew Restraining Order

Clerk stamps date here when form is filed.

DRAFT

8/2/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Instructions: Either party may use this form to ask the court to reschedule the hearing (court date) listed on form WV-710, *Notice of Hearing to Renew Restraining Order*. Note: If the hearing is rescheduled, the restraining order will be extended until the new court hearing.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 My Information

a. My name is: _____

b. I am the *(check one)*:

(1) ☐ **Petitioner** (employer) *(skip to 2).*

(2) ☐ **Restrained Party** *(give your contact information below).*

Address where I can receive mail:

This address will be used by the court and by the other party to send you official court dates, orders, and papers. For privacy, you may use another address like a post office box, a Safe at Home address, or another person's address, if you have their permission. If you have a lawyer, give their information.

Address: _____

City: _____ State: _____ Zip: _____

Additional contact information *(optional)*

Telephone: _____ Fax: _____

Email Address: _____

Lawyer's information *(skip if you do not have one)*

Name: _____ State Bar No.: _____

Firm Name: _____

2 Information About Your Case

a. The other party in this case is *(full name):* _____

b. The court date is currently scheduled for *(date):* _____

This is not a Court Order.

3 Why does your court date need to be rescheduled?

a. ☐ I need more time to have the restrained party served.

b. ☐ Other reason:

4 Signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

5 Lawyer's signature *(if you have one)*

Date: _____

_____ ▶ _____

Lawyer's name *Lawyer's signature*

Your Next Steps

- Complete form WV-716, *Order to Reschedule Hearing to Renew Restraining Order* (only items 1 and 2).
- File forms WV-715 and WV-716 with the court. A judge will review your forms and decide whether to reschedule your court date.
- If the judge grants your request to reschedule your court date, you must have someone serve a copy of all forms listed on form WV-716, item 5. Your server can be the sheriff or another adult who is not involved in the case. For more information on how to serve the restrained person, go to *https://selfhelp.courts.ca.gov/WV-restraining-order/renew/sheriff-serves*.
- If the judge denies your request to reschedule, you must go to your court hearing (listed on form WV-710).

WV-716 Order to Reschedule Hearing to Renew Restraining Order

Clerk stamps date here when form is filed.

DRAFT

8/2/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

(Complete ① and ② only. The court will complete the rest of this form.)

① Petitioner (Employer): _____

② Restrained Party: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

③ Next Court Date

a. ☐ **Denied:** The request to reschedule the court date is denied.

Your court date is: _____

(1) The *Workplace Violence Restraining Order After Hearing* (WV-130) granted in this case stays in full force and effect until your court date.

(2) Your court date is not rescheduled because:

_____

_____

_____

_____

b. ☐ **Granted:** The request to reschedule the court date is granted. Your court date is rescheduled for the day and time listed below. The current restraining order stays in effect until the hearing date below or the original expiration date, whichever is later. See ④–⑦ for more information.

New Court Date →

Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court, if different from above:

_____

_____

_____

Warning and Notice to the Restrained Party:
You must obey the restraining order while it is in effect.

This is a Court Order.

Case Number:

4 Reason Court Date Is Rescheduled

a. ☐ The petitioner has not served the restrained party.

b. ☐ Other reason:

5 Serving (Giving) Order to Other Party

The request to reschedule was made by the:

a. ☐ **Petitioner**

(1) ☐ You do not have to serve the restrained party because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the restrained party personally served with a copy of all the forms listed on form WV-710, item 5, by *(date):*

(3) ☐ You must have the restrained party served with a copy of this order. This can be done by mail. You must serve by *(date):*

(4) ☐ Other:

b. ☐ **Restrained party**

(1) ☐ You do not have to serve the petitioner because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the petitioner personally served with a copy of this order by *(date):*

(3) ☐ You must have the petitioner served with a copy of this order. This can be done by mail. You must serve by *(date):*

(4) ☐ Other:

c. ☐ **Court**

(1) ☐ Further notice is not required.

(2) ☐ The court will mail a copy of this order to all parties by *(date):*

(3) ☐ Other:

This is a Court Order.

6 No Fee to Serve (Notify) Restrained Person ☐ Ordered ☐ Not Ordered

The sheriff or marshal will serve this order for free because:

a. ☐ The order is based on unlawful violence, a credible threat of violence, or stalking.

b. ☐ The person in 1 is entitled to a fee waiver.

7 ☐ Other Orders

_____

_____

_____

_____

Date: _____

_____
Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms.htm* for *Disability Accommodation Request* (form MC-410). (Civ. Code, § 54.8.)

Instructions to Clerk

If the court rescheduled the court date, the court must enter this order into CLETS or send this order to law enforcement to enter into CLETS. This must be done within one business day from the day the order is made.

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order to Reschedule Hearing to Renew Restraining Order* (form WV-716) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by: _____, Deputy

This is a Court Order.

SPR23-26

Protective Orders: Updated Law Enforcement Information Form and New Request Forms for Continuances (Adopt forms CH-715, CH-716, EA-715, EA-716, SV-715, SV-716, WV-715, and WV-716; revise form CLETS-001)

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

	Commenter	Position	Comment	Draft Committee Response
1.	Bay Area Legal Aid by Kemi Mustapha Family Law Supervising Attorney	NI	Bay Area Legal Aid ("BayLegal") submits this letter in response to the Judicial Council's invitation to comment on proposals concerning protective orders, specifically item numbers SPR23-26, SPR23-28, and SPR23-30. BayLegal is the largest provider of free legal services to low-income residents of Alameda, Contra Costa, Marin, Napa, Santa Cara, San Francisco, and San Mateo counties. Our mission is to provide meaningful access to the civil justice system through high quality legal assistance to low-income litigants regardless of location, language, or disability. Many low-income litigants, including BayLegal clients, are individuals with limited English proficiency, individuals with limited literacy, survivors of interpersonal violence, people with disabilities, and individuals who are housing insecure. BayLegal provides legal services to roughly 10,000 low-income residents of the Bay Area annually. In addition, BayLegal is the provider of public Domestic Violence Restraining Order Clinics in Contra Costa and San Mateo counties, helping an average of over 1000 individuals prepare restraining orders each year. We also provide free full scope representation to survivors of domestic violence in family law matters, which includes restraining order applications. The large number of individuals we serve gives us a unique insight to assess the potential impact of the Judicial Council's	The committees thank you for reviewing this proposal.

	Commenter	Position	Comment	Draft Committee Response
			proposed changes on low-income California residents. Overall, BayLegal supports the Judicial Council's proposals. We do recommend some changes as detailed below. Our recommendations and responses to Request for Specific Comments are organized by Item Number.	
			Updated Law Enforcement Information Form and New Request Forms for Continuances (Item Number SPR23-26) • *Proposed Changes to CLETS-001* BayLegal recommends that the CLETS-001 form continue to include space to provide the restrained party's employer, business address, work hours, and occupation. In our experience, law enforcement uses this information to help with service and enforcement of protective orders. With this recommendation incorporated, BayLegal believes that the proposed changes to the CLETS-001 form address the stated purposes, including providing additional information helpful for law enforcement to enforce the protective order and safeguarding the protected party's safety. We especially commend the Judicial Council	The committees have included the name and address of the restrained person's employer. Adding other information would require adding another page to the form and the committees prefer to keep this as a one-page form. The committees note that if additional information would be helpful for service it can be added to the new form for requesting service by the sheriff.

	Commenter	Position	Comment	Draft Committee Response
			for responding to safety concerns raised by survivor advocates by removing the protected party's address from the form.	The committees appreciate your feedback on this change.
			• *New Continuance Forms* BayLegal strongly supports the Judicial Council's user-friendly approach of creating separate continuance forms for hearings to renew protective orders rather than revising the existing 115 and 116 forms to include continuances for renewals. The Judicial Council's proposal addresses the stated purpose related to the continuance forms.	The committees agree that adding these forms to the renewal series (700s) will be helpful and ensure the consistent and accessible administration of justice.
2.	Family Violence Appellate Project by Arati Vasan Senior Managing Attorney	NI	On behalf of Family Violence Appellate Project (FVAP), I write to offer comments on Invitation To Comment (ITC) SPR23-26. FVAP is a State Bar-funded legal services support center and the only nonprofit organization in California dedicated to representing domestic violence survivors in civil appeals for free. FVAP is devoted to ensuring domestic violence survivors can live in healthy safe environments, free from abuse. This includes a commitment to improving how survivors—and all litigants—are treated in family and civil court.	Thank you for reviewing this proposal.
			Form CLETS-001, Confidential Information for Law Enforcement Asking survivors seeking protection to fill out the CLETS-001 form, and to be responsible for	The committees agree that it could be burdensome to require the petitioner to complete the form

	Commenter	Position	Comment	Draft Committee Response
			amending this form as the information changes places additional burdens on survivors. Efforts to simplify the form are welcome and needed. Overall, the changes to the CLETS-001 form are helpful. The changes will make it easier for both the people completing the form and those using it for enforcement. In particular, the removal of the address requirement for the person filling in the form is an important change. It is a credit to the committee for continuing to be responsive to the named safety needs of survivors.	every time information changes, and have revised the instruction to make it optional to complete the form again.
			The change from "Person to Be Restrained" to "Person You Want a Restraining Order Against" is problematic and potentially confusing. It is true that at the time a petitioner fills out the form, they are seeking to restrain someone. But this form is put into effect only in the event of someone *actually being* restrained—and it will continue to be used only so long as there is a restraining order in effect against this person. While "Person to Be Restrained" may seem odd in light of changing "Person to Be Protected" to "Your Information" (for GVROs), the new wording unintentionally minimizes the fact that when this form is actually entered the person is already restrained.	The committees did not make this change. "Person You Want a Restraining Order Against" is used because the committees believe it is easier to understand than "Person to be Restrained." While it is true that at the time the information on this form is entered into CLETS, the person in 1 will be restrained, this is not the case when the petitioner is completing the form at the same time as completing the request for restraining order.
			In addition, the updated Instructions are helpful but should clarify that the form will be entered	The committees have made this change in the proposal.

	Commenter	Position	Comment	Draft Committee Response
			into a database *only* if a restraining order is issued, temporary or otherwise. It is unclear from the ITC why certain information about the restrained party—such as their place of employment—is not important to enforcement, but as the California Department of Justice will be looking at this proposal, they will hopefully weigh in on what is needed for enforcement. To the extent that the form is removing requests for information that is already available on the restraining order documents, the age of the petitioner is already available on the DV-100 so it too could be removed.	In response to comments, the committees agree that the name and address of the restrained person's employer should be included in the proposal. Age is still included on the CLETS form because information from the request form (e.g., DV-100) is not entered into CLETS. Additionally, the petitioner's age is not listed on the temporary or long-term restraining order.
			Forms for Rescheduling Restraining Order Renewal Hearings Like the new DV-715 and 716, these forms are a positive and important addition to help people with the complicated process of navigating a renewal. For the forms in this ITC, the first item has the heading "My Information" whereas the DV forms say, "Your Information." If that has some significance it is not clear but as this is a great effort to create consistency across forms, using the same heading on all the 715 forms is preferable. Similar to our comments for the DV-715, two	The committees agree that adding these forms to the renewal series (700s) will be helpful and ensure the consistent and accessible administration of justice. The committees acknowledge that some forms use first-person ("I" statements), while others, like the DV forms, generally use the second-person ("You" statements). The committees anticipate working to increase consistency across protective order forms in this regard as resources and timing permits. The Judicial Council has a forms style guide that

	Commenter	Position	Comment	Draft Committee Response
			suggestions for all of these forms would be to 1) increase the font size of the language in the Note confirming that the restraining order will be extended and 2) add some space and increase the font size for Protected Party and Restrained Party. The first suggestion is to allow that language to stand out so it is clear to either party requesting rescheduling. In the current size and space, it is less distinctive than it should be given its importance. The second suggestion is due to a concern that the eye easily goes directly to the prominent exclamation points for the address. In doing so a person would not answer the important question of which party they are. In addition, it is important that petitioners understand that they can skip this portion. If the focus groups and other feedback show otherwise, that is good to hear, but increasing the font size does not seem likely to cause a negative effect and based on the spaces between numbers 1 and 2, there seems to be enough space to increase the size without affecting the layout or length of the form.	provides parameters for certain form design elements, like font size. The font size used in the body of a form is set at 11-point Times New Roman. However, the committee has increased the spacing in the instruction box and underlined "Note" to draw attention to the text that follows. Also, to make it easier to see item 1b, spacing has been increased and boldface type has been removed from the subheadings.
			Again, similar to our comments for the DV-716, it would be helpful for petitioners to know that that their 716 form goes *on top of* their 710 form, or that it should be attached to it along with the underlying restraining order. Sometimes when rescheduling restraining order hearings, problems arise when the original	The committees did not adopt this suggestion as forms 716 state that the restraining order will remain in effect until the court date. The icon for court date has been added to form DV-716 but has not been included on the forms contained in this proposal as those forms do not use the icon.

	Commenter	Position	Comment	Draft Committee Response
			restraining order has a different expiration date than the rescheduled hearing date. While those forms may be stapled together, without the addition of the 716 there is not readily available proof that the restraining order has not expired so a clear reminder is helpful. In addition, it would be helpful to use the same icon used for hearing dates on the 710 and the 720 for the new date on the renewal in addition to the box that says New Court Date. Using the same icon keeps the visual cues for this important information consistent across the forms.	
3.	Hon. Steven Ipson Commissioner Los Angeles	A	I agree with the proposed changes. They will simplify the forms and allow them to be used for the intended purpose, including rescheduling a hearing. They also remove unnecessary information regarding the protected person, and they allow for gun violence restraining orders to be implemented (there is no protected party for a gun violence restraining order). These changes simplify and streamline the forms, and are especially helpful for self-represented litigants.	The committees appreciate the information provided.
4.	Orange County Bar Association By Michael A. Gregg, President	A	* The commenter indicates agreement.	Thank you for reviewing this proposal.
5.	Superior Court of California, County of Los Angeles by Bryan Borys, Director of Research and Data Management	AM	Regarding CLETS-001, Confidential Information for Law Enforcement form: o Suggest further explaining the purpose of the CLETS form to litigants by expanding the phrase “Information you give on this form will be entered into a database...” to include “that law enforcement have access to, called	The committees have added language to explain that the information will help with enforcement.

	Commenter	Position	Comment	Draft Committee Response
			CLETS, to assist them with enforcing the restraining order."	
			o Suggest expanding the following advisement alongside "Information that has a star (*)..." to include "unless the instructions specifically permit the item containing it to be skipped" for the purposes of reducing ambiguity between conflicting instructions.	This suggestion was not adopted. The committees prefer to keep the instruction simple and believe that instruction for gun violence petitioners to skip certain items is clear.
			o Page 1, Section 1: Is there a reason why the "Gender" field was removed? It seems appropriate to include the "Gender" field in Sections 1 and 2 with the non-binary option	Gender was removed from item 1 because it is information that would be included on the restraining order itself and information from the restraining order is also entered into CLETS.
			o Page 1, Section 1: Is there a reason why there is a language question in CLETS? Is there a better way to ask if someone has Limited English Proficiency? If it is asked, perhaps it should be asked about both parties if the petitioner knows the information. This may be helpful to flag interpreter language needs for court hearings. Or, perhaps the language information should be noted elsewhere in a Restraining Order form/petition	The information on this form is entered into CLETS to help law enforcement enforce the restraining order. Knowing ahead of time that a party does not speak English would allow the agency to send an officer who speaks the needed language or at least alert the officer that there may be a language barrier and interpreter services are needed. The form includes a question about the ability to speak English in item 1 (for the proposed restrained person) and item 2 (person asking for protection). The committees note that rule 1.51 governs the use and handling of this form. The information provided on the form is confidential, and does not become part of the court file.
			Regarding CH-716, Order to Reschedule	This has been corrected in the proposed form.

	Commenter	Position	Comment	Draft Committee Response
			Hearing to Renew Restraining Order form: o Bottom of Page 1, Warning and Notice to the Restrained Party: a typo exists in "expries"	
			Regarding EA-716, Order to Reschedule Hearing to Renew Restraining Order form: o Bottom of Page 1, Warning and Notice to the Restrained Party: a typo exists in "expries"	This has been corrected.
			Regarding SV-716, Order to Reschedule Hearing to Renew Restraining Order form: o Bottom of Page 1, Warning and Notice to the Restrained Party: a typo exists in "expries"	This has been corrected.
			Regarding WV-716, Order to Reschedule Hearing to Renew Restraining Order form: o Bottom of Page 1, Warning and Notice to the Restrained Party: a typo exists in "expries"	This has been corrected.
6.	Superior Court of California, County of Orange Family Law/Juvenile Division	NI	**Form CLETS-001** Simplify version for easier reading as the CLETS-001 is completed by the litigant. See sample below. *The sample provided by commenter proposes some minor changes to language and formatting, including (1) moving the instruction to clerk from the right side of the form, to the left side of the form; 2) separating each piece of information regarding the restrained person's vehicle into separate fields; 3) having separate fields for driver's license number and state of issuance; and 4) center-justify the instruction	The committees have, in response to (2) in this comment, separated out the vehicle information into individual fields for type, model, year, and plate number in the proposal. However, the committees believe, in response to (1) that the notice to clerk is less likely to be missed if it appears where the clerk's stamp would go. In response to (3), the committees also did not separate the driver's license number and state of issuance into separate fields as this may lead to some confusion if "state" appears by itself without specifying that it relates to the driver's license. In response to (4), the committees prefer to keep the

	Commenter	Position	Comment	Draft Committee Response
			directed at petitioner's of gun violence restraining orders.	instruction for gun violence restraining orders left-justified, consistent with the item numbers.
			▪ *Does the Proposal appropriately address the stated purpose?* Yes. ▪ *Does the proposal approximately address the stated purpose relating to the continuance forms?* Yes. ▪ *Would the proposal provide cost savings? If so, please quantify.* No. ▪ *What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?* This implementation would require updating procedures and creating event codes in the case management system. ▪ *Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes.	Thank you for reviewing this proposal. No response required. No response required. Thank you for your response. The committees agree that three months would

	Commenter	Position	Comment	Draft Committee Response
			▪ *How well would this proposal work in courts of different sizes?* Our court is a large court, and this could work for Orange County.	provide sufficient time for implementation. Thank you for your response.
7.	Superior Court of California, County of Riverside by Susan Ryan Chief Deputy of Legal Services	A	Apart from the suggested edits below, the proposed revisions offer clarity and comply with existing law.	Thank you for reviewing this proposal.
			CLETS-001 Confidential Information for Law Enforcement Suggested edits: Suggest placing the following in a "For Court Use Only" block 2. Physical description of the restrained person (as required information.) The revisions to the CLETS removes height, weight, eye color, and car information. The form presumes that this information is not helpful to law enforcement for enforcement the existing protective order. Oddly, the form keeps "race" which is limited when used to describe appearance. The committee plans to seek feedback from the CA DOJ on the removed fields. Suggested edits:	The committees decline this suggestion, as the form is not filed with court and has never had such a block. Thank you for your response. The committees note that information from CLETS-001 is entered into the California Restraining and Protective Order Registry (CARPOS) within CLETS, in addition to the restraining order itself. The height, weight, and eye color of the restrained person were removed from the CLETS-001 form because these items are included on the restraining order. Race is included and required on the form, as it is a mandatory field in CARPOS. The committees note that “skin tone” is an optional field in CARPOS and includes 13 options. The

	Commenter	Position	Comment	Draft Committee Response
			If agreed to by CA DOJ, suggest deleting in race in favor of restoring section on the height, weight, eye color, and consider adding skin tone.	committees would like to keep this as a one-page form and therefore do not recommend including "skin tone."
			CH-716; EA-716; SV-716; WV-716 Suggested edits: Correct "expries" to "expires".	The committees appreciate this correction and instead recommend using "while it is in effect" to match other language on the form.
			Does the proposal appropriately address the stated purpose relating to the CLETS form? Yes, the proposal addresses the stated purpose relating to the CLETS form. It is a more "user" friendly form sufficiently simplified to only require needed information for purposes of enforcement. Also, the revised form had addressed the concern over the safety of the protected party by no longer requiring protect party to provide their address and contact information.	Thank you for your response. The committees agree that the revisions will make the form more user-friendly.
			Does the proposal approximately address the stated purpose relating to the continuance forms? Yes, the proposal addresses the stated purpose relating to the continuance of a hearing set for renewal of an existing restraining order. The proposed forms are specific to each type of restraining order, thereby facilitating successful completion of the form and accomplish obtaining a new court date. The continuance forms address 1) the concern for the safety and	The committees agree that adding these forms to the renewal series (700s) will be helpful and ensure the consistent and accessible administration of justice.

	Commenter	Position	Comment	Draft Committee Response
			emotional well-being of the protected party, as it provides for existing orders to remain in effect, and 2) it preserves due process rights of the burdened party to respond and defend.	
			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? Uncertain. Defer to operations for estimates to incorporate new forms into the court's case management and processing systems.	No response required.
			Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Three months would be a sufficient amount of time to implement the proposal.	The committees agree that three months would provide sufficient time for implementation.
8.	Superior Court of California, County of San Bernardino, Barstow District by Anita Morales Legal Processing Assistant II	A	No specific comment.	Thank you for reviewing this proposal.
9.	Superior Court of California, County of San Diego by Mike Roddy, Executive Officer	A	**Request for Specific Comments** Does the proposal appropriately address the stated purpose relating to the CLETS form? **Yes.**	Thank you for your response.
			Does the proposal appropriately address the stated purpose relating to the continuance forms? **Yes.**	Thank you for your response.

	Commenter	Position	Comment	Draft Committee Response
			Would the proposal provide cost savings? If so, please quantify. **No.**	No response required.
			What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **Revising internal procedures, adding new case management entries, and training staff.**	Thank you for your response.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes, provided the final versions of the forms are provided to the court at that time. This will ensure that the court is able to provide training to staff and update its internal procedures and case management systems.**	The committees agree that three months would provide sufficient time for implementation. Approved versions of the form that could be used for training and updating internal procedures will be available in September. The final versions of the form will be published on the Judicial Resources Network with enough time to allow courts to modify forms packets.
			How well would this proposal work in courts of different sizes? **It appears the proposal would work for courts of various sizes.** No additional Comments.	Thank you for your response.
10.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) (TCPJAC/CEAEC Joint Rules Subcommittee)	AM	The JRS notes the following impact to court operations: • Impact on existing automated systems. • Impact on local or statewide justice partners. • Results in additional training, which requires the commitment of staff time and court resources.	Thank you for your response.
			Suggested Modifications	

	Commenter	Position	Comment	Draft Committee Response
			Current CLETS-001 has fields to provide demographic information and address information for the restrained person. The new form has removed these fields and the Invitation states the reason for the removal as: ***"Finally, the committee recommends removing information that is unlikely to be helpful in enforcing an order (e.g., a protected person's vehicle and license plate number and a restrained person's employer or occupation) or is already included on the restraining order (e.g., a restrained person's address***)." However, the form also includes instructions to the protected person that if the information on the form changes, they are to complete a new form and file it with the court. CLETS-001 is the appropriate mechanism for the protected person to provide this new or changed information to law enforcement, and therefore should remain on the form. By removing the information/fields mentioned above, a protected person cannot complete a new CLETS-001 if the information changes after the filing of the TRO or permanent order. Also, it appears that at least some of the omitted information could be helpful for enforcement, i.e., the restrained party's employer.	The committees agree that knowing the restrained person's employer could be helpful for enforcement and have added the name and address of the restrained person's employer to the proposed form. In response to another comment, the committees recommend revising the instruction to not require that the petitioner complete the form if information changes. Instead, it would be optional for the petitioner to submit another form if information changes. In speaking with the Department of Justice, they note that if information from form CLETS-001 conflicts with the order itself, the order would control. Therefore, if information changes that would need to be reflected on the order itself, the protected party should submit an amended order.
			Response to Request for Court Comments:	Thank you for your response. The committees

	Commenter	Position	Comment	Draft Committee Response
			1. No, the proposal will not provide cost savings. 2. To implement the court will have to update procedures and train judicial officers and staff – anticipate minimal impact. Case management systems may also need to be updated but anticipate minimal impact. 3. 3 months appears to be sufficient time for implementation. 4. Do not anticipate that court size will make a difference on how well the proposal works.	agree that three months provides sufficient time to implement this proposal.
			Response to Request for Specific Comments: 1. If modified as set out above, the proposal appropriately addresses the state purpose relating to the CLETS form. 2. Yes, the proposal appropriately addresses the state purpose relating to the continuance forms and will be very helpful to the parties and the court.	Thank you for your response.

Item number: 27

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Protective Orders: Revisions to Gun Violence Restraining Order Forms

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Adopt forms GV-715 and GV-716; revise forms EPO-002, GV-020, GV-020-INFO, GV-030, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-120, GV-120-INFO, GV-125, GV-130, GV-620, GV-700, GV 710, GV-730, GV-800, and GV 800 INFO

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

*Staff contact (*name, phone and e-mail*): James Barolo, 415-865-8928, james.barolo@jud.ca.gov*

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): November 1, 2022
Project description from annual agenda: Item 1: 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.

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

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

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

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

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

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

Judicial Council *of* California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-153
For business meeting on September 18–19, 2021

Title
Protective Orders: Revisions to Gun Violence Restraining Order Forms

Rules, Forms, Standards, or Statutes Affected
Adopt forms GV-715 and GV-716; revise forms EPO-002, GV-020, GV-020-INFO, GV-030, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-120, GV-120-INFO, GV-125, GV-130, GV-620, GV-700, GV-710, GV-730, GV-800, and GV-800-INFO

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

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
August 4, 2023

Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends the adoption and revision of numerous gun violence restraining order forms. These new and revised forms implement Assembly Bill 2870 (Stats. 2022, ch. 974) permitting additional categories of individuals to petition for gun violence restraining orders. The proposed forms also bring the language describing firearm parts on gun violence restraining order forms in line with other protective order forms, include new forms that can be used to request continuance of a hearing to renew a gun violence protective order, and clarify that no additional service is required for enforcement if the respondent attends the hearing where the order was issued, whether attending in person or remotely.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2024, take the following actions, to implement Assembly Bill 2870 in gun violence restraining order forms, revise the language used to describe firearm parts, add forms related to continuances, and clarify when further service is not required for enforcement:

1. Adopt the following forms:

    - *Request to Reschedule Hearing to Renew Restraining Order* (form GV-715); and
    - *Order to Reschedule Hearing to Renew Restraining Order* (form GV-716).

2. Revise the following forms:

    - *Gun Violence Emergency Protective Order* (form EPO-002);
    - *Response to Gun Violence Emergency Protective Order* (form GV-020);
    - *How Can I Respond to a Gun Violence Emergency Protective Order?* (form GV-020-INFO);
    - *Gun Violence Restraining Order After Hearing on EPO-002* (form GV-030);
    - *Petition for Gun Violence Restraining Order* (form GV-100);
    - *Can a Gun Violence Restraining Order Help Me?* (form GV-100-INFO);
    - *Notice of Court Hearing* (form GV-109);
    - *Temporary Gun Violence Restraining Order* (form GV-110);
    - *Request to Continue Court Hearing for Gun Violence Restraining Order* (form GV-115);
    - *Response to Petition for Gun Violence Restraining Order* (form GV-120);
    - *How Can I Respond to a Petition for a Gun Violence Restraining Order?* (form GV-120-INFO);
    - *Consent to Gun Violence Restraining Order and Surrender of Firearms* (form GV-125);
    - *Gun Violence Restraining Order After Hearing or Consent to Gun Violence Restraining Order* (form GV-130);
    - *Response to Request to Terminate Gun Violence Restraining Order* (form GV-620);
    - *Request to Renew Gun Violence Restraining Order* (form GV-700);
    - *Notice of Hearing on Request to Renew Gun Violence Restraining Order* (form GV-710);
    - *Order on Request to Renew Gun Violence Restraining Order* (form GV-730);
    - *Receipt for Firearms, Firearm Parts, Ammunition, and Magazines* (form GV-800); and
    - *How Do I Turn In, Sell, or Store My Firearms, Firearm Parts, Ammunition, and Magazines?* (form GV-800-INFO).

The proposed new and revised forms are attached at pages 8–64.

Relevant Previous Council Action

Under the Penal Code, the Judicial Council must provide forms and instructions for use in gun violence restraining order matters and has done so for several years. The forms have been revised several times, when changes to the law required revisions and in response to suggestions from the public, judicial officers, and court professionals. The last substantive change to gun violence restraining order forms came in 2022 when the council revised these forms to implement legislation relating to the definition of "firearms" and the ability of parties and witnesses to attend hearings on gun violence restraining orders remotely.

Analysis/Rationale

This recommendation to revise the council's gun violence restraining order forms (1) implements Assembly Bill 2870; (2) makes consistent across protective orders the language used to describe firearm parts; (3) creates forms to request continuance of a hearing to renew a gun violence protective order; and (4) clarifies that no additional service is required for enforcement if the respondent attended the hearing where the order was issued, whether attending in person or remotely. These issues are summarized below, followed by an explanation of the form revisions the committee recommends in response.

Assembly Bill 2870

Effective January 1, 2023, Assembly Bill 2870 (Stats. 2022, ch. 974) (Link A) allows additional categories of individuals to petition for gun violence restraining orders: individuals who have a child in common with the subject of the restraining order; individuals who have a dating relationship with the subject of the restraining order; and, if certain requirements are met, roommates of the subject of the restraining order. AB 2870 also broadens the definition of "immediate family member."[1]

The form revisions recommended to implement AB 2870 are straightforward. The petition, notice of hearing, response to request to terminate, request for renewal, and order forms[2] contain the additional categories of people who may bring a gun violence restraining order. The information sheets[3] also reference the new categories of people who may bring the petition and include the expanded meaning of "immediate family member." Finally, given that the type of petitioner is not relevant to a request to continue a hearing, this proposal replaces the specific categories of individuals listed on the request to continue hearing (form GV-115) with "person asking for the protective order or law enforcement officer/law enforcement agency" and carries that structure onto proposed new form GV-715.

[1] These changes do not affect temporary emergency gun violence restraining orders governed by Penal Code sections 18125 through 18148. These orders, also referred to as emergency protective orders, may only be requested by law enforcement officers.

[2] Recommended forms GV-100, GV-109, GV-110, GV-130, GV-620, GV-700, GV-710, and GV-730.

[3] Recommended forms GV-100-INFO and GV-120-INFO.

Firearm parts

The language used to define "firearm parts" is inconsistent between gun violence restraining orders and other Judicial Council civil restraining order forms. Effective July 1, 2022, Assembly Bill 1057 (Stats. 2021, ch. 682) (Link B) and Assembly Bill 1621 (Stats. 2022, ch. 76) (Link C) amended the definition of "firearm" in Penal Code section 16520 and thus required individuals restrained under gun violence restraining orders to relinquish and not possess firearm parts. AB 1621 also applied the section 16520 definition of "firearm" to civil restraining orders for the first time.

The council approved revisions implementing AB 1621 in gun violence restraining order forms in September 2022.[4] The gun violence restraining order forms were revised separately from other restraining orders that addressed firearm parts and before being sent out for comment because other changes were needed to the gun violence forms in addition to those necessary to implement AB 1621. In November 2022, the committee approved revisions to the other civil restraining order forms after a special comment period. Based on comments received on this proposal, the council approved the other civil restraining order forms with different language to describe firearm parts than was earlier approved in the gun violence restraining orders.[5]

At this time, the committee recommends revising the gun violence forms to be consistent with the other restraining order forms on this point. The recommended revisions would describe firearm parts as including "firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531)," which is the language that is already included on other civil protective order forms[6] and criminal protective order forms.[7] A separate recommendation going to the September 2023 council meeting is also updating domestic violence restraining order forms to include that language as well.[8]

Continuances on hearing to renew

This committee recommends adopting *Request to Reschedule Hearing to Renew Restraining Order* (form GV-715); and *Order to Reschedule Hearing to Renew Restraining Order* (form

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[4] See Judicial Council of Cal., Advisory Com. Rep., *Protective Orders: Gun Violence Forms Implementing Statutory Amendments Permitting Remote Appearances and Modifying the Definition of Firearms* (Aug. 10, 2022), https://jcc.legistar.com/View.ashx?M=F&ID=11205465&GUID=ACE8A41E-6217-4FC9-9B8A-E3ED80D7145F.

[5] See Judicial Council of Cal., Advisory Com. Rep., *Protective Orders: Civil Protective Order Forms Implementing Assembly Bill 1621* (Nov. 2, 2022), https://jcc.legistar.com/View.ashx?M=F&ID=11461123&GUID=89F39689-D073-494C-9390-2A55F4C5AEC0.

[6] *Ibid.*

[7] See Judicial Council of Cal., Advisory Com. Rep., *Criminal Procedure: Criminal Protective Orders and Firearm Relinquishment Order* (Nov. 8, 2022), https://jcc.legistar.com/View.ashx?M=F&ID=11460928&GUID=058F0EC3-4C6A-47B7-BF10-DFCA23C91E70.

[8] That proposal, *Domestic Violence: Form Changes to Implement New Laws*, is available on the agenda for the September 19, 2023, Judicial Council meeting at *https://jcc.legistar.com/Calendar.aspx*.

GV-716) to continue a hearing on a request to renew a restraining order because the existing continuance forms (forms GV-115 and GV-116) are not designed for renewal proceedings.

This committee and the Family and Juvenile Law Advisory Committee are jointly recommending creation of such forms for the Civil Harassment (CH), Elder or Dependent Adult Abuse (EA), Private Postsecondary School Violence (SV), and Workplace Violence (WV) form sets in a separate report going to the September 2023 council meeting concurrently with this report.[9]

Clarification of service requirements after remote appearance

The committee also recommends revising gun violence restraining order forms to specify to the respondent that attending the hearing, including through the use of remote technology, will result in immediate enforcement of any orders issued.[10] This recommendation is consistent with and discussed more fully in a separate joint recommendation made by this committee and the Family and Juvenile Law Advisory Committee, which proposes two new rules of court and revisions to the CH, EA, SV, and WV notice of hearing and order after hearing forms.[11]

Policy implications

Several of the revised forms in this proposal implement new law that permits additional categories of people to seek gun violence restraining orders. Accordingly, the key policy implications for those changes are ensuring that council forms reflect the law correctly and are not misleading to parties.

The recommended form revisions that modify language used to describe firearm parts to be consistent with statutory language and other Judicial Council protective orders promote uniformity across forms to make them more accessible and understandable.

The new forms to request continuance of a hearing to renew a gun violence protective order helps implement Goal I, "Access, Fairness, Diversity, and Inclusion," of the Judicial Council's strategic plan by helping to make forms easier to complete and understand for self-represented litigants.

The recommended form revisions to clarify service requirements after a hearing on a gun violence restraining order reflect existing practice regarding service requirements after a remote

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[9] That proposal, *Protective Orders: Updated Law Enforcement Information Form and New Forms for Continuances on Hearings to Renew*, is available on the agenda for the September 19, 2023, Judicial Council meeting at *https://jcc.legistar.com/Calendar.aspx*. The domestic violence restraining order form proposal, *supra* note 6, also creates substantially similar forms for the DV form set.

[10] Such revisions to *Order on Request to Renew Gun Violence Restraining Order* (form GV-730) were inadvertently not included when the form was circulated for comment but are included as part of this recommendation.

[11] That proposal, *Protective Orders: Service Requirements After Remote Appearances*, is available on the agenda for the September 19, 2023, Judicial Council meeting at *https://jcc.legistar.com/Calendar.aspx*.

appearance by the respondent at a hearing on a restraining order. As such, the policy implications are limited to confirming a prior policy decision.

Comments

The new and revised forms were circulated for comments from March 30 to May 12, 2023. This proposal received five comments.[12] Two of the comments were from superior courts and one comment each was received from a legal aid organization, the Orange County Bar Association, and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. All commenters agreed that the revisions were needed and most requested further revisions to the forms.

A chart with the full text of the comments received and the committee's responses is attached beginning at page 65. The principal comments and the committee's responses are summarized below.

Form GV-100

A commenter suggested switching the order of item 6 (grounds for gun violence restraining order issuance) and item 7 (request for gun violence restraining order) on form GV-100. The committee declined this suggestion because it is helpful for the grounds to come before the request so that the petitioner can verify sufficient grounds exist before they fill out the item requesting the restraining order.

Form GV-109

A commenter suggested adding information to form GV-109 about the new form SER-001, used to request service by the sheriff. The committee declined this suggestion because this information is best suited to the information sheet about service, form GV-200-INFO, which is already mentioned on form GV-109.

Forms GV-115 and GV-715

The Joint Rules Subcommittee suggested including on the requests to continue hearing (forms GV-115 and GV-715) a check box for the restrained party to indicate if they have relinquished their firearms pursuant to a gun violence restraining order in effect. The committee recommends revising the forms accordingly because this information will be useful to the judicial officer when deciding whether a continuance is appropriate.

Form GV-800-INFO

A commenter suggested adding "firearm parts" to the list of items on form GV-800-INFO that may be sold to a firearms dealer by the restrained party after turning in the items to law enforcement. The committee declined this suggestion because many firearm parts are illegal to possess and thus could not be resold to a gun dealer.

[12] One additional comment discusses domestic violence restraining order forms but was directed to this proposal's ITC number in error.

Firearm parts
A commenter suggested adding "firearm parts" to the list of items the restrained person must surrender on forms EPO-002, GV-030, GV-110, GV-130, and GV-730. The committee declined this suggestion because the language in these sections is mandated by statute, and the statutory language does not include "firearm parts."[13]

Alternatives Considered

In addition to the alternatives suggested by the commenters and discussed above, the committee considered not recommending any further revisions to these forms. However, because AB 2870 made significant and substantial changes to who may bring gun violence restraining orders, the committee determined that taking no action would be inappropriate. The committee also determined it would be inappropriate to take no action to update the language about firearm parts as taking no action would mean that different forms use different language to describe the same statutory provisions. The committee also decided that creating new continuance forms for renewal proceedings was preferable to not acting because a separate continuance form set for renewals would be more user-friendly. Finally, the committee determined it would be inappropriate to take no action to clarify the service requirements after a respondent's remote appearance on the proposed forms as the committee has been asked to address this issue several times by courts and members of the Judicial Council.

Fiscal and Operational Impacts

The committee anticipates that this proposal would require courts to train court staff and judicial officers on the newly adopted and revised forms. Courts will also incur costs to incorporate the new and revised forms into the paper or electronic processes.

Attachments and Links

1. Forms EPO-002, GV-020, GV-020-INFO, GV-030, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-120, GV-120-INFO, GV-125, GV-130, GV-620, GV-700, GV-710, GV-715, GV-716, GV-730, GV-800, and GV-800-INFO, at pages 8–64
2. Chart of comments, at pages 65–70
3. Link A: Assembly Bill 2870, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2870
4. Link B: Assembly Bill 1057, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1057
5. Link C: Assembly Bill 1621, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1621

[13] See Pen. Code, §§ 18135, 18160, 18180.

EPO-002

GUN VIOLENCE EMERGENCY PROTECTIVE ORDER

LAW ENFORCEMENT CASE NUMBER:

Clerk stamps date here when form is filed.

DRAFT

7/12/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

1. **RESTRAINED PERSON** *(insert name):* _____
   Address: _____
   _____
   Gender: ☐ M ☐ F ☐ Nonbinary Ht.: _____ Wt.: _____ Hair color: _____
   Eye color: _____ Race: _____ Age: _____ Date of birth: _____
2. **TO THE RESTRAINED PERSON**
   (Also see important Warnings and Information on page 2):
   You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with Section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazine while this order is in effect. However a more permanent gun violence restraining order may be obtained from the court. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.
   If you have any firearms (guns), firearm parts (receivers, frames, and any item that may be used as or easily turned into a receiver or frame), ammunition, or magazines, you MUST IMMEDIATELY SURRENDER (GIVE) THEM if asked by a police officer. If a police officer does not ask you to surrender the items, within 24 hours of getting this order, you must take them to a police station or a licensed gun dealer to sell or store them and must file a receipt with the court proving that this has been done. You have 48 hours to file a receipt with the court shown to the right. **If you do not file a receipt within 48 hours you have violated this order and can go to jail.**
3. **This order will last until:** _____ **Time** _____
   INSERT DATE OF 21st CALENDAR DAY (DO NOT COUNT DAY THE ORDER IS GRANTED)
4. **Court Hearing** ☐ A court hearing will be set within 21 days.
   ☐ A court hearing will take place at the court above on: Date: _____ Time/Dept: _____

You must attend the court hearing if you do not want this restraining order against you. You may attend the hearing remotely (check your court's website for instructions). At the hearing, the judge can make this order last for up to five years.

5. Reasonable grounds for the issuance of this order exist, and a Gun Violence Emergency Protective Order (1) is necessary because the Restrained Person poses an immediate danger of causing personal injury to themself or to another by having custody or control, owning, purchasing, possessing, or receiving any firearms, firearm parts, ammunition, or magazines; **and** (2) less restrictive alternatives were ineffective or have been determined to be inadequate or inappropriate under the circumstances.
6. Judicial officer *(name):* granted this order on *(date):* at *(time):*

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

APPLICATION

7. Officer has a reasonable cause to believe that the grounds set forth in item 5, above, exist *(state supporting facts and dates; specify weapons—number, type and location):*
   _____
   _____
   _____
   _____
8. ☐ Firearms (including parts) were ☐ observed ☐ reported ☐ physically searched for ☐ seized.
   ☐ Ammunition (including magazines) was ☐ observed ☐ reported ☐ physically searched for ☐ seized.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: _____ ▶ _____
(PRINT NAME OF LAW ENFORCEMENT OFFICER) (SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: _____ Telephone No: _____ Badge No: _____

Address: _____

PROOF OF SERVICE

9. I personally delivered copies of this Order to the restrained person name in item 1.
   Date of service: _____ Time of service: _____ Address:
10. At the time of service, I was at least 18 years of age.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____ _____ ▶ _____
(TYPE OR PRINT NAME OF SERVER/LAW ENFORCEMENT OFFICER) (SIGNATURE OF SERVER)

WARNINGS AND INFORMATION

TO THE RESTRAINED PERSON: You are prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm (gun), a firearm part (a receiver, frame, or any item that may be used as or easily turned into a receiver or frame), ammunition, or a magazine. (Pen. Code, §§ 16531 & 18125 et seq.) A violation of this order is a misdemeanor punishable by a $1,000 fine or imprisonment for six months or both. (Pen. Code, §§ 19 & 18205.)

Within 24 hours of receipt of this order, you must turn in all items listed above to a law enforcement agency or sell them to or store them with a licensed firearms dealer until the expiration of this order. (Pen. Code, § 18125 et seq.) A receipt proving surrender, sale, or storage must be filed with the court within 48 hours of receipt of this order, or on the next court business day if the 48-hour period ends on a day when the court is closed. You must also file the receipt with the law enforcement agency that served you with this Order. You may use form GV-800, *Receipt for Firearms, Firearm Parts, Ammunition, and Magazines.*

This Gun Violence Emergency Protective Order is effective when made. It will last until the date and time in item 3 on the front. The court will hold a hearing within 21 days to determine if a longer-term order should be issued. If the date and time are not stated in item 4 on the front, you will get a notice with the date and time of the hearing in the mail at the residential address listed on page 1 of this form. If you would like to respond to this order in writing you must use form GV-020, *Response to Gun Violence Emergency Protective Order.* A longer-term restraining order may be requested from the court.

If you violate this order, you will also be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm (gun), firearm part (a receiver, frame, or any item that may be used as or easily turned into a receiver or frame), ammunition, or magazine for an additional five-year period, to begin on the expiration of the existing gun violence restraining order. (Pen. Code, §§ 16531 & 18205.)

This protective order must be enforced by all law enforcement officers in the state of California who are aware of it or shown a copy of it. The terms and conditions of this order remain enforceable regardless of the acts or any agreement of the parties; it may be changed only by order of the court.

A LA PERSONA RESTRINGIDA: Tiene prohibido ser dueño de, o poseer, comprar, recibir, o tratar de comprar o recibir un arma de fuego, un componente de armas de fuego (un receptor o armadura, o cualquier artículo que puede ser usado como receptor o armadura o fácilmente convertido en receptor o armadura), municiones o cargadores. (Cód. Penal, §§ 16531 & 18125 y siguientes). Una violación de esta orden es un delito menor que está sujeta a una multa de $1000 o encarcelamiento de seis meses o ambos. (Cód. Penal, §§ 19 & 18205.)

Dentro de las 24 horas de recibir esta orden, tiene que entregar todos los artículos indicados arriba a una agencia del orden público o venderlos a un comerciante de armas autorizado, o almacenarlos con el mismo hasta el vencimiento de esta orden. (Cód. Penal, § 18125 y siguientes). Se tiene que presentar a la corte una prueba de haberlos entregado, vendido, o almacenado dentro de las 48 horas de recibir esta orden, o el próximo día hábil, si el periodo de 48 horas termina un día en que está cerrada la corte. También tiene que presentar el recibo a la agencia del orden público que le entregó esta Orden. Se puede usar el formulario GV-800, *Recibo por armas de fuego, componentes de armas de fuego, munciones, y cargadores*.

Esta orden de protección de emergencia de armas de fuego entra en vigencia en el momento en que se emite. Durará hasta la fecha y hora indicadas en el punto 3 de la primera página. Se realizará una audiencia dentro de 21 días para determinar si es necesario emitir una orden que dure por más tiempo. Si la fecha y la hora no se indican en el punto 4 de la primera página, recibirá un aviso con la fecha y la hora de la audiencia por correo a la dirección residencial indicada en la primera página. Si desea responder a esta orden por escrito, tiene que usar el formulario GV-020, *Respuesta a la orden de protección de emergencia de armas de fuego*. Se puede solicitar a la corte una orden de restricción a más largo plazo.

Si contraviene esta orden de restricción, se le prohibirá tener en su posesión o control, comprar, poseer o recibir, o tratar de comprar o recibir un arma de fuego, un componente de armas de fuego (un receptor o armadura, o cualquier artículo que puede ser usado como receptor o armadura o fácilmente convertido en receptor o armadura), municiones o cargadores por otro periodo de cinco años más, comenzando a partir del vencimiento de la orden de restricción de armas de fuego existente. (Cód. Penal, §§ 16531 & 18205.)

Todo agente del orden público del estado de California que tenga conocimiento de la orden o a quien se le muestre una copia de la misma tiene que hacer cumplir esta orden de protección. Los términos y condiciones de esta orden se podrán hacer cumplir independientemente de las acciones de las partes; solo la corte podrá cambiar esta orden.

To law enforcement: The Gun Violence Emergency Protective Order must be served on the restrained person by the officer if the restrained person can reasonably be located. Ask the restrained person if he or she has any firearms, firearm parts, ammunition, or magazines in his or her possession or under his or her custody or control. A copy must be filed with the court as soon as practicable, but not later than three court days, after issuance, so a hearing can be set, if one was not already scheduled. If the court did not give you a hearing date when issuing the order (to put in item 4 on the front), the court will set a hearing within 21 days and will provide you with notice of the hearing. Also, the officer must have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.
The provisions in this temporary Gun Violence Emergency Protective Order do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form Save this form Clear this form

GV-020 Response to Gun Violence Emergency Protective Order

Clerk stamps date here when form is filed.

DRAFT

3/3/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Use this form if you do not want the court to extend the *Gun Violence Emergency Protective Order* for a period of time between 1–5 years.

1. Read *How Can I Respond to a Gun Violence Emergency Protective Order?* (form GV-020-INFO) to protect your rights.
2. Fill out this form and take it to the filing window at the court.
3. Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the law enforcement agency that applied for the *Gun Violence Emergency Protective Order* (form EPO-002). (Use *Proof of Service by Mail* (form GV-025).)

Fill in court name and street address:

Superior Court of California, County of

See Notice of Hearing for case number and fill in:

Case Number:

1 Requesting Agency or Officer

(A petition may be filed in the name of the law enforcement agency in which the officer is employed.)

_____

2 Restrained Person

a. Your Name: _____

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. You do not have to give telephone, fax, or email address.)*

Address: _____

City: _____ State: ____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Be prepared to tell the court at the hearing why you don't agree. Write your hearing date, time, and place from the Notice of Hearing or *Gun Violence Emergency Protective Order* (form EPO-002) here:

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

You must obey the *Gun Violence Emergency Protective Order* until the expiration date. At the hearing, the court may make an order against you for a period of time between 1–5 years.

3 Gun Violence Restraining Order

☐ I do not agree that a gun violence restraining order should be extended for 1–5 years *(explain)*:

_____

_____

_____

_____

_____

_____

_____

☐ *Check here if there is not enough space above for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 3—Reasons I Disagree" as a title. You may use form MC-025,* Attachment.

Case Number:

4 ☐ Denial, Justification, or Excuse

☐ I did not do anything described in item 7 of form EPO-002.

☐ If I did some of the things stated in the Gun Violence Emergency Protective Order, my actions were justified or excused for the following reasons *(explain):*

☐ *Check here if there is not enough space above for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 4—Denial, Justification, or Excuse" as a title. Use form MC-025,* Attachment.

5 Firearms (Guns), Firearm Parts, Ammunition, and Magazines

A *Gun Violence Emergency Protective Order* (form EPO-002) was issued against you. You cannot own or possess any firearms (guns), firearm parts, ammunition, or magazines. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531). You must turn over any of these items in your possession to law enforcement when they ask you to do so. If not asked, you must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any of the above listed items in your immediate possession or control within 24 hours of being served with form EPO-002. You must file a receipt with the court and the law enforcement agency. You may use *Receipt for Firearms, Firearm Parts, Ammunition, and Magazines* (form GV-800) for the receipt.

a. ☐ I do not own or control any firearms (guns), firearm parts, ammunition, or magazines.

b. ☐ I have turned in my firearms (guns), firearm parts, ammunition, and magazines to a law enforcement officer or agency, or sold them to or stored them with a licensed gun dealer. A copy of the receipt
☐ is attached ☐ has already been filed with the court and the law enforcement agency.

6 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____
Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

_____ ▶ _____
Type or print your name *Sign your name*

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GV-020-INFO How Can I Respond to a Gun Violence Emergency Protective Order?

DRAFT 1/20/2023
NOT APPROVED BY THE JUDICIAL COUNCIL

What is a *Gun Violence Emergency Protective Order* (form EPO-002)?

It is a court order requested by law enforcement that prohibits someone from having any of the following prohibited items:

- Firearms, including any handgun, rifle, shotgun, and assault weapon;
- Firearm parts, meaning receivers, frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531) (these may also be called "ghost guns");
- Ammunition; and
- Magazines (any ammunition feeding device).

The person must turn in, sell, or store all prohibited items listed above that they currently own.

For more information about prohibited items, please see *https://selfhelp.courts.ca.gov/restraining-orders/prohibited-items*.

Who can ask for a gun violence emergency protective order?

The gun violence emergency protective order must have been requested by a law enforcement officer and was issued by a judicial officer based on the statements made under penalty of perjury in the protective order.

I've been served with a *Gun Violence Emergency Protective Order* (form EPO-002) and a *Notice of Court Hearing*. What do I do now?

Read the papers served on you very carefully. The *Notice of Court Hearing* or form EPO-002 tells you when to appear for court and where the court is located. If you want to attend the hearing remotely, such as by phone or videoconference, check your local court's website for instructions and availability. Follow the *Gun Violence Emergency Protective Order* (form EPO-002) prohibiting you from having any prohibited items listed above and requiring you to surrender, sell, or store any prohibited items that you currently own or possess. You must obey the order until the expiration date on the form.

What if I don't obey the emergency protective order?

The police can arrest you. You can go to jail and pay a fine. You may also be prohibited for a longer period of time from having access to firearms, firearm parts, ammunition, and magazines.

What if I don't want the order to be extended?

If you disagree with the order that has been issued and do not want the court to extend it for a longer time, fill out *Response to Gun Violence Emergency Protective Order* (form GV-020), before your hearing date. File the form with the court and serve it on the requesting law enforcement agency. You can get the form from legal publishers or from the California Courts website at *www.courts.ca.gov/forms*. You also may be able to find it at your local courthouse or county law library.

Will I have to pay a filing fee?

No.

Do I have to serve the other person with a copy of my response?

Yes. Have someone age 18 or older—**not you**—mail a copy of the completed *Response to Gun Violence Emergency Protective Order* (form GV-020) to the law enforcement agency that issued the *Gun Violence Emergency Protective Order* (form EPO-002). (This is called "service by mail.")

The person who serves the form by mail must fill out *Proof of Service by Mail* (form GV-025). Have the person who did the mailing sign the original form GV-025. Take the completed form back to the court clerk or bring it with you to the hearing.

GV-020-INFO How Can I Respond to a Gun Violence Emergency Protective Order?

Should I attend the court hearing?

Yes. You should attend the hearing listed on the *Notice of Court Hearing* or the *Gun Violence Emergency Protective Order* (form EPO-002). You can do so remotely, such as by telephone or videoconference, or go to court in person. If you do not attend the hearing, the judge can extend the order against you for a period of time between 1–5 years without hearing from you.

Can I attend the court hearing remotely, such as by telephone or videoconference?

Yes. Remote appearances are permitted for parties and witnesses. Check with your local court for instructions on how to appear remotely. Information is also available on the court's website, which you can find at *www.courts.ca.gov/find-my-court.htm*.

Can I bring a witness to the court hearing?

Yes. You can bring witnesses or documents that support your case to the hearing. But if possible, you should also bring the witnesses' written statements of what they saw or heard. Their statements must be made under penalty of perjury. (You can use *Declaration* (form MC-030) for this purpose.)

Do I need a lawyer?

Having a lawyer is always a good idea, but it is not required, and you are not entitled to a free, court-appointed attorney. Ask the court clerk about free and low-cost legal services and self-help centers in your county.

How long does the order last?

The *Gun Violence Emergency Protective Order* (form EPO-002) will last until the expiration date listed on the front of the form in item 3. The court will decide at the hearing whether to issue a gun violence restraining order that can last for a period of time between 1–5 years.

Will I see the person who asked for the court order at the court hearing?

It's possible the law enforcement officer may appear at the court hearing.

What if I need help to understand English?

When you file your papers, ask the clerk if a court interpreter is available. You can also use form INT-300, *Request for Interpreter (Civil)*, or a local court form or website to request an interpreter. For more information about court interpreters, go to *selfhelp.courts.ca.gov/request-interpreter*.

What if I have a disability?

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

For help in your area, contact:

[Local information may be inserted.]

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GV-030 Gun Violence Restraining Order After Hearing on EPO-002

Clerk stamps date here when form is filed.

DRAFT

1/20/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

The court will complete this form.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Requesting Agency or Officer

(A petition may be filed in the name of the law enforcement agency in which the officer is employed.)

Law enforcement agency or officer that applied for the Gun Violence Emergency Protective Order: _____

2 Restrained Person

Full Name: _____

Lawyer *(if there is one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

Address: _____

City: _____ State: ____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Description of Restrained Person

Gender: ☐ M ☐ F ☐ Nonbinary Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address: _____

City: _____ State: _____ Zip: _____

3 Expiration Date

This order expires at:

(Time): _____ ☐ a.m. ☐ p.m. ☐ midnight on *(date):* _____

If no expiration date is written here, this order expires one year from the date of issuance.

4 Hearing

a. There was a hearing on *(date):* _____ at *(time):* _____ in Dept.: _____ Room: _____.
(Name of judicial officer): _____ made the orders at the hearing.

b. These people attended the hearing:

(1) ☐ The officer or representative of the Requesting Agency _____

(2) ☐ The Restrained Person ☐ Lawyer for the Restrained Person *(name):* _____

This is a Court Order.

5 Findings

a. ☐ The court finds by clear and convincing evidence that the following are true:

(1) The Restrained Person poses a significant danger of causing personal injury to themself or another person by having in their custody or control, owning, purchasing, possessing, or receiving firearms, firearm parts, ammunition, or magazines. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531).

(2) A gun violence restraining order is necessary to prevent personal injury to the Restrained Person or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

(3) ☐ The court has received credible information that the Restrained Person owns or possesses one or more firearms, firearm parts, ammunition, or one or more magazines.

(4) ☐ The facts as stated in the *Gun Violence Emergency Protective Order* (form EPO-002) and supporting documents submitted at the time of the hearing, which are incorporated here by reference, and for the reasons set forth below, establish sufficient grounds for the issuance of this Order.

☐ See the attached *Attachment* (form MC-025)

b. ☐ A gun violence restraining order is not being issued for the reasons below:

This is a Court Order.

6 No Firearms (Guns), Firearm Parts, Ammunition, and Magazines

a. You cannot have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any prohibited items listed below in b.

b. **Prohibited items are:**

(1) Firearms (guns);

(2) Firearm parts, meaning receivers, frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531);

(3) Ammunition; and

(4) Magazines (ammunition feeding devices).

c. You must surrender (turn in, sell, or store) all prohibited items in your custody or control or that you possess or own. If a law enforcement officer asks you to turn over prohibited items, you must do so immediately. If no request is made by a law enforcement officer, you must surrender all prohibited items within 24 hours of being served with this Order. You may surrender these items by turning them in to law enforcement, selling them to a licensed gun dealer, or storing them with a licensed gun dealer for as long as this Order or any more permanent order granted at the hearing in item 4 is in effect.

d. Within 48 hours of receiving this Order, you must file a receipt with the court that proves that all your prohibited items have been turned in, sold, or stored. (You may use *Receipt for Firearms, Firearm Parts, Ammunition, and Magazines* (form GV-800) for the receipt.) You must also file a copy of the receipt with the law enforcement agency that served you with this order. **FAILURE TO FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER.**

e. ☐ **Order dissolving (terminating) *Gun Violence Emergency Protective Order*.**

The court dissolves (terminates) the *Gun Violence Emergency Protective Order* (form EPO-002) originally issued on *(date):* _____ as of *(date of hearing):* _____.

7 Service of Order on the Restrained Person

a. ☐ The Restrained Person was present in court at the time the order was issued. No other proof of service is needed. The clerk has provided the Restrained Person with a blank copy of *Request to Terminate Gun Violence Restraining Order* (form GV-600), if a restraining order was granted.

b. ☐ The Restrained Person was not present in court at the time the order was issued. The Restrained Person must be personally served with a court file-stamped copy of this order and a blank copy of *Request to Terminate Gun Violence Restraining Order* (form GV-600), if a restraining order was granted.

8 Number of pages attached to this Order, if any: _____

Date: _____ _____

Judicial Officer

Warnings and Notices to the Restrained Person

To the restrained person: This order will last until the expiration date and time noted on page 1. If you have not done so already, you must surrender all firearms, ammunition, and magazines that you own or possess in accordance with section 18120 of the Penal Code. You may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive a firearm, ammunition, or magazine, while this Order is in effect. Pursuant to section 18185, you have the right to request a hearing on an annual basis to terminate this Order during its effective period. You may seek the advice of an attorney as to any matter connected with the order.

This is a Court Order.

Violation of this Order is a misdemeanor punishable by a $1,000 fine or imprisonment for six months or both. (Pen. Code, §§ 19, 18205.) If you violate this Order, you will be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, any prohibited items listed in item 6b, above, for a period of up to five years. This Order must be enforced by any law enforcement officer in the state of California who is aware of or shown a copy of this Order. The Order remains enforceable regardless of the acts of the parties; it may be terminated only by an order of the court.

Instructions for Law Enforcement

Duties of Officer Serving This Order

The officer who serves this order on the Restrained Person must do the following:

- Ask if the Restrained Person is in possession of any of the prohibited items listed in item 6b, above, or has custody or control of any of those items that they have not already turned in.
- Order the Restrained Person to immediately surrender to you all prohibited items.
- Issue a receipt to the Restrained Person for all prohibited items that have been surrendered.
- Complete a proof of personal service and file it with the court. You may use form GV-200 for this purpose.
- Within one business day of service, submit the proof of service directly into the California Restraining and Protective Order System (CARPOS), including the serving officer's name and law enforcement agency.

Duties of Agency on Surrender of Firearms, Firearm Parts, Ammunition, and Magazines

The law enforcement agency that has received the surrendered prohibited items listed in item 6b, above, must do the following:

- Retain the prohibited items until the expiration of this Order or of any other gun violence restraining order issued by the court.
- On the expiration of this order or of any later gun violence restraining order issued by the court, return the prohibited items to the Restrained Person as provided by chapter 2 of division 11 of title 4 of the Penal Code (commencing with section 33850). Section 34000 provides for the sale or destruction of any unclaimed items.
- If someone other than the Restrained Person claims title to any of the prohibited items surrendered, determine whether that person is the lawful owner. If so, return the prohibited items to that person as provided by chapter 2 of division 11 of title 4 of the Penal Code (commencing with section 33850).

Enforcing This Order

The law enforcement officer should determine if the Restrained Person had notice of the order. Consider the Restrained Person "served" (given notice) if:

- The officer sees a copy of the proof of service or confirms that the proof of service is on file;
- The Restrained Person was informed of the order by an officer; or
- Item 7a is checked, indicating the Restrained Person was present in court at the time the order was issued.

This is a Court Order.

Instructions for Law Enforcement

(continued)

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the respondent cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it *(see above: Duties of Officer Serving This Order).*

The provisions in this *Gun Violence Restraining Order After Hearing on EPO-002* do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this *Gun Violence Restraining Order After Hearing on EPO-002 (CLETS-HGV)* (form GV-030) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

GV-100 Petition for Gun Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT

3/3/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Read *Can a Gun Violence Restraining Order Help Me?* (form GV-100-INFO) before completing this form.

1 Petitioner

a. Your Full Name or Name of Law Enforcement Agency: _____

I am:

- ☐ A family member of the Respondent.
- ☐ An officer of a law enforcement agency *(A petition may be filed in the name of the law enforcement agency in which the officer is employed. If you wrote your full name above, write the name of the law enforcement agency that employs you):* _____
- ☐ An employer of the Respondent (*your position and name of company*): _____
- ☐ A coworker of the Respondent. I have had substantial and regular interactions with the Respondent for at least one year and I have obtained the approval of my employer to file this petition *(name of company):* _____
- ☐ An employee or teacher of a secondary or postsecondary school that the Respondent has attended in the last 6 months. I have obtained the approval of a school administrator to file this petition *(name of the school):* _____
- ☐ A roommate of the Respondent. I currently live with the Respondent or lived with the Respondent within the past six months and have had substantial and regular interactions with the Respondent for at least one year.
- ☐ A person who has a dating relationship with the Respondent.
- ☐ A person who has a child in common with the Respondent. I have had substantial and regular interactions with the Respondent for at least one year.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

b. Your Lawyer *(if you have one for this case):* Name: _____
Firm Name: _____ State Bar No.: _____

c. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email. Law enforcement officer, give agency information.)*

Address: _____ Telephone: _____
City: _____ State: _____ Zip: _____ Fax: _____
Email Address: _____

2 Respondent

Full Name: _____ Age: _____
Address *(if known):* _____
City: _____ State: _____ Zip: _____

This is not a Court Order.

3 Venue

Why are you filing in this county? *(Check all that apply):*

a. ☐ The Respondent lives in this county.

b. ☐ Other *(specify):* _____

4 Other Court Cases

a. Are you aware of any other court cases, civil or criminal, involving the Respondent?

☐ Yes ☐ No *If yes, check each kind of case and give as much information as you know as to where and when each was filed:*

Kind of Case	Filed in *(County/State)*	Year Filed	Case Number *(if known)*
(1) ☐ Civil Harassment			
(2) ☐ Domestic Violence			
(3) ☐ Divorce, Nullity, Legal Separation			
(4) ☐ Paternity, Parentage, Child Custody			
(5) ☐ Elder or Dependent Adult Abuse			
(6) ☐ Eviction			
(7) ☐ Workplace Violence			
(8) ☐ Criminal			
(9) ☐ Other *(specify):* _____			

b. Are there now any protective or restraining orders in effect relating to Respondent?

☐ Yes ☐ No ☐ I don't know *If yes, attach a copy if you have one.*

5 Description of Respondent's Firearms (Guns), Firearm Parts, Ammunition, or Magazines

Answer 5a or check 5b if you have reason to believe that the respondent is in possession of firearms (guns), firearm parts, ammunition, or magazines. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531).

a. ☐ I am informed, and on that basis believe, that Respondent currently possesses or controls the following firearms, firearm parts, ammunition, or magazines (*describe the number, types, and locations of any of those items that you believe that the Respondent currently possesses or controls):*

	Types of firearms (guns), firearm parts, ammunition or magazines	How many or what amount?	Location, if known
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			

b. ☐ I am informed, and on that basis believe, that Respondent currently possesses or controls firearms, firearm parts, ammunition, or magazines, but I have no further specific information as to the number, types, and locations of those items.

This is not a Court Order.

Case Number:

6 Grounds for Issuance of a Gun Violence Restraining Order

I have reasonable cause to believe both of the following are true:

a. The Respondent poses a significant danger in the near future of causing personal injury to themself or another person by having in their custody or control, owning, purchasing, possessing, or receiving a firearm (gun), a firearm part, ammunition, or a magazine. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531).

b. A gun violence restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

c. The facts supporting the above statements are set forth:

☐ Below

☐ On *Attached Declaration* (form MC-031).

7 Request for Gun Violence Restraining Order

I request that the court issue an order prohibiting Respondent from having in their custody or control, owning, purchasing, possessing or receiving, or attempting to purchase or receive, any firearms (guns), firearm parts, ammunition, or magazines. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531). I further request that Respondent be ordered to immediately surrender (turn in, sell, or store) all firearms, firearm parts, ammunition, and magazines currently in their possession to a law enforcement officer or to sell those items to or store them with a licensed gun dealer.

a. I request the order above for _____ years. (*Please include a number of years between one and five years.)*

b. I am asking for this amount of time because:

This is not a Court Order.

Case Number:

8 No Fee to Serve (Notify) Restrained Person

If you want the sheriff or marshal to serve (notify) the restrained person about the orders, they will do it for free.

9 Request for Hearing

I request that the court set a hearing in this matter for the purpose of issuing a gun violence restraining order that will last between one and five years.

10 ☐ Temporary Gun Violence Restraining Order

I request that a temporary gun violence restraining order be issued against the Respondent to last until the hearing. I am presenting *Temporary Gun Violence Restraining Order* (form GV-110) for the court's signature together with this Petition.

Has the Respondent been told that you were going to court to seek a temporary gun violence restraining order?

☐ Yes ☐ No *(If you answered no, explain why below):*

☐ Reasons stated in Attachment 10.

11 ☐ Request to Give Less Than Five Days' Notice of Hearing

You must have your papers personally served on Respondent at least five calendar days before the hearing, unless the court orders a shorter time for service. (See What Is "Proof of Personal Service"? *(form GV-200-INFO).* Proof of Personal Service *(form GV-200) may be used to show the court that the papers have been served.)*

If you want there to be fewer than five days between service and the hearing, explain why below:

☐ Reasons stated in Attachment 11.

12 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____

Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

This is not a Court Order.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

These instructions cannot cover all of the questions that may arise in a particular case. If you do not know what to do to protect your rights, you should see a lawyer or a self-help center.

What is a gun violence restraining order?

It is a court order that temporarily prohibits someone from having any of the following items:

- Firearms, including any handgun, rifle, shotgun, and assault weapon;
- Firearm parts, meaning receivers, frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531) (these may also be called "ghost guns");
- Ammunition; and
- Magazines (any ammunition feeding device).

The person must turn in, sell, or store any prohibited items listed above that that person currently owns. The police will come and remove the items or the person can store them with a licensed gun dealer while the restraining order is in effect. The restrained person also cannot buy any of the prohibited items during this time.

For more information about prohibited items, please see *http://selfhelp.courts.ca.gov/restraining-orders/prohibited-items*.

Can I get a gun violence restraining order against someone?

You can ask for one if you are connected to the person you think is dangerous as:

- An immediate family member;
- An employer;
- A coworker who has substantial and regular interactions with the person and has worked with them for at least a year. You must have permission from your employer to ask for the restraining order;
- An employee or teacher at a school that the person has attended in the last six months, where you have permission from a school administrator or staff member who has a supervisorial role;
- A law enforcement officer or agency;
- A roommate who resided in the household in the past six months and has had substantial and regular interactions with the person for at least a year;
- Somebody in a dating relationship; or
- Somebody who shares a child with the person and has had substantial and regular interactions with the person for at least a year.

Immediate family members include:

- Your spouse or domestic partner;
- You or your spouse's parents, children, siblings, grandparents, and grandchildren and their spouses, including any stepparents or stepgrandparents; and
- You or your spouse's aunts, uncles, nieces, nephews, first and second cousins, great-grandparents, and great-grandchildren if you have had substantial and regular interactions for at least a year.

If you do not have the necessary relationship, advise a law enforcement officer of the situation. The officer may investigate and file the petition if grounds exist.

Will I have to pay a filing fee to request the order?

No.

Will the order protect me in other ways, such as keeping the person from coming near me?

No, the only order the court can make is to force the person to not have the prohibited items listed above. If you need personal protection from a family member, you should proceed under the Domestic Violence Prevention Act. See *Can a Domestic Violence Restraining Order Help Me?* (form DV-500-INFO) for information on how to proceed.

For information on other civil restraining orders, please see *http://selfhelp.courts.ca.gov/restraining-orders-california*.

What forms do I need to get the order?

You must fill out the following forms:

- *Petition for Gun Violence Restraining Order* (form GV-100);
- *Confidential CLETS Information* (form CLETS-001);
- *Notice of Court Hearing* (form GV-109), items 1 and 2 only; and
- *Temporary Gun Violence Restraining Order* (form GV-110), items 1 and 2 only.

You may need other local forms. Ask your self-help center or visit your court's website.

Where can I get these forms?

You can get the forms from legal publishers or the internet at *www.courts.ca.gov/forms*. You also may be able to find them at your local courthouse or county law library.

What do I need to do to get the order?

You must file your papers with the superior court in the county where the person to be restrained lives. Check online or ask the court how to file your request for a gun violence restraining order. (A self-help center or legal aid association may be able to assist you in filing your request.) File your forms electronically or give your forms to the clerk of the court. The court will give you a hearing date on the *Notice of Court Hearing* form.

How soon can I get the order?

You can ask for a temporary gun violence restraining order, which will be effective right away if granted. The court may decide whether or not to grant the temporary order based only on the facts that you have stated in your petition. If so, the court will decide within 24 hours whether or not to make the temporary order. Sometimes the court will want to examine you personally under oath. If you file in person, the clerk will tell you whether you should wait to talk to the judge or come back later to find out if the court has signed a temporary order.

If you don't ask for a temporary restraining order, you will have to wait until the hearing, at which the court will decide whether to make an order that will last for a period of time between 1–5 years.

How will the person to be restrained know about the order?

If the court issues a temporary restraining order, someone age 18 or older—**not you**—must personally "serve" (give) the person to be restrained a copy of the order. The server must then fill out *Proof of Personal Service* (form GV-200) and give it to you to file with the court. If the person to be restrained attends the hearing, no further proof of service is required. But if they do not attend the hearing, then any order issued at the hearing must also be personally served. For help with service, ask the court clerk for *What Is "Proof of Personal Service"?* (form GV-200-INFO). Note: A sheriff or marshal can serve the order for free.

Do I need a lawyer?

Having a lawyer is always a good idea, but it is not required and you are not entitled to a free, court-appointed attorney. Ask the court clerk about free and low-cost legal services and self-help centers in your county.

What do I have to prove to get the order?

You will have to convince the judge that the person to be restrained poses a significant danger in the near future of causing personal injury to themself or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving any of the prohibited items listed on page 1.

You will also have to convince the judge that a gun violence restraining order is needed to prevent personal injury to the person to be restrained or to another person because less restrictive alternatives either have been tried and haven't worked, or are inadequate or inappropriate for the current circumstances.

How can I convince the judge?

You will need to give the judge specific information. You should tell the judge everything that you know about the firearms, firearm parts, ammunition, or magazines that the person to be restrained currently owns, including how many the person owns, the types, and where they are kept.

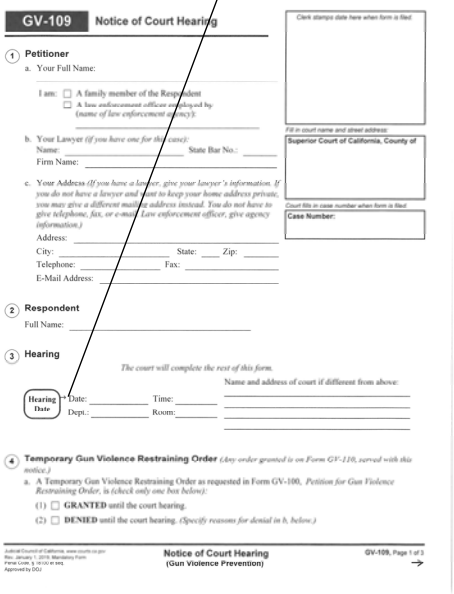
Then you will need to present facts to show that the person to be restrained is dangerous to themself or others. This could be information about any threat of violence that the person to be restrained has made, any violent incident in which the person has been involved, or any crime of violence the person has committed. It could also be evidence that the person to be restrained has violated a protective order or abuses controlled substances or alcohol. It could also be evidence of the unlawful and reckless use, display, or brandishing of a firearm or the recent acquisition of a firearm. Or it could be evidence that the person to be restrained has been identified by a mental health provider as someone prohibited from purchasing, possessing or controlling any firearms.

You should include all of this information in your Petition and also be prepared to present it to the judge at the hearing.

GV-100-INFO Can a Gun Violence Restraining Order Help Me?

Do I have to attend a court hearing?

Yes. Attend the hearing on the date listed on *Notice of Court Hearing* (form GV-109).



GV-109 Notice of Court Hearing

1 Petitioner
a. Your Full Name:
I am: A family member of the Respondent
A law enforcement officer employed by (name of law enforcement agency):
b. Your Lawyer (if you have one for this case):
Name: State Bar No.:
Firm Name:
c. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail. Law enforcement officer, give agency information.)
Address:
City: State: Zip:
Telephone: Fax:
E-Mail Address:
Clerk stamps date here when form is filed.
Fill in court name and street address:
Superior Court of California, County of
Court fills in case number when form is filed.
Case Number:
2 Respondent
Full Name:
3 Hearing
The court will complete the rest of this form.
Hearing Date
Date: Time:
Dept.: Room:
Name and address of court if different from above:
4 Temporary Gun Violence Restraining Order (Any order granted is on Form GV-110, served with this notice.)
a. A Temporary Gun Violence Restraining Order as requested in Form GV-100, Petition for Gun Violence Restraining Order, is (check only one box below):
(1) GRANTED until the court hearing.
(2) DENIED until the court hearing. (Specify reasons for denial in b, below.)
Notice of Court Hearing (Gun Violence Prevention)
GV-109, Page 1 of 3

You can attend the hearing remotely, such as by telephone or videoconference, or go to court in person. Check with your local court for instructions on how to appear remotely. Information is also available on the court's website, which you can find here: *www.courts.ca.gov/find-my-court.htm*.

Can someone attend the hearing with me?

Yes. Someone can sit with you during the hearing, but that person cannot speak for you to the court. Only you or your lawyer (if you have one) can speak for you.

Do I need to bring a witness to the hearing?

Witnesses are not required, but it helps to have more proof than just your word. For example, consider bringing:

- Witnesses
- Written statements from witnesses made under oath
- Photos
- Medical or police reports
- Damaged property
- Threatening letters, emails, or telephone messages

The court may or may not let witnesses speak at the hearing. So, if possible, you should bring their written statements under oath to the hearing. (You can use *Declaration* (form MC-030) for this purpose.)

Will I see the restrained person at the court hearing?

If the person attends the hearing, yes. If you are afraid, tell the court.

How long does the order last?

If the court makes a temporary order, it will last until your hearing date, which must be within 21 days of the date of the temporary order. If at the hearing the court issues a more permanent order, it will last for one to five years. It may be renewed for an additional one to five years.

What if the restrained person does not obey the order?

Call the police. The restrained person can be arrested and charged with a crime.

Can I agree with the restrained person to terminate the order?

No. Once the order is issued, only the judge can change or terminate it. The restrained person would have to file a request with the court to terminate the order.

What if I need help to understand English?

When you file your papers, ask the clerk if a court interpreter is available. You can also use form INT-300, *Request for Interpreter (Civil)*, or a local court form or website to request an interpreter. For more information about court interpreters, go to *https://selfhelp.courts.ca.gov/request-interpreter*.

What if I have a disability?

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

Information about the process is also available online.

http://selfhelp.courts.ca.gov/GV-restraining-order.

For help in your area, contact:

[Local information may be inserted.]

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

GV-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

DRAFT

7/12/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Petitioner must complete items (1) and (2) only.

(1) Petitioner

Your Full Name or Name of Law Enforcement Agency:

_____

I am:
- ☐ A family member of the Respondent.
- ☐ An officer of a law enforcement agency.
- ☐ An employer of the Respondent.
- ☐ A coworker of the Respondent.
- ☐ An employee or teacher of a secondary or postsecondary school that the Respondent has attended in the last 6 months.
- ☐ A roommate of the Respondent.
- ☐ A person who has a dating relationship with the Respondent.
- ☐ A person who has a child in common with the Respondent.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(2) Respondent

Full Name: _____

The court will complete the rest of this form.

(3) Hearing

Hearing Date

Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

_____

_____

You may attend your hearing remotely, such as by phone or videoconference. For more information, go to the court's website for the county listed above. To find the court's website, go to *www.courts.ca.gov/find-my-court.htm*.

To the person in (2):

- If you attend the hearing (in person, by phone, or by videoconference) and the judge grants a restraining order against you, the order will be effective immediately, and you could be arrested if you violate the order.
- If you do not attend the hearing, the judge may still grant the restraining order that could last up to five years. After you receive a copy of the order, you could be arrested if you violate the order.

(4) Temporary Gun Violence Restraining Order *(Any order granted is on form GV-110, served with this notice.)*

a. A Temporary Gun Violence Restraining Order as requested in *Petition for Gun Violence Restraining Order* (form GV-100) is *(check only one box below):*

(1) ☐ **GRANTED** until the court hearing.

(2) ☐ **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

4 b. Reasons for denial of a Temporary Gun Violence Restraining Order as requested in *Petition for Gun Violence Restraining Order* (form GV-100) are:

(1) ☐ The facts as stated in form GV-100 do not show that there is a substantial likelihood that both of the following are true:

Respondent poses a significant danger of causing personal injury to themself or another person by having custody or control of, owning, purchasing, possessing, or receiving firearms, firearm parts, ammunition, or magazines. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531).

A gun violence restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

(2) ☐ Other *(as stated):* ☐ Below ☐ On Attachment 4b(2)

_____

_____

_____

_____

_____

5 Service of Documents on Respondent

At least ☐ **five** ☐ _____ **calendar days before the hearing**, a law enforcement officer or someone age 18 or older—**and not a party to the action—**must personally give (serve) a court file-stamped copy of this form GV-109 to the Respondent, along with a copy of all the forms indicated below:

a. GV-100, *Petition for Gun Violence Restraining Order* (file-stamped)

b. ☐ GV-110, *Temporary Gun Violence Restraining Order* (file-stamped) **IF GRANTED**

c. GV-120, *Response to Petition for Gun Violence Restraining Order* (blank form)

d. GV-120-INFO, *How Can I Respond to a Petition for a Gun Violence Restraining Order?*

e. GV-125, *Consent to Gun Violence Restraining Order and Surrender of Firearms* (blank form)

f. ☐ Other *(specify):* _____

Date: _____

_____

Judicial Officer

Case Number:

To the Petitioner in 1:

- The court cannot make an order at the court hearing unless the Respondent has been personally given (served) a copy of the Petition and a temporary order if issued. To show that the Respondent has been served, the person who served the forms must fill out a proof of service form. *Proof of Personal Service* (form GV-200) may be used.
- For information about service, read *What Is "Proof of Personal Service"?* (form GV-200-INFO).
- You may ask to reschedule the hearing if you are unable to find the Respondent and need more time to serve, or for other good reasons. Use *Request to Continue Court Hearing for Gun Violence Restraining Order* (form GV-115).
- You must attend the hearing if you want the judge to make any of the orders you requested on form GV-100, *Petition for Gun Violence Restraining Order*. Bring any evidence or witnesses you have. For more information, read form GV-100-INFO, *Can a Gun Violence Restraining Order Help Me?*

To the Respondent:

- If you want to oppose the *Petition for Gun Violence Restraining Order* (form GV-100) in writing, file *Response to Petition for Gun Violence Restraining Order* (form GV-120) and have someone age 18 or older—**not you**—mail it to the Petitioner.
- The person who mailed the form must fill out a proof of service form. *Proof of Service by Mail* (form GV-250) may be used. File the completed form with the court before the hearing and bring a copy with you to the court hearing.
- Whether or not you respond in writing, attend the hearing if you want the judge to hear from you before making an order. You may tell the judge why you agree or disagree with the order requested.
- You may bring witnesses and other evidence.
- At the hearing, the judge may order you to turn in to law enforcement, or sell to or store with, a licensed gun dealer, any firearms (guns), firearm parts, ammunition, or magazines that you own or possess. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531). If issued, the order will last for one year.
- If you do not oppose the petition and are willing to give up your firearm rights, complete and file a *Consent to Gun Violence Restraining Order and Surrender of Firearms* (form GV-125).
- If you are unable to attend your court hearing or need more time to prepare your case, you may ask to reschedule your court date. Use *Request to Continue Court Hearing for Gun Violence Restraining Order* (form GV-115).

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Disability Accommodation Request* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Court Hearing* (form GV-109) is a true and correct copy of the original on file in the court.

Clerk's Certificate

Date: _____

[seal]

Clerk, by _____, Deputy

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

GV-110 Temporary Gun Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT

1/20/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Petitioner must complete items (1) and (2) only.

(1) Petitioner

a. Your Full Name or Name of Law Enforcement Agency:

_____

I am:
- ☐ A family member of the Respondent
- ☐ An officer of a law enforcement agency
- ☐ An employer of the Respondent
- ☐ A coworker of the Respondent
- ☐ An employee or teacher of a secondary or postsecondary school that the Respondent has attended in the last 6 months
- ☐ A roommate of the Respondent.
- ☐ A person who has a dating relationship with the Respondent.
- ☐ A person who has a child in common with the Respondent.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

b. Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

c. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email. Law enforcement officer, give agency information.)*

Address: _____

City: _____ State: ____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

(2) Respondent

(Give all the information you know. Information with a star (*) is required to add this order to the California police database. If age is unknown, give an estimate.)

*Full Name: _____ *Age: _____ Date of Birth: _____

*Race: _____ Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____

*Gender: ☐ M ☐ F ☐ Nonbinary Home Address: _____

City: _____ State: _____ Zip: _____

Relationship to Protected Person: _____

The court will complete the rest of this form.

(3) Expiration Date

This Order expires at the end of the hearing scheduled for the date and time below:

Date: _____ Time: _____ ☐ a.m. ☐ p.m.

This is a Court Order.

4 Findings

☐ Having examined ☐ Petitioner ☐ and other witnesses under oath,

☐ Having considered the declarations of ☐ Petitioner ☐ and other witnesses under penalty of perjury,

a. The court finds that there is a substantial likelihood that both of the following are true:

(1) Respondent poses a significant danger in the near future of causing personal injury to themself or another person by having in their custody or control, owning, purchasing, possessing, or receiving firearms, firearm parts, ammunition, or magazines. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531).

(2) A temporary gun violence restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

b. ☐ The court has received credible information that Respondent owns or possesses one or more firearms, firearm parts, ammunition, or magazines.

c. ☐ The facts as stated in the Petition and supporting documents, which are incorporated here by reference, establish sufficient grounds for the issuance of this Order. And for the reasons stated below.

☐ See the attached *Attachment* (form MC-025).

5 No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal serves this order, service will be free.

This is a Court Order.

6 No Firearms (Guns), Firearm Parts, Ammunition, and Magazines

a. You cannot have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any prohibited items listed below in b.

b. **Prohibited items are**:
   (1) Firearms (guns);
   (2) Firearm parts, meaning receivers, frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531);
   (3) Ammunition; and
   (4) Magazines (ammunition feeding devices).

c. The court has received credible information that you own or possess one or more prohibited items that have not been turned in, sold, or stored. You must surrender (turn in, sell, or store) all prohibited items in your custody or control or that you possess or own. If a law enforcement officer asks you to turn over your prohibited items, you must do so immediately. If no request is made by a law enforcement officer, you must surrender all prohibited items within 24 hours of being served with this Order. You may surrender these items by turning them in to law enforcement, selling them to a licensed gun dealer, or storing them with a licensed gun dealer for as long as this Order or any more permanent order granted at the hearing in item 3 is in effect.

d. Within 48 hours of receiving this Order, you must file a receipt with the court that proves that all your prohibited items have been turned in, sold, or stored. (You may use *Receipt for Firearms, Firearm Parts, Ammunition, and Magazines* (form GV-800) for the receipt.) You must also file a copy of the receipt with the law enforcement agency that served you with this order. **FAILURE TO FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER.**

7 Number of pages attached to this Order, if any: _____

Date: _____ _____
Judicial Officer

Warnings and Notices to the Respondent

To the restrained person: This Order is valid until the expiration date and time noted on page 1. You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazines while this order is in effect. A hearing will be held on the date and at the time noted on Page 1 to determine if a more permanent gun violence restraining order should be issued. Failure to appear at the hearing may result in a court making an order against you that is valid for a period between one and five years. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.

Violation of this Order is a misdemeanor. If you violate this Order, you will be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, any prohibited items listed in item 6b, above, for a period of five years. This Order must be enforced by any law enforcement officer in the state of California who is aware of or shown a copy of this Order. The Order remains enforceable regardless of the acts of the parties; it may be changed only by an order of the court.

This is a Court Order.

After You Have Been Served With a Temporary Order

- Obey the order by turning in all firearms (guns), firearm parts, ammunition, and magazines to a law enforcement agency or selling them to or storing them with a licensed gun dealer.
- Read *How Can I Respond to a Petition for Gun Violence Restraining Order?* (form GV-120-INFO) to learn how to respond to this Order.
- If you do not oppose the petition, fill out *Consent to Gun Violence Restraining Order and Surrender of Firearms* (form GV-125) and file it with the court clerk.
- If you disagree with the petition, fill out *Response to Petition for Gun Violence Restraining Order* (form GV-120) and file it with the court clerk.
- You must have form GV-120 served by mail on the Petitioner or the Petitioner's attorney. You cannot do this yourself. The person who does the mailing should complete and sign *Proof of Service by Mail* (form GV-250). File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served, signed by you and other persons who have personal knowledge of the facts. You may use *Declaration* (form MC-030) for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at *www.courts.ca.gov/forms*. If you do not know how to prepare a declaration, you should see a lawyer.
- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also attend the hearing. You and your witnesses may attend the hearing remotely (check with your court for instructions).
- At the hearing, the judge can make a gun violence restraining order against you that lasts between one to five years. Tell the judge why you disagree with the order requested.

Instructions for Law Enforcement

Duties of Officer Serving This Order

The officer who serves this order on the Restrained Person must do the following:

- Ask if the Restrained Person is in possession of any of the prohibited items listed in item 6b, above, or has custody or control of any that they have not already turned in.
- Order the Restrained Person to immediately surrender to you all prohibited items.
- Issue a receipt to the Restrained Person for all prohibited items that have been surrendered.
- Complete a proof of personal service and file it with the court. You may use form GV-200 for this purpose.
- Within one business day of service, submit the proof of service directly into the California Restraining and Protective Order System (CARPOS), including the serving officer's name and law enforcement agency.

Duties of Agency on Surrender of Firearms, Firearm Parts, Ammunition, or Magazines

The law enforcement agency that has received the surrendered prohibited items listed in item 6b, above, must do the following:

- Retain the prohibited items until the termination or expiration of this Order or of any other gun violence restraining order issued by the court.
- On the expiration of this Order or of any later gun violence restraining order issued by the court, return the prohibited items to the respondent as provided by chapter 2 of division 11 of title 4 of the Penal Code (commencing with section 33850). Section 34000 provides for the sale or destruction of any unclaimed items.

This is a Court Order.

Instructions for Law Enforcement

(continued)

- If someone other than the Respondent claims title to any of the prohibited items surrendered, determine whether that person is the lawful owner. If so, return the prohibited items to that person as provided by chapter 2 of division 11 of title 4 of the Penal Code (commencing with section 33850).

Enforcing This Order

The law enforcement officer should determine if the Respondent had notice of the order. Consider the Respondent "served" (given notice) if:

- The officer sees a copy of the proof of service or confirms that the proof of service is on file; or
- The Respondent was informed of the order by an officer; or
- The officer sees a filed copy of form GV-125.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the Respondent cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it *(see above: Duties of Officer Serving This Order).*

The provisions in this *Temporary Gun Violence Restraining Order* do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in any other another existing protective order remain in effect.

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Temporary Gun Violence Restraining Order (CLETS-TGV)* (form GV-110) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

GV-115 Request to Continue Court Hearing for Gun Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT

6/20/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Instructions: Use this form to ask the court to reschedule the court date listed on *Notice of Court Hearing* (form **GV-009**, **GV-109**, or **GV-110**) or *Gun Violence Emergency Protective Order* (form **EPO-002**).

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 My Information

a. My name is: _____

b. I am the:

(1) ☐ **Petitioner** (person asking for the protective order or law enforcement officer/law enforcement agency) *(skip to 2).*

(2) ☐ **Respondent** *(give your contact information below).*

Address where I can receive mail:

This address will be used by the court and other party to notify you in this case. If you want to keep your home address private, you can use another address like a post office box or another person's address, if you have their permission. If you have a lawyer, give your lawyer's address and contact information.

Address: _____

City: _____ State: ____ Zip: _____

Additional contact information *(optional)*:

Telephone: _____ Fax: _____

Email Address: _____

Lawyer's information *(skip if you do not have one):*

Name: _____ State Bar No.: _____

Firm Name: _____

2 Information About My Case

a. The other party in this case is *(full name)*: _____

b. I have a court date currently scheduled for *(date)*: _____

This is not a Court Order.

Case Number:

3 Why does the court date need to be rescheduled?

a. ☐ I could not get the papers served before the court date. I need more time to have the respondent personally served.

b. ☐ I am either the petitioner or the respondent. I request the the court reschedule the court date for these reasons:

_____

_____

_____

_____

_____

_____

_____

4 Current orders in effect

a. Is a temporary Gun Violence Restraining Order or Gun Violence Emergency Protective Order in effect?

☐ Yes. Date the order was made, if known: _____
Please attach a copy of the order if there is one.

☐ No.

☐ I don't know.

b. If you are the respondent and answered yes or I don't know above, have you turned in, sold, or stored your prohibited items (guns, firearm parts, ammunition, and magazines)? *(Skip if you are the petitioner or answered no above)*

☐ Yes.

☐ No.

Notice: If the court date is rescheduled, the *Temporary Gun Violence Restraining Order* (form **GV-110**) or *Gun Violence Emergency Protective Order* (form **EPO-002**) will remain in effect until the end of the new court date, unless otherwise ordered by the court.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____
Type or print your name *Sign your name*

Date: _____

_____ ▶ _____
Lawyer's name, if you have one *Lawyer's signature*

This is not a Court Order.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form Save this form Clear this form

GV-120 Response to Petition for Gun Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT

7/12/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Use this form to respond to the Petition (form GV-100)

- Read *How Can I Respond to a Petition for a Gun Violence Restraining Order?* (form GV-120-INFO) to protect your rights.
- If you agree to the Petition for a gun violence restraining order filed against you, use *Consent to Gun Violence Restraining Order and Surrender of Firearms* (form GV-125) to agree to a voluntary gun violence restraining order.
- If you do not agree to the gun violence restraining order filed against you, fill out this form and take it to the filing window at the court.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the Petitioner or to their lawyer. (Use *Proof of Service by Mail* (form GV-250).)

Fill in court name and street address:

Superior Court of California, County of

See Petition for case number and fill in:

Case Number:

1 Petitioner

Name of person or law enforcement agency seeking order *(see form GV-100, item 1):*

2 Respondent

a. Your Name: _____

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*

Address: _____

City: _____ State: ____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Be prepared to tell the court at the hearing why you don't agree. Write your hearing date, time, and place from form GV-109 item 3 here:

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

If a Temporary Gun Violence Restraining Order was issued, you must obey it until the hearing. At the hearing, the court may make an order against you for one to five years.

3 Gun Violence Restraining Order

☐ I do not agree to the order requested in the Petition because:

_____

_____

_____

_____

_____

_____

_____

_____

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 3—Reasons I Disagree" as a title. You may use* Attachment *(form MC-025).*

Case Number:

4 ☐ Denial

I did not do anything described in item 6 of form GV-100.

5 ☐ Justification or Excuse

If I did some or all of the things that the Petitioner has accused me of, my actions were justified or excused for the following reasons *(explain):*

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 5—Justification or Excuse" as a title. You may use* Attachment *(form MC-025).*

6 Firearms (Guns), Firearms Parts, Ammunition, and Magazines

If a *Temporary Gun Violence Restraining Order* (form GV-110) was issued, you cannot own or possess any firearms (guns), firearm parts, ammunition, or magazines. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531). (See item 6 of form GV-110.) You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency or officer, any of those items in your immediate possession or control within 24 hours of being served with form GV-110. You must file a receipt with the court. You may use *Receipt for Firearms, Firearm Parts, Ammunition, and Magazines* (form GV-800) for the receipt.

a. ☐ I do not own or control any firearms (guns), firearm parts, ammunition, or magazines.

b. ☐ I have turned in my firearms (guns), firearm parts, ammunition, and magazines to a law enforcement officer or agency, or sold them to or stored them with a licensed gun dealer. A copy of the receipt
   ☐ is attached. ☐ has already been filed with the court.

7 Number of pages attached to this form, if any: _____

Date: _____

_____ ▶ _____
Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

_____ ▶ _____
Type or print your name *Sign your name*

For your protection and privacy, please press the Clear This Form button after you have printed the form.

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GV-120-INFO How Can I Respond to a Petition for a Gun Violence Restraining Order?

DRAFT 5/30/2023
NOT APPROVED BY THE JUDICIAL COUNCIL

What is a gun violence restraining order?

It is a court order that temporarily prohibits someone from having any firearms (guns), firearm parts (also called "ghost guns"), ammunition, or magazines (any ammunition feeding device). This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531).The person must turn in, sell, or store all such items that the person currently owns.
For more information about prohibited items and obeying these orders, please see *http://selfhelp.courts.ca.gov/restraining-orders/prohibited-items*.

I've been served with a *Petition for Gun Violence Restraining Order*. What do I do?

Read the papers served on you very carefully. The *Notice of Court Hearing* (form GV-109) tells you when to appear in court. There may also be a *Temporary Gun Violence Restraining Order* (form GV-110) prohibiting you from having any firearms (guns), firearm parts, ammunition, or magazines and requiring you to turn in, sell, or store any such items that you currently own or possess. You must obey the order until the hearing.

Who can ask for a gun violence restraining order?

The petition must have been filed by a:

- Law enforcement officer or agency,
- An employer,
- A coworker who has had "regular interactions" with you for at least a year,
- A teacher or employee of a school that you have attended in the last 6 months,
- An immediate family member of yours,
- A roommate,
- Somebody in a dating relationship with you, or
- Somebody who shares a child with you.

"Immediate family member" is defined to include people who are not blood relatives. The definition includes (1) your spouse or domestic partner; (2) you or your spouse's parents, children, siblings, grandparents, and grandchildren and their spouses, including any stepparent or stepgrandparent; and (3) you or your spouse's aunts, uncles, nieces, nephews, first and second cousins, great-grandparents, and great-grandchildren if you have had substantial and regular interactions for at least a year.

What if I don't obey the temporary order?

The police can arrest you. You can go to jail and pay a fine. You could lose access to firearms and other items for a longer period of time.

What if I don't agree with what the order says?

If you disagree with the order that the Petitioner is asking for, fill out *Response to Petition for Gun Violence Restraining Order* (form GV-120) before your hearing date and file it with the court. You can get the form from legal publishers or from the California Courts website at *www.courts.ca.gov/forms*. You also may be able to find it at your local courthouse or county law library.

What if I don't oppose the Petition?

If you agree to give up your access to firearms and your rights to own, possess, and buy guns, firearm parts, ammunition, and magazines for the time period requested in the petition, which is between one and five years, then you can fill out *Consent to Gun Violence Restraining Order and Surrender of Firearms* (form GV-125) and check the box for item 4a. Make sure you take it to the court clerk and file it, and then mail it to the person or law enforcement agency that applied for the petition. The court will issue the gun violence restraining order before the hearing and remove the hearing from the calendar. You do not have to go to your court date, and the court will mail you a copy of the order. Make sure you check with the court to see if you have to show up for your court date.

Will I have to pay a filing fee?

No.

Do I have to serve the other person with a copy of my response?

Yes. Have someone age 18 or older—**not you**—mail a copy of completed *Response to Petition for Gun Violence Restraining Order* (form GV-120) to the person who asked for the order (or that person's lawyer). (This is called "service by mail.")

The person who serves the form by mail must fill out *Proof of Service by Mail* (form GV-250). Have the person who did the mailing sign the original. Take the completed form back to the court clerk or bring it with you to the hearing.

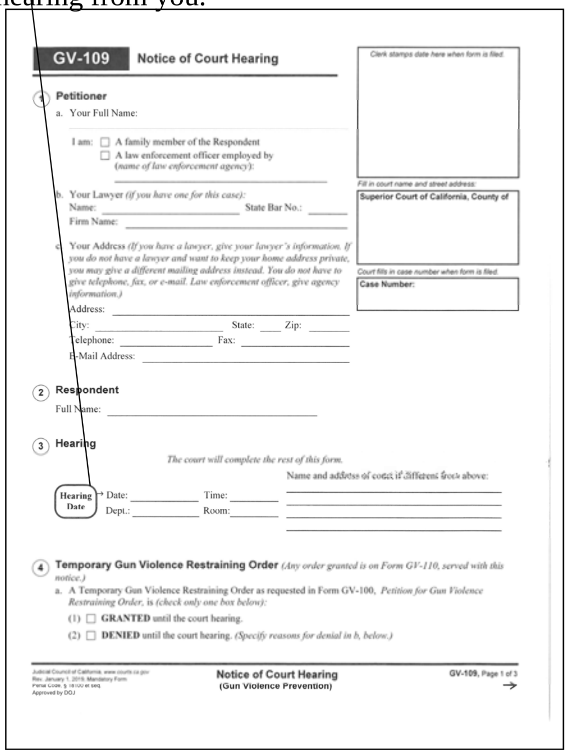
How Can I Respond to a Petition for a Gun Violence Restraining Order?

Do I need a lawyer?

Having a lawyer is always a good idea, but it is not required, and you are not entitled to a free, court-appointed attorney. Ask the court clerk about free and low-cost legal services and self-help centers in your county.

Should I attend the court hearing?

Yes. You should attend the hearing on the date listed on *Notice of Court Hearing* (form GV-109). If you do not attend the hearing, the judge can extend the order against you for a period between one and five years without hearing from you.



GV-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

1 Petitioner

a. Your Full Name: ______

I am: ☐ A family member of the Respondent
☐ A law enforcement officer employed by *(name of law enforcement agency)*: ______

b. Your Lawyer *(if you have one for this case)*:
Name: ______ State Bar No.: ______
Firm Name: ______

c. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail. Law enforcement officer, give agency information.)*
Address: ______
City: ______ State: ___ Zip: ______
Telephone: ______ Fax: ______
E-Mail Address: ______

Fill in court name and street address:
Superior Court of California, County of

Court fills in case number when form is filed.
Case Number:

2 Respondent

Full Name: ______

3 Hearing

The court will complete the rest of this form.

Hearing Date → Date: ______ Time: ______
Dept.: ______ Room: ______

Name and address of court if different from above:

4 Temporary Gun Violence Restraining Order *(Any order granted is on Form GV-110, served with this notice.)*

a. A Temporary Gun Violence Restraining Order as requested in Form GV-100, *Petition for Gun Violence Restraining Order*, is *(check only one box below)*:
(1) ☐ **GRANTED** until the court hearing.
(2) ☐ **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

Judicial Council of California, www.courts.ca.gov
Rev. January 1, 2019, Mandatory Form
Penal Code, § 18100 et seq.
Approved by DOJ

Notice of Court Hearing (Gun Violence Prevention)

GV-109, Page 1 of 3 →

You can attend the hearing remotely, such as by telephone or videoconference, or go to court in person. Check with your local court for instructions on how to appear remotely. Information is also available on the court's website, which you can find here: *www.courts.ca.gov/find-my-court.htm.*

Information about the process is also available online.

http://selfhelp.courts.ca.gov/GV-restraining-order.

How long does the order last?

If the court issued a temporary restraining order before the hearing, it will last until your hearing date. At that time, the court will decide whether to issue a gun violence restraining order that can last for one to five years.

Will I see the person who asked for the order at the court hearing?

Assume that the person who is asking for the order will attend the hearing. It is probably best not to talk to them unless the judge or that person's attorney says that you can.

Can I bring a witness to the court hearing?

Yes. You can bring witnesses or documents that support your case to the hearing. But if possible, you should also bring the witnesses' written statements of what they saw or heard. Their statements must be made under penalty of perjury. (You can use *Declaration* (form MC-030) for this purpose.)

Can I agree with the protected person to terminate the order?

No. Once the order is issued, only the judge can change or terminate it. You would have to file a request with the court to terminate the order.

What if I need help to understand English?

When you file your papers, ask the clerk if a court interpreter is available. You can also use form INT-300, *Request for Interpreter (Civil)*, or a local court form or website to request an interpreter. For more information about court interpreters, go to *https://selfhelp.courts.ca.gov/request-interpreter*.

What if I have a disability?

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

For help in your area, contact:

[Local information may be inserted.]

For your protection and privacy, please press the Clear This Form button after you have printed the form.

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GV-125 Consent to Gun Violence Restraining Order and Surrender of Firearms

Clerk stamps date here when form is filed.

DRAFT

3/3/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Use this form if you have been served with a Petition for Gun Violence Restraining Order *(form GV-100) and you want to agree to voluntarily give up your firearm rights without a court hearing.*

- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the Petitioner or to their lawyer. (Use *Proof of Service by Mail* (form GV-250).)
- If you do not agree to a gun violence restraining order, use *Response to Petition for Gun Violence Restraining Order* (form GV-120) to tell the court you oppose a gun violence restraining order.

Fill in court name and street address:

Superior Court of California, County of

See Petition for case number and fill in:

Case Number:

1 Petitioner

Name of person or law enforcement agency seeking order *(see form GV-100, item 1):*

2 Respondent

a. Your Name: _____

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*

Address: _____

City: _____ State: ____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

3 Gun Violence Restraining Order

☐

- By checking this box and signing this form, I agree to give up my right to own, possess, or purchase firearms (guns), firearm parts, magazines, and ammunition for the time requested in the petition (between one to five years) or, if no time is specified, then for one year. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531).
- I am not contesting the petition.
- I understand that the petitioner can request to renew this order for one to five years.
- I understand that I can only request to terminate this order once per year while it is in effect.

Case Number:

4 Firearms (Guns), Firearm Parts, Ammunition, and Magazines

- **After you file this form, the court will issue a *Gun Violence Restraining Order After Hearing or Consent to Gun Violence Restraining Order* (form GV-130) and send it to you and the petitioner in the mail.**
- **This form will be listed in the statewide California Restraining and Protective Order System, where it will be accessible to all law enforcement.**
- **You cannot own or possess any guns, other firearms (guns), firearm parts, ammunition, or magazines. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531). You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, those items in your immediate possession or control within 48 hours of filing this form. You must file a receipt with the court. You may use *Receipt for Firearms, Firearm Parts, Ammunition, and Magazines* (form GV-800) for the receipt.**

a. ☐ I do not own or control any firearms (guns), firearm parts, ammunition, or magazines.

b. ☐ I have turned in my firearms (guns), firearm parts, ammunition, and magazines to a law enforcement officer or agency, or sold them to or stored them with a licensed gun dealer. A copy of the receipt
☐ is attached. ☐ has already been filed with the court.

Instructions to Clerk

- On the filing of *Consent to Gun Violence Restraining Order and Surrender of Firearms* (form GV-125), submit the proposed order, *Gun Violence Restraining Order After Hearing or Consent to Gun Violence Restraining Order* (form GV-130) to the judicial officer, because the court must issue the order at least five court days before the scheduled hearing, or if this form is filed within five court days before the scheduled hearing, the court must issue, without any hearing, the gun violence restraining order, as soon as possible.
- Within one business day of issuance of the order, submit this form directly into the California Restraining and Protective Order System (CARPOS) or to law enforcement to enter into CARPOS within one business day of receipt from the court.

Date: _____

_____ ▶ _____
Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

_____ ▶ _____
Type or print your name *Sign your name*

For your protection and privacy, please press the Clear This Form button after you have printed the form.

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GV-130 Gun Violence Restraining Order After Hearing or Consent to Gun Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT

2/2/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

Petitioner must complete items (1) and (2) only.

(1) Petitioner

a. Your Full Name or Name of Law Enforcement Agency:

I am:
- ☐ A family member of the Respondent.
- ☐ An officer of a law enforcement agency *(A petition may be filed in the name of the law enforcement agency in which the officer is employed).*
- ☐ An employer of the Respondent.
- ☐ A coworker of the Respondent.
- ☐ An employee or teacher of a secondary or postsecondary school that the Respondent has attended in the last 6 months.
- ☐ A roommate of the Respondent.
- ☐ A person who has a dating relationship with the Respondent.
- ☐ A person who has a child in common with the Respondent.

b. Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

c. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email. Law enforcement officer, give agency information.)*
Address: _____
City: _____ State: ____ Zip: _____ Telephone: _____
Email Address: _____ Fax: _____

(2) Respondent

(Give all the information you know. Information with a star (*) is required to add this order to the California police database. If age is unknown, give an estimate.)

*Full Name: _____ *Age: _____ Date of Birth: _____
*Race: _____ Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____
*Gender: ☐ M ☐ F ☐ Nonbinary Home Address: _____
City: _____ State: _____ Zip: _____
Relationship to Protected Person: _____

The court will complete the rest of this form.

(3) Expiration Date

This Order expires at:

(Time): _____ ☐ a.m. ☐ p.m. ☐ midnight on *(date):* _____

If no expiration date is written here, this Order expires one year from the date of issuance.

This is a Court Order.

4 Hearing

a. ☐ There was a hearing *(date):* _____ at *(time):* _____ in Dept.: _____ Room: _____.
(Name of judicial officer): _____ made the orders at the hearing.

b. ☐ These people attended the hearing.
(1) ☐ The Petitioner (3) ☐ The lawyer for the Petitioner *(name):* _____
(2) ☐ The Respondent (4) ☐ The lawyer for the Respondent *(name):* _____

c. ☐ There was not a hearing because Respondent filed a *Consent to Gun Violence Restraining Order and Surrender of Firearms* (form GV-125).

5 Findings

a. The court finds by clear and convincing evidence that the following are true:
(1) Respondent poses a significant danger of causing personal injury to themself or another person by having in their custody or control, owning, purchasing, possessing, or receiving firearms, firearm parts, ammunition, or magazines. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531).
(2) A gun violence restraining order is necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

b. ☐ The court has received credible information that the Respondent owns or possesses one or more firearms, firearm parts, ammunition, or one or more magazines.

c. ☐ The facts as stated in the Petition and supporting documents, which are incorporated here by reference, establish sufficient grounds for the issuance of this Order. Any reasons stated below apply as well.

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

☐ See the attached *Attachment* (form MC-025).

d. ☐ The Respondent filed *Consent to Gun Violence Restraining Order and Surrender of Firearms* (form GV-125). The court finds that Respondent agreed not to have in Respondent's custody or control, own, purchase, possess, or receive a firearm, firearm part, ammunition, or magazine or attempt to purchase or receive those items until: *(expiration date)* _____.

This is a Court Order.

6 No Fee to Serve

If the sheriff or marshal serves this order, service will be free.

7 No Firearms (Guns), Firearm Parts, Ammunition, and Magazines

a. You cannot have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any prohibited items listed below in b.

b. **Prohibited items are:**

(1) Firearms (guns);

(2) Firearm parts, meaning receivers, frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531);

(3) Ammunition; and

(4) Magazines (ammunition feeding devices).

c. You must surrender (turn in, sell, or store) all prohibited items in your custody or control or that you possess or own. If a law enforcement officer asks you to turn over your prohibited items, you must do so immediately. If no request is made by a law enforcement officer, you must surrender all prohibited items within 24 hours of being served with this Order. You may surrender these items by turning them in to law enforcement, selling them to a licensed gun dealer, or storing them with a licensed gun dealer for as long as this Order is in effect.

d. Within 48 hours of receiving this Order, you must file a receipt with the court that proves that all your prohibited items have been turned in, sold, or stored. (You may use *Receipt for Firearms, Firearm Parts, Ammunition, and Magazines* (form GV-800) for the receipt.) You must also file a copy of the receipt with the law enforcement agency that served you with this order. **FAILURE TO FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER.**

8 Service of Order on Respondent

a. ☐ The Respondent was present in court, either physically or remotely (by telephone or videoconference), at the time the order was issued. No other proof of service is needed. The clerk has provided the Respondent with a blank copy of *Request to Terminate Gun Violence Restraining Order* (form GV-600).

b. ☐ The Respondent was not present in court at the time the order was issued. The Respondent must be personally served with a court file-stamped copy of this Order and a blank copy of *Request to Terminate Gun Violence Restraining Order* (form GV-600) by a law enforcement officer or someone age 18 or older, **and not a party to the action.**

c. ☐ This is an order based on the Respondent's filing of a *Consent to Gun Violence Restraining Order and Surrender of Firearms* (form GV-125). The court will provide notice to all parties.

9 Number of pages attached to this Order, if any: _____

Date: _____ _____

Judicial Officer

This is a Court Order.

Warnings and Notices to the Respondent

To the restrained person: This Order is valid until the expiration date and time noted on page 1. If you have not done so already, you must surrender all firearms, ammunition, and magazines that you own or possess in accordance with section 18120 of the Penal Code. You may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive a firearm, ammunition, or magazine, while this Order is in effect. Pursuant to section 18185, you have the right to request a hearing on an annual basis to terminate this Order during its effective period. You may seek the advice of an attorney as to any matter connected with the order.

Violation of this Order is a misdemeanor punishable by a $1,000 fine or imprisonment for six months or both. (Pen. Code, §§ 19, 18205.) If you violate this Order, you will be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, any prohibited items listed in item 7b, above, for a period of five years. This Order must be enforced by any law enforcement officer in the State of California who is aware of or shown a copy of this Order. The Order remains enforceable regardless of the acts of the parties; it may be terminated only by an order of the court.

Instructions for Law Enforcement

Duties of Officer Serving This Order

The officer who serves this order on the Restrained Person must do the following:

- Ask if the Restrained Person is in possession of any of the prohibited items listed in item 7b, above, or has custody or control of any that they have not already turned in.
- Order the Restrained Person to immediately surrender to you all prohibited items.
- Issue a receipt to the Restrained Person for all prohibited items that have been surrendered.
- Complete a proof of personal service and file it with the court. The officer may use form GV-200 for this purpose.
- Within one business day of service, submit the proof of service directly into the California Restraining and Protective Order System (CARPOS), including the serving officer's name and law enforcement agency.

Duties of Agency on Surrender of Firearms, Firearm Parts, Ammunition and Magazines

The law enforcement agency that has received surrendered prohibited items listed in item 7b, above, must do the following:

- Retain the prohibited items until the expiration of this order or of any other gun violence restraining order issued by the court.
- On the expiration of this order or of any later gun violence restraining order issued by the court, return the prohibited items to the Respondent as provided by chapter 2 of division 11 of title 4 of the Penal Code (commencing with section 33850). Section 34000 provides for the sale or destruction of any unclaimed items.
- If someone other than the Respondent claims title to any of the prohibited items surrendered, determine whether that person is the lawful owner. If so, return the prohibited items to that person as provided by chapter 2 of division 11 of title 4 of the Penal Code (commencing with section 33850).

This is a Court Order.

Instructions for Law Enforcement

(continued)

Enforcing This Order

The law enforcement officer should determine if the Respondent had notice of the order. Consider the Respondent "served" (given notice) if:

- The officer sees a copy of the proof of service or confirms that the proof of service is on file; or
- The respondent was informed of the order by an officer.
- Item 8a or 8c is checked.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the respondent cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it *(see above: Duties of Officer Serving This Order).*

The provisions in this *Gun Violence Restraining Order After Hearing or Consent to Gun Violence Restraining Order* (form GV-130) do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in any other existing protective order remain in effect.

Instructions to Clerk

This order must be served on all parties by the court, if it is made following the filing of a *Consent to Gun Violence Restraining Order and Surrender of Firearms* (form GV-125).

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Gun Violence Restraining Order After Hearing or Consent to Gun Violence Restraining Order (CLETS-OGV)* (form GV-130) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

GV-620 Response to Request to Terminate Gun Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT

1/10/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Use this form to respond to the *Request to Terminate Gun Violence Restraining Order* (Form GV-600).

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the Respondent at the address in (2) below. Use *Proof of Service by Mail* (form GV-250).

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(1) Petitioner

a. Your Full Name or Name of Law Enforcement Agency:

_____

I am:
- ☐ A family member of the Respondent.
- ☐ An officer of a law enforcement agency.
- ☐ An employer of the Respondent.
- ☐ A coworker of the Respondent.
- ☐ An employee or teacher of a secondary or postsecondary school that the Respondent has attended in the last 6 months.
- ☐ A roommate of the Respondent.
- ☐ A person who has a dating relationship with the Respondent.
- ☐ A person who has a child in common with the Respondent.

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email. Law enforcement officer, give agency information.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

The court will consider your response at the hearing. Write your hearing date, time, and place from form GV-610 item (3) here.

Hearing Date → Date: _____

Time: _____

Dept.: _____ Room: _____

(2) Respondent

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Case Number:

3 Response

a. ☐ I do not oppose termination of the order.

b. ☐ I oppose termination of the order for the following reasons *(specify below)*:

☐ *Check here if there is not enough space for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 3b—Reasons Not to Terminate" for a title. You may use* Attachment *(form MC-025).*

Date: _____

_____ ▶ _____

Lawyer's name, if you have one *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

To the Petitioner:

1. Have someone age 18 or older—**not you**—mail a copy of this completed form GV-620 to the Respondent or to the Respondent's lawyer, if any. This is called "service by mail."
2. The person who serves the form by mail must fill out *Proof of Service by Mail* (form GV-250). Have the person who did the mailing sign the original form GV-250.
3. Take the completed *Proof of Service by Mail* (form GV-250) back to the court clerk or bring it with you to the hearing.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

GV-700 Request to Renew Gun Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT

1/10/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Petitioner

a. Your Full Name or Name of Law Enforcement Agency: _____

I am:
- ☐ A family member of the Respondent.
- ☐ An officer of a law enforcement agency *(a petition may be filed in the name of the law enforcement agency in which the officer is employed).*
- ☐ An employer of the Respondent.
- ☐ A coworker of the Respondent.
- ☐ An employee or teacher of a secondary or postsecondary school that the Respondent has attended in the last 6 months.
- ☐ A roommate of the Respondent.
- ☐ A person who has a dating relationship with the Respondent.
- ☐ A person who has a child in common with the Respondent.

b. Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

c. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email. Law enforcement officer, give agency information.)*

Address: _____
City: _____ State: ____ Zip: _____
Telephone: _____ Fax: _____
Email Address: _____

2 Respondent

Full Name: _____
Address *(if known):* _____
City: _____ State: _____ Zip: _____

3 Request to Renew Restraining Order

I ask the court to renew the *Gun Violence Restraining Order After Hearing or Consent to Gun Violence Restraining Order* (form GV-130) for an additional period of between 1 and 5 years. A copy of the order is attached.

a. The order currently will end on *(date):* _____
(If the order has already expired, you must file a new petition.)

This is not a Court Order.

Case Number:

3 b. ☐ This is my first request to renew the order.
☐ The order has been renewed _____ times.

c. I ask the court to renew the gun violence restraining order because *(explain below):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 3c—Reasons to Renew Order" for a title. You may use* Attachment *(form MC-025).*

Date: _____

_____ ▶ _____
Lawyer's name (if any) *Lawyer's signature*

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

_____ ▶ _____
Type or print your name *Sign your name*

This is not a Court Order.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

50

Print this form | Save this form | Clear this form

GV-710 Notice of Hearing on Request to Renew Gun Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT

3/3/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Respondent completes items (1) and (2). Court completes items (3) and (4).

(1) Petitioner

a. Your Full Name or Name of Law Enforcement Agency:

I am:
- ☐ A family member of the Respondent.
- ☐ An officer of a law enforcement agency *(a petition may be filed in the name of the law enforcement agency in which the officer is employed).*
- ☐ An employer of the Respondent.
- ☐ A coworker of the Respondent.
- ☐ An employee or teacher of a secondary or postsecondary school that the Respondent attended in the last 6 months.
- ☐ A roommate of the Respondent.
- ☐ A person who has a dating relationship with the Respondent.
- ☐ A person who has a child in common with the Respondent.

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email. Law enforcement officer, give agency information.)*

Address: _____

City: _____ State: _____ Zip: _____ Fax: _____

Telephone: _____ Email: _____

(2) Respondent

Full Name: _____

Address *(if known)*: _____

City: _____ State: _____ Zip: _____

(3) Court Hearing

The judge has set a court hearing date. *Court will fill in box below.*

The current restraining order stays in effect.

Name and address of court if different from above:

Hearing Date →

Date: _____ Time: _____

Dept.: _____ Room: _____

You may attend your hearing remotely, such as by phone or videoconference. For more information, go to the court's website for the county listed above. To find the court's website, go to *www.courts.ca.gov/find-my-court.htm*.

This is a Court Order.

Case Number:

To the Petitioner:

4 Service on Respondent

Someone age 18 or older—**not you**—must serve a copy of the following forms on the Respondent:

- *Request to Renew Gun Violence Restraining Order* (form GV-700);
- *Notice of Hearing on Request to Renew Gun Violence Restraining Order* (form GV-710) (this form);
- *Response to Request to Renew Gun Violence Restraining Order* (form GV-720) (blank copy);

a. ☐ The forms must be personally served on the Respondent _____ days before the hearing.

b. ☐ The forms may be served by mail on the Respondent or the Respondent's lawyer _____ days before the hearing.

Date: _____ _____

Judicial Officer

To the Respondent:

At the hearing, the judge can renew the current restraining order for between one and five years. You *must* continue to obey the current restraining order. At the hearing, you can tell the judge if you do not want the order against you renewed. If the restraining order is renewed, you *must* continue to obey the order even if you do not attend the hearing.

If you wish to make a written response to the request to renew the restraining order, you may fill out *Response to Request to Renew Gun Violence Restraining Order* (form GV-720). File the original with the court before the hearing and have someone age 18 or older—**not you**—mail a copy of it to the Petitioner at the address in (1) at least _____ days before the hearing. Also file *Proof of Service by Mail* (form GV-250) with the court before the hearing or bring it with you to the hearing.

Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Disability Accommodation Request* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Notice of Hearing on Request to Renew Gun Violence Restraining Order* (form GV-710) is a true and correct copy of the original on file in the court.

Date: _____

Clerk, by _____, Deputy

This is a Court Order.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

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GV-715 Request to Reschedule Hearing to Renew Restraining Order

Clerk stamps date here when form is filed.

DRAFT

8/2/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Instructions: Either party may use this form to ask the court to reschedule the hearing (court date) listed on form **GV-710**, *Notice of Hearing on Request to Renew Gun Violence Restraining Order*. Note: If the hearing is rescheduled, the restraining order will be extended until the new court hearing.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 My Information

a. My name is: _____

b. I am the *(check one):*

(1) ☐ **Petitioner** (person asking for the protective order or law enforcement officer/law enforcement agency) *(skip to 2).*

(2) ☐ **Restrained Party** *(give your contact information below).*

Address where I can receive mail:

This address will be used by the court and by the other party to send you official court dates, orders, and papers. For privacy, you may use another address like a post office box, a Safe at Home address, or another person's address, if you have their permission. If you have a lawyer, give their information.

Address: _____

City: _____ State: _____ Zip: _____

Additional contact information *(optional):*

Telephone: _____ Fax: _____

Email Address: _____

Lawyer's information *(skip if you do not have one):*

Name: _____ State Bar No.: _____

Firm Name: _____

Have you turned in, sold, or stored your prohibited items (guns, firearm parts, ammunition, and magazines)?

☐ Yes.

☐ No.

2 Information About My Case

a. The other party in this case is *(full name):* _____

b. The court date is currently scheduled for *(date):* _____

This is not a Court Order.

Case Number:

3 Why does the court date need to be rescheduled?

a. ☐ I need more time to have the restrained party served.

b. ☐ Other reason:

4 Signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____
Type or print your name

_____
Sign your name

5 Lawyer's signature *(if you have one)*

Date: _____

_____
Lawyer's name

_____
Lawyer's signature

Your Next Steps

- Complete form GV-716, *Order to Reschedule Hearing to Renew Restraining Order* (only items 1 and 2).
- File forms GV-715 and GV-716 with the court. A judge will review your forms and decide whether to reschedule your court date.
- If the judge grants your request to reschedule your court date, you must have someone serve a copy of all forms listed on form GV-716, item 5. Your server can be the sheriff or another adult who is not involved in the case. For more information on how to serve the restrained person, go to *https://selfhelp.courts.ca.gov/GV-restraining-order/renew/sheriff-serves*.
- If the judge denies your request to reschedule, you must go to your court hearing (listed on form GV-710).

GV-716 Order to Reschedule Hearing to Renew Restraining Order

Clerk stamps date here when form is filed.

DRAFT

8/2/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

(Complete ① and ② only. The court will complete the rest of this form.)

① Petitioner: _____

② Restrained Party: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

③ Next Court Date

a. ☐ **Denied:** The request to reschedule the court date is denied.

Your court date is: _____

(1) The *Gun Violence Restraining Order After Hearing or Consent to Gun Violence Restraining Order* (form GV-130) granted in this case stays in full force and effect until your court date.

(2) Your court date is not rescheduled because:

_____

_____

_____

_____

b. ☐ **Granted:** The request to reschedule the court date is granted. Your court date is rescheduled for the date and time listed below. The current restraining order stays in effect until the hearing date below or the original expiration date, whichever is later. See ④–⑦ for more information.

New Court Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court, if different from above:

_____

_____

_____

Warning and Notice to the Restrained Party:
You must obey the restraining order while it is in effect.

This is a Court Order.

4 Reason Court Date Is Rescheduled

a. ☐ The petitioner has not served the restrained party.

b. ☐ Other reason:

5 Serving (Giving) Order to Other Party

The request to reschedule was made by the:

a. ☐ **Petitioner**

(1) ☐ You do not have to serve the restrained party because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the restrained party personally served with a copy of all the forms listed on form GV-710, item 4, by *(date):*

(3) ☐ You must have the restrained party served with a copy of this order. This can be done by mail. You must serve by *(date):*

(4) ☐ Other:

b. ☐ **Restrained party**

(1) ☐ You do not have to serve the petitioner because they or their lawyer were at the court date or agreed to reschedule the court date.

(2) ☐ You must have the petitioner personally served with a copy of this order by *(date):*

(3) ☐ You must have the petitioner served with a copy of this order. This can be done by mail. You must serve by *(date):*

(4) ☐ Other:

c. ☐ **Court**

(1) ☐ Further notice is not required.

(2) ☐ The court will mail a copy of this order to all parties by *(date):*

(3) ☐ Other:

This is a Court Order.

6 No Fee to Serve

The sheriff or marshal will serve this order for free.
Bring a copy of all the papers that need to be served to the sheriff or marshal.

7 ☐ Other Orders

_____

_____

_____

_____

Date: _____

_____
Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms.htm* for *Disability Accommodation Request* (*form MC-410*). (Civ. Code, § 54.8.)

Instructions to Clerk

If the court rescheduled the court date, the court must enter this order into CLETS or send this order to law enforcement to enter into CLETS. This must be done within one business day from the day the order is made.

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order to Reschedule Hearing to Renew Restraining Order* (form GV-716) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by: _____, Deputy

This is a Court Order.

GV-730 Order on Request to Renew Gun Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT

6/28/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Prevailing party completes items (1) and (2). If the Order is granted, the Petitioner is the prevailing party. If the Order is denied, the Respondent is the prevailing party.

(1) Petitioner

a. Your Full Name or Name of Law Enforcement Agency:

_____

I am:
- ☐ A family member of the Respondent.
- ☐ An officer of a law enforcement agency *(a petition may be filed in the name of the law enforcement agency in which the officer is employed).*
- ☐ An employer of the Respondent.
- ☐ A coworker of the Respondent.
- ☐ An employee or teacher of a secondary or postsecondary school that the Respondent attended in the last 6 months.
- ☐ A roommate of the Respondent.
- ☐ A person who has a dating relationship with the Respondent.
- ☐ A person who has a child in common with the Respondent.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

Your Lawyer *(if you have one for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
Email Address: _____

(2) Respondent

Full Name: _____
Address *(if known)*: _____
City: _____ State: _____ Zip: _____

(3) Hearing

There was a hearing on *(date)*: _____ at time: _____ ☐ a.m. ☐ p.m. Dept.: _____ Room: _____
(Name of judicial officer): _____ made the orders at the hearing.
These people attended the hearing:
a. ☐ The Petitioner
b. ☐ The Respondent
c. ☐ The lawyer for the Petitioner *(name):* _____
d. ☐ The lawyer for the Respondent *(name):* _____

This is a Court Order.

Case Number:

4 Order on Request for Renewal

The request to renew the attached *Gun Violence Restraining Order After Hearing or Consent to Gun Violence Restraining Order* (form GV-130), originally issued on *(date)*: _____, is:

☐ **DENIED**. The attached order expires as stated in item 3 of the order.

☐ **GRANTED**. The attached order is renewed and will now expire:

on *(date)*: _____ at *(time)*: _____ ☐ a.m. ☐ p.m. or ☐ midnight

If no expiration date is written here, the order expires one year from the date of the hearing in item 3.

a. The court finds by clear and convincing evidence that both of the following are true:

(1) Respondent continues to pose a significant danger of causing personal injury to themself or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving firearms, firearm parts, ammunition, or magazines. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531).

(2) A gun violence restraining order remains necessary to prevent personal injury to Respondent or to another person because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the current circumstances.

b. ☐ The facts as stated in the *Request to Renew Gun Violence Restraining Order* (form GV-700) and supporting documents, which are incorporated here by reference, establish sufficient grounds for the issuance of this Order. Any reasons stated below apply as well.

_____

_____

_____

_____

_____

_____

_____

☐ See the attached Form MC-025, *Attachment.*

c. **To the restrained person: If this order is renewed, it will last until the date and time noted above. If you have not done so already, you must surrender all firearms, ammunition, and magazines that you own or possess in accordance with section 18120 of the Penal Code. You may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive a firearm, ammunition, or magazine, while this order is in effect. Pursuant to section 18185, you have the right to request one hearing on an annual basis to terminate this Order at any time during its effective period. You may seek the advice of an attorney as to any matter connected with the order.**

This is a Court Order.

Case Number:

To the Prevailing Party:

5 Service of Order

Someone age 18 or older—**not you**—must serve a copy of this order on the other party.

☐ **Order Granted**—The Respondent was present in court, either physically or remotely (by telephone or videoconference), at the time the order was renewed. **No further service is required**.

☐ **Order Granted**—The Respondent was not present in court at the time the order was renewed. **Personal service is required**. The Respondent must be personally served with this Order. *(After the Respondent has been served, file form GV-200,* Proof of Personal Service, *with the court clerk. For help with service, read form GV-200-INFO,* What Is "Proof of Personal Service"?*)*

☐ **Order Denied—Service by Mail**—If the Petitioner was not present in court at the hearing, the Petitioner may be served with this Order by mail. *(After the Petitioner has been served, the person doing the mailing should fill out form POS-030,* Proof of Service by First-Class Mail—Civil. *File the form with the court clerk. For help with service by mail, read the Information Sheet on page 2 of form POS-030.)*

Date: _____ _____

Judicial Officer

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this *Order on Request to Renew Gun Violence Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

60

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GV-800 Receipt for Firearms, Firearm Parts, Ammunition, and Magazines

Clerk stamps date here when form is filed.

DRAFT

3/3/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Petitioner/Requesting Agency

Name: _____

2 Respondent/Restrained Person

a. Your Name: _____

Your Lawyer *(if you have one for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

3 To the Restrained Person:

If a judge has ordered you to turn in, sell, or store your firearms (guns), firearm parts—meaning receivers, frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531)—use this form to prove to the judge that you have obeyed their orders. Take this form to law enforcement officer or a licensed gun dealer to complete item 4 or 5. For more information on how to properly turn in your items, read form GV-800-INFO, *How Do I Turn In, Sell, or Store My Firearms, Firearm Parts, Ammunition, and Magazines?*

4 To Law Enforcement

(Complete the section below. Keep a copy and give the original to the person in 2.)

Name of Law Enforcement Agency: _____

Name of Law Enforcement Agent: _____

Address: _____

Telephone: _____ Email Address: _____

Items Surrendered

a. Firearms, firearm parts, ammunition, and magazines transferred on:
Date: _____ Time: _____ ☐ a.m. ☐ p.m.

b. List of items *(List all the items surrendered by the person in 2. You may attach a separate form from your agency (e.g., a property report), use item 6, or both. Check below if you have attached a separate form):*

☐ Separate form is attached. *(If it does not include all surrendered items, list additional items in item 6.)*

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

▶ *Signature of law enforcement agent:* _____

Case Number:

5 To Licensed Gun Dealer

(Complete the section below. Keep a copy and give the original to the person in 2.)

Name of Licensed Gun Dealer: _____

License number: _____

Address: _____

Telephone: _____ Email Address: _____

Items Stored or Sold

a. Firearms, firearm parts, ammunition, and magazines transferred on:
Date: _____ Time: _____ ☐ a.m. ☐ p.m.

b. List of items *(List all the items surrendered by the person in 2. You may attach a separate form (e.g., Department of Justice's Report of Firearms Acquisition) or you may use item 6. Check below if you have attached a separate form):*

☐ Separate form is attached. *(If it does not include all surrendered items, list additional items in item 6.)*

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

▶ *Signature of licensed gun dealer:* _____

6 ☐ List of Items Surrendered

Firearms and firearm parts

	Make	Model	Serial Number, if there is one	Sold	Stored	To be destroyed
(1)				☐	☐	☐
(2)				☐	☐	☐
(3)				☐	☐	☐
(4)				☐	☐	☐
(5)				☐	☐	☐
(6)				☐	☐	☐

Ammunition and magazines

	Brand	Type	Amount	Sold	Stored	To be destroyed
(1)				☐	☐	☐
(2)				☐	☐	☐
(3)				☐	☐	☐
(4)				☐	☐	☐
(5)				☐	☐	☐
(6)				☐	☐	☐

☐ *Check here if there is not enough space above for your answer. Use a separate sheet of paper to list other items. Write "GV-800, item 6" at the top, and attach it to this form.*

Case Number:

7 To the Restrained Person:

Besides the items listed on page 2 or in an attached form, do you have or own any other firearms (guns), firearm parts, ammunition, or magazines?

☐ No

☐ Yes *(If yes, check one of the boxes below:)*

a. ☐ I filed a *Receipt of Firearms, Firearm Parts, Ammunition, and Magazines* (form GV-800) or other proof for those items with the court on *(date):* _____

b. ☐ I am filing the proof for those firearms (guns), firearm parts, ammunition, or magazines along with this proof.

c. ☐ I have not yet filed the proof for the other firearms (guns), firearm parts, ammunition, or magazines. *(Explain why not):*

_____

_____

_____

_____

_____

_____

Your signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____
Type or print your name

▶ _____
Sign your name

Your Next Steps

- After the form is complete, make two additional copies. Take the copies and original to the court clerk to file.
- If law enforcement served you with the restraining order, give a copy to the law enforcement agency that served you with the restraining order.
- Keep a copy for yourself.

Note that failure to file a receipt with the court and with the law enforcement agency is a violation of the court's order.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

GV-800-INFO How Do I Turn In, Sell, or Store My Firearms, Firearm Parts, Ammunition, and Magazines?

What items do I need to turn in, sell, or store?

You must turn in, sell, or store all of the following prohibited items that you have or control:

- Firearms, including any handgun, rifle, shotgun, and assault weapon;
- Firearm parts, meaning receivers, frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531) (these may also be called "ghost guns");
- Ammunition, also called ammo, including bullets, shells, cartridges, and clips; and
- Magazines (any ammunition feeding device, whether fixed or removable).

How do I properly turn in, sell, or store the prohibited items?

You must take them to:

- Law enforcement, who will accept all prohibited items and may store them or destroy them;

OR

A licensed gun dealer, who can buy or store firearms. If you have firearms parts, ammunition, or magazines, call ahead for more information.

When do I have to turn in, sell, or store the prohibited items?

Immediately if law enforcement asks you for the items. Otherwise, within 24 hours.

Who can I turn in, sell, or store the prohibited items with?

Only law enforcement or a licensed gun dealer. You cannot give your prohibited items to a family member, friend, or anyone else.

Where can I sell the prohibited items?

At a licensed gun dealer in your area. You can search the internet for "Gun Dealers" or "Firearms Dealers" to find one. Make sure the dealer is licensed.

Do I have to pay a fee to store prohibited items?

You may have to pay a fee. Contact your local law enforcement agency or a licensed gun dealer about fees and whether they have space to store your items.

How do I turn in the prohibited items to law enforcement?

Call your local law enforcement agency to ask about their procedures. Unload your firearms and take a copy of the court order with you.
Do not bring firearms to court.

If I turn in the prohibited items to law enforcement, how long will they keep them?

It depends. There are procedures for getting your firearms back after the restraining order has expired. Ask the law enforcement agency for more information.

After I turn in the prohibited items to law enforcement, can I change my mind?

Yes. You are allowed to sell firearms, ammunition, and magazines to a licensed gun dealer. To do this, the gun dealer must present a bill of sale to your local law enforcement agency. The law enforcement agency will give the licensed gun dealer the items that you are selling.

Do I have to prove that I have turned in, sold, or stored the prohibited items?

Yes. Within 48 hours you must file a receipt with the court and the law enforcement agency showing that you have surrendered the prohibited items to a law enforcement agency or sold them to or stored them with a licensed gun dealer. You may use *Receipt for Firearms, Firearm Parts, Ammunition, and Magazines* (form GV-800) for this purpose.

Additional Questions?

Contact an attorney for legal advice. Call your local law enforcement agency, for example, your city police or county sheriff for their procedures.

Information about prohibited items and how to obey these orders is also available online.

https://selfhelp.courts.ca.gov/respond-to-GV-restraining-order/obey-firearms-orders.

For help in your area, contact:

[Local information may be inserted.]

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

SPR23-28

Protective Orders: Revisions to Gun Violence Restraining Order Forms (Adopt forms GV-715 and GV-716; revise forms EPO-002, GV-020, GV-020-INFO, GV-030, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-120, GV-120-INFO, GV-125, GV-130, GV-620, GV-700, GV-710, GV-730, GV-800, and GV-800-INFO)

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

	Commenter	Position	Comment	DRAFT Committee Response
1.	Bay Area Legal Aid By Kemi Mustapha Family Law Supervising Attorney	A	BayLegal believes that the proposal addresses the stated purpose of conforming with new state laws that add to the category of individuals who can request gun violence restraining orders (AB 2870) and that require restrained parties to surrender firearm parts under the modified definition of "firearms" (AB 1057 and AB 1621). BayLegal also supports the proposed forms to request continuance of a hearing to renew a gun violence protective order (see also above comments re Item Number SPR23-26).	The committee appreciates the information provided.
2.	Orange County Bar Association by Michael A. Gregg President	A		No response required.
3.	Superior Court of California, County of Los Angeles by Bryan Borys Director of Research and Data Management	AM	The following comments are submitted on behalf of the Los Angeles Superior Court. Regarding EPO-002 Gun Violence Emergency Protective Order (CLETS-EGV) form: o Page 1, Section 2: In the first sentence, add "firearm parts" Regarding GV-030 Gun Violence Restraining Order After Hearing on EPO-002 form: o Page 3, Warning and Notices to the Restrained Person: Add "firearm parts" to list of items that must be surrendered Regarding GV-100-INFO Can a Gun Violence	The committee declines this suggestion as the language in that section is provided in Penal Code section 18135, which does not include "firearm parts." The committee declines this suggestion as the language in that section is provided in Penal Code section 18135, which does not include "firearm parts." In light of this comment, "to themselves or

SPR23-28

Protective Orders: Revisions to Gun Violence Restraining Order Forms (Adopt forms GV-715 and GV-716; revise forms EPO-002, GV-020, GV-020-INFO, GV-030, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-120, GV-120-INFO, GV-125, GV-130, GV-620, GV-700, GV-710, GV-730, GV-800, and GV-800-INFO)

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

	Commenter	Position	Comment	DRAFT Committee Response
			Restraining Order Help Me? form: o Page 2, How Can I Convince the Judge?, Second paragraph: Add "to themself or others" at the end of the first sentence, "Then you will need to present facts to show..." for clarity and to match the examples listed in the sentences that follow.	others" has been added to the recommended form.
			Regarding GV-100 Petition for Gun Violence Restraining Order form: o Suggest switching Sections 6 & 7 so that the Request comes first, then the Grounds	The committee declines this suggestion as it is helpful for the grounds to come before the request so that the petitioner can verify sufficient grounds exist before they fill out the item requesting the restraining order.
			Regarding GV-109 Notice of Court Hearing form: o Page 3, 3rd bullet: Suggest adding language about using the Sheriff's Department for service and completing form SER-001	The committee declines this suggestion as it believes it is better suited for an information sheet and will work to add it to form GV-200-INFO as time and resources permit.
			Regarding GV-110 Temporary Gun Violence Restraining Order form: o Page 3, Warning and Notices to the Restrained Person: Add "firearm parts" to list of items that must be surrendered	The committee declines this suggestion as the language in that section is provided in Penal Code section 18160, which does not include "firearm parts."
			Regarding GV-120-INFO How Can I Respond to a Petition for a Gun Violence Restraining Order? form: o Page 2, Should I attend the court hearing?: Correct the phrasing in the sentence "You can	In light of this comment, the change has been made to the recommended form.

SPR23-28
Protective Orders: Revisions to Gun Violence Restraining Order Forms (Adopt forms GV-715 and GV-716; revise forms EPO-002, GV-020, GV-020-INFO, GV-030, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-120, GV-120-INFO, GV-125, GV-130, GV-620, GV-700, GV-710, GV-730, GV-800, and GV-800-INFO)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	DRAFT Committee Response
			attend the hearing by remotely..." Regarding GV-130 Gun Violence Restraining Order After Hearing or Consent to Gun Violence Restraining Order form: o Page 4, Warning and Notices to the Restrained Person: Add "firearm parts" to list of items that must be surrendered Regarding GV-716 Order to Reschedule Hearing to Renew Restraining Order form: o Page 3, Section 6a: The phrase "The order is based on unlawful violence, a credible threat of violence, or stalking" appears to be the criteria for Civil Harassment, not Gun Violence. Regarding GV-730 Order on Request to Renew Gun Violence Restraining Order form: o Page 2, Warning and Notices to the Restrained Person: Add "firearm parts" to list of items that must be surrendered Regarding GV-800-INFO Receipt for Firearms, Firearm Parts, Ammunition, and Magazines form: o Page 1, Second column, After I turn in prohibited items to law enforcement, how long will they keep them?: Add "firearm parts" in items permissible to sell	The committee declines this suggestion as the language in that section is provided in Penal Code section 18180, which does not include "firearm parts." In light of this comment, the recommended form has been corrected to reflect that service is made for free. The committee declines this suggestion as the language in that section is provided in Penal Code section 18180, which does not include "firearm parts." The committee declines this suggestion as certain firearm parts are illegal and thus are not eligible for sale.
4.	Superior Court of California, County of San Diego	AM	**Request for Specific Comments** Does the proposal appropriately address the	The committee appreciates the information provided.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR23-28

Protective Orders: Revisions to Gun Violence Restraining Order Forms (Adopt forms GV-715 and GV-716; revise forms EPO-002, GV-020, GV-020-INFO, GV-030, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-120, GV-120-INFO, GV-125, GV-130, GV-620, GV-700, GV-710, GV-730, GV-800, and GV-800-INFO)

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

	Commenter	Position	Comment	DRAFT Committee Response
	by Mike Roddy Executive Officer		stated purpose? **Yes.**	
			Would the proposal provide cost savings? If so, please quantify. **No.**	The committee appreciates the information provided.
			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? **Updating internal procedures and packets, training staff, and adding new forms to case management system.**	The committee appreciates the information provided.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes, provided the final versions of the forms are provided to the court at that time. This will ensure that the court is able to provide training to staff and update its internal procedures and case management systems.**	The committee appreciates the information provided.
			How well would this proposal work in courts of different sizes? **It appears the proposal would work for courts of various sizes.**	The committee appreciates the information provided.
			General Comments **GV-730, Item 4:** Propose removing "for one year" when an order on request for renewal is	In light this of this comment, "for one year" has been removed from item 4 in the recommended form.

	Commenter	Position	Comment	DRAFT Committee Response
			granted as follows: "GRANTED. The attached order is renewed ~~**for one year**~~ and will now expire: …" Penal Code section 18190(f)(1) provides that a renewal of a GVRO shall have a duration of between one to five years. No additional Comments.	
5.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) (TCPJAC/CEAC Joint Rules Subcommittee)	AM	The JRS notes the following impact to court operations: • Impact on existing automated systems. • Results in additional training, which requires the commitment of staff time and court resources. The JRS also notes that the proposal is required to conform to a change of law. **Suggested Modifications** Recommend on forms GV-115 and GV-715 that a check box with language for the restrained party who is requesting to continue a hearing for a GVRO or to renew a GVRO to indicate that they have complied with the applicable EPO, TGVRO or GVRO by turning in all firearms, firearm parts, ammunition and magazines to law enforcement or sold or stored them with a	In light of this comment, the committee has revised recommended forms GV-115 and GV-715 accordingly.

SPR23-28

Protective Orders: Revisions to Gun Violence Restraining Order Forms (Adopt forms GV-715 and GV-716; revise forms EPO-002, GV-020, GV-020-INFO, GV-030, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-120, GV-120-INFO, GV-125, GV-130, GV-620, GV-700, GV-710, GV-730, GV-800, and GV-800-INFO)

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

	Commenter	Position	Comment	DRAFT Committee Response
			licensed gun dealer and has provided proof to the court. While the court will need to confirm the veracity of the representation, the presence of this check box may alert the court to a deficiency and serve to remind the restrained party of their obligations with regard to firearms. **Response to Request for Specific Comments:** 1. Yes, the proposal appropriately addresses the stated purpose. **Response to Request for Courts' Comments:** 1. No, the proposal will not provide cost savings. 2. Implementation will require training of judicial officers and staff, anticipate minimal impact. 3. Changes in case management systems may be necessary for system generated forms. 4. 3 months should be sufficient time to implement. 5. Do not anticipate that court size will impact how well the proposal will work.	The committee appreciates the information provided. The committee appreciates the information provided.

Item number: 28

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Domestic Violence: Form Changes to Implement New Laws

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Adopt DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/FL-840, EPO-001

Committee or other entity submitting the proposal:
The Family and Juvenile Law Advisory Committee

*Staff contact (*name, phone and e-mail*): Frances Ho; (415) 865-7662; frances.ho@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 1, 2022
Project description from annual agenda:
Item 1b: AB 2369 (Salas) Domestic Violence Prevention Act: attorney's fees and costs (Ch. 591, Stats. of 2022) 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.

Item 1f: 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.

Item 8: 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.

Item 15: 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.

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

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

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

- **Form Translations** (check all that apply)
  This proposal:
  ☒ includes forms that have been translated.

☐ includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: Click or tap here to enter text.
☒ includes forms that staff will request be translated.

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

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

Judicial Council *of* California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-170
For business meeting on September 18–19, 2023

Title
Domestic Violence: Form Changes to Implement New Laws

Rules, Forms, Standards, or Statutes Affected
Adopt forms DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/ FL-840, EPO-001

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
August 7, 2023

Contact
Frances Ho, 415-865-7662
frances.ho@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising 14 domestic violence restraining order forms to implement Assembly Bill 2369, Senate Bill 935, and Assembly Bill 1621. The committee also recommends adopting 2 new forms that would be used to continue a hearing on a request to renew a restraining order.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2024:

1. Adopt 2 Judicial Council forms:

   - *Request to Reschedule Hearing to Renew Restraining Order* (form DV-715); and

- *Order to Reschedule Hearing to Renew Restraining Order* (form DV-716); and

2. Revise 14 Judicial Council forms:

- *Request for Domestic Violence Restraining Order* (form DV-100);
- *Notice of Court Hearing* (form DV-109);
- *Temporary Restraining Order* (form DV-110);
- *Response to Request for Domestic Violence Restraining Order* (form DV-120);
- *How Can I Respond to a Request for Domestic Violence Restraining Order?* (form DV-120-INFO);
- *Restraining Order After Hearing (Order of Protection)* (form DV-130);
- *Request to Renew Restraining Order* (DV-700);
- *How Do I Ask the Court to Renew My Restraining Order?* (form DV-700-INFO);
- *Notice of Hearing to Renew Restraining Order* (DV-710);
- *Response to Request to Renew Restraining Order* (DV-720);
- *Order to Renew Domestic Violence Restraining Order* (DV-730);
- *How Do I Turn In, Sell, or Store My Firearms, Firearm Parts, and Ammunition?* (DV-800-INFO/JV-270-INFO);
- *Notice of Compliance Hearing for Firearms and Ammunition* (DV-840/FL-840); and
- *Emergency Protective Order* (CLETS-EPO) (EPO-001).

The proposed forms are attached at pages 10–79.

Relevant Previous Council Action

Under the Domestic Violence Prevention Act, the Judicial Council must provide forms and instructions for use in domestic violence restraining order matters. The council has approved revisions to the forms when changes to the law required revisions and in response to feedback from user testing and suggestions made by the public, judicial officers, and court professionals. Forms DV-720 and DV-730 were adopted effective 2012 and have not been revised since their adoption. Forms DV-700, and DV-700-INFO were last revised in 2012 to implement a new law and to make the styles consistent with other civil restraining order forms, and form DV-710 was revised in 2014 to add a clerk's seal and to clarify when the restraining order after hearing expires. The other forms in this proposal were last revised in 2023 to implement new laws.

Analysis/Rationale

This proposal is needed to implement three new laws. Because most litigants in domestic violence restraining order proceedings represent themselves, it is particularly important for the council to act quickly to ensure that litigants are provided up-to-date information about available remedies and court procedures. A number of additional changes are recommended to the renewal forms to make the format and content consistent with changes that have been made to other domestic violence forms over the past few years, as are a few substantive changes that are described below.

Assembly Bill 2369

Effective January 1, 2023, AB 2369 (Stats. 2022, ch. 591) requires the court in a domestic violence restraining order proceeding to, on request, award attorney's fees or costs to a prevailing petitioner, or to a prevailing respondent if the prevailing respondent can show "by a preponderance of the evidence" that the petition or request was "frivolous or solely intended to abuse, intimidate, or cause unnecessary delay."[1] However, before an award of attorney's fees or costs can be made, the court must first determine whether "the party ordered to pay has, or is reasonably likely to have, the ability to pay."[2]

To implement AB 2369, the committee recommends adding information on the request and response forms informing the parties of the new legal requirements. For the request forms (DV-100 and DV-700), the committee has added information that the court must award lawyer's fees and costs to a prevailing petitioner if the respondent can afford to pay.[3] For the response forms (DV-120 and DV-720), the committee has added information that the court may award lawyer's fees and costs to a prevailing respondent if the respondent can show that (1) the request for restraining order was frivolous or was made only to abuse, intimidate, or cause unneeded delay; and (2) the petitioner can afford to pay.[4] For form DV-120 the committee also recommends removing the options to agree or disagree with the request for lawyer's fees and costs because the court no longer has discretion on whether to make this award.

Senate Bill 935

Effective January 1, 2023, SB 935 (Stats. 2022, ch. 88) changes the duration of a renewed order. Before SB 935, the duration of a renewed order either had to be five years or was permanent. Under SB 935, a renewed order may be for any length of time provided that it is at least five years long, and could still be made a permanent order of the court.[5] SB 935 also clarifies that a domestic violence restraining order may be renewed more than once. The committee proposes to revise the renewal forms to indicate that the order may be extended for any length of time that is at least five years. Changes to implement AB 2369 and to make the renewal forms consistent with the format of other DV forms are also recommended and described below.

Request to renew form (form DV-700)

To implement SB 935, the committee has added a third option in the request to renew, for the petitioner to ask for a duration longer than five years but less than a permanent order.[6]

In response to a suggestion from a domestic violence organization, the committee also recommends including an instruction at the top of the request form to indicate that the form may

[1] Fam. Code, § 6344(a) & (b).

[2] *Id.*, § 6344(c).

[3] See DV-100, item 26, and DV-700, item 5.

[4] See DV-120, item 23, and DV-720, item 6.

[5] Fam. Code, § 6345(a).

[6] See DV-700, item 3c.

be used to request a renewal of a juvenile restraining order that was issued to prevent domestic violence. Under Family Code section 6345, on request of a party, the court may renew the personal conduct, stay-away, and residence exclusion orders for a period of at least five years, or permanently. The availability of renewals under the Family Code is not limited to those cases arising from family court but applies to all restraining orders issued under the Domestic Violence Prevention Act.[7] Therefore, a protected party in a juvenile restraining order to prevent domestic violence would use the DV forms to request a renewal of a juvenile restraining order in family court after the juvenile case has been closed.

The committee also recommends providing more space for the protected party to include the reasons for requesting the renewal, and, as noted above, adding an item for the party to seek attorney's fees and costs to implement AB 2369.[8]

Response to request to renew form (form DV-720)

To implement SB 935, the committee has added information at item 3 that the duration of a renewed order could be more than five years, or a permanent order. At item 5, more space has been provided for a respondent who opposes the request and wishes to state the reasons. Item 6 has also been added to allow the respondent to respond to or make a request for lawyer's fees or costs, consistent with the new requirements under AB 2369, as described above.

Notice and order forms (forms DV-710 and DV-730)

To implement SB 935 on form DV-730, the committee has provided two options for when a renewed order expires: a specific date after five years, or no expiration.[9]

The committee also recommends adding an item to form DV-730 to address service of the order on the respondent. The committee notes that the Domestic Violence Prevention Act is silent on the issue of service of a renewed order when the respondent did not attend the hearing. Because a renewed restraining order changes only the duration of the restraining order, the committee recommends applying the requirement in Family Code section 6384(a) that applies to temporary restraining orders where the court may order service by first-class mail if the only change to the restraining order is the duration of the order.[10] The committee also recommends including notice of this new procedure on form DV-710, informing the restrained person that the person will receive a copy of the renewed restraining order at the address provided on form DV-710 if the person does not appear at the hearing. A similar notice is already provided on the existing temporary restraining order (page 7 of form DV-110).

[7] *Garcia v. Escobar* (2017) 17 Cal.App.5th 267; *Priscila N. v. Leonardo G.* (2017) 17 Cal.App.5th 1208.

[8] New item 5 on form DV-700.

[9] New item 3a on form DV-730.

[10] New item 6 on form DV-730.

Information form (form DV-700-INFO)

This form provides information for the protected party (person requesting the renewal). The committee recommends adding information on what the protected party will have to prove to the court at the renewal hearing, as provided by the Court of Appeal in *Richie v. Konrad*.[11] The committee also recommends adding information on when a juvenile restraining order involves domestic violence, and the possibility of filing a request to renew in another county by filing a request to change venue.

AB 1621

Assembly Bill 1621 (Stats. 2022, ch. 76) went into effect immediately on the Governor's approval on June 30, 2022. It prohibits persons subject to a restraining order from possessing or owning certain firearm parts, including a "firearm precursor part," which it redefined.[12] Changes are needed to certain order forms (DV-110, DV-130, and EPO-001) and other forms (DV-100, DV-120-INFO, DV-800-INFO/JV-270-INFO, and DV-840/FL-840) to implement the new definition of firearm precursor part. The recommended language parallels language the council has previously approved to implement this new definition in other protective order forms.[13]

Continuance forms for renewal hearings

Currently, no forms are available to request or order to continue (reschedule) a hearing on a request to renew a restraining order. The committee has received comments that continuance forms would be helpful because the existing continuance forms (e.g., forms DV-115 and DV-116) are not designed for renewal proceedings. The committee agrees that continuance forms would be helpful and especially important if the order for continuance extends the *Restraining Order After Hearing*, because the new expiration would need to be entered into the California Law Enforcement Telecommunications System (CLETS). A new request (form DV-715) and order to continue (form DV-716) a request for renewal are contained in this proposal. They are substantially similar to the forms for requesting and ordering continuances of hearings on the original petitions. Similar forms for gun violence (GV), civil harassment (CH), elder abuse (EA), school violence (SV), and workplace violence (WV) are also being proposed in a separate report being made concurrently with this one.

Additional changes to form EPO-001

In addition to revising the language regarding firearm precursor parts to implement AB 1621, the committee also recommends simplifying the warning and notices contained on page 2 of the EPO form. Many of the existing notices unnecessarily repeat information that is on page 1 of the order. Also, some of the words used could be stated more plainly. Simplifying the content on this

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[11] In *Richie*, the court held that a protected party would be entitled to renewal, merely on request, if the request is uncontested. If the request to renew is contested, the court held that the court could renew on a finding of "reasonable apprehension of future abuse." (*Richie v. Konrad* (2004) 115 Cal.App.4th 1275,1284.)

[12] Pen. Code, § 16531(a).

[13] See Judicial Council of Cal., Advisory Com. Rep., *Protective Orders: Civil Protective Order Forms Implementing Assembly Bill 1621* (Nov. 2, 2022), https://jcc.legistar.com/View.ashx?M=F&ID=11461123&GUID=89F39689-D073-494C-9390-2A55F4C5AEC0.

page also provides more space to allow for a complete translation into Spanish of all the content on page 2. The existing version does not translate into Spanish the bolded "Warnings and Information" for the restrained person, or the information provided to law enforcement.

In light of comments received, the proposal will also correct item 1, the identity of all protected persons. to add an instruction to include the persons' gender (M, F, or X) because that is a field mandated for the protective order registry accessible via CLETS.

Clarification of service requirements after remote appearance

To clarify the service requirements for respondents who appear remotely in protective order proceedings, this committee and the Civil and Small Claims Advisory Committee are jointly recommending two new rules of court, as well as revisions to the CH, EA, SV, and WV forms in a separate proposal. As more fully discussed in that proposal, the committees are recommending revisions to the notice of hearing forms and the order after hearing forms to specify to the respondent that any order issued at the hearing may be enforced immediately if the respondent attends the hearing, including through the use of remote technology. Substantially similar changes are being recommended to forms DV-109 and DV-130 in this proposal.

Form DV-109

As discussed above, on this notice form, the committee recommends alerting respondents that orders issued at a hearing may be enforced immediately if respondent attends the hearing—whether physically, by phone, or by videoconference.

In response to a suggestion received by a court, the committee also recommends removing form 250 (proof of service by mail) from the list of forms that must be served by the petitioner on respondent. This requirement can lead to court delays and safety issues when the petitioner unintentionally does not include it in the packet of forms that must be served on the restrained person. The committees note that service of a blank proof of service form is atypical and not a requirement in other proceedings and should be removed for the reasons noted above.

The committee also recommends simplifying the notices provided to each party.[14] The committee believes that reducing the amount of text would make the form easier to read. For example, in the current version of form DV-109, information regarding the process for serving a response form is provided. While this could be helpful, the committee believes it is unnecessary to provide the information on this form as the response form itself (DV-120) provides this information. The same is true for information regarding the right to cancel a hearing where referring to the relevant form (form DV-112) provides the details related to that process.

Form DV-130

The item for service on form DV-130 would be revised to state that no other proof of service is needed to enforce an order if the respondent attends the hearing "either physically or remotely

[14] Page 3 of proposed form DV-109.

(by telephone or videoconference)." This language is consistent with the new rules in the joint proposal.

Additional changes to implement new request for service form

One or more forms are being proposed in a separate proposal to implement AB 2791 (Stats. 2022, ch. 417), which requires the Judicial Council to create forms to allow litigants in civil cases to request service of process by a sheriff or marshal. Those forms will be recirculated for comment in August of 2023, and if approved, will become effective on January 1, 2024. In this proposal, the committee proposes to include language on certain order forms that includes an instruction to use the proposed form (form SER-001) to request service by a sheriff or marshal.[15]

Policy implications

In addition to implementing legislative changes, this recommendation helps implement Goal I, "Access, Fairness, Diversity, and Inclusion," of the Judicial Council's strategic plan by helping to make forms easier to complete and understand for self-represented litigants. Additionally, changes to the forms were based on user testing and feedback from service providers, consistent with Goal IV of the strategic plan to provide the highest quality of justice and service to the public.

Comments

This proposal was released for public comment from March 30 through May 12, 2023. Nine commenters responded to the proposal. Four agreed with the proposal, three agreed if modified, and two did not indicate a position; no commenters disagreed with the proposal. Commenters were the Superior Courts of Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties; the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee; the California Lawyers Association, Family Law Section Executive Committee; the Family Violence Appellate Project; and the Orange County Bar Association.

The committee thanks commenters for taking the time to respond to this proposal. In general, commenters supported many of the changes. Some of the more significant changes are described below. All comments and the committee's responses are provided in the attached chart of comments at pages 80–103.

Commenters supported many of the proposed revisions to the renewal forms (DV-700 series), including the recommendation to adopt new continuance forms for these proceedings. Some commenters suggested adding more information to form DV-700-INFO, including the ability to (1) request a renewal more than once; (2) file a request to renew in another county; and (3) request a continuance. The committee agrees with these additions to form DV-700-INFO. One commenter suggested renumbering form DV-700 to DV-700/JV-700 since the forms may be used to request a renewal of a juvenile restraining order issued to prevent domestic violence. As noted above, form DV-700 would be used to request a renewal of a juvenile restraining order

[15] See DV-110, item 22; DV-130, item 31; DV-710, item 6; and DV-730, item 7.

after the juvenile case has closed. Currently, there are no juvenile forms to specifically request a renewal of a restraining order within a juvenile case. The committee is interested in the possibility of recommending new forms for this purpose and will consider it in a future cycle.

Another suggestion by a commenter that the committee did not recommend is to have the order renewing the restraining order (form DV-730) reflect all the current orders made by the court. For example, child custody and visitation orders may have changed since the original restraining order (form DV-130) was issued and form DV-730 could include what those current orders are. While the committee sees value in this approach, it reflects a significant change in process that the committee would want the public to comment on. Therefore, this suggestion will be considered in the future.

Alternatives considered

Many of the proposed revisions are required by statutory changes, so the committee did not consider the alternative of no action.

For the new continuance forms for renewal proceedings, the committee considered revising existing forms DV-115 and DV-116. However, the committee rejected this approach because some of the provisions of the Family Code apply only to continuances of the initial request for restraining order (e.g., under Family Code section 245, a respondent is entitled to one continuance, for a reasonable period of time, to respond to the petition). Creating a form that would work both for the initial request for restraining order and for a renewal would make the forms more complicated. Instead, the committee decided that a separate continuance form set for renewals would be more user-friendly. The committee also considered whether to adopt a new information form, similar to form DV-115-INFO. The committee decided against a separate information form at this time and instead included more instruction on new form DV-715, under "Your Next Steps." In response to a comment received, the committee considered including information about the option to appear remotely on form DV-716. The committee decided against including the information without public comment but will propose the addition in the future.

The committee considered not adding an item on form DV-730 to address service on respondent. However, the committee rejected this approach because adding the information provides clarity to both parties on when further service of the order is required. It would also inform law enforcement as to whether service is required for enforcement purposes, because this information would be entered into CLETS.

Fiscal and Operational Impacts

Commenting courts noted that resources would be needed to provide training, revise internal procedures, and update form packets and case management systems. All courts that responded indicated that three months for implementation would be sufficient.

Attachments and Links

1. Forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-715, DV-716, DV-720, DV-730, DV-800-INFO/ JV-270-INFO, DV-840/FL-840, EPO-001, at pages 10–79.
2. Chart of comments, at pages 80–103.
3. Link A: Assem. Bill 2369 (Stats. 2022, ch. 591), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2369*
4. Link B: Sen. Bill 935 (Stats. 2022, ch. 88), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB935*
5. Link C: Assem. Bill 1621 (Stats. 2022, ch. 76), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB1621*

DV-100 Request for Domestic Violence Restraining Order

Clerk stamps date here when form is filed.

Draft- Not approved by the Judicial Council

7.7.23

Instructions

To ask for a domestic violence restraining order, you will need to complete this form and other forms (see page 12 for list of forms). If this case includes sensitive information about a minor child (under 18 years old), see form DV-160-INFO, *Privacy Protection For a Minor (Person Under 18 Years Old) Domestic Violence Prevention* for more information on how to protect the child's information.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Person Asking for Protection

a. **Your name:** _____

b. **Your age:** _____

c. **Address where you can receive court papers**

(This address will be used by the court and by the person in 2 to send you official court dates, orders, and papers. For privacy, you may use another address like a post office box, a Safe at Home address, or another person's address, if you have their permission and can get your mail regularly. If you have a lawyer, give their information.)

Address: _____

City: _____ State: _____ Zip: _____

d. **Your contact information** *(optional)*

(The court could use this information to contact you. If you don't want the person in 2 to have this information, leave it blank or provide a safe phone number or email address. If you have a lawyer, give their information.)

Telephone: _____ Fax: _____

Email Address: _____

e. **Your lawyer's information** *(if you have one)*

Name: _____ State Bar No.: _____

Firm Name: _____

2 Person You Want Protection From

a. **Full name**: _____

b. **Age** *(give estimate if you do not know exact age):* _____

c. **Date of birth** *(if known):* _____

d. **Gender**: ☐ M ☐ F ☐ Nonbinary

e. **Race**: _____

This is not a Court Order.

3 Your Relationship to the Person in 2

(If you do not have one of these relationships with the person in 2, do not complete the rest of this form. You may be eligible for another type of restraining order. Learn more at https://selfhelp.courts.ca.gov/restraining-orders.)

(Check all that apply)

a. ☐ We have a child or children together *(names of children):* _____

_____

b. ☐ We are married or registered domestic partners.

c. ☐ We used to be married or registered domestic partners.

d. ☐ We are dating or used to date.

e. ☐ We are or used to be engaged to be married.

f. ☐ We are related. The person in 2 is my *(check all that apply):*

- ☐ Parent, stepparent, or parent-in-law
- ☐ Child, stepchild, or legally adopted child
- ☐ Child's spouse
- ☐ Brother, sister, sibling, step-sibling, or sibling in-law
- ☐ Grandparent, step-grandparent, or grandparent-in-law
- ☐ Grandchild, step-grandchild, or grandchild-in-law

g. ☐ We live together or used to live together. *(If checked, answer question below):*

Have you lived together with the person in 2 as a family or household (more than just roommates)?

☐ Yes ☐ No (If no, you do not qualify for this kind of restraining order unless you checked one of the other relationships listed above.)

4 Other Restraining Orders and Court Cases

a. Are there any restraining orders currently in place **or** that have expired in the last six months (examples: Did the police give you a restraining order that lasts a few days? Do you have one from the criminal court?)

☐ No

☐ Yes *(If yes, give information below and attach a copy if you have one.)*

(1) *(date of order):* _____ *(date it expires):* _____

(2) *(date of order):* _____ *(date it expires):* _____

b. Are you involved in any other court case with the person in 2?

☐ No

☐ Yes *(If you know, list where the case was filed (city, state, or tribe), the year it was filed, and case number.)*

- ☐ Custody _____
- ☐ Divorce _____
- ☐ Juvenile *(child welfare or juvenile justice):* _____
- ☐ Guardianship _____
- ☐ Criminal _____
- ☐ Other *(what kind of case?):* _____

This is not a Court Order.

Case Number:

Describe Abuse

In this section, explain how the person in (2) has been abusive. The judge will use this information to decide your request. Listed below are some examples of what "abuse" means under the law. **It is not a complete list** of all examples of abuse. Give information on any incident that you believe was abusive.

- made repeated unwanted contact with you
- tracked, controlled, or blocked your movements
- kept you from getting food or basic needs
- isolated you from friends, family, or other support
- made threats based on actual or suspected immigration status
- made you do something by force, threat, or intimidation
- stopped you from accessing or earning money
- tried to control/interfere with your contraception, birth control, pregnancy, or access to health information
- harassed you
- hit, kicked, pushed, or bit you
- injured you or tried to
- threatened to hurt or kill you
- sexually abused you
- abused a pet or animal
- destroyed your property
- choked or strangled you
- abused your children

(5) Most recent abuse

a. Date of abuse *(give an estimate if you don't know the exact date):* _____

b. Did anyone else hear or see what happened on this day?
☐ I don't know ☐ No ☐ Yes *(If yes, give names):* _____

c. Did the person in (2) use or threaten to use a gun or other weapon?
☐ No ☐ Yes *(If yes, describe gun or weapon):* _____

d. Did the person in (2) cause you any emotional or physical harm?
☐ No ☐ Yes *(If yes, describe harm):*

_____

e. Did the police come? ☐ I don't know ☐ No ☐ Yes *(If the police gave you a restraining order, list it in (4).)*

f. Give more details about how the person in (2) was abusive on this day. Details can include what was said, done, or sent to you (examples: text messages, emails, or pictures), how often something happened, etc.

_____
_____
_____
_____
_____
_____
_____
_____

g. How often has the person in (2) abused you like this?
☐ Just this once ☐ 2 –5 times ☐ Weekly ☐ Other: _____
Give dates or estimates of when it happened, if known:

_____
_____

This is not a Court Order.

6 Has the person in 2 abused you in a different way from the abuse you described in 5? If yes, describe below.

a. Date of abuse *(give an estimate if you don't know the exact date):* _____

b. Did anyone else hear or see what happened on this day?
☐ I don't know ☐ No ☐ Yes *(If yes, give names):* _____

c. Did the person in 2 use or threaten to use a gun or other weapon?
☐ No ☐ Yes *(If yes, describe gun or weapon):* _____

d. Did the person in 2 cause you any emotional or physical harm?
☐ No ☐ Yes *(If yes, describe harm):*
_____
_____

e. Did the police come? ☐ I don't know ☐ No ☐ Yes *(If the police gave you a restraining order, list it in 4.)*

f. Give more details about how the person in 2 was abusive on this day. Details can include what was said, done, or sent to you (examples: text messages, emails, or pictures), how often something happened, etc.
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

g. How often has the person in 2 abused you like this?
☐ Just this once ☐ 2–5 times ☐ Weekly ☐ Other: _____
Give dates or estimates of when it happened, if known:
_____
_____

This is not a Court Order.

7 Is there other abuse by the person in 2 that you want the judge to know about? If yes, describe below.

a. Date of abuse *(give an estimate if you don't know the exact date):* _____

b. Did anyone else hear or see what happened on this day?
☐ I don't know ☐ No ☐ Yes *(If yes, give names):* _____

c. Did the person in 2 use or threaten to use a gun or other weapon?
☐ No ☐ Yes *(If yes, describe gun or weapon):* _____

d. Did the person in 2 cause you any emotional or physical harm?
☐ No ☐ Yes *(If yes, describe harm):*

_____

_____

e. Did the police come? ☐ I don't know ☐ No ☐ Yes *(If the police gave you a restraining order, list it in 4.)*

f. Give more details about how the person in 2 was abusive on this day. Details can include what was said, done, or sent to you (examples: text messages, emails, or pictures), how often something happened, etc.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

g. How often has the person in 2 abused you like this?

☐ Just this once ☐ 2–5 times ☐ Weekly ☐ Other: _____

Give dates or estimates of when it happened, if known:

_____

_____

☐ **Check this box if you need more space to describe the abuse**. You can use form DV-101, *Description of Abuse*, and turn it in with this form. You can also use a separate sheet of paper, write "Describe Abuse" abuse at the top, and turn it in with this form.

This is not a Court Order.

8 Other Protected People

Do you want the restraining order to protect your children, family, or someone you live with?

a. ☐ No

b. ☐ Yes *(If yes, complete the section below):*

(1) Full name	Age	Relationship to you	Lives with you?
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No

☐ Check this box if you need to list more people. Use a separate piece of paper and write "DV-100, Other Protected People" at the top. Turn it in with this form.

(2) Why do these people need protection?

9 Does Person in 2 Have Firearms (Guns), Firearm Parts, or Ammunition?

(A firearm includes a handgun, rifle, shotgun, and assault weapon. A firearm part means a receiver or frame or any item that may be used as or easily turned into a receiver or frame. Ammunition includes bullets, shells, cartridges, and clips.)

a. ☐ I don't know

b. ☐ No

c. ☐ Yes *(If you have information, complete the section below.)*

Describe Firearms (Guns), Firearm Parts, or Ammunition	Number or Amount	Location, if known
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		

This is not a Court Order.

Case Number:

Choose the Orders That You Want a Judge to Make

In this section, you will choose the orders you want a judge to make now. Every situation is different. Choose the orders that fit your situation.

Check all the orders that you want a judge to make (order).

10 ☐ Order to Not Abuse

I ask the judge to order the person in (2) to not do the following things to me or anyone listed in (8):
Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, keep under surveillance, impersonate (on the internet, electronically, or otherwise), block movements, annoy by phone or other electronic means (including repeatedly contact), or disturb the peace. (For more information on what "disturbing the peace" means, read form DV-500-INFO, *Can A Domestic Violence Restraining Order Help Me?*)

11 ☐ No-Contact Order

I ask the judge to order the person in (2) to not contact me or anyone listed in (8).

12 ☐ Stay-Away Order

a. I ask the judge to order the person in (2) to stay away from:

(Check all that apply)

☐ Me.
☐ My home.
☐ My job or workplace.
☐ My vehicle.
☐ My school.
☐ Each person in (8).
☐ My children's school or childcare.
☐ Other *(please explain):* _____

b. How far do you want the person to stay away from all the places you checked above?

☐ 100 yards (300 feet) ☐ Other *(give distance in yards):* _____

c. Do you and the person in (2) live together or live close to each other?

☐ No ☐ Yes *(If yes, check one):*
- ☐ Live together *(If you live together, you can ask that the person in (2) move out in (13).)*
- ☐ Live in the same building, but not in the same home
- ☐ Live in the same neighborhood
- ☐ Other *(please explain):* _____

d. Do you and the person in (2) have the same workplace or go to the same school?

☐ No ☐ Yes *(If yes, check all that apply):*
- ☐ Work together at *(name of company):* _____
- ☐ Go to the same school *(name of school):* _____
- ☐ Other *(please explain):* _____

This is not a Court Order.

13 ☐ Order to Move Out

a. I ask the judge to order the person in (2) to move out of the home, located at:
(Give address): _____

b. I have a right to live at this address because:

(Check all that apply)

- ☐ I own the home.
- ☐ My name is on the lease.
- ☐ I live at this address with my child(ren).
- ☐ I have lived at this address for _____ years, _____ months.
- ☐ I pay for some or all the rent or mortgage.
- ☐ Other *(please explain):* _____

14 ☐ Other Orders

(Describe any additional orders you want the judge to make to keep you, your children, or the people in (8) safe.):

15 ☐ Child Custody and Visitation

(Check this box if you have a child with the person in (2) and want the judge to make or change a child custody or visitation order. **You must fill out** form DV-105**, *Request for Child Custody and Visitation Orders*, and attach it to this form.**)

Orders that you can request on form DV-105 include:

- Child custody
- Stop person in (2) from accessing your child's school or medical information
- No visits with your children
- Supervised (monitored) visits with your children
- Unsupervised (unmonitored) visits with your children

This is not a Court Order.

16 ☐ Protect Animals

a. (You may ask the court to protect your animals, your children's animals, or the person in 2's animals.)

Name *(or other way to ID animal)*	Type of animal	Breed *(if known)*	Color
(1)			
(2)			
(3)			
(4)			

b. I ask the judge to protect the animals listed above by ordering the person in 2 to:

(Check all that apply)

(1) ☐ Stay away from the animals by at least: ☐ 100 yards (300 feet) ☐ Other *(number of yards):* _____

(2) ☐ **Not** take, sell, hide, molest, attack, strike, threaten, harm, get rid of, transfer, or borrow against the animals.

(3) ☐ Give me sole possession, care, and control of the animals because *(check all that apply):*

☐ Person in 2 abuses the animals. ☐ I take care of these animals.
☐ I purchased these animals. ☐ Other *(please explain):* _____

17 ☐ Control of Property

a. I ask the judge to give **only me** temporary use, possession, and control of the property listed here *(describe):*

b. Explain why you want control of the property you listed:

18 ☐ Health and Other Insurance

I ask the judge to order the person in 2 to **not** make any changes to any insurance or other coverage for me, the person in 2, or our children, including not being allowed to cancel, cash, borrow against, transfer, dispose of, or change the beneficiaries for the insurance.

19 ☐ Record Communications

I ask the judge to allow me to record calls or communications the person in 2 makes to me, when those calls or communications violate this restraining order.

This is not a Court Order.

20 ☐ Property Restraint *(only if you are married or a registered domestic partner with the person in 2.)*

I ask the judge to order the person in 2 **not to** borrow against, sell, hide, or get rid of or destroy any possessions or property, except in the usual course of business or for necessities of life. I also ask the judge to order the person in 2 to notify me of any new or big expenses and to explain them to the court.

21 ☐ Extend My Deadline to Give Notice to Person in 2

(Usually, the judge will give you about two weeks to give notice, or to "serve" the person in 2 of your request. If you need more time to serve, the judge may be able to give you a few extra days.)

I ask the judge to give me more time to serve the person in 2 because *(explain why you need more time):*

_____

22 ☐ Pay Debts (Bills) Owed for Property

(If you want the person in 2 to pay any debts owed for property, list them and explain why. The amount can be for the entire bill or only a portion. Some examples include rent, mortgage, car payment, etc.)

a. I ask the judge to order the person in 2 to make these payments while the restraining order is in effect:

(1) Pay to: _____ For: _____ Amount: $ _____ Due date: _____

(2) Pay to: _____ For: _____ Amount: $ _____ Due date: _____

(3) Pay to: _____ For: _____ Amount: $ _____ Due date: _____

Explain why you want the person in 2 to pay the debts listed above:

_____

_____

_____

_____

b. **Special decision (finding) by the judge if you did not agree to the debt** *(optional)*

(If you did not agree to the debt or debts listed above, you can ask the judge to decide (find) that one or more debts was made without your permission and resulted from the person in 2's abuse. This may help you defend against the debt if you are sued in another case.)

Do you want the judge to make this special decision (finding)?

☐ No ☐ Yes *(If yes, answer the questions below.)*

(1) Which of the debts listed above resulted from the abuse? *(check all that apply):*

☐ a(1) ☐ a(2) ☐ a(3)

(2) Do you know how the person in 2 made the debt or debts?

☐ No ☐ Yes

(If yes, explain how the person in 2 made the debt or debts):

_____

_____

_____

This is not a Court Order.

Case Number:

Orders That You Want a Judge to Make at Your Court Date

Below is a list of orders that a judge cannot make right away but can make at your court date in a few weeks. The person in (2) must be notified of your court date before the judge can consider making any of the orders listed below. Check all the orders that you want the judge to make at your court date.

(23) ☐ Pay Expenses Caused by the Abuse

I ask the judge to order the person in (2) to pay for things **caused directly** by the person in (2) (damaged property, medical care, counseling, temporary housing, etc.). Bring proof of these amounts to your court date.

Pay to: _____ For: _____ Amount: $ _____
Pay to: _____ For: _____ Amount: $ _____

(24) ☐ Child Support *(this only applies if you have a minor child with the person in (2))*

(Check all that apply)

a. ☐ I do not have a child support order and I want one.
b. ☐ I have a child support order and I want it changed *(attach a copy if you have one)*.
c. ☐ I now receive or have applied for TANF, Welfare, or CalWORKS.

(25) ☐ Spousal Support *(this only applies if you are married or a registered domestic partner with person in (2))*

I ask the judge to order the person in (2) to give me financial assistance.

(26) ☐ Lawyer's Fees and Costs

I ask that the person in (2) pay for some or all of my lawyer's fees and costs. (If you ask for fees and costs and the court grants your restraining order, the court must award you fees and costs if the respondent can afford to pay.)

(27) ☐ Batterer Intervention Program

I ask the judge to order the person listed in (2) to go to a 52-week batterer intervention program.
(The goal of this program is to stop abuse. There are weekly classes on accountability, abuse effects, and gender roles. If ordered, the person in (2) has to show the judge that they enrolled and completed the program.

(28) ☐ Transfer of Wireless Phone Account

(If the person in (2) holds the rights to your cell phone account, you can ask the judge to transfer your number or your child's number to you. This means you will be financially responsible for these accounts. If you want to have control over a mobile device, like a cell phone, make this request at (17).)

I ask the judge to order the wireless service provider to transfer the billing responsibility and rights to the wireless phone numbers listed below to me because the account currently belongs to the person in (2):

a. ☐ My number ☐ Number of child in my care (including area code): _____
b. ☐ My number ☐ Number of child in my care (including area code): _____

This is not a Court Order.

Case Number:

Automatic Orders if the Judge Grants Restraining Order

29 No Firearms (Guns), Firearm Parts, or Ammunition

If the judge grants you a restraining order, the person in (2) must turn in, sell, or store any firearms (guns), firearm parts, or ammunition that they have or control. The person in (2) would also be prohibited from buying firearms (guns), firearm parts, and ammunition.

30 Cannot Look for Protected People

If the judge grants you a restraining order, the person in (2) will not be allowed to look for the address or location of any person protected by the restraining order, unless the court finds good cause not to make this order.

31 Additional pages

If you used additional paper or forms, enter the number of extra pages attached to this form: _____

32 Your signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

33 Your lawyer's signature *(if you have one)*

Date: _____

_____ ▶ _____

Lawyer's name *Lawyer's signature*

Your Next Steps

1. **You must complete at least three additional forms**:
   - Form DV-110, *Temporary Restraining Order (only items 1, 2 and 3)*
   - Form DV-109, *Notice of Court Hearing (only items 1 and 2)*
   - Form CLETS-001, *Confidential CLETS Information*
   - **If you are asking for child custody and visitation orders**, you must complete form DV-105, *Request for Child Custody and Visitation Orders*, and form DV-140, *Child Custody and Visitation Order*.
2. Turn in your completed forms to the court. Find out when your forms will be ready for you.
3. Once you get your forms back from the court, have someone "serve" a copy of all forms on the person in (2). The sheriff or marshal can do this for free. See form SER-001, *Request for Sheriff to Serve Court Papers*. Learn more about service at *https://selfhelp.courts.ca.gov/sheriff-serves-your-request-restraining-order*.
4. If you are asking for child support or spousal support you must also complete form FL-150, *Income and Expense Declaration*. If you are only asking for child support, you may be eligible to fill out a simpler form, FL-155. Read form DV-570 to see if you are eligible. Turn in your completed form to the court before your court date. You must also have someone mail or personally deliver a copy to the person in (2).

This is not a Court Order.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

DV-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

Draft- Not approved by the Judicial Council 7.31.23

Instruction: The person asking for a restraining order must complete items (1) and (2). The court will complete the rest of this form.

(1) Person Asking for Protection

Name: _____

(2) Person to Be Restrained

Name: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(3) Notice of Hearing

A court hearing is scheduled on the request for restraining orders against the person in (2):

Name and address of court if different from above:

Date: _____ Time: _____

Dept.: _____ Room: _____

You may attend your court date remotely, such as by phone or videoconference. For more information, go to the court's website for the county listed above. To find the court's website, go to: *www.courts.ca.gov/find-my-court.htm*.

To the person in (2):

- If you attend the hearing (in person, by phone, or by videoconference) and the judge grants a restraining order against you, the order will be effective immediately, and you could be arrested if you violate the order.
- If you do not attend the hearing, the judge may still grant the restraining order that could last up to five years. After you receive a copy of the order, you could be arrested if you violate the order.

(4) Temporary Restraining Orders (Any orders granted are attached on form DV-110.)

a. Temporary Restraining Orders *(any order requested under Family Code section 6320): (check one)*

(1) ☐ All **granted** until the court hearing.

(2) ☐ All **denied** until the court hearing. *(Reasons for denial are given below in b.)*

(3) ☐ Partly **granted** and partly **denied** until the court hearing. *(Reasons for denial are given in b.)*

4 b. ☐ Reasons for denial of some or all of the orders requested on form DV-100.

(1) ☐ The facts given in the request (form DV-100) do not show reasonable proof of a past act or acts of abuse. (Family Code sections 6300, 6320, and 6320.5.)

(2) ☐ The facts given in the request do not give enough detail about the most recent incidents of abuse, including what happened, the dates, who did what to whom, or any injuries or history of abuse.

(3) ☐ Other reasons for denial:

_____

5 Confidential Information Regarding Minor

a. ☐ A *Request to Keep Minor's Information Confidential* (form DV-160) was made and **granted** (see form DV-165, *Order on Request to Keep Minor's Information Confidential*, served with this form.)

b. **If the request was granted, the information described on the order (form DV-165, item 7) must be kept CONFIDENTIAL. The disclosure or misuse of the information is punishable as a sanction, with a fine of up to $1,000 or other court penalties.**

6 Service of Documents by the Person in 1

At least ☐ five ☐ _____ days before the hearing, someone age 18 or older—**not you or anyone to be protected—**must personally give (serve) a court file-stamped copy of this form (DV-109, *Notice of Court Hearing)* to the person in 2 along with a copy of all the forms indicated below:

a. DV-100, *Request for Domestic Violence Restraining Order* (file-stamped)

b. ☐ DV-110, *Temporary Restraining Order* (file-stamped), **if granted**

c. DV-120, *Response to Request for Domestic Violence Restraining Order* (blank form)

d. DV-120-INFO, *How Can I Respond to a Request for Domestic Violence Restraining Order?*

e. ☐ DV-170, *Notice of Order Protecting Information of Minor,* and DV-165, *Order on Request to Keep Minor's Information Confidential* (file-stamped), **if granted**

f. ☐ Other *(specify):* _____

Judge's Signature

Date: _____ _____

Judicial Officer

Case Number:

To the Person in 1:

- **At the hearing**: The judge will decide if a restraining order is needed to keep you or your children safe. If the judge grants you a restraining order at the hearing, it can last up to five years. You must attend the hearing if you want the judge to make any of the orders you requested on form DV-100. Bring any evidence or witnesses you have. For more information, read **form DV-520-INFO**, *Get Ready for Your Restraining Order Court Hearing*.
- **Option to cancel hearing**: If item 4a(2) or 4a(3) is checked, you have the option of canceling the hearing. If you cancel the hearing, your request for restraining order will not move forward. Any temporary orders made will expire on the day of the hearing. If you want to cancel the hearing, use **form DV-112**, *Waiver of Hearing on Denied Request for Temporary Restraining Order*.
- **Before the hearing:** You must have someone personally serve (give) the person in 2 a copy of all the papers listed in 6 by the deadline listed in 6. For more information, read form DV-200-INFO, *What Is "Proof of Personal Service"?* You may ask to reschedule the hearing if you are unable to serve the person in 2 and need more time to serve the documents, or for other good reasons. Read form DV-115-INFO, *How to Ask for a New Hearing Date*.

To the Person in 2:

- **Respond in writing** (optional): You can respond in writing by completing form DV-120, *Response to Request for Domestic Violence Restraining Order*. For more information, read **form DV-120-INFO**, *How Can I Respond to a Request for Domestic Violence Restraining Order?*
- **At the hearing**: Whether or not you respond in writing, attend the hearing if you want the judge to hear from you before making an order. At the hearing, tell the judge why you agree or disagree with the orders requested. Bring any evidence or witnesses you have. Read **form DV-520-INFO**, *Get Ready for Your Restraining Order Court Hearing.*
- If you are unable to attend your court hearing or need more time to prepare your case, you may ask the judge to reschedule your court date. Read form DV-115-INFO, *How to Ask for a New Hearing Date*.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Disability Accommodation Request* (form MC-410). (Civil Code section 54.8.)

(Clerk will fill out this part.)

Clerk's Certificate
[seal]

—Clerk's Certificate—

I certify that this *Notice of Court Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

DV-110 Temporary Restraining Order

☐ **Original Order** ☐ _____ **Amended Order**

Instruction: The person asking for a restraining order must complete (1), (2), and (3) only. The court will complete the rest of this form.

Clerk stamps date here when form is filed.

Draft- Not approved by the Judicial Council 7.31.23

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(1) Protected Person *(name):* _____

(2) Restrained Person

***Full Name**: _____

***Gender**: ☐ M ☐ F ☐ Nonbinary ***Race**: _____

***Age**: _____ *(estimate, if age unknown)* Date of Birth: _____

Height: _____ Weight: _____

Hair Color: _____ Eye Color: _____

Relationship to person in (1): _____

Address of restrained person: _____

City: _____ State: _____ Zip: _____

Firearms, firearm parts, or ammunition that restrained person may have:
(Include information from form DV-100, item 9)

_____

_____

_____

(**Information that has a star (*) next to it is required** to add this order into a California police database. Give all the information you know.)

(3) ☐ Other Protected People

In addition to the person named in (1), the people listed below are protected by the orders listed in (8) through (11).

Full name	Relationship to person in (1)	Age

☐ Check here if you need to list more people. List them on a separate piece of paper, write "DV-110, Other Protected People" at the top, and attach it to this form.

(The court will complete the rest of this form)

(4) Your Hearing Date (Court Date)

This order expires at the end of the hearing listed below:

Hearing Date: _____ Time: _____ ☐ a.m. ☐ p.m.

This order must be enforced throughout the United States. See page 7.

This is a Court Order.

Case Number:

To the Person in (2)

The judge has granted temporary orders. See (5) through (20). If you do not obey these orders, you can be charged with a crime, go to jail or prison, and/or pay a fine. It is a felony to take or hide a child in violation of this order.

(5) No Firearms (Guns), Firearm Parts, or Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get any prohibited item listed below in b.

b. **Prohibited items are:**

(1) Firearms (guns);

(2) Firearm parts, meaning receivers, frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531); and

(3) Ammunition.

c. Within 24 hours of receiving this order, you must sell to or store with a licensed gun dealer, or turn in to law enforcement, any prohibited items you have in your immediate possession or control.

d. If law enforcement asks you for your prohibited items, you must turn them over immediately.

e. Within 48 hours of receiving this order, you must file a receipt with the court that proves all prohibited items have been turned in, sold, or stored. (You may use form DV-800/JV-270, *Receipt for Firearms, Firearm Parts, and Ammunition*.) If law enforcement served you with the restraining order, you must give a copy of the receipt to that law enforcement agency.

(6) ☐ Restrained Person Has Prohibited Items

The court finds that you have the following prohibited items:

a. Firearms and/or firearm parts

Description *(include serial number, if known)*	Location, if known	Proof of compliance received by the court
(1)		☐ *(date):*
(2)		☐ *(date):*
(3)		☐ *(date):*
(4)		☐ *(date):*

b. Ammunition

Description	Amount, if known	Location, if known	Proof of compliance received by the court
(1)			☐ *(date):*
(2)			☐ *(date):*
(3)			☐ *(date):*
(4)			☐ *(date):*

This is a Court Order.

7 ☐ Court Hearing to Review Firearms (Guns), Firearm Parts, and Ammunition Compliance

In addition to the hearing listed on form DV-109, item 3, you must attend the court hearing listed below to prove that you have properly turned in, sold, or stored all prohibited items (described in 5b) you still have or own, including any items listed in 6. If you do not attend the court hearing listed below, a judge may find that you have violated the restraining order and notify law enforcement and a prosecuting attorney of the violation.

Date: _____ Dept.: _____
Time: _____ Room: _____

Name and address of court, if different than court address listed on page 1

_____
_____
_____

8 Cannot Look for Protected People

You must not take any action to look for any person protected by this order, including their addresses or locations.

☐ If checked, this order was **not granted** because the judge found good cause not to make the order.

9 Order to Not Abuse ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

You must not do the following things to the person in 1 and any person listed in 3:

- Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, keep under surveillance, impersonate (on the internet, electronically, or otherwise), block movements, annoy by phone or other electronic means (including repeatedly contact), or disturb the peace.
- "Disturb the peace" means to destroy someone's mental or emotional calm. This can be done directly or indirectly, such as through someone else. This can also be done in any way, such as by phone, over text, or online. Disturbing the peace includes coercive control.
- "Coercive control" means a number of acts that unreasonably limit the free will and individual rights of any person protected by this restraining order. Examples include isolating them from friends, relatives, or other support; keeping them from food or basic needs; controlling or keeping track of them, including their movements, contacts, actions, money, or access to services; and making them do something by force, threat, or intimidation, including threats based on actual or suspected immigration status. Coercive control includes reproductive coercion meaning controlling someone's reproductive choices, such as using force, threat, or intimidation to pressure someone to be or not be pregnant, and to control or interfere with someone's contraception, birth control, pregnancy, or access to health information.

This is a Court Order.

10 No-Contact Order ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

a. You must **not contact** ☐ the person in (1) ☐ the persons in (3) directly or indirectly, by any means, including by telephone, mail, email, or other electronic means.

b. ☐ Exception to 10a:

(1) ☐ You may have brief and peaceful contact with the person in (1) only to communicate about your children for court-ordered visits.

(2) ☐ You may have contact with your children only during court-ordered contact or visits.

(3) ☐ Other *(explain):* _____

c. Peaceful written contact through a lawyer or process server or another person for service of legal papers related to a court case is allowed and does not violate this order.

11 Stay-Away Order ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

a. You must stay at least *(specify):* _____ yards away from *(check all that apply):*

☐ Person in (1).
☐ Home of person in (1).
☐ Job or workplace of person in (1).
☐ Vehicle of person in (1).
☐ School of person in (1).
☐ Persons in (3).
☐ Children's school or child care.
☐ Other *(explain):* _____

b. ☐ Exception to 11a:

The stay-away orders do not apply:

(1) ☐ For you to exchange your children for court-ordered visits. You must do so briefly and peacefully.

(2) ☐ For you to visit with your children for court-ordered contact or visits.

(3) ☐ Other *(explain):* _____

12 Order to Move Out ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

You must take only personal clothing and belongings needed until the hearing and move out immediately from *(address):* _____

13 Other Orders ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

_____

_____

_____

_____

_____

This is a Court Order.

14 Child Custody and Visitation ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

Granted on the attached form DV-140, *Child Custody and Visitation Order*, and

☐ *(list other form):* _____ .

15 Protect Animals ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

a. ☐ You must stay at least _____ yards away from the animals listed below.

b. ☐ You must not take, sell, hide, molest, attack, strike, threaten, harm, get rid of, transfer, or borrow against the animals.

c. ☐ The person in 1 is given the sole possession, care, and control of the animals listed below.

Name *(or other way to ID animal)*	Type of animal	Breed *(if known)*	Color

16 Control of Property ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

Until the hearing, **only** the person in 1 can use, control, and possess the following property:

_____

_____

_____

17 Health and Other Insurance ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person ☐ in 1 ☐ in 2 is ordered **not** to cash, borrow against, cancel, transfer, dispose of, or change the beneficiaries of any insurance or coverage held for the benefit of the parties —or their children, if any —for whom support may be ordered, or both.

18 Record Communications ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person in 1 may record communications made by the person in 2 that violate this order.

This is a Court Order.

Case Number:

19 Property Restraint ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person ☐ in 1 ☐ in 2 must not transfer, borrow against, sell, hide, or get rid of or destroy any property, including animals, except in the usual course of business or for necessities of life. In addition, each person must notify the other of any new or big expenses and explain them to the court. (If the court granted 8, the person in 2 must not contact the person in 1. To notify the person in 1 of new or big expenses, have a server mail or personally give the information to the person in 1 or contact their lawyer, if they have one.)

20 Pay Debts Owed for Property ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person in 2 must make these payments until this order ends:

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

21 Orders That May Be Made at the Hearing Date (Court Date)

If the person in 1 checked any of these orders on form DV-100, a judge could grant them at your court date.

- **Child Support**
- **Lawyer's Fees and Costs**
- **Batterer Intervention Program**
- **Spousal Support**
- **Pay Expenses Caused by Abuse**
- **Transfer of Wireless Phone Account**

22 No Fee to Serve (Notify) Restrained Person

The sheriff or marshal will serve this order for free. If you want the sheriff to serve your papers, complete form SER-001, *Request for Sheriff to Serve Court Papers*. Give SER-001 and a copy of this order to the sheriff.

23 ☐ Attached pages *(All of the attached pages are part of this order.)*

a. Number of pages attached to this nine-page form: _____

b. Attachments include forms *(check all that apply):*

☐ DV-140 ☐ DV-145 ☐ DV-820 ☐ Other: _____

Judge's Signature

Date: _____

_____

Judge or Judicial Officer

This is a Court Order.

Certificate of Compliance With VAWA

This temporary protective order meets all "full faith and credit" requirements of the Violence Against Women Act, 18 U.S.C. section 2265 (1994) (VAWA), upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

Warnings and Notices to the Restrained Person in ②

Your Address to Receive Court Orders

If the judge makes a restraining order at the hearing (court date), which has the same orders as in this Temporary Restraining Order, you will get a copy of that order by mail at your last known address, which is written in ② on page 1. If your address was not listed on this form or is incorrect, contact the court. If you did not attend your hearing and want to know if the judge granted a restraining order against you, contact the court.

Child Custody, Visitation, and Support

- **Child custody and visitation:** If you do not attend your hearing (court date), the judge can make custody and visitation orders for your children without hearing from you.
- **Child support:** The judge can order child support based on the income of both parents. The judge can also have that support taken directly from a parent's paycheck. Child support can be a lot of money, and usually you have to pay until the child is age 18. File and serve **form FL-150**, *Income and Expense Declaration,* or **form FL-155**, *Financial Statement (Simplified),* if you want the judge to have information about your finances. Otherwise, the court may make support orders without hearing from you.
- **Spousal support:** File and serve **form FL-150**, *Income and Expense Declaration,* so the judge will have information about your finances. Otherwise, the court may make support orders without hearing from you.

Firearms (Guns), Firearm Parts, and Ammunition

Under California law, you cannot have any firearms (guns), certain firearm parts, or ammunition. (Family Code sections 6216 and 6389(a)). Ask the court for information on how to properly turn in, sell, or store these items in your city or county. You can also contact your local police department for instructions.

This is a Court Order.

Instructions for Law Enforcement

This order is effective when made. It is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency shall advise the restrained person of the terms of the order and then shall enforce it. Violations of this order are subject to criminal penalties.

Duties of Officer Serving This Order

The officer who serves this order on the Restrained Person must do the following:

- Ask if the Restrained Person is in possession of any of the prohibited items listed in (6), or has custody or control of any that they have not already turned in.
- Order the Restrained Person to immediately surrender to you all prohibited items.
- Issue a receipt to the Restrained Person for all prohibited items that have been surrendered.
- Complete a proof of personal service and file it with the court. You may use form DV-200 for this purpose.

  Within one business day of service, submit the proof of service directly into the California Restraining and Protective Order System (CARPOS), including the serving officer's name and law enforcement agency.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Penal Code sections 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, the orders remain in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Penal Code section 13710(b).)

Child Custody and Visitation

Child custody and visitation orders are listed on form DV-140 or another attached form. If the judge made these orders, look at (10) and (11) of this order to see if the judge granted an exception for brief and peaceful contact with the person in (1) as needed to follow court-ordered visits. Contact by the person in (2) that is **not** brief and peaceful is a violation of this order. **Forms DV-100 and DV-105 are not orders. Do not enforce them.**

This is a Court Order.

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Penal Code section 136.2 and Family Code sections 6383(h)(2), 6405(b)):

1. **Emergency Protective Order (EPO):** If one of the orders is an *Emergency Protective Order* (form EPO-001), provisions (e.g., stay away order) that are more restrictive than in the other restraining/protective orders must be enforced. Provisions of another order that do not conflict with the EPO must be enforced.
2. **No-Contact Order:** If a restraining/protective order includes a no-contact order, the no-contact order must be enforced. Item (10) is an example of a no-contact order.
3. **Criminal Protective Order (CPO):** If none of the orders include an EPO or a no-contact order, the most recent CPO must be enforced. (Family Code sections 6383(h)(2) and 6405(b).) Additionally, a CPO issued in a criminal case involving charges of domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil court order. (Penal Code section 136.2(e)(2).) All provisions in the civil court order that do not conflict with the CPO must be enforced.
4. **Civil Restraining Orders:** If there is more than one civil restraining order (e.g., domestic violence, juvenile, elder abuse, civil harassment), then the order that was issued last must be enforced. Provisions that do not conflict with the most recent civil restraining order must be enforced.

(The clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Temporary Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

DV-120 Response to Request for Domestic Violence Restraining Order

Clerk stamps date here when form is filed.

Draft- Not approved by the Judicial Council 8.6.23

Use this form if someone has asked for a domestic violence restraining order against you, and you want to respond in writing. You will need a copy of form DV-100, *Request for Domestic Violence Restraining Order*, that was filled out by the person who asked for a restraining order against you. There is no cost to file this form with the court.
Do not use this form if you want to ask for your own restraining order. Read form DV-500-INFO, *Can a Domestic Violence Restraining Order Help Me?* to find out more about this type of restraining order.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Name of Person Asking for Protection:

(See form DV-100, item 1):

_____

2 Your Name: _____

Address where you can receive court papers

(**This address will be used by the court and by the person in 1 to send you official court dates, orders, and papers**. For privacy, you may use another address like a post office box, a Safe at Home address, or another person's address, if you have their permission and can get your mail regularly. If you have a lawyer, give their information.)

Address: _____

City: _____ State: _____ Zip: _____

Your contact information *(optional)*

(The court could use this information to contact you. If you don't want the person in 1 to have this information, leave it blank or provide a safe phone number or email address. If you have a lawyer, give their information.)

Email Address: _____ Telephone: _____ Fax: _____

Your lawyer's information *(if you have one)*

Name: _____ State Bar No.: _____

Firm Name: _____

3 Your Hearing Date (Court Date)

Your hearing date is listed on form DV-109, *Notice of Court Hearing*. If you do not agree to having a restraining order against you, attend your hearing date. If you do not attend your hearing, the judge could grant a restraining order that could last up to five years.

This is not a Court Order.

How to complete this form: To answer the questions below, look at the form DV-100 filled out by the person in (1). Tip: When the restraining order forms say "the person in (2)" that means you, and the "person in (1)" means the person who is asking for a restraining order against you.

4 Information About You *(see item 2 on form DV-100)*

The person in (1) listed your name, age, gender, and date of birth. If any of the information is incorrect, use the space below to give the correct information.

5 Your Relationship to the Person in (1)

In item (3) of form DV-100, has the person in (1) correctly described your relationship with them?

☐ Yes ☐ No If no, what is your relationship with the person in (1)?:

6 History of Court Cases and Restraining Orders *(see item 4 on form DV-100)*

The person in (1) may have listed other court cases or restraining orders involving you. If information is incorrect or missing, use the space below to give information.

☐ Check here if you are including a copy of restraining order or court order that you want the judge to know about.

7 ☐ Other Protected People

If the judge grants a restraining order, it can include family or household members of the person in (1). See item (8) on form DV-100 to see if the person in (1) is asking for other people to be protected by the restraining order.

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to:

8 ☐ Order to Not Abuse *(see item 10 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to:

This is not a Court Order.

9 ☐ **No-Contact Order** *(see item 11 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

10 ☐ **Stay-Away Order** *(see item 12 on form DV-100)*

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

11 ☐ **Order to Move Out** *(see item 13 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

12 ☐ **Other Orders** *(see item 14 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

13 ☐ **Child Custody and Visitation** *(see item 15 on form DV-100 and DV-105)*

a. ☐ I am **not** the parent of the child listed in form DV-105, *Request for Child Custody and Visitation Orders*

b. ☐ I am the parent of the child or children listed in form DV-105 *(check one):*

(1) ☐ I agree to the orders requested.

(2) ☐ I do not agree to the orders requested. (Complete form DV-125, *Response to Request for Child Custody and Visitation Orders*, and attach it to this form.)

This is not a Court Order.

14 ☐ **Protect Animals** *(see item 16 on form DV-100)*

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

15 ☐ **Control of Property** *(see item 17 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

16 ☐ **Health and Other Insurance** *(see item 18 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

17 ☐ **Record Communications** *(see item 19 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

18 ☐ **Property Restraint** *(see item 20 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

19 ☐ **Pay Debt (Bills) Owed for Property** (*see item 22 on form DV-100*)

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

This is not a Court Order.

20 ☐ **Pay Expenses Caused by the Abuse** *(see item 23 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

21 ☐ **Child Support** *(see item 24 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

c. ☐ I agree to pay guideline child support. *(Learn more about guideline child support at www.courts.ca.gov/selfhelp-support.htm.)*

22 ☐ **Spousal Support** *(see item 25 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

23 ☐ **Lawyer's Fees and Costs**

If the person in 1 checked item 26 on form DV-100, this means that they have asked the judge to order you to pay their lawyer's fees and costs. You may also ask for lawyer's fees and costs. The judge can order the person in 1 to pay for your lawyer's fees and cost if:

(1) The person in 1's request for restraining order is denied;

(2) The judge decides that the request was frivolous or was made only to abuse, intimidate, or cause unneeded delay; and

(3) The person in 1 can afford to pay for your lawyer's fees and costs.

☐ Check here if you want the person in 1 to pay for some or all of your lawyer's fees and costs.

24 ☐ **Batterer Intervention Program** *(see item 27 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

This is not a Court Order.

25 ☐ Transfer Wireless Phone Account *(see item 28 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

26 Firearms (Guns), Firearm Parts, or Ammunition *(see item 29 on form DV-100)*

If you were served with form DV-110, *Temporary Restraining Order*, you must follow the orders in 5 on form DV-110. You must file a receipt with the court from the law enforcement agency or a licensed gun dealer within 48 hours after you received form DV-110. You may use form DV-800/JV-270, *Receipt for Firearms, Firearm Parts, and Ammunition*.

(Check all that apply)

a. ☐ I do not own or have any prohibited items (firearms (guns), prohibited firearm parts, or ammunition).

b. ☐ I have turned in all prohibited items that I have or own to law enforcement or sold/stored them with a licensed gun dealer. A copy of the receipt showing that I turned in, sold, or stored the prohibited items *(check all that apply):* ☐ is attached ☐ has already been filed with the court.

c. ☐ I ask for an exception to carry a firearm for work only. (You will have to show the judge that your work requires you to have a firearm, and that your employer cannot reassign you to another position where a firearm is not needed. If you are a peace officer, there are additional requirements.)

(Give details, like what your job is and why you need a firearm): _____

_____

27 Cannot Look for Protected People *(see item 30 on form DV-100)*

a. ☐ I agree to the order.

b. ☐ I do not agree to the order.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

28 ☐ Additional Reasons I Do Not Agree with the Request *(optional)*

Explain why you do not agree to any of the orders requested by the person in 1 *(give specific facts and reasons):*

_____

_____

_____

_____

_____

_____

☐ Check here if you need more space. Attach a sheet of paper and write "DV-120, Additional Reasons I Do Not Agree with the Request" at the top.

This is not a Court Order.

29 ☐ My Out-of-Pocket Expenses

If the request for restraining order is denied by the judge at the court hearing, I ask the judge to order the person in 1 to pay my out-of-pocket expenses because the temporary restraining order was granted without enough supporting facts. The expenses are:

For: _____ Because: _____ Amount: $ _____

For: _____ Because: _____ Amount: $ _____

For: _____ Because: _____ Amount: $ _____

30 Additional Pages

Number of pages attached to this form, if any: _____

31 Your signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

32 Your lawyer's signature *(if you have one)*

Date: _____

_____ ▶ _____

Lawyer's name *Lawyer's signature*

Your Next Steps

- Turn in your completed form with the court.
- If the person in 1 asked for child support, spousal support, or lawyer's fees, you must complete form FL-150, *Income and Expense Declaration*. If the person in 1 is only asking for child support (item 24 on form DV-100), you may be eligible to fill out a simpler form, form FL-155. Read form DV-570 to see if you are eligible to fill out form FL-155. Before your court date, you must file form FL-150 or FL-155 with the court.
- Have someone else (not you) mail the person in 1 a copy of your forms, and complete form DV-250, *Proof of Service by Mail*. File form DV-250 with the court. *(The person who mails this form must be at least 18 years old and cannot be you or someone protected on the restraining order.)*
- Prepare for your court date by gathering evidence or witnesses, if you have any. Learn more at *https://selfhelp.courts.ca.gov/respond-domestic-violence-restraining-order*. More information is also available on form DV-120-INFO, *How Can I Respond to a Request for Domestic Violence Restraining Order?*

This is not a Court Order.

DV-120-INFO How Can I Respond to a Request for Domestic Violence Restraining Order?

I was served with form DV-100, DV-109, or DV-110. What does this mean?

Someone has asked for a domestic violence restraining order against you. On the forms, you are the "person in (2)" and the person who wants a restraining order against you is listed in (1) on all the forms.

Form DV-100: This form has all the orders that the person in (1) has asked the judge to order.

Form DV-109: Your court hearing (court date) is listed on this form. You should attend the court hearing if you do not agree to the orders requested. If you do not attend, the judge can make orders against you without hearing from you.

Form DV-110: If you were served with form DV-110, it means that the judge granted a temporary restraining order against you. You must follow the orders.

What is a Domestic Violence Restraining Order?

It is a court order that can help protect people who have been abused by someone they have been intimate with, or are closely related to. To be eligible, the person asking for the restraining order must be:

- Someone you date or used to date
- A spouse, ex-spouse, registered domestic partner, or ex-domestic partner
- Someone you live or lived with (more than a roommate)
- Your parent, sibling, child, grandparent, or grandchild related by blood, marriage, or adoption

What can a restraining order do?

A restraining order can include orders for you to:

- Not contact or harm the protected person, including children or others listed as protected people
- Stay away from all protected people and places
- Not have any firearms (guns), firearm parts, or ammunition. This includes homemade or untraceable guns, like "ghost guns."
- Move out of the place that you share with the protected person
- Follow custody and visitation orders
- Pay child support
- Pay spousal support
- Pay debt for property
- Give control of property (examples: cell phone, car, home) to the person asking for protection.

What if I have children with the person asking for a restraining order?

A restraining order can include orders for your children, including listing them as protected persons. It can also include child custody and visitation orders and orders to limit your ability to travel with your children.

How long does the order last?

If the judge granted a temporary restraining order (form DV-110), it will last until the hearing date. At your court hearing, the judge will decide whether to extend the order or cancel the order. The judge can extend the order for up to five years. Custody, visitation, child support, and spousal support orders can last longer than five years and they do not end when the restraining order ends.

DV-120-INFO How Can I Respond to a Request for Domestic Violence Restraining Order?

What do I do next?

Part 1: Turn in or sell prohibited items

If there is a temporary restraining order against you (see form DV-110), then you must immediately turn in, sell, or store any prohibited items you have or own. Prohibited items include:

- **Firearms**, including any handgun, rifle, shotgun, and assault weapon
- **Firearm parts,** meaning receivers, frames, and any item that may be used as or easily turned into a receiver or frame
- **Ammunition**, including bullets, shells, cartridges, and clips

You must then prove to the court that you've complied with the orders. Bring form DV-800/JV-270, *Receipt for Firearms, Firearm Parts, and Ammunition*, to a gun dealer or law enforcement when you turn in your items. After DV-800/JV-270 is complete, file it with the court. You may ask the court for information on how to turn in, sell, or store these items in your city or county. You can also read form DV-800-INFO/JV-270-INFO, *How Do I Turn In, Sell, Or Store My Firearms, Firearm Parts, and Ammunition?*.

Part 2: Respond in writing (optional)

"Respond" means to let the judge and the other side know whether you agree or disagree with the request for restraining order, and why. Responding in writing is optional and there is no penalty if you don't. If you need more time to prepare for your case, talk to a lawyer or self-help center staff before you file a response.

If you want to respond in writing, complete form DV-120, *Response to Request for Domestic Violence Restraining Order*. After you complete the form, file it with the court. There is no court fee to file this form. Then "serve" the form on the person asking for the restraining order. "Serve" means to have someone 18 years old or older mail a copy to the person asking for the restraining order. You cannot be the one to mail your papers. The person who mails your form must fill out form DV-250, *Proof of Service by Mail*. After form DV-250 is completed, file it with the court.

Part 3: Get ready and go to your court hearing

Your court hearing is listed on form DV-109, *Notice of Court Hearing*. You have the option of attending your hearing in-person or remotely (by phone, or videoconference if available). For information on how to attend your hearing remotely, go to the court's website. Some courts may require advance notice. At the hearing, you and the other side will have the opportunity to tell your side of the story. For more information, read form DV-520-INFO, *Get Ready for the Restraining Order Court Hearing*. If you need more time to prepare your case, you may ask the judge for a new court date. The judge will decide whether to grant your request. Read form DV-115-INFO, *How to Ask For a New Hearing Date*, for more information. Note that if the judge does give you a new court date and if there is a temporary restraining order against you, the judge will usually extend the temporary restraining order until the next court date.

What if I need an interpreter?

You may use form INT-300 to request an interpreter or ask the clerk how you can request one.

What if I have a disability and need an accommodation?

You may use form MC-410 to request assistance. Contact the disability/ADA coordinator at your local court for more information.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms.htm* for *Disability Accommodation Request* (form MC-410). (Civil Code section 54.8.)

DV-120-INFO How Can I Respond to a Request for Domestic Violence Restraining Order?

Do I need a lawyer?

It's possible to go through this process without a lawyer. But having a restraining order against you may have a lot of consequences, and you may want to hire a lawyer. If you don't hire a lawyer, you can get free help from your court's self-help center.

What if I was arrested or have criminal charges against me?

Anything you write in your court papers or say at a hearing for this case and for any criminal case can be used against you. Talk to a lawyer if you have any concerns about what you can do and say.

Where can I find a self-help center?

Free legal help is available at your court's self-help center. Find your local court's self-help center at *www.selfhelp.courts.ca.gov/find*. Self-help center staff will not act as your lawyer but may be able to give you information to help you decide what to do in your case, and help you with the forms. Staff may also refer you to other agencies who may be able to help you.

What if I don't obey the order?

The police can arrest you. You can go to jail and pay a fine. You must still follow the orders even if you are not a U.S. citizen. If you are worried about your immigration status, talk to an immigration lawyer.

Can I use the restraining order to get divorced or end a domestic partnership?

No. These forms will not end your marriage or registered domestic partnership. You must file other forms to end your marriage or registered domestic partnership.

What if I want to leave the county or state?

You must still comply with the restraining order, including custody and visitation orders. The restraining order is valid anywhere in the United States.

What if I have more than one restraining order against me?

If the police are called to enforce the order, they will need to follow the rules of enforcement (see "Priority of Enforcement" listed on the back of form DV-110, DV-130, and CR-160). If you have questions about any of the orders against you, contact your local self-help center or talk to a lawyer. Find your local court's self-help center at *www.selfhelp.courts.ca.gov/find*.

What if I am a victim or survivor of domestic violence?

The National Domestic Violence Hotline provides free and private safety tips. Help is available in over 100 languages. Visit online at *www.thehotline.org* or call 1-800-799-7233; 1-800-787-3224 (TTY).

What if I need a restraining order against the other person?

Do not use form DV-120 to request a domestic violence restraining order. For information on how to file your own restraining order, read form DV-505-INFO. You can also ask the court clerk about free or low-cost legal help.

Information about the court process is also available online

https://selfhelp.courts.ca.gov/respond-to-DV-restraining-order

DV-130 Restraining Order After Hearing (Order of Protection)

☐ **Original Order** ☐ _____ **Amended Order**

Clerk stamps date here when form is filed.

Draft- Not approved by the Judicial Council 7.11.23

Fill in court name and street address:

Superior Court of California, County of

Clerk fills in case number when form is filed.

Case Number:

1 Protected Person *(name):* _____

2 Restrained Person

***Full Name**: _____

***Gender**: ☐ M ☐ F ☐ Nonbinary ***Race**: _____

***Age**: _____ *(estimate, if age unknown)* Date of Birth: _____

Height: _____ Weight: _____

Hair Color: _____ Eye Color: _____

Relationship to person in 1: _____

Address of restrained person: _____

City: _____ State: _____ Zip: _____

(**Information that has a star (*) next to it is required** to add this order into a California police database. Give all the information you know.)

3 ☐ Other Protected People

In addition to the person in 1, the following persons are protected by orders as indicated in 11 through 14.

Full name	Relationship to person in 1	Age

☐ Check here if you need to list more people. List them on a separate piece of paper, write "DV-130, Other Protected People" at the top, and attach it to this form.

4 Expiration Date

This restraining order, except the orders noted below,* end on:

(date): _____ at *(time):* _____ ☐ a.m. ☐ p.m. or ☐ midnight

***Custody, visitation, child support, and spousal support orders remain in effect after the restraining order ends. Custody, visitation, and child support orders usually end when the child is 18.**

- If no date is written, the restraining order ends three years after the date of the hearing in 5a.
- If no time is written, the restraining order ends at midnight on the expiration date.

This order must be enforced throughout the United States. See page 9.

This is a Court Order.

5 Hearing

a. The hearing was on *(date):* _____ with *(name of judicial officer):* _____

b. These people attended the hearing *(check all that apply)*:

☐ The person in 1 ☐ The lawyer for the person in 1 *(name):* _____

☐ The person in 2 ☐ The lawyer for the person in 2 *(name):* _____

6 ☐ Future Court Hearing

The ☐ person in 1 ☐ person in 2 must attend court on:

Date: _____ Department: _____

Time: _____ ☐ a.m. ☐ p.m. to review *(list issues):* _____

_____

To the Person in 2

The court has granted a long-term restraining order. See 7 through 29. If you do not obey these orders, you can be charged with a crime, go to jail or prison, and/or pay a fine. It is a felony to take or hide a child in violation of this order.

7 No Firearms (Guns), Firearm Parts, or Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get any prohibited item listed below in b.

b. **Prohibited items are:**

(1) Firearms;

(2) Firearm parts, meaning receivers, frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531); and

(3) Ammunition.

c. Within 24 hours of receiving this order, you must sell to or store with a licensed gun dealer, or turn in to law enforcement, any prohibited items you have in your immediate possession or control.

d. If law enforcement asks you for your prohibited items, you must turn them over immediately.

e. Within 48 hours of receiving this order, you must file a receipt with the court that proves all prohibited items have been turned in, sold, or stored. (You may use form DV-800/JV-270, *Receipt for Firearms, Firearm Parts, and Ammunition*.) If law enforcement served you with the restraining order, you must give a copy of the receipt to that law enforcement agency.

f. ☐ Limited Exemption: The judge has made the necessary findings to grant an exemption under Family Code section 6389(h). Under California law, the person in 2 is not required to relinquish this firearm *(make, model, and serial number of firearm):* _____ but must only have it during scheduled work hours and to and from their place of work. Even if exempt under California law, the person in 2 may be subject to federal prosecution for possessing or controlling a firearm.

This is a Court Order.

8 ☐ Restrained Person Has Prohibited Items

The court finds that you have the following prohibited items:

a. **Firearms and/or firearm parts**

Description *(include serial number, if known)*	Location, if known	Proof of compliance received by the court
(1)		☐ *(date):*
(2)		☐ *(date):*
(3)		☐ *(date):*
(4)		☐ *(date):*

b. **Ammunition**

Description	Amount, if known	Location, if known	Proof of compliance received by the court
(1)			☐ *(date):*
(2)			☐ *(date):*
(3)			☐ *(date):*
(4)			☐ *(date):*

☐ Check here to list additional items. List them on a separate piece of paper, write "DV-130, Restrained Person Has Prohibited Items" at the top, and attach it to this form.

9 ☐ Restrained Person Has Not Complied With Surrendering Prohibited Items

a. The court finds that you have not fully complied with the orders previously granted on *(date):* _____
The court has not received a receipt or proof of compliance for all the items listed in 8.

b. Notify Law Enforcement
The court will immediately notify the following law enforcement agency of this violation
(law enforcement agency or agencies): _____

c. Notify Prosecutor
The court will immediately notify the following prosecuting agency of this violation
(prosecuting agency): _____

10 ☐ Court Hearing to Review Firearms (Guns), Firearm Parts, and Ammunition Compliance

You must attend the court hearing in 6 to prove that you have properly turned in, sold, or stored all prohibited items (described in 7 b) you still have or own, including any items listed in 8. If you do not attend the court hearing listed in 6, a judge may find that you have violated the restraining order and notify law enforcement and a prosecuting attorney of the violation.

This is a Court Order.

11 Cannot Look for Protected People

You must not take any action to look for any person protected by this order, including their addresses or locations.

☐ If checked, this order was not granted because the court found good cause not to make this order.

12 ☐ Order to Not Abuse

You must not do the following things to the person in 1 and any person listed in 3:

- Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, keep under surveillance, impersonate (on the internet, electronically, or otherwise), block movements, annoy by phone or other electronic means (including repeatedly contact), or disturb the peace.
- "Disturb the peace" means to destroy someone's mental or emotional calm. This can be done directly or indirectly, such as through someone else. This can also be done in any way, such as by phone, over text, or online. Disturbing the peace includes coercive control.
- "Coercive control" means a number of acts that unreasonably limit the free will and individual rights of any person protected by this restraining order. Examples include isolating them from friends, relatives, or other support; keeping them from food or basic needs; controlling or keeping track of them, including their movements, contacts, actions, money, or access to services; and making them do something by force, threat, or intimidation, including threats based on actual or suspected immigration status. Coercive control includes reproductive coercion meaning controlling someone's reproductive choices, such as using force, threat, or intimidation to pressure someone to be or not be pregnant, and to control or interfere with someone's contraception, birth control, pregnancy, or access to health information.

13 ☐ No-Contact Order

a. You must **not contact** ☐ the person in 1, ☐ the persons in 3, directly or indirectly, by any means, including by telephone, mail, email, or other electronic means.

b. ☐ Exception to 13a:

(1) ☐ You may have brief and peaceful contact with the person in 1 to only communicate about your children for court-ordered visits.

(2) ☐ You may have contact with your children only during court-ordered contact or visits.

(3) ☐ Other *(explain):* _____

c. Peaceful written contact through a lawyer or process server or another person for service of legal papers related to a court case is allowed and does not violate this order.

This is a Court Order.

14 ☐ Stay-Away Order

a. You **must** stay at least *(specify):* _____ yards away from *(check all that apply):*

- ☐ Person in (1).
- ☐ Home of person in (1).
- ☐ Job or workplace of person in (1).
- ☐ Vehicle of person in (1).
- ☐ School of person in (1).
- ☐ Persons in (3).
- ☐ Children's school or child care.
- ☐ Other *(specify):* _____

b. ☐ Exception to 14a:

The stay-away orders do not apply:

(1) ☐ For you to exchange your children for court-ordered visits. You must do so briefly and peacefully.

(2) ☐ For you to visit with your children for court-ordered contact or visits.

(3) ☐ Other *(explain):* _____

15 ☐ Order to Move Out

You must move out immediately from *(address):*

_____

16 ☐ Other Orders

_____

_____

17 ☐ Child Custody and Visitation Order

The judge has granted orders regarding minor children. The orders are included on **form DV-140**,

and *(list other form):* _____

18 ☐ Protect Animals

a. ☐ You must stay at least _____ yards away from the animals listed below.

b. ☐ You must not take, sell, hide, molest, attack, strike, threaten, harm, get rid of, transfer, or borrow against the animals.

c. ☐ The person in (1) is given the sole possession, care, and control of the animals listed below.

Name *(or other way to ID animal)*	Type of animal	Breed *(if known)*	Color

This is a Court Order.

19 ☐ Control of Property

Only the person in 1 can use, control, and possess the following property:

_____

_____

_____

_____

_____

20 ☐ Health and Other Insurance

The person ☐ in 1 ☐ in 2 is ordered **not** to cash, borrow against, cancel, transfer, dispose of, or change the beneficiaries of any insurance or coverage held for the benefit of the parties, or their children, if any, for whom support may be ordered, or both.

21 ☐ Record Communications

The person in 1 may record communications made by the person in 2 that violate this order.

22 ☐ Property Restraint

The person ☐ in 1 ☐ in 2 must not transfer, borrow against, sell, hide, or get rid of or destroy any property, including animals, except in the usual course of business or for necessities of life. In addition, each person must notify the other of any new or big expenses and explain them to the court. (If the court granted the order in 13, the person in 2 must not contact the person in 1. To notify the person in 1 of new or big expenses, have a server mail or personally give the information to the person in 1 or contact their lawyer, if they have one.)

23 ☐ Pay Debts (Bills) Owed for Property

a. You must make these payments until this order ends:

(1) Pay to: _____ For: _____ Amount: $ _____ Due date: _____

(2) Pay to: _____ For: _____ Amount: $ _____ Due date: _____

(3) Pay to: _____ For: _____ Amount: $ _____ Due date: _____

b. ☐ The court finds that the debt or debts listed above in ☐ a(1) ☐ a(2) ☐ a(3) were the result of abuse in this case, and made without the person in 1's agreement.

This is a Court Order.

24 ☐ Pay Expenses Caused by the Abuse

You must pay the following:

Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____

25 ☐ Child Support

Child support is ordered on the attached form FL-342, *Child Support Information and Order Attachment* or *(list other form):* _____

26 ☐ Spousal Support

Spousal support is ordered on the attached form FL-343, *Spousal, Partner, or Family Support Order Attachment* or *(list other form):* _____

27 ☐ Lawyer's Fees and Costs

You must pay the following lawyer's fees and costs:

Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____

28 ☐ Batterer Intervention Program

a. The person in (2) must go to and pay for a probation certified 52-week batterer intervention program and show proof of completion to the court.

b. The person in (2) must enroll by *(date):* _____ or if no date is listed, must enroll within 30 days after the order is made.

c. The person in (2) must complete, file, and serve form DV-805, *Proof of Enrollment for Batterer Intervention Program.*

29 ☐ Transfer of Wireless Phone Account

The court has made an order transferring one or more wireless service accounts from you to the person in (1). These orders are contained on form DV-900, *Order Transferring Wireless Phone Account*.

This is a Court Order.

30 Service

(Check a, b, or c)

a. ☐ **No other proof of service is needed**. The people in 1 and 2 attended the hearing, either physically or remotely (by telephone or videoconference), or agreed in writing to this order.

b. ☐ **The person in 2 was not present.** Proof of service of form DV-109 and form DV-110 (if issued) was presented to the court. *(Check all that apply):*

(1) ☐ This order can be served by mail. The judge's orders in this form are the same as in form DV-110 except for the expiration date. The person in 2 must be served, either by mail or in person.

(2) ☐ This order must be personally served. The judge's orders in this form are different from the orders in form DV-110, or form DV-110 was not issued. The person in 2 must be personally served (given) a copy of this order.

(3) ☐ The court has scheduled a firearms and ammunition compliance hearing. The person in 1 must have a copy of this order served on the person in 2 by:

(a) ☐ Personal service by *(date):* _____

(b) ☐ Mail at the person in 2's last known address by *(date):* _____

c. ☐ **Proof of service of form FL-300 to modify the orders in form DV-130 was presented to the court.**

(1) ☐ The people in 1 and 2 attended the hearing or agreed in writing to this order. No other proof of service is needed.

(2) ☐ The person ☐ in 1 ☐ in 2 did not attend the hearing and must be personally served (given) a copy of this amended (modified) order.

31 No Fee to Serve (Notify) Restrained Person

The sheriff or marshal will serve this order for free. If you want the sheriff to serve your papers, (1) complete form SER-001, *Request for Sheriff to Serve Court Papers*, and (2) give the completed form and a copy of this order to the sheriff.

32 ☐ Attached pages

All of the attached pages are part of this order.

a. Number of pages attached to this 10-page form: _____

b. Attachments include forms *(check all that apply):*

☐ DV-140 ☐ DV-145 ☐ DV-900 ☐ FL-341(C) ☐ FL-342 ☐ FL-343 ☐ Other: _____

Judge's Signature

Date: _____

_____

Judge or Judicial Officer

This is a Court Order.

Certificate of Compliance With VAWA

This restraining (protective) order meets all "full faith and credit" requirements of the Violence Against Women Act, 18 U.S.C. section 2265 (1994) (VAWA) upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

Instructions for Law Enforcement

Start Date and End Date of Orders

This order starts on the earlier of the following dates:

- The hearing date in (5)a on page 2; or
- The date next to the judge's signature on this page.

This order ends on the expiration date in (4). If no date is listed, they end three years from the hearing date.

Duties of Officer Serving This Order

The officer who serves this order on the Restrained Person must do the following:

- Ask if the Restrained Person is in possession of any of the prohibited items listed in (7)b, or has custody or control of any that they have not already turned in.
- Order the Restrained Person to immediately surrender to you all prohibited items.
- Issue a receipt to the Restrained Person for all prohibited items that have been surrendered.
- Complete a proof of personal service and file it with the court. You may use form DV-200 for this purpose.
- Within one business day of service, submit the proof of service directly into the California Restraining and Protective Order System (CARPOS), including the serving officer's name and law enforcement agency.

Enforcing the Restraining Order in California

Any law enforcement officer in California who receives, sees, or verifies the orders on a paper copy, in the California Law Enforcement Telecommunications System (CLETS), or in an NCIC Protection Order File must enforce the orders.

Notice/Proof of Service

Law enforcement must first determine if the restrained person had notice of the orders. If notice cannot be verified, the restrained person must be advised of the terms of the orders. If the restrained person then fails to obey the orders, the officer must enforce them. (Family Code section 6383.)

Consider the restrained person "served" (notified) if:

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; *or*
- The restrained person attended the hearing (see (30)) or was informed of the order by an officer. (Family Code section 6383; Penal Code section 836(c)(2).) An officer can obtain information about the contents of the order in the California Restraining and Protective Order System (CARPOS). (Family Code section 6381(b)-(c).)

This is a Court Order.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Penal Code sections 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, the orders remain in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Penal Code section 13710(b).)

Child Custody and Visitation

Child custody and visitation orders are listed on form DV-140 or another attached form. If the judge made these orders, look at (13) and (14) of this order to see if the judge granted an exception for brief and peaceful contact with the person in (1) as needed to follow court-ordered visits. Contact by the person in (2) that is **not** brief and peaceful is a violation of this order.

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Penal Code section 136.2 and Family Code sections 6383(h)(2), 6405(b)):

1. **Emergency Protective Order (EPO):** If one of the orders is an *Emergency Protective Order* (form EPO-001), provisions (e.g., stay away order) that are more restrictive than in the other restraining/protective orders must be enforced. Provisions of another order that do not conflict with the EPO must be enforced.
2. **No-Contact Order:** If a restraining/protective order includes a no-contact order, the no-contact order must be enforced. Item (13) is an example of a no-contact order.
3. **Criminal Protective Order (CPO):** If none of the orders include an EPO or a no-contact order, the most recent CPO must be enforced. (Family Code sections 6383(h)(2) and 6405(b)). Additionally, a CPO issued in a criminal case involving charges of domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil court order. (Penal Code section 136.2(e)(2)). All provisions in the civil court order that do not conflict with the CPO must be enforced.
4. **Civil Restraining Orders:** If there is more than one civil restraining order (e.g., domestic violence, juvenile, elder abuse, civil harassment), then the order that was issued last must be enforced. Provisions that do not conflict with the most recent civil restraining order must be enforced.

(The clerk will fill out this part.)

Clerk's Certificate
[seal]

—Clerk's Certificate—

I certify that this *Restraining Order After Hearing (Order of Protection)* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

DV-700 Request to Renew Restraining Order

Clerk stamps below when form is filed.

Draft- Not approved by the Judicial Council
8.6.23
Changes are substantial and not highlighted.

Instructions
Use this form to renew *Restraining Order After Hearing* (form DV-130), or a juvenile restraining order (form JV-255 or JV-265) based on domestic violence. For more information about how to renew a restraining order, read form DV-700-INFO, *How Do I Ask the Court to Renew My Restraining Order*.)

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Your Name: _____

Address where you can receive court papers
(This address will be used by the court and by the person in 2 to send you official court dates, orders, and papers. For privacy, you may use another address like a post office box, a Safe at Home address, or another person's address, if you have their permission and can get your mail regularly. If you have a lawyer, give their information.)

Address: _____
City: _____ Zip: _____ State: _____

Your contact information *(optional)*
(The court could use this information to contact you. If you don't want the person in 2 to have this information, leave it blank or provide a safe phone number or email address. If you have a lawyer, give their information.)

Telephone: _____ Fax: _____
Email Address: _____

Your lawyer's information *(if you have one)*

Name: _____ State Bar No.: _____
Firm Name: _____

2 Name of Restrained Person _____

This is not a Court Order.

3 Request to Renew

a. When does your current restraining order expire?
(Expiration date: month, day, year): _____

b. Has the order been renewed before?
☐ No ☐ Yes *(If yes, how many times?)* _____

c. How long do you want the restraining order to be renewed for? *(check one)*
☐ Five years ☐ Permanently ☐ Other *(any length more than five years)*: _____

(**Attach a copy of your current restraining order.** Your current restraining order would be on form DV-130, DV-730, JV-255, or JV-265, and must have a judge's signature or stamp.)

4 Reason for Renewal

(In this section, explain why you want the judge to renew your restraining order.)

(Check all that apply)

a. ☐ **I am afraid or worried that the person in 2 might abuse me in the future because:**

(For information about what "abuse" means under the law, go to form DV-500-INFO, *Can a Domestic Violence Restraining Order Help Me?*)

This is not a Court Order.

4 b. ☐ **The person in 2 has violated the order**

(**Note**: For the judge to grant your request, you do not have to prove to the judge that the person in 2 violated the order. But this information can help the judge make a decision, if it applies in your case.)

(1) Date violation happened *(give estimate if you don't know the date):* _____

Explain what the person in 2 did: _____

How often has the person in 2 violated the order like this?

☐ Just this once ☐ 2–5 times ☐ Weekly ☐ Other: _____

Give dates of other violations or estimates of when they happened, if known:

(2) Date other violation happened *(give estimate if you don't know the date):* _____

Explain what the person in 2 did: _____

How often has the person in 2 violated the order like this?

☐ Just this once ☐ 2–5 times ☐ Weekly ☐ Other: _____

Give dates of other violations or estimates of when they happened, if known:

c. ☐ **Other reason or violation *(explain):***

☐ *Check here if you need more space. Attach a sheet of paper and write "Form DV-700, Reason for Renewal" for a title.*

This is not a Court Order.

5 ☐ Lawyer's Fees and Costs

I ask that the person in (2) pay for some or all of my lawyer's fees and costs. (If you ask for fees and costs and the court grants your restraining order, the court must award you fees and costs if the respondent can afford to pay.)

6 Your Signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____
Type or print your name

▶ _____
Sign your name

7 Your lawyer's signature *(if you have one)*

Date: _____

_____
Lawyer's name

▶ _____
Lawyer's signature

Your Next Steps

- After you complete this form, complete items 1 and 2 of form DV-710, *Notice of Hearing to Renew Restraining Order*.
- File this form and form DV-710 with the court clerk. You must do this before your restraining order expires.
- Once you get your forms back from the court, have someone "serve" a copy of all forms on the person in (2). The sheriff or marshal can do this for free. See form SER-001, *Request for Sheriff to Serve Court Papers*. Learn more about service at *https://selfhelp.courts.ca.gov/sheriff-serves-your-request-restraining-order*.
- Learn more about how to prepare for your hearing at *https://selfhelp.courts.ca.gov/DV-restraining-order/renew/court.*

This is not a Court Order.

DV-700-INFO How Do I Ask the Court to Renew My Restraining Order?

What does "renew" mean?

It means to extend your current restraining order (form DV-130). If renewed, the judge would extend it for at least five years, or make the order permanent (no expiration).

When do I ask for a renewal?

You must ask to renew your restraining order before your current restraining order expires. The expiration date is listed on the first page of your current restraining order. You can make the request up to three months before your order expires. Give yourself enough time, if possible, to fill out and file all the required paperwork before your order expires.

What if I want to renew a juvenile restraining order in Family Court?

If you have a juvenile restraining order (on form JV-255 or JV-265), that was based on domestic violence and the juvenile case has closed, you can ask the judge to renew your restraining order. Your restraining order is based on domestic violence if it was granted to protect you or your child from the other parent, or to protect you from someone you dated or had an intimate relationship with. If you are not sure whether your juvenile restraining order was based on domestic violence, talk to your lawyer. If you do not have a lawyer, your local self-help center may be able to help you. Find your local court's self-help center at *www.selfhelp.courts.ca.gov/find*.

Is there a court fee to ask for a renewal?

No.

WIll I have to go to court?

Yes, if you ask for a renewal, you will get a court date. At your court hearing, the judge will ask you why you want your restraining order renewed. If you do not attend your hearing, your restraining order will not be renewed.

What if I also want to change (modify) my restraining order?

There is another process to ask to change your restraining order. If you ask to renew your restraining order, and also ask to change your restraining order, you can ask the judge to decide both requests at the same time. For information on how to ask to change your order, read form DV-400-INFO, *How Do I Ask to Change or End a Domestic Violence Restraining Order After Hearing*?

What if my restraining order expired but I still want protection?

You are not eligible for a renewal if you have not filed your request to renew before your restraining order expired. You can still ask for protection by filing another request for restraining order. For more information, read form DV-505-INFO, *How to Ask for a Domestic Violence Restraining Order.*

What if my restraining order has been renewed before? Can I ask to renew it again?

Yes, a judge can renew your restraining order more than once. Follow the steps on the next page to ask for a renewal.

What if I've moved and want to file my request to renew in another county?

If you want to file your request in another county in California, you may ask the judge in your case to move (transfer) your case. This is called changing venue. For more information about how to make this request, your local self-help center may be able to help you, or contact a lawyer for advice.

Steps to ask for a renewal

① Complete two forms:

- Form DV-700, *Request to Renew Restraining Order*; and
- Form DV-710, *Notice of Hearing to Renew Restraining Order* (items 1 and 2 only).

② File forms with court

File both forms with the court clerk. Make sure you include a copy of your current restraining order (form DV-130, JV-255, or JV-265) with form DV-700. You can file in person or electronically. For more information on how or where to file, go to the court's website.

③ Get your papers back from the court

Make sure you get at least two copies back: one for you and one to have served on the restrained person.

④ Have restrained person served with papers

You must have an adult personally give a copy of all the court papers (all forms listed on form DV-710, item 5) to the person you want a restraining order against. It cannot be you or anyone listed on the restraining order. Your server must then complete a proof of service (form DV-200). Make a copy of the completed form DV-200 and file it with the court.

Serving papers can be a dangerous situation. If you want the sheriff to serve your papers, they will do so for free. If you want the sheriff to serve your papers, complete form SER-001, *Request for Sheriff to Serve Court Papers*. Give the sheriff a copy of the completed form and all papers that need to be served on the other side (all forms listed on form DV-710, item 5). For more information on service, go to *https://selfhelp.courts.ca.gov/DV-restraining-order/renew/sheriff-serves*.

If you can't serve the restrained person before your court hearing, you will need to ask the judge to reschedule your court hearing. Fill out and file forms DV-715 and DV-716. The judge will review your request and decide whether to reschedule your court hearing. If you do not receive a signed copy of form DV-716 from the judge before your court date or the judge denied your request to reschedule your hearing, you *must* attend your court date (listed on form DV-710 or DV-716) if you still want to renew your restraining order.

⑤ Get ready for and attend your court hearing

At your court hearing, the judge will decide whether to grant your request to renew your restraining order. What you will need to prove at your court hearing will depend on if the other side attends the hearing:

- If the restrained person does not attend the hearing, the judge can renew your restraining order based on only your request.
- If the restrained person attends the hearing and does not agree to the renewal, then you must prove that you have a reasonable fear or concern that there is enough risk of further abuse if the order is not renewed. The further abuse can be different from the abuse that led to your restraining order. But you don't have to prove that you've been abused by the person since the restraining order has been in effect. The abuse that led to your restraining order may be enough to renew it.

At the hearing, you and the other side will have the opportunity to tell your side of the story. Bring any evidence or witnesses you have.

If you don't want to attend your court hearing in person, go to the court's website to find out more information about attending by phone or videoconference. For information on your court hearing, go to *https://selfhelp.courts.ca.gov/DV-restraining-order/renew/court.*

DV-700-INFO How Do I Ask the Court to Renew My Restraining Order?

What if the judge renews my restraining order?

1. You will need form DV-730, *Order to Renew Domestic Violence Restraining Order*, signed by the judge. If the court does not complete this form for you, make sure you complete it and give it to the court clerk. Contact the court's self-help center if you need help.

2. You will need to get copies of form DV-730, once it is signed by the judge. Ask the court clerk when your forms will be ready. There is no fee for turning in this form, and you should receive some free copies.

3. Look at form DV-730 to see if the judge ordered you to serve the form by mail or in person. If you are ordered to serve the form by mail, this means your server only has to mail a copy of the restraining order. But serving someone in person is always best. When you mail court papers, it may be hard to prove that the person actually received a copy, especially if the person moves a lot. Learn more about service at *https://selfhelp.courts.ca.gov/DV-restraining-order/renew/serve-order.*

Where can I find free help?

Free legal help is available at your court's self-help center. Find your local court's self-help center at *www.selfhelp.courts.ca.gov/find*. Self-help center staff will not act as your lawyer but may be able to give you information to help you decide what to do in your case, and help you with the forms. Staff may also refer you to other agencies who may be able to help you.

What if I need an interpreter?

You may use form INT-300 to request an interpreter or ask the clerk how you can request one.

What if I have a disability and need an accommodation?

You may use form MC-410 to request assistance. Contact the disability/ADA coordinator at your local court for more information.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms.htm* for *Disability Accommodation Request* (form MC-410). (Civil Code section 54.8.)

Information about this process is also available online

https://selfhelp.courts.ca.gov/DV-restraining-order/renew

What if I am worried about my safety?

The National Domestic Violence Hotline provides free and private safety tips. Help is available every day, 24 hours a day, and in over 100 languages. Visit online at *www.thehotline.org* or call 1-800-799-7233; 1-800-787-3224 (TTY).

DV-710 Notice of Hearing to Renew Restraining Order

Clerk stamps date here when form is filed.

Draft- Not approved by the Judicial Council-8.7.23

Changes are substantial and not highlighted.

Instruction: The protected person must complete (1) and (2) only. The court will complete the rest of this form.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(1) Protected Person *(name):*

(2) Restrained Person *(full name):*

Address of restrained person:

City: State: Zip:

(3) Court Hearing

The judge has set a court hearing (court date) for the request to renew restraining order.

The *Restraining Order After Hearing (Order of Protection)* stays in effect until the expiration date on that order or the end of the hearing below, whichever is later.

Date: Time:

Dept.: Room:

Name and address of court, if different from above:

(4) To the person in (2):

- You **must** continue to obey the current restraining order until the expiration date on the current order or the hearing date, whichever is later.
- At the hearing: The judge can renew the current restraining order for at least five years or make it permanent. You can tell the judge why you agree or disagree with the request to renew the orders.
- If you do not attend the hearing, the judge can still renew the restraining order. If the judge renews the order you should receive a copy of the order at the address listed in (2). If your address is incorrect or not listed, contact the court.
- If the restraining order is renewed, you *must* obey the orders even if you do not attend the hearing. If you did not attend the hearing and want to know if the judge renewed the order, contact the court.
- If you want to respond in writing to the request to renew the restraining order, fill out form DV-720, *Response to Request to Renew Restraining Order*. File the original with the court, and have someone 18 or over—**not you**—mail a copy of it to the person in (1) before the hearing. Also file form DV-250, *Proof of Service by Mail*, with the court before the hearing, and bring a copy to the court hearing.

This is a Court Order.

5 To the Person in 1

a. You must have the person in 2 personally served with a copy of all the forms listed below in 5b by *(date of deadline):* _____

b. Forms to serve:

- DV-700, *Request to Renew Restraining Order* (file stamped);
- DV-710, *Notice of Hearing to Renew Restraining Order* (this form);
- DV-720, *Response to Request to Renew Restraining Order* (blank copy); and
- The current *Restraining Order After Hearing (Order of Protection)* that you want to renew (form DV-130, JV-255 or JV-265).

("Service" means someone 18 or over—not you or anyone else protected by the restraining order—must personally give the court forms to the person in 2. After the person has been served, file form DV-200, *Proof of Personal Service,* with the court clerk, and bring a copy to the court hearing. For help with service, read form DV-200-INFO, *What Is"Proof of Personal Service"?*

6 No Fee to Serve (Notify) Restrained Person

The sheriff or marshal will serve this order for free. If you want the sheriff to serve your papers, (1) complete form SER-001, *Request for Sheriff to Serve Court Papers,* and (2) give form SER-001 and a copy of this order to the sheriff.

Judge's Signature

Date: _____ _____

Judge or Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Disability Accommodation Request* (form MC-410). (Civil Code section 54.8.)

(Clerk will fill out this part.)

Instructions to Clerk: The court must enter this order into CLETS or send this order to law enforcement to enter into CLETS. This must be done within one business day from the day the order is made.

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this *Notice of Hearing to Renew Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____ , Deputy

DV-715 Request to Reschedule Hearing to Renew Restraining Order

Clerk stamps date here when form is filed.

Draft- Not approved by the Judicial Council

8.6.23

Instructions
Either party may use this form to ask the court to reschedule the hearing (court date) listed on form DV-710, *Notice of Hearing to Renew Restraining Order*.

Note: if your hearing is rescheduled, the restraining order will be extended until the new court hearing.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Your Information

a. Name: _____

b. Who are you in this case?:

☐ Protected party *(skip to 2)*

☐ Restrained party *(give your contact information below).*

(!) Address where you can receive court papers
(This address will be used by the court and by the other party to send you official court dates, orders, and papers. For privacy, you may use another address like a post office box, a Safe at Home address, or another person's address, if you have their permission and can get your mail regularly. If you have a lawyer, give their information.)

Address: _____
City: _____ State: _____ Zip: _____

(!) Your contact information *(optional)*
(The court could use this information to contact you. If you don't want the other party to have this information, leave it blank or provide a safe phone number or email address. If you have a lawyer, give their information.)

Telephone: _____ Fax: _____
Email Address: _____

Your lawyer's information *(if you have one)*

Name: _____ State Bar No.: _____
Firm Name: _____

2 Information About Your Case

a. The other party in this case is *(full name):* _____

b. The court date is currently scheduled for *(date):* _____

This is not a Court Order.

Case Number:

3 Why does your court date need to be rescheduled?

a. ☐ I need more time to have the restrained party personally served.

b. ☐ Other reason:

_____

_____

_____

_____

4 Your Signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

5 Your Lawyer's Signature *(if you have one)*

Date: _____

_____ ▶ _____

Lawyer's name *Lawyer's signature*

Your Next Steps

- Complete form DV-716, *Order to Reschedule Hearing to Renew Restraining Orders* (only items 1 and 2).
- File this form and form DV-716 with the court. A judge will review your forms and decide whether to reschedule your court date.
- If the judge grants your request to reschedule your court date, you must have someone serve a copy of this form and any other form that the judge ordered you to serve (see form DV-716, item 5). Your server can be the sheriff or another adult who is not involved in the case. For more information on how to serve the restrained person, go to *https://selfhelp.courts.ca.gov/DV-restraining-order/renew/sheriff-serves*.
- If the judge denies your request to reschedule, you must attend your court hearing (listed on form DV-710). For information on how to prepare for your court date, go to *https://selfhelp.courts.ca.gov/DV-restraining-order/renew/court*.

This is not a Court Order.

DV-716 Order to Reschedule Hearing to Renew Restraining Order

Clerk stamps date here when form is filed.

Draft -Not approved by the Judicial Council 8.4.23

Instruction: Complete (1) and (2) only. The court will complete the rest of this form.

(1) **Protected Party:** _____

(2) **Restrained Party:** _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(3) Next Court Date

a. ☐ **Denied**. The request to reschedule the court date is denied.

Your court date is: _____

(1) The *Restraining Order After Hearing* (form DV-130) granted in this case stays in full force and effect until your court date.

(2) Your court date is not rescheduled because:

_____

_____

_____

_____

b. ☐ **Granted**. The request to reschedule the court date is granted. Your court date is rescheduled for the date and time listed below.

The *Restraining Order After Hearing* (form DV-130) stays in effect until the hearing date below or the original expiration date, whichever is later. See (4)–(7) for more information.

Name and address of court, if different from above:

Date: _____ Time: _____

Dept.: _____ Room: _____

Warning and Notice to the Restrained Party:
You must obey the restraining order while it is in effect.

This is a Court Order.

Case Number:

4 Reason Court Date Is Rescheduled

a. ☐ The protected party has not served the restrained party.

b. ☐ Other reason:

5 Serving (Giving) Order to Other Party

The request to reschedule was made by the:

a. ☐ **Protected party**	b. ☐ **Restrained party**	c. ☐ **Court**
(1) ☐ You do not have to serve the restrained party because they were or their lawyer was at the court date or agreed to reschedule the court date.	(1) ☐ You do not have to serve the protected party because they were or their lawyer was at the court date or agreed to reschedule the court date.	(1) ☐ Further notice is not required.
(2) ☐ You must have the restrained party personally served with a copy of this order and all forms listed on form DV-710, item 5 by *(date):* _____	(2) ☐ You must have the protected party personally served with a copy of this order by *(date):* _____	(2) ☐ The court will mail a copy of this order to all parties by *(date):* _____
(3) ☐ You must have the restrained party served with a copy of this order. This can be done by mail. You must serve by *(date):* _____	(3) ☐ You must have the protected party served with a copy of this order. This can be done by mail. You must serve by *(date):* _____	(3) ☐ Other: _____
(4) ☐ Other: _____	(4) ☐ Other: _____	

This is a Court Order.

6 No Fee to Serve

The sheriff or marshal will serve this order for free. If you want the sheriff to serve your papers, (1) complete form SER-001, *Request for Sheriff to Serve Court Papers*, and (2) give form SER-001 and a copy of this order to the sheriff.

7 ☐ Other Orders

_____

_____

_____

8 ☐ Attached Pages *(All of the attached pages are part of this order.)*

a. Number of pages attached to this three-page form: _____

b. Attachments include forms *(check all that apply):*

☐ DV-710 ☐ DV-820 ☐ Other: _____

Judge's Signature

Date: _____

_____

Judge or Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms.htm* for *Disability Accommodation Request* (form MC-410). (Civil Code section 54.8.)

Instructions for Clerk

If the court rescheduled the court date, the court must enter this order into CLETS or send this order to law enforcement to enter into CLETS. This must be done within one business day from the day the order is made.

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order to Reschedule Hearing to Renew Restraining Order* (form DV-716) is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by: _____, Deputy

This is a Court Order.

DV-720 Response to Request to Renew Restraining Order

Clerk stamps date here when form is filed.

Draft- Not approved by the Judicial Council
8.6.23

Changes are substantial and not highlighted.

Instructions: Use this form if the protected person has asked to renew the restraining order against you and you want to respond in writing. There is no court fee to file this form.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Protected Person *(see form DV-700, item 1):*

_____

2 Your Name: _____

Address where you can receive court papers

(This address will be used by the court and by the person in 1 to send you official court dates, orders, and papers. For privacy, you may use another address like a post office box, a Safe at Home address, or another person's address, if you have their permission and can get your mail regularly. If you have a lawyer, give their information.)

Address: _____

City: _____ State: _____ Zip: _____

Your contact information *(optional)*

(The court could use this information to contact you. If you don't want the person in 1 to have this information, leave it blank or provide a safe phone number or email address. If you have a lawyer, give their information.)

Email Address: _____ Telephone: _____ Fax: _____

Your lawyer's information *(if you have one)*

Name: _____ State Bar No.: _____

Firm Name: _____

3 Your Hearing Date (Court Date)

Your hearing date is listed on form DV-710, *(Notice of Hearing to Renew Restraining Order)*. If you do not agree to having the restraining order renewed, attend your hearing date. If you do not attend your hearing, the judge could renew the restraining order against you for at least five years, or make it a permanent order with no expiration.

This is not a Court Order.

4 Do you agree with the request to renew the restraining order?

a. ☐ I agree.

b. ☐ I do not agree.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

5 ☐ Additional Reasons I Do Not Agree With the Request *(optional)*

If you do not agree to the request to renew restraining order, you may explain why *(give specific facts and reasons):*

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

☐ Check here if you need more space. Attach a sheet of paper and write "DV-720, Additional Reasons I Do Not Agree With the Request" at the top.

6 ☐ Lawyer's Fees and Costs

If the person in 1 checked item 5 on form DV-700, this means that they have asked the judge to order you to pay their lawyer's fees and costs. You may also ask for lawyer's fees and costs. The judge can order the person in 1 to pay for your lawyer's fees and costs if:

(1) The person in 1's request for restraining order is denied;

(2) The judge decides that the request was frivolous or was made only to abuse, intimidate, or cause unneeded delay; and

(3) The person in 1 can afford to pay for your lawyer's fees and costs.

☐ Check here if you want the person in 1 to pay for some or all of your lawyer's fees and costs.

This is not a Court Order.

7 Your signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____
Type or print your name

▶ _____
Sign your name

8 Your lawyer's signature *(if you have one)*

Date: _____

_____
Lawyer's name

▶ _____
Lawyer's signature

Your Next Steps

- Turn in (file) your completed form with the court.
- Have someone (not you) mail the person in 1 a copy of this form, and complete form DV-250, *Proof of Service by Mail*. File form DV-250 with the court. *(The person who mails this form must be at least 18 years old and cannot be you or someone protected on the restraining order.)*
- Prepare for your court date by gathering evidence or witnesses, if you have any. If you need an interpreter for your court date, use form INT-300 to request an interpreter, or ask the court clerk how you can request one. If you need a disability accommodation, use form MC-410 to request assistance, and contact the disability/ADA coordinator at your local court for more information.
- Free legal help is available at your court's self-help center. Find your local court's self-help center at *www.courts.ca.gov/selfhelp*.

This is not a Court Order.

DV-730 Order to Renew Domestic Violence Restraining Order

Clerk stamps date here when form is filed.

Draft- Not approved by Judicial Council. 8.1.23

Changes are substantial and not highlighted.

Instructions: *Restraining Order After Hearing* (form DV-130, JV-255, or JV-265) must be attached to this form.

1 Protected Person

Name: _____

Fill in court name and street address:

Superior Court of California, County of

2 Restrained Person

Full Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Fill in case number:

Case Number:

3 Renewal and Expiration

The request to renew the attached restraining order is:

a. ☐ **Granted.**

The attached restraining order is renewed and will *(check one):*

(1) ☐ Expire on *(must be renewed for at least five years)*
(date): _____ *(time):* _____ ☐ a.m. ☐ p.m. or ☐ midnight

(2) ☐ Not expire (permanent order)

*(*Child custody and visitation, property, and support orders may have been changed (modified) and may be different from those issued on the attached restraining order.)*

b. ☐ **Denied.** The attached restraining order expires as stated in that order.

This is a Court Order.

4 Hearing

There was a hearing on *(date):* _____ at *(time):* _____ ☐ a.m. ☐ p.m.

These people were at the hearing *(check all that apply):*

☐ The person in 1 ☐ The lawyer for the person in 1 *(name):* _____

☐ The person in 2 ☐ The lawyer for the person in 2 *(name):* _____

5 ☐ Lawyer's Fees and Costs

The person ☐ in 1 ☐ in 2 must pay the following lawyer's fees and costs:

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

6 Service by Person in 1

(Check a or b.)

a. ☐ **No other proof of service is needed**. The people in 1 and 2 attended the hearing, either physically or remotely (by telephone or videoconference), or agreed in writing to this order.

b. ☐ **The person in 2 was not present.** The person in 1 must have person in 2 served with a copy of this order by *(check all that apply):*

(1) ☐ Mail (at the address listed on form DV-710)

(2) ☐ Other: _____

(3) ☐ The court has scheduled a firearms and ammunition compliance hearing. The person in 1 must have person in 2 served with a copy of this order by:

(a) ☐ Personal service by *(date):* _____

(b) ☐ Mail at the person in 2's last known address by *(date):* _____

This is a Court Order.

7 No Fee to Serve (Notify) Restrained Person

The sheriff or marshal will serve this order for free. If you want the sheriff to serve your papers, (1) complete form SER-001, *Request for Sheriff to Serve Court Papers*, and (2) give form SER-001 and a copy of this order to the sheriff.

8 ☐ Attached Pages

All of the attached pages are part of this order.

a. Number of pages attached to this three-page form: _____

b. Attachments include forms *(check all that apply):*

☐ DV-820 ☐ Other: _____

Judge's Signature

Date: _____

_____
Judge or Judicial Officer

Certificate of Compliance With VAWA

This restraining (protective) order meets all "full faith and credit" requirements of the Violence Against Women Act, 18 U.S.C. section 2265 (1994) (VAWA) upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.

(The clerk will fill out this part.)

Clerk's Certificate
[seal]

—Clerk's Certificate—

I certify that this *Order on Request to Renew Restraining Order (form DV-730)* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

DV-800-INFO/JV-270-INFO How Do I Turn In, Sell, or Store My Firearms, Firearm Parts, and Ammunition?

What do I need to turn in, sell, or store?

You must turn in, sell, or store all of the following prohibited items that you have or own:

- Firearms, including any handgun, rifle, shotgun, and assault weapon;
- Firearm parts, includes receivers, frames, and any item that may be used as or easily turned into a receiver or frame (also called "ghost guns"); and
- Ammunition, including bullets, shells, cartridges, and clips.

How do I properly turn in, sell, or store the prohibited items?

You must take them to:

- Law enforcement, who will accept all prohibited items for safekeeping or to destroy,

or

- A licensed gun dealer, who can buy or store your firearms. If you have firearm parts or ammunition, call ahead for more information.

When do I turn in, sell, or store prohibited items?

Immediately, if law enforcement asks you to. Otherwise, within 24 hours of being served, or told by a judge to do so.

Can I give my prohibited items to family or friends?

No, only to law enforcement or a licensed gun dealer. You cannot give your prohibited items to a family member, friend, or anyone else.

Do I have to pay a fee to store prohibited items?

You may have to pay a fee. Contact law enforcement or a licensed gun dealer about fees and whether they have space to store your items.

How do I take prohibited items to law enforcement?

Call your local law enforcement agency to ask about their procedures. They will give you specific instructions, like making sure your firearms are unloaded and in the trunk of the car. Take a copy of the restraining order with you. **Do not** bring your firearms to court.

If I turn in my firearms to law enforcement, how long will they keep them?

It depends. There are procedures for getting your firearms back after a restraining order expires. Ask the law enforcement agency.

After I give my firearms to law enforcement, can I change my mind?

Yes. You are allowed to make one sale through a licensed gun dealer. To do this, a licensed gun dealer must present a bill of sale to your local law enforcement agency. The law enforcement agency will give the licensed gun dealer the firearms you are selling.

How do I prove to the judge that I have complied with (obeyed) the orders?

1. Bring a copy of form DV-800/JV-270, *Receipt for Firearms, Firearm Parts, and Ammunition*, with you, and ask the dealer or officer to complete and sign the form.

2. File form DV-800/JV-270 with the court. Make sure you get two copies. All receipts must be filed with the court within 48 hours from the time you were served with the restraining order, unless the judge gave you another deadline.

Do I need to bring a copy of the receipt to anyone besides the judge?

Yes, if:

- Law enforcement served you with the restraining order, you must give them a copy of your receipt (example: form DV-800/JV-270). If you don't know who served you with the restraining order, ask the court clerk for a copy of the proof of service form for the restraining order. The law enforcement agency is listed on that form.
- You did not obey the order when you were supposed to, and the court notified law enforcement or a prosecuting attorney. (Tip: Look at forms DV-110, DV-130, or DV-820 to see if the court notified another agency. If the court did, give a copy of the receipt to the agencies listed on any of the forms).

Where can I find free help?

Free legal help is available at your court's self-help center. Find your local court's self-help center at *www.selfhelp.courts.ca.gov/find*. Self-help center staff will not act as your lawyer but may be able to give you information to help you decide what to do in your case, and help you with the forms. Staff may also refer you to other agencies who may be able to help you.

More information on how to obey these orders is available online

https://selfhelp.courts.ca.gov/respond-to-DV-restraining-order/obey-firearms-orders.

DV-840/FL-840 Notice of Compliance Hearing for Firearms and Ammunition

Clerk stamps date here when form is filed.

Draft- Not approved by the Judicial Council 7.12.23

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Protected Person

(name): _____

2 Restrained Person

(name): _____

3 Notice of Compliance Hearing

To the person in 2:

The court has issued a domestic violence restraining order against you. You must attend the court hearing on the date and time listed below. At the hearing, you must prove that you have properly turned in, sold, or stored any firearms (guns), firearm parts, or ammunition that you have or own, as required in the restraining order and listed below in 4.

Date: _____ Dept.: _____

Time: _____ Room: _____

Name and address of court, if different from the one listed above:

_____

_____

_____

4 No Firearms (Guns), Firearm Parts, or Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get any prohibited item listed below in b.

b. **Prohibited items are:**

(1) Firearms (guns);

(2) Firearm parts, meaning receivers, frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531); and

(3) Ammunition.

c. Within 24 hours of receiving this order, you must sell to or store with a licensed gun dealer, or turn in to law enforcement, any prohibited items you have in your immediate possession or control.

d. If law enforcement asks you for your prohibited items, you must turn them over immediately.

e. Within 48 hours of receiving this order, you must file a receipt with the court that proves all prohibited items have been turned in, sold, or stored. (You may use form DV-800/JV-270, *Receipt for Firearms, Firearm Parts, and Ammunition*.) If law enforcement served you with the restraining order, you must give a copy of the receipt to that law enforcement agency.

This is a Court Order.

Case Number:

5 ☐ Restrained Person Has Prohibited Items

The court has found that you have the following prohibited items:

a. **Firearms and/or firearm parts**

Description *(include serial number, if known)*	Location, if known	Proof of compliance received by the court
(1)		☐ *(date):*
(2)		☐ *(date):*
(3)		☐ *(date):*
(4)		☐ *(date):*

b. **Ammunition**

Description	Amount, if known	Location, if known	Proof of compliance received by the court
(1)			☐ *(date):*
(2)			☐ *(date):*
(3)			☐ *(date):*
(4)			☐ *(date):*

☐ Check here to list additional items. List them on a separate piece of paper, write "DV-840/FL-840, Restrained Person Has Prohibited Items" at the top, and attach it to this form.

6 ☐ Restrained Person Has Not Complied With Surrendering Prohibited Items

a. The court finds that you have not fully complied with (obeyed) the orders previously granted on *(date):* _____. The court has not received a receipt or proof of compliance for all the items listed in 5.

b. Notify Law Enforcement
The court will immediately notify the following law enforcement agency of this violation *(name of agency):* _____.

c. Notify Prosecutor
The court will immediately notify the following prosecuting agency of this violation *(prosecuting agency):* _____.

7 ☐ Service

The person in 2 does not have notice of these orders. The person in 1 must have the person in 2 served by:

a. ☐ Personal service by *(date):* _____

b. ☐ Mail, at the person in 2's last known address by *(date):* _____

Judge's Signature

Date: _____

_____
Judge or Judicial Officer

This is a Court Order.

EPO-001 ONE copy to court, ONE copy to restrained person, ONE copy to protected person, ONE copy to issuing agency

LAW ENFORCEMENT CASE NUMBER:

EMERGENCY PROTECTIVE ORDER *(See reverse for important notices.)*

1. **PROTECTED PERSONS** ***(insert the name and gender (M, F, X) of all persons protected by this Order):***

2. **RESTRAINED PERSON** *(name):* Gender: ☐ M ☐ F ☐ X
Ht.: Wt.: Hair color: Eye color: Race: Age: Date of birth:

3. **TO THE RESTRAINED PERSON:**

a. ☐ **YOU MUST NOT** harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property of, keep under surveillance, impersonate, block movements of, annoy by phone or other electronic means (including repeatedly contact), or disturb the peace of (including coercive control), any person named in item 1.

b. ☐ **YOU MUST NOT** contact, either directly or indirectly, by any means, including but not limited to by telephone, mail, e-mail or other electronic means, any person named in item 1.

c. ☐ **YOU MUST** ☐ stay away at least: _____ yards from each person named in item 1.
☐ stay away at least: _____ yards from ☐ move out immediately from:
(address):

d. **YOU MUST NOT** take any action, directly or through others, to obtain the addresses or locations of any person named in item 1.

e. **YOU MUST NOT** own, possess, purchase, receive, or attempt to purchase or receive any firearm (gun), firearm parts (receiver, frame, or item that may be used as or easily turned into a receiver or frame), or ammunition. You must immediately surrender these items if asked by law enforcement. If not asked by law enforcement to surrender immediately, you must turn them in to a law enforcement agency or sell them to, or store them with, a licensed gun dealer within 24 hours of receiving this order.

4. ☐ *(Name):* is given temporary care and control of the following minor children of the parties *(names and ages):*

5. Order Expires on *(date):* at *(time):* EXPIRES ON THE 5TH COURT DAY OR 7TH CALENDAR DAY, WHICHEVER IS EARLIER. DO NOT COUNT THE DAY THE ORDER IS GRANTED.

6. To Person in 1: To ask for a longer restraining order, ask for help at your local court. If there is an open juvenile case, file in that case. *(Name and address of court):*

7. Reasonable grounds for the issuance of this Order exist, and an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, elder or dependent adult abuse, or stalking.

8. Judicial officer *(name):* granted this Order on *(date):* at *(time):*

APPLICATION

9. The events that caused the protected person to fear immediate and present danger of domestic violence, child abuse, child abduction, elder or dependent adult abuse (except solely financial abuse), or stalking are *(give facts and dates; specify weapons):*

10. ☐ Firearms or ammunition were *(check all that apply):* ☐ observed ☐ reported ☐ physically searched for ☐ seized

11. ☐ The persons in 1 and 2 live together. The person in 1 asks that the person in 2 immediately move out from the address in item 3c.

12. ☐ The person in 1 has minor children in common with the person in 2, and a temporary custody order is requested because of the facts alleged in item 9. A custody order ☐ does exist. ☐ does not exist.

By: ▶
(PRINT NAME OF LAW ENFORCEMENT OFFICER) (SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: Telephone No.: Badge No.:

PROOF OF SERVICE

13. I personally delivered (served) copies of this Order to the person named in 2 on: *(date):* at *(time):*
Address where person in 2 was served:

14. At the time of service, I was at least 18 years of age and not a party to this cause. ☐ I am a California law enforcement officer.

15. My name, address, and telephone number are *(this does not have to be server's home telephone number or address):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date:

▶
(TYPE OR PRINT NAME OF SERVER) (SIGNATURE OF SERVER)

WARNINGS AND INFORMATION

To the restrained person: You must follow this order until it expires (see item 5). If you have firearms, firearm parts, or ammunition, follow the orders in item 3e. After you have turned in or sold your items, you must file a receipt with the court that proves that all items listed in 3e have been turned in or sold. You may use form DV-800, *Receipt for Firearms, Firearm Parts, and Ammunition*. If you violate the order, you can be arrested, charged with a crime, and/or fined. If you are served with another restraining order, you must follow the order. You may want advice from a lawyer. If you were served with more court papers, contact one as soon as possible. Free help may be available at your court's local self-help center. To find your local self-help center, go to *www.selfhelp.courts.ca.gov/find*.

A la persona restringida: Tiene que cumplir con esta orden hasta su fecha de vencimiento (vea el punto 5). Si tiene armas de fuego, componentes de armas de fuego, o municiones, cumpla con las órdenes del punto 3e. Después de haber entregado o vendido todos estos artículos, tiene que presentar un recibo a la corte comprobando que todos los artículos indicados en el punto 3e han sido entregados o vendidos. Puede usar el formulario DV-800, *Recibo por armas de fuego, componentes de armas de fuego, y municiones*. Si contraviene la orden, puede ser arrestado, acusado de un delito, y/o multado. Si recibe por entrega legal otra orden de restricción, tiene que cumplir con esa orden. Es posible que quiera los consejos de un abogado. Si recibió por entrega legal más documentos de la corte, contáctese con un abogado lo más pronto posible. Es posible que el centro de ayuda de su corte local ofrezca un servicio de ayuda gratuita. Puede localizar su centro de ayuda local en *www.selfhelp.courts.ca.gov/find*.

To the protected person: This order will expire on the the date and time listed in item 5. If you want a longer restraining order to protect you or your children from abuse, you will have to ask for one from your local court. Start the process as soon as you can. The paperwork can take a few hours to complete. There is no court fee and you do not need a lawyer to ask for one, but the process can be hard to get through on your own. If you want advice from a lawyer, contact one as soon as possible. Free help may be available at your local court's self-help center. To find your local self-help center, go to *www.selfhelp.courts.ca.gov/find*. You can also ask for child custody orders to stop child abuse or abduction. Note that if there is a juvenile dependency case for your child, ask for orders to protect your child in that case.

A la persona protegida: Esta orden se vence en la fecha y la hora indicadas en el punto 5. Si desea una orden de más larga duración para protegerse a sí mismo o a sus hijos del maltrato, tendrá que solicitarla de su corte local. Comience el proceso lo más antes posible. Los formularios pueden tomar algunas horas para llenar. No hay cuota de presentación y no necesita un abogado para presentar su solicitud, pero el proceso puede ser difícil de navegar sin ayuda. Si desea consejos de un abogado, contáctese con uno lo más pronto posible. Es posible que el centro de ayuda de su corte local ofrezca un servicio de ayuda gratuita. Puede localizar su centro de ayuda local en *www.selfhelp.courts.ca.gov/find*. También puede solicitar órdenes de custodia de los hijos para impedir el maltrato o el secuestro. Nótese que si hay un caso de dependencia de menores para su hijo, solicite órdenes para proteger a su hijo en ese caso.

To Law Enforcement

This order must be served on the restrained person by the officer, if the restrained person can be found. A copy must be given to the protected person. A copy must be filed with the court as soon as practicable. Also, the officer must have the order entered into CLETS (CARPOS).

This emergency protective order is effective when made and must be enforced by all law enforcement officers in the State of California who are aware of or shown a copy of this order. The terms and conditions of this order are enforceable regardless of the acts of the parties; the order may be changed only by the court (Penal Code section 13710(b)). A law enforcement officer shall use every reasonable means to enforce this order. An officer acting in good faith to enforce the order will not be held liable.

The provisions of this emergency protective order take precedence in enforcement over provisions of other existing protective orders between the same protected and restrained persons if the provisions of this order are more restrictive. The provisions in another existing protective order remain in effect and take precedence if they are more restrictive than the provisions in this emergency protective order. The availability of an emergency protective order must not be affected by the fact that the endangered person has vacated the household to avoid abuse.

A las agencias del orden público

El agente tiene que hacer la entrega legal de esta orden a la persona restringida, si esta puede ser localizada. Hay que darle una copia a la persona protegida. Hay que presentar una copia a la corte tan pronto sea posible. También, el oficial tiene que hacer que la orden se ingrese al sistema CLETS (CARPOS).

Esta orden de protección de emergencia entra en vigencia al emitirse y tiene que hacerse cumplir por todos los oficiales del orden público del estado de California que tengan conocimiento de, o a quienes se les muestre una copia de esta orden. Los términos y condiciones de esta orden pueden hacerse cumplir a pesar de las acciones de las partes; la orden solo puede ser modificada por la corte (Código Penal, sección 13710(b)). Un agente del orden público tiene que usar todo recurso razonable para hacer cumplir esta orden. Un agente que actúe de buena fe para hacer cumplir esta orden quedará exento de toda responsabilidad civil o penal.

Las disposiciones de la presente orden de protección de emergencia tendrán prioridad sobre las disposiciones de otras órdenes de protección existentes entre las mismas partes si las disposiciones de la presente orden son más restrictivas. Las disposiciones de otras órdenes se mantienen en vigencia y tendrán prioridad si son más restrictivas que las disposiciones de la presente orden de protección de emergencia. La disponibilidad de una orden de protección de emergencia no será afectada por el hecho de que la persona en peligro haya desocupado el hogar para evitar el maltrato.

SPR23-29

Domestic Violence: Form Changes to Implement New Laws (Adopt forms DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/FL-840, EPO 001)

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

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association, Family Law Section Executive Committee by Saul Bercovitch, Associate Executive Director, Governmental Affairs	A	FLEXCOM agrees with this proposal, and has the following suggestions: • As to Form DV-710, in the parenthetical instructions at item 1, it might be clearer to restate the final sentence as: If you have a lawyer, give their **<u>contact</u>** information. The same as to Form DV715, in the parenthetical instructions at item 1.b., and Form DV-720 in the parenthetical instructions at item 2.	The committee prefers to keep the instruction as-is to be consistent with the instruction on form DV-100 and does not recommend this change on form DV-100 as there is not enough space.
			• As to Form DV-720, the term renew is parenthetically explained in item 3 as meaning "extend." It might be clearer to also do the same in the instructions at the top of page one as follows, so the explanation is provided early: Use this form if the protected person has asked to renew (extend) the restraining order against you and you want to respond in writing. Additionally, or alternatively, the form could be retitled as "Response to Request to Renew (Extend) Restraining Order.	Because "renew" is used regularly in other contexts (e.g., renew driver's license, passport, membership) the committee believes that "extend" does not need to be included as a parenthetical to "renew."
2.	Family Violence Appellate Project by Arati Vasan, Senior Managing Attorney	NI	Implementing New Attorney's Fees Law (AB 2369) Overall, the changes to the DV-100 Request for DVRO, and DV-120 Response to Request for DVRO, help to achieve the purpose of the law. However, more information on the DV-100 (and the DV-500-INFO), and different wording and changes on the DV-120 would be helpful.	Thank you for reviewing this proposal.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR23-29

Domestic Violence: Form Changes to Implement New Laws (Adopt forms DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/FL-840, EPO 001)

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	Commenter	Position	Comment	Committee Response
			DV-100 & DV-500-INFO The purpose of AB 2369 in part was to make it easier for survivor petitioners to receive lawyer's fees and costs and more difficult for respondents to receive them—in keeping with other statutes which reduce the barriers to and chilling effects of seeking protection under important public policy priorities. The changed language seeks to make it easier for survivors to have legal representation at restraining order hearings. It is widely understood that the most survivors are unrepresented in these hearings and having legal representation can have a significant positive effect on a survivor's ability to receive protection from the court. As such, it would help to have language that informs petitioners of these reduced barriers, so they can make decisions based on the knowledge that they have a better chance at recovering lawyer's fees and costs than before. To the extent that before AB 2369, a survivor would not be able to get representation or would not file for protection because of legal fees and costs, the language of the statute is now clear. Where the petitioner is the prevailing party in their restraining order request and asks for lawyer's fees and costs, they *will* be awarded payment of some or all their lawyer's fees and costs if the other party has or reasonably has the ability to pay, regardless of the petitioner's own circumstances. In addition, they will not be penalized by having to pay the respondent's costs and fees simply for	The committee is recommending added language to DV-100 to explain the legal requirements for an award of attorney's fees and costs if the petitioner makes the request and prevails.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR23-29

Domestic Violence: Form Changes to Implement New Laws (Adopt forms DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/FL-840, EPO 001)

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

	Commenter	Position	Comment	Committee Response
			filing their request and being denied. These reduced barriers to coverage of legal fees and costs should be reflected in the DV-100 (and the DV-500 INFO). One example of additional language is: "(Note: If you have a lawyer and ask for lawyer's fees and costs, and the court grants your restraining order, the court will determine if the other person has the ability to pay and if so, you will be awarded lawyer's fees and costs.)"	
			DV-120 On Form DV-120, page 5, number 23, the language in the Note should be revised to make it clear that the court *also* must find that the petitioner has or reasonably has the ability to pay. It would be better to add the word "only" before the word "if" so it is understood that the court will not award their lawyer fees and costs without all three elements: 1) a denied restraining order, 2) a finding that it had no basis in law or fact or was made only to abuse, intimidate or cause unneeded delay, and 3) a finding that petitioner has or reasonably has the ability to pay.	The committee has added the requirement that the court must find that petitioner has the ability to pay to the proposed form.
			Additionally for the same item on the DV-120, the options (a) and (b), to agree to pay or to explain why they disagree are unneeded. First, the DV-100 does not ask for a specific amount so it is unlikely and possibly harmful that a respondent would agree to an unspecified blanket request for lawyer fees and cost. Second, it is unclear why a respondent should be asked to explain why they do	Because the issuance of lawyer's fees and costs are no longer discretionary, the committee agrees that the option to agree or disagree to the request for lawyer's fees or costs should be removed from the recommended form.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR23-29

Domestic Violence: Form Changes to Implement New Laws (Adopt forms DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/FL-840, EPO 001)

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	Commenter	Position	Comment	Committee Response
			not want to pay. Whether or not the respondent agrees or requests something different, the court will order lawyer fees and costs if requested by a prevailing petitioner and the respondent has or reasonably has the ability to pay. Another problem with this question is that, while the explanation section does not explicitly say it is required, in many cases that space is used to make additional accusations, character attacks and other statements about the petitioner. If anything, now that the additional language is there in the Note, the respondent may effectively be encouraged to use the space in number 23(a) and (b) to allege the petitioner had an improper motive and intent from the start. That was not the purpose of the statute. It is widely understood that survivors of domestic violence seeking protection can often be treated with skepticism and have to overcome preconceived negative perceptions about credibility and intent. Some abusive parties capitalize on this general understanding by immediately alleging ulterior and improper motives by survivors and focusing the courts attention on those claims while deflecting from their own conduct. AB 2369 was not enacted to encourage or increase the common practice of making unfounded attacks on survivors about improper motive. Maintaining questions and a space that is often used for that purpose along with this new language for an issue that does not lend	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR23-29

Domestic Violence: Form Changes to Implement New Laws (Adopt forms DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/FL-840, EPO 001)

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	Commenter	Position	Comment	Committee Response
			itself to agreement or explanation is unnecessary and can easily be removed.	
			DV-700 & DV-720 As the DV-700 and DV-720 were modified to reflect this new law, the recommendations above would apply to these forms now that the option to request lawyer fees and costs has been added to both forms as part of this proposal.	The committee proposes the same changes be made to forms DV-700 and DV-720 as described above regarding implementation of AB 2369.
			For the purposes of implementing SB 935, the proposed changes to the DV-700 form and the DV-730 form are effective and help to make it clear that the minimum duration for a renewal is still 5 years.	Thank you for your response.
			For purposes of this law, the only change to the DV-720 appears to be adding the words “at least” before “five years” in the box about the hearing date. It is not clear what if any are the plain language or accessibility differences between using “at least”, “5 or more” or “from 5 years up to permanent.” Deferring of course to the results of any focus groups and testing, but “at least” may not be clearest of those options.	To be consistent with language on the other forms (DV-710 and DV-730), the committee proposes using “at least five years.”
			For the DV-700-INFO, the form does not have language that makes it clear, per the new law, that a protected person can ask for a renewal more than once. In addition to the change of “at least”, it would be helpful to add a sentence under the section “What does “renew” mean?” or the section	The committee has added a section to the proposed form to explain that a judge can renew a domestic violence restraining order more than once.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR23-29

Domestic Violence: Form Changes to Implement New Laws (Adopt forms DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/FL-840, EPO 001)

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

	Commenter	Position	Comment	Committee Response
			"When do I ask for the renewal?" that explains that a person can renew more than once either" Changing the heading to say "a" renewal rather than "the" renewal will help clarify that there can be more than one renewal.	This change has been made.
			Implementing New Law Changing Definition of "firearm precursor part" (AB 1621) The updated language on the seven forms is clear. Using language that is already being used on other forms and keeping it uniform across forms is very helpful.	The committee agrees that using consistent language across the protective forms is helpful.
			Adopting Forms to Request Rescheduling Hearing for Restraining Order Renewal (DV - 715, DV- 716) The new forms are a welcome addition to helping make the renewal process clearer and easier. While it is understandable that it is difficult and resource-consuming to add new forms, and there is a constant effort to reduce and streamline, adding these forms will actually help those efforts. By having forms in the same number group (DV-700s), they reflect the differences in rescheduling a renewal hearing when an existing DVRO must be extended. The process of finding and using the forms for the original DV-115/DV-116 forms was confusing. Including separate forms in the DV-700 group makes it easier for people who rely on the sequencing of the numbers (e.g., DV-710 comes before DV-716) to understand the steps and flow	The committee agrees that adding these forms to the renewal series (700s) will be helpful and ensure the consistent and accessible administration of justice.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR23-29

Domestic Violence: Form Changes to Implement New Laws (Adopt forms DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/FL-840, EPO 001)

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

	Commenter	Position	Comment	Committee Response
			in their case. The approach of having similar forms across the different types of restraining orders as proposed in SPR23-26 is very helpful. Across the board, the additional forms will reduce confusion and make it easier to reschedule hearings in renewal cases.	
			As an initial note, the DV-700-INFO form does not have information about the ability to request that the renewal hearing be rescheduled. This would be helpful particularly as there will not be a separate DV-715-INFO.	The committee agrees that it would be helpful to include information regarding how to reschedule a court hearing on form DV-700-INFO and has added information at page 2 of the proposed form.
			For the DV-715, there are two suggestions: 1) increase the font size of the language in the Note confirming that the restraining order will be extended and 2) add space and increase the font size for Protected Party and Restrained Party. The first suggestion is to allow that language to stand out, so it is clear to either party requesting rescheduling. In the current size and space, it is less distinctive than it should be given its importance. The second suggestion is due to a concern that the eye easily goes directly to the prominent exclamation points for the address. In doing so a person would not answer the important question of which party they are. In addition, it is important that petitioners understand that they can skip this portion. If the focus groups and user feedback say otherwise, that is of course what should be followed, but increasing the font size is	The Judicial Council has a forms style guide that provides parameters for certain form design elements, like font size. The font size used in the body of a form is set at 11-point Times New Roman. However, the committee has increased the spacing in the instruction box to draw attention to the "Note." Also, to make it easier to see item 1b, spacing has been increased and boldface type has been removed from the subheadings.

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SPR23-29

Domestic Violence: Form Changes to Implement New Laws (Adopt forms DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/FL-840, EPO 001)

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	Commenter	Position	Comment	Committee Response
			unlikely to have negative effects and based on the spaces. between numbers 1 and 2, there seems to be enough room to increase the size without affecting the layout or length of the form.	
			For the DV-716 it would be helpful for petitioners to know that that their DV-716 form goes on top of their DV-710 form, or that it should be attached to the DV-710 form along with the underlying restraining order. Sometimes when rescheduling restraining order hearings, problems can arise when the original restraining order has a different expiration date than the rescheduled hearing date. While those forms may be stapled together, without keeping the DV-716 with the DV-710 and underlying order, there is no readily available proof that the restraining order has not expired. A clear reminder that papers should be together would be helpful. In addition, consistent with the formatting on the DV-710, it would be helpful to put in bold the language that the restraining order remains in effect. Finally, the form would have more clarity if the new hearing date information used the same icon and box format as that used on the DV-710 and the DV-720. The icon and box format for the new date on the renewal could be added while keeping the box saying New Court Date. Using the same icon and formatting keeps the visual cues for this important information consistent across the forms.	The committee did not adopt this suggestion in its proposal as form DV-716 states that the restraining order stays in effect, at least until the next court date. The committee has bolded the language and added the icon to the proposed form, as requested by commenter.

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SPR23-29

Domestic Violence: Form Changes to Implement New Laws (Adopt forms DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/FL-840, EPO 001)

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			Other Changes to the Existing Renewal Forms (DV-700, DV-700-INFO, DV-710, DV-720 and DV-730) The committee is to be commended for its significant work to make these forms easier with visuals and language that is clearer and more informative. The committee is also thanked for being diligent and responsive about seeking and incorporating feedback from those who work with survivors. The addition of information on the DV-700 and DV-700-INFO about juvenile restraining orders is a prime example and will be extremely helpful.	Thank you for your response.
			DV-700, Request to Renew Restraining Order While the form is now 4 pages, it is easier to read and use. It provides space for information that is more consistent with the DV-100 and other request forms, which provide more information and more detailed questions for petitioners. On page 2, number 4a, consider adding a note similar to the note provided for 4b that makes it clear that for the judge to grant the order, the petitioner does not have to show/prove that the other person will commit abuse. While asking the petitioner to explain why they are afraid the person will abuse them in the future does give much more guidance than is than the previous version, there is the potential in the wording for a petitioner to believe they have to talk about what the restrained party "will" do or specific acts they "could" do.	To address commenter's concern, the committee has revised the language in proposed item 4a to state that the petitioner is afraid or worried that the person in 2 "might" abuse them in the future, instead of "will" abuse them in the future. The committee notes that item 4a is optional, and not required to be completed by the petitioner.

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SPR23-29

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			The underlying acts that led to the original restraining order can be enough to meet the legal standard of reasonable apprehension of future abuse. In addition, the future abuse feared does not have to be the same type of abuse as what happened in the past. The current wording, without clarification, could suggest that the person has to speculate or say they are afraid of the same thing happening again, when what already happened to them can be more than enough to be afraid, and they can be afraid even if the same abuse would not be possible.	
			Furthermore, in item 4(a) we would suggest saying "I am afraid **or concerned** . . ." (emphasis in our suggestion), because the case law uses "apprehension," which can be either fear *or concern*, and concern seems broader than fear.	The committee has changed the language in the proposed form to "I am afraid or worried…" as "worried" has the same meaning as "concerned" but represents more natural language.
			The section on page 3 number 4 which gives space for violations is helpful and appreciated. It would be helpful to make the "Note" larger in size and give it more emphasis visually. Some courts still routinely deny restraining order renewals based on a lack of violations or because they prioritize lack of violations over every other factor. If there are no violations, this page in a request will stand out for being blank. **Petitioners should have clarity and reassurance that the renewal cannot be denied because the restraining order was working, as case law holds.** The language in the "Note" should provide more clarity to that effect	As noted above, the font size is consistent with the Judicial Council's forms style guide. The committee has bolded "Note" in the proposed form to make the note more visible.

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SPR23-29

Domestic Violence: Form Changes to Implement New Laws (Adopt forms DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/FL-840, EPO 001)

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			and be more prominent so that anyone looking at it will know that this section being blank does not allow the court to deny it on that basis. This is particularly important where the restraining orders are issued for a shorter duration, like a year or less.	
			DV-710, Notice of Hearing To Renew Restraining Order, DV-730 Order to Renew Domestic Violence Restraining Order The changes to these forms make them much easier to use and understand. The ability to serve by mail if there is no change except for the duration is helpful and clear. However, for the DV-730, page 1 number 5, the information on no fee personal service is confusing. In most cases, a DV-730 will not have to be personally served as either the restrained party appears at the hearing, or the renewal is granted with no change other than duration. Placing prominent information on the first page about personal service suggests a step which often will not be required. In comparison, documents that often require personal service including the DV-109, 110 and 130 do not have this language on the first page. While in some cases, a survivor may be told that it is better to take the additional step of having the DV-730 personally served, that should not be confused with requiring personal service to be effective. A suggestion would be to place this information after page 2, number 6 “Service by person in 1” so that if the personal service is checked in 6(b)(1)(3)(A) or written in 6(b)(2) the information is readily	To respond to the commenter’s concern, the committee has moved the items regarding service toward the end of proposed form DV-730.

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SPR23-29

Domestic Violence: Form Changes to Implement New Laws (Adopt forms DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/FL-840, EPO 001)

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			available. If space is an issue, then consider moving number 7 "Lawyer's Fees and Costs" to the first page.	
			Another suggested change to the DV-730 is to format the box and information on page 1, number 3, the same way that information is formatted on the DV-130, on page 1, number 4. The DV-730 is a separate document and must always be attached to the original restraining order, unlike the DV-130 which is itself a complete order. The formatting of the expiration date and other information on the DV-130 emphasizes this information and draws the eye. The same should be true of the DV-730.	The committee has reformatted the proposed item that contains the new expiration date to make it more visible.
			In addition, since the DV-730 functions as the order going forward if it is "Granted", that should be the first option available. **Switching numbers 3(a) and 3(b) on the DV-730 will make it more prominent.** This is consistent with the DV-110, page 2, number 4(a)(1) where "All granted" is the first box.	The committee has made this change to the proposed form.
			DV-700- INFO, How Do I Ask the Court to Renew My Restraining Order? The changes to this form, including the removal of the numbers make the form clearer and easier to read. As noted above, adding language about how it can be renewed more than once would be helpful.	The committee has added a section to the proposed form to address subsequent renewals.

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SPR23-29

Domestic Violence: Form Changes to Implement New Laws (Adopt forms DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/FL-840, EPO 001)

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			[DV-700-INFO] In addition, adding a sentence explaining the petitioner can file the request to renew in any court in California, and it need not necessarily be the same as the court that originally granted the order would be helpful to survivors who may not be in the same area where the underlying order was issued. Most survivors do not have this information even if they are aware of the option to renew. Some survivors may abandon seeking renewal because they incorrectly believe they must go back to the place where the order was granted.	The committee has added a section that addresses the issue of changing venue on page 1 of the proposed form.
			[DV-700-INFO] Additional language and adding emphasis to existing language in the section "When do I ask for the renewal?" will be helpful. Survivors need to know that not only do they need to file for a renewal before their existing restraining order expires, but also that they should allow sufficient time for processing to ensure continuous protection. In some cases, if a petitioner only files on or just before the date of expiration, they may not be able to get the DV-710 order extending their restraining order the same day or next day. Petitioners can risk being without proof that their restraining order is extended. This period of time however brief, can be dangerous.	The committee has added language to the proposed form to instruct petitioners to give themselves enough time to fill out the forms and file. Because processing will vary from court to court, the committee is not able to include more information about the timeline, other than what is allowed under the Family Code.
			[DV-700-INFO] In addition, restraining order after hearings in some cases are issued for less than three months so	The language on the form, as proposed, reflects the requirement under the Family Code. Therefore,

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SPR23-29

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	Commenter	Position	Comment	Committee Response
			the language could be confusing as it assumes that their restraining order is valid for at least three months.	the committee does not recommend changing the proposed language.
			It is not uncommon to find survivors who did not know they had the option to renew their restraining order (a fact that should be included on the DV-130), and only find out on the last day, or shortly before. At that point, there is not enough time to actually apply for the renewal and get their papers processed and returned. **As such, it would be helpful to 1) emphasize the language that it has to happen before the expiration date, 2) add language that people should not wait until the last day(s) if possible, and 3) add language that makes it clear that without renewing the order, not only will their current order expire but they will have to start all over again if there is any further abuse.**	As stated above, the committee has added language to the proposed form to instruct petitioners to give themselves enough time to fill out the forms and file. The committee has also added a section that addresses the situation where the restrained order has expired before a request to renew has been submitted.
			Finally, the additional language on page 2, number 5, including language as to what a petitioner will generally have to prove is helpful particularly in conjunction with the changes in the DV-700. However, the language is buried under the issue of whether the other person appears. A greater delineation between the issue of appearance and the underlying points of what will be expected of the petitioner would be more helpful.	The committee did not adopt this suggestion to its proposal as what is expected of petitioner directly depends upon whether the other side appears in the case. However, the committee has added additional information on what the petitioner will have to prove, if the respondent attends the hearing and opposes the restraining order.
			Changes to EPO-001 Emergency Protection Order	The committee has added the following language to the proposed form, “Start the process as soon as

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			The changes to the back of the form are helpful and as noted remove a lot of duplicative and unclear language. The primary suggestion is that in the section "To the protected person" that language is added, which, similar to what was suggested with the renewal form above, makes it clear that if they do not want to lose protection, they need to go to court before the EPO expires with enough time to fill out the forms for the DVRO. We have worked with many people who did not have enough information or correct information in advance and thought they could show upon the day it expired, at the courthouse at 4pm, and try to get it "extended" with a TRO (which is often how police phrase it even though it is a separate request and order). Completion of the DV-100 and understanding what it is about should not happen under the time pressure of an EPO running out that same day; it would be helpful to give protected parties a better understanding of that by including language about giving themselves enough time to go to court and fill out and file papers. Whether EPOs should be longer to give petitioners more time to make an informed decision about whether to also seek a TRO/DVRO is beyond this proposal but perhaps something the Council would consider suggesting to the Legislature. In any event, without further legislative action on that issue, survivors should have more information up front about the fact that	you can. The paperwork can take a few hours to complete." This additional information should help protected persons plan accordingly.

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SPR23-29

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	Commenter	Position	Comment	Committee Response
			they will need that time before the EPO expires, if they want to have secure protection.	
3.	Orange County Bar Association by Michael A. Gregg, President	A	* The commenter indicates agreement.	Thank you for reviewing this proposal.
4.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	AM	Regarding DV-109 Notice of Court Hearing form: o Page 1, Section 3, 2nd Bullet: Suggest rephrasing or expanding the sentence “If you attend the hearing (in person, by phone or by videoconference) and the judge...” to avoid misleading restrained parties to think that if they don’t attend the hearing, they won’t have to follow any orders made.	The committee has revised the proposed instruction to make it clear that the restraining order must be complied with even if the person does not attend the hearing.
			Regarding DV-700 Request to Renew Restraining Order form: o Page 2, Section 3c: Suggest capitalizing the first letter in “five” and “permanently” for consistency with “Other” o Page 2, Section 4: Correct the formatting error around “abuse” by placing spaces in the sentence “(For information about what”abuse”means under the law...”	This change has been made to the proposed form. The spacing has been corrected.
			Regarding DV-710 Notice of Hearing to Renew Restraining Order form: o Page 1: Above the “Case Number” box, replace the ellipses with a colon where it says “Fill in case number..”	This error has been fixed.

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SPR23-29

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	Commenter	Position	Comment	Committee Response
			Regarding DV-715 Request to Reschedule Hearing to Renew Restraining Order form:	
			o Form Title: Suggest using the phrase "Continue" either in place of, or in addition to, "Reschedule," as the statute uses the term "continuance," and because it conforms with the term used in the current DV-115/DV-116 form titles.	The committee does not recommend using "continuance" as it is a legal term and not as understandable as "reschedule." The committee will recommend that other domestic violence forms be changed in the future to use "reschedule" instead of "continuance."
			o Page 2, First bullet under Your Next Steps: Place a period after the sentence beginning with "Complete form DV-716, Order to Reschedule Hearing to Renew Restraining Order..."	This change has been made to the proposed form.
			o Page 2, Last bullet under Your Next Steps: This statement may be confusing because it is possible to request a continuance at the hearing. Instead, suggest stating "If the judge denies your request to reschedule the hearing, you must be prepared to proceed on the date listed on form DV-710" or something similar.	The committee has added a link for more information on how to prepare for the court hearing.
			Regarding DV-716 Order to Reschedule Hearing to Renew Restraining Order form: o Current DV-116 forms include the option to attend remotely; proposed DV-716 forms do not.	The committee agrees that including the option to attend remotely would be helpful but does not recommend making this change without public comment. The committee will consider adding this information in a future cycle.
			Regarding DV-730 Order to Renew Domestic Violence Restraining Order form:	

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SPR23-29

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			o Page 1, Section 3b: Suggest capitalizing the first letter in “five” and “permanently” for consistency with “Other”	These changes have been made to the proposed form.
			o Page 1, Sections 3 & 4: Current DV-730 forms list the Hearing first, then the Date for Expiration. Is there a reason this was reordered?	These items have been reordered to match the sequence of these same items on form DV-130, *Restraining Order After Hearing.*
			o Page 1, Section 3b: Suggest reordering the duration options in the following order: “Five years,” “Other (give duration longer than five years),” then “Permanently” If the “Permanently” option is selected, what date is one supposed to put in the box under Section 3b? If a “Permanently” option is included in the expiration date box, this may cause an issue with CLETS.	This section has been reorganized to allow for two options: 1) at least five years (with a specific date of termination), or 2) permanent. The committee notes that CLETS (CARPOS) can record permanent orders and the new format clarifies that no expiration date is needed for permanent orders.
			In the same expiration date box, the old DV-730 forms had the note about “(Child custody and visitation, property...” listed underneath the box, but now it is included in the box. Should there be clarity as to what is being attached in terms of what is being renewed and what has been amended since the original orders? For example, provide an option under Section 8 for attached pages to include other changes/court orders so that the information entered into CLETS reflect the entire correct restraining order, along with current orders and expiration date.	This would be a substantive change that the committee would like feedback on. The committee will consider this suggestion in a future cycle.

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			o Page 2, Section 8: Suggest including an option for DV-840 (Notice of Compliance Hearing for Firearms and Ammunition) to be attached rather than including a reference of a compliance hearing in Section 6, as there is room for error to include a different date in DV-730 and in DV-840. Additionally, DV-730 does not need to serve as the notice for the compliance hearing, as that is what DV-840 is intended for.	Form DV-820, *Prohibited Items: Finding and Orders*, which includes an order to attend a compliance hearing, would be more appropriate as an attachment to DV-730. The committee will add a reference to form DV-820 in item 8 (Attached pages) in the proposed form. Because form DV-820 does not include an item regarding service, form DV-730 would need to address service to provide notice of a noncompliance hearing.
			Regarding EPO-001 Emergency Protective Order (CLETS-EPO) form: o Page 1, Section 1: Is there a reason why the "Gender" field was removed? It seems appropriate to include the "Gender" field in both Sections 1 and 2 with the non-binary option.	The committee notes that item 1 in the current version of EPO-001 does not include the gender of the protected persons. The committee will add gender to item 1 in the proposed form as it is a mandatory field for the protective order registry accessible via CLETS.
5.	Superior Court of Orange County, Family Law and Juvenile Law Division	NI	**Form DV-715 -** *Request to Reschedule Hearing to Renew Restraining Order*, revise any reference of "Protected Party/Restrained Party" to "Protected Person/Restrained Person" to be consistent with other DV forms such as DV-110, DV-130, DV-140, etc.	The committee did not accept this recommendation. Similar to other protective order forms that can be used by either party, proposed forms DV-715 and DV-716 use "party" to make clear that either side may use the form. For the continuance forms, the committee also believes it is important to use "party" to make clear that an additional protected person may not ask for a continuance.
			Form DV-716 - *Order to Reschedule Hearing to Renew Restraining Order* a. Change any reference of "Protected Party/Restrained Party" to "Protected	See response above.

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			Person/Restrained Person" so that it is consistent with other DV forms such as DV-110, DV-130, DV-140, etc. b. Align boxes in item #4 c. Remove period under "(date") in item #5c(2)	 This change has been made to the proposed form. The period has been removed.
			Does the Proposal appropriately address the stated purpose? Yes.	Thank you for reviewing this proposal.
			Would the proposal provide cost savings? If so, please quantify. No.	No response required.
			What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? This implementation would require training for staff, judicial officers, and the Protective Order Unit (approximately 1 hour each group). New event codes would need to be created for the two new forms.	Thank you for your response.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	The committee agrees that three months will provide courts with sufficient time to implement this proposal.

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			How well would this proposal work in courts of different sizes? Our court is a large court, and this process can work for a court of our size.	Thank you for your response.
6.	Superior Court of Riverside County by Susan Ryan, Chief Deputy of Legal Services	AM	Suggested Edit: [DV-109] At Item, #2 - Replace the deleted line: "The court will fill out the rest of this form." to ensure pro pers don't fill in hearing information and orders.	The committee removed the instruction to create more white space on the first page and notes that the instruction is still included at the top of the form.
			Temporary Restraining Order (DV-110) Information in the box concerning firearms box seeking firearms must also be repeated in item 6 and in significant detail. *If there is a distinction between these sections in that #2 contains permissible weapons, the form is not clear on that distinction. Suggested edit: If the information is intended to be the same, state: See item #6 for prohibited firearms and ammunition.	The information in item 2 is provided by the petitioner while the information in item 6 is based on the court's determination that the restrained person has prohibited items in their possession or control. The committee has included an instruction in item 2 to make clear that the information is provided by the petitioner and should be based on the information included on the request form (DV-100).
7.	Superior Court of San Bernardino County, Barstow District by Anita Morales, Legal Processing Assistant II	A	Form DV-700-Info- there are two Page 2s. The last page should be numbered Page 3.	The page number has been corrected.
8.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	AM	Does the proposal appropriately address the stated purpose? **Yes.**	Thank you for reviewing this proposal.
			Would the proposal provide cost savings? If so, please quantify.	No response required.

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	Commenter	Position	Comment	Committee Response
			No.	
			What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **Revising internal procedures, training staff, and adding new forms to the case management system.**	Thank you for your response.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes, provided the final versions of the forms are provided to the court at that time. This will ensure that the court is able to provide training to staff and update its internal procedures and case management systems.**	The committee agrees that three months is sufficient time for implementation. If approved by the council, the forms will be published with enough time to allow the courts to modify forms packets.
			How well would this proposal work in courts of different sizes? **It appears the proposal would work for courts of various sizes.**	No response required.
			DV-110, Item 22: Refers to form SERVE-001, however Invitation SPR23-27 lists the form name as SER-001.	The form number for the proposed new request for service form is SER-001 and has been corrected on this form.
			DV-700: Propose that form be renumbered as "DV-700/JV-700" as the form may be used for	The committee did not make this proposed change as the issue of whether these renewal forms may

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR23-29

Domestic Violence: Form Changes to Implement New Laws (Adopt forms DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/FL-840, EPO 001)

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

	Commenter	Position	Comment	Committee Response
			renewing juvenile DVROs. Dual form numbering is used for other DV and JV forms (e.g. DV-800/JV-270 Receipt for Firearms, Firearm Parts, and Ammunition).	be filed in juvenile cases is a substantive change that the committee would seek public comment on. As proposed, this form would be used to renew a juvenile restraining order after a juvenile court has terminated jurisdiction. The committee will consider whether to adopt renewal forms for use in a juvenile case in a future cycle.
			DV-716, Item 6: Refers to form SERVE-001, however Invitation SPR23-27 lists the form name as SER-001.	The form number has been corrected.
			The proposed modifications appear appropriate and address the new statutes.	Thank you for reviewing this proposal.
9.	Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee Joint Rules Subcommittee	A	Comments are for proposed DV-120. Page 5, paragraph 23, provides a note about respondent's ability to recover attorney fees if court finds "that the request had no basis (in fact or law) or was made only to abuse, intimidate, or cause unneeded delay." Family Code Section 6344(b) uses the word "frivolous" and not "no basis (in fact or law)." The concern is that "frivolous" may be a different standard. From People v Collins (2003) 110 Cal.App.4th 340: "Code of Civil Procedure section 128.5, subdivision (b)(2) defines "frivolous" to mean "(A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party." Whether action taken by a party or party's attorney is frivolous under that statute 'is governed by an objective standard: Any reasonable attorney	The committee agrees to recommend the statutory language "frivolous" instead of a plain language explanation of frivolous.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR23-29

Domestic Violence: Form Changes to Implement New Laws (Adopt forms DV-715 and DV-716; revise forms DV-100, DV-109, DV-110, DV-120, DV-120-INFO, DV-130, DV-700, DV-700-INFO, DV-710, DV-720, DV-730, DV-800-INFO/JV-270-INFO, DV-840/FL-840, EPO 001)

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

	Commenter	Position	Comment	Committee Response
			would agree it is totally and completely without merit.' "Totally and completely without merit" appears to be a higher standard than "no basis in fact or law." This might be misleading. Why not use the word in the statute?	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Item number: 29

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Protective Orders: Service Requirements after Remote Appearances

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Adopt Cal. Rules of Court, rules 3.1162 and 5.496; revise forms CH-109, CH-130, EA 109, EA-130, EA-309, EA-330, SV-109, SV-130, WV-109 and WV-130

Committee or other entity submitting the proposal:
The Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee

*Staff contact (*name, phone and e-mail*): Frances Ho; (415) 865-7662; frances.ho@jud.ca.gov*
James Barolo; (415) 865-8928; james.barolo@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): November 1, 2022
Project description from annual agenda:
Family and Juvenile Law Advisory Committee agenda:
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.

Civil and Small Claims Advisory Committee agenda:
Work with Protective Order Working Group (under lead of Family and Juvenile Law Advisory Committee) 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.

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

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

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

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

- **Form Descriptions** (for any proposal with new or revised forms)

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

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

Judicial Council *of* California

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-158
For business meeting on: September 18–19, 2023

Title
Protective Orders: Service Requirements After Remote Appearances

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rules 3.1162 and 5.496; revise forms CH-109, CH-130, EA-109, EA-130, EA-309, EA-330, SV-109, SV-130, WV-109, and WV-130

Recommended by
Civil and Small Claims Advisory Committee
Hon. Tamara L. Wood, Chair
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
August 4, 2023

Contact
James Barolo, 415-865-8928
james.barolo@jud.ca.gov

Frances Ho, 415-865-7662
frances.ho@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee recommend adopting two California Rules of Court and revising 10 notice and order forms to clarify the service requirements for respondents who appear remotely in protective order proceedings. The committees make this recommendation because the statutory authority governing service of protective orders after hearing does not indicate the type of service required if the respondent appears remotely at the hearing.

Recommendation

The Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2024, take the following actions to clarify service requirements relating to protective orders:

1. Adopt California Rules of Court, rules 3.1162 and 5.496;

2. Revise the following forms:

   - *Notice of Court Hearing* (form CH-109);
   - *Civil Harassment Restraining Order After Hearing* (form CH-130);
   - *Notice of Court Hearing* (form EA-109);
   - *Elder or Dependent Adult Abuse Restraining Order After Hearing* (form EA-130);
   - *Notice of Court Hearing to Allow Contact* (form EA-309);
   - *Elder or Dependent Adult Restraining Order Allowing Contact After Hearing* (form EA-330);
   - *Notice of Court Hearing* (form SV-109);
   - *Private Postsecondary School Violence Restraining Order After Hearing* (form SV-130);
   - *Notice of Court Hearing* (form WV-109); and
   - *Workplace Violence Restraining Order After Hearing* (form WV-130).

The proposed rules of court and revised forms are attached at pages 7–52, with all changes highlighted.

Relevant Previous Council Action

Under the Code of Civil Procedure, the Judicial Council must provide forms and instructions for use in civil harassment, elder and dependent adult abuse, private postsecondary school violence, and workplace violence protective order matters. The forms have been revised when changes to the law required revisions and in response to suggestions from the public, judicial officers, and court professionals. The council last approved substantive changes to such forms last year to implement legislation prohibiting persons restrained under civil restraining orders from possessing firearm parts or "ghost guns" (in addition to already prohibited firearms).

Analysis/Rationale

In 2020, the Judicial Council adopted emergency rule 8, among others, in response to the COVID-19 pandemic. Emergency rule 8 provided that a remote appearance by a respondent at a restraining order hearing is the same as a physical appearance in the courtroom for purposes of service.[1] Specifically, if a respondent appeared remotely, no further service was required on respondent for enforcement of the order, so long as other statutory requirements were met. Now that emergency rule 8 is no longer in effect—but remote appearances are statutorily authorized in these proceedings—clarification is needed as to whether a remote appearance should be treated the same as a physical appearance in court, for purposes of enforcement of the order against the respondent.

[1] Judicial Council of Cal., *Judicial Branch Administration: Emergency Rules in Response to the COVID-19 Pandemic* (Apr. 4, 2020), see *www.courts.ca.gov/documents/appendix_I.pdf*.

Furthermore, the statutory authority governing service of protective orders after hearing does not separately indicate the type of service required if the respondent appears remotely at the hearing. Specifically, the Code of Civil Procedure, the Family Code, and the Welfare and Institutions Code provide for enforcement after a "personal appearance," providing that if a respondent to "a restraining order issued after a hearing has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, additional proof of service is not required for enforcement of the order."[2]

Nowhere in the California Codes is "personal appearance in court" defined, and the committees are unaware of any authority that prevents such phrases from being understood to include remote appearances. Given that the statutes do not expressly address this issue, and that courts and council members have requested clarification on this point, the committees recommend clarification of the issue through court rules and reflecting such clarification on the applicable court forms.

Rules 3.1162 and 5.496

The committees recommend adoption of two substantively identical rules of court to explain that if a respondent appears at a protective order hearing using remote technology and meets the other requirements of the statutes, then no further proof of service is required to enforce an order issued after hearing. Proposed rule 3.1162 is included in the Civil Rules and governs protective orders issued under certain sections of the Code of Civil Procedure, the Penal Code, and the Welfare and Institutions Code, which cover civil harassment, elder abuse, gun violence, school violence, and workplace violence restraining orders. Proposed rule 5.496 is included in the Family and Juvenile Rules and applies to protective orders issued under certain sections of the Family Code that cover domestic violence restraining orders, and of the Welfare and Institutions Code that cover juvenile restraining orders.[3]

The substance of the rules borrows heavily from the operative statutory provisions, which establish the circumstances in which no additional proof of service of the order issued after hearing is needed for enforcement purposes—namely that the respondent "appear[ed]" at the hearing when the order was issued and received actual notice of the terms of the order.

[2] Code Civ. Proc., §§ 527.6(q) (civil harassment restraining orders), 527.8(q) (workplace violence restraining orders), 527.85(q) (school violence restraining orders); Fam. Code, § 6384(a) (domestic violence restraining orders); Welf. & Inst. Code, § 15657.03(o) (elder abuse restraining orders). Similarly, the Penal Code, which governs gun violence restraining orders, provides that the respondent's "presence in court constitutes proof of service of notice of the terms of the order." (Pen. Code, § 18115(d).)

[3] The proposed rules do not apply to criminal protective orders.

Form revisions

The committees recommend revising the notice and order forms in the CH (civil harassment), DV (domestic violence), GV (gun violence), EA (elder abuse), SV (private postsecondary school violence), and WV (workplace violence) form sets.[4]

The committees recommend adding to the first page of form 109 in each form series, a notice to respondents that (1) attending the hearing remotely may result in immediate enforcement of any orders issued, and (2) the consequences of not appearing at the hearing. The committees also recommend including the following previously omitted information on the form: (1) advising the petitioner to attend the hearing and bring any witnesses and evidence, and (2) advising respondent of the ability to request a continuance of the hearing. The revisions to the forms in this set would also remove the requirement that the petitioner serve the respondent with a blank proof of service by mail (form 250), which is further discussed below in the "Comments" section.

The committees also recommend revising the *Restraining Order After Hearing* (form 130) in each form series. Specifically, the item for service in the order form is proposed to state that no other proof of service is needed if the respondent attends the hearing "either physically or remotely (by telephone or videoconference)."

Policy implications

The proposed rules and revised forms in this proposal reflect existing practice regarding service requirements after a remote appearance by the respondent at a hearing on a restraining order. Indeed, this proposal provides the necessary legal authority to continue what has been court practice since 2020. As such, the policy implications of this proposal are limited to confirming a prior policy decision in the rules of court and on council forms.

Comments

The new and revised forms were circulated for comments from March 30, 2023, to May 12, 2023. Comments were received from the Superior Courts of Los Angeles, Orange, Riverside, and San Diego Counties; Bay Area Legal Aid; the California Lawyers Association; a Commissioner at the Superior Court of Los Angeles County; the Orange County Bar Association; and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. All commenters either agreed with the proposal or did not state any objection to the proposal.

[4] Because other changes relevant only to the DV and GV form sets are recommended in other judicial council reports, the DV and GV forms are included in those reports. Those reports are titled, *Protective Orders: Revisions to Gun Violence Restraining Order Forms* and *Domestic Violence: Form Changes to Implement New Laws*, and can be found at *https://jcc.legistar.com/Calendar.aspx* with the agenda for the September 19, 2023 Judicial Council meeting.

A chart with the full text of the comments received and the committee's responses is attached beginning at page 53. The principal comments and the committees' responses are summarized below.

Additional information in the proposed rules

Two commenters suggested modification to the rules recommended by the committees. Bay Area Legal Aid suggested that the rules replace "through the use of remote technology" with "by phone or video conference." The committees declined this suggestion as "through the use of remote technology" is a phrase used in California Rules of Court, rule 3.672 and Code of Civil Procedure section 367.75, both of which govern the use of remote appearances. Additionally, the forms already use the language suggested by the commenter.[5]

Another commenter suggested that the proposed rules of court should specify that the court must read the restraining order aloud to ensure that the restrained party has notice of the existence and the substance of the order. The committees determined that such a requirement is unnecessary as the rules already reference the respondent receiving "actual notice" of the existence and substance of the order.

Required service of a blank proof of service by mail form

Several commenters opined on the committees' proposal to remove the requirement on the notice of hearing forms that the petitioner serve the respondent with a blank proof of service by mail form. One commenter agreed that eliminating this requirement "appears to be consistent with other motion processes," and another did not see any problem with such a proposal. Other commenters, however, suggested that the specific proposal might result in fewer proofs of service being filed and that the benefit of the requirement is that the respondent is provided with all the forms necessary to respond. While the committees acknowledge the arguments on either side of this issue, they ultimately recommend removing the requirement from the form as it places additional burdens on the petitioner that may affect their ability to have the sheriff serve their papers or move forward in their case if service was defective. Additionally, in most other actions the plaintiff or petitioner is not required to serve blank forms on the opposing party.

Alternatives considered

In addition to the alternatives suggested by the commenters and discussed above, the committees considered not recommending any action on this issue but decided against it as the committees have been asked to address this issue several times by courts and members of the Judicial Council. All of the committees' recommendations in this proposal garnered broad support among committee members.

[5] The committees did accept this commenter's suggestions to clarify "remote technology" on the order after hearing forms by adding a parenthetical including "phone" and "videoconference." Separately, the committees agreed with this commenter's suggestion that the notice of hearing forms include information advising petitioners that they may seek a hearing continuance for "good cause."

Fiscal and Operational Impacts

The committees anticipate that this proposal will require courts to train court staff and judicial officers on the newly approved rules and revised forms. Courts will also incur costs to incorporate the revised forms into the paper or electronic processes.

Attachments and Links

1. Cal. Rules of Court, rules 3.1162 and 5.496, at pages 7–8
2. Forms CH-109, CH-130, EA-109, EA-130, EA-309, EA-330, SV-109, SV-130, WV-109, and WV-130, at pages 9–52
3. Chart of comments, at pages 53–59

Rules 3.1162 and 5.496 of the California Rules of Court are adopted, effective January 1, 2024, to read:

Title 3. Civil Rules

Division 11. Law and Motion

Chapter 3. Provisional and Injunctive Relief

Article 4. Protective Orders

Rule 3.1162. Service requirement for respondents who appear remotely

(a) Application of rule

This rule applies to protective orders issued under Code of Civil Procedure sections 527.6, 527.8, and 527.85; Penal Code sections 18100–18205; and Welfare and Institutions Code section 15657.03.

(b) No additional proof of service required

If the respondent named in an order issued after hearing appears at that hearing through the use of remote technology, and through that appearance has received actual notice of the existence and substance of the restraining order after hearing, no additional proof of service is required for enforcement of the order.

Title 5. Family and Juvenile Rules

Division 2. Rules Applicable in Family and Juvenile Proceedings

Chapter 4. Protective Orders

Rule 5.496. Service requirement for proposed restrained persons who appear remotely

(a) Application of rule

This rule applies to orders issued under part 4 of division 10 (Domestic Violence Prevention Act) of the Family Code and Welfare and Institutions Code section 213.5.

(b) No additional proof of service required

If the proposed restrained person named in an order issued after hearing appears at that hearing through the use of remote technology, and through that appearance has received actual notice of the existence and substance of the restraining order after hearing, no additional proof of service is required for enforcement of the order.

CH-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

DRAFT

6/20/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

1 Person Seeking Protection

a. Your Full Name:

_____

Your Lawyer (if you have one for this case):

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

2 Person From Whom Protection Is Sought

Full Name: _____

The court will complete the rest of this form.

3 Notice of Hearing

A court hearing is scheduled on the request for restraining orders against the person in 2:

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

_____

_____

To the person in 2:

- If you attend the hearing (in person, by phone, or by videoconference) and the judge grants a restraining order against you, the order will be effective immediately, and you could be arrested if you violate the order.
- If you do not attend the hearing, the judge may still grant the restraining order that could last up to five years. After you receive a copy of the order, you could be arrested if you violate the order.

4 Temporary Restraining Orders *(Any orders granted are on form CH-110, served with this notice.)*

a. Temporary Restraining Orders for personal conduct and stay-away orders as requested in form CH-100, *Request for Civil Harassment Restraining Orders,* are *(check only one box below):*

(1) ☐ All **GRANTED** until the court hearing.

(2) ☐ All **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

(3) ☐ Partly **GRANTED** and partly **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

b. Reasons for denial of some or all of those personal conduct and stay-away orders as requested in form CH-100, *Request for Civil Harassment Restraining Orders,* are:

(1) ☐ The facts as stated in form CH-100 do not sufficiently show acts of violence, threats of violence, or a course of conduct that seriously alarmed, annoyed, or harassed the person in (1) and caused substantial emotional distress.

(2) ☐ Other *(specify):* ☐ As stated on Attachment 4b.

(5) Confidential Information Regarding Minor

a. ☐ A *Request to Keep Minor's Information Confidential* (form CH-160) was made and **GRANTED**. (*See form CH-165,* Order on Request to Keep Minor's Information Confidential, *served with this form.)*

b. **If the request was granted, the information described in item (7) on the order (form CH-165) must be kept CONFIDENTIAL. The disclosure or misuse of the information is punishable as a sanction, with a fine of up to $1,000 or other court penalities.**

(6) Service of Documents for the Person in (1)

At least ☐ **five** ☐ _____ **days before the hearing**, someone age 18 or older—**not you or anyone to be protected—**must personally give (serve) a court's file-stamped copy of this form CH-109 to the person in (2) along with a copy of all the forms indicated below:

a. CH-100, *Request for Civil Harassment Restraining Orders* (file-stamped)

b. ☐ CH-110, *Temporary Restraining Order* (file-stamped) **IF GRANTED**

c. CH-120, *Response to Request for Civil Harassment Restraining Orders* (blank form)

d. CH-120-INFO, *How Can I Respond to a Request for Civil Harassment Restraining Orders?*

e. ☐ CH-170, *Notice of Order Protecting Information of Minor* and CH-165*, Order on Request to Keep Minor's Information Confidential* (file-stamped) **IF GRANTED**

f. ☐ Other *(specify):* _____

Date: _____ _____

Judicial Officer

Case Number:

To the Person in ❶:

- The court cannot make the restraining orders after the court hearing unless the person in ❷ has been personally given (served) a copy of your request and any temporary orders. To show that the person in ❷ has been served, the person who served the forms must fill out a proof of service form. Form CH-200, *Proof of Personal Service,* may be used.
- For information about service, read form CH-200-INFO, *What Is "Proof of Personal Service"?*
- You may ask to reschedule the hearing if you are unable to find the person in ❷ and need more time to serve the documents, or for other good reasons. Read form CH-115-INFO, *How to Ask for a New Hearing Date*.
- You must attend the hearing if you want the judge to make any of the orders you requested on form CH-100, *Request for Civil Harassment Restraining Orders*. Bring any evidence or witnesses you have. For more information, read form CH-100-INFO, *Can a Civil Harassment Restraining Order Help Me?*

To the Person in ❷:

- If you want to respond to the request for orders in writing, file form CH-120, *Response to Request for Civil Harassment Restraining Orders,* and have someone age 18 or older—**not you or anyone to be protected**—mail it to the person in ❶.
- The person who mailed the form must fill out a proof of service form. Form CH-250, *Proof of Service by Mail,* may be used. File the completed form with the court before the hearing and bring a copy with you to the court hearing.
- Whether or not you respond in writing, go to the hearing if you want the judge to hear from you before making an order. You may tell the judge why you agree or disagree with the orders requested.
- You may bring witnesses and other evidence.
- At the hearing, the judge may make restraining orders against you that could last up to five years and may order you to turn in to law enforcement, or sell to or store with a licensed gun dealer, any firearms (guns) and firearm parts that you own or possess. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531).
- If you are unable to attend your court hearing or need more time to prepare your case, you may ask to reschedule your court date. Read form CH-115-INFO, *How to Ask for a New Hearing Date.*

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to www.courts.ca.gov/forms for *Disability Accommodation Request* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Court Hearing* is a true and correct copy of the original on file in the court.

Clerk's Certificate
[seal]

Date: _____

Clerk, by _____, Deputy

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

CH-130 Civil Harassment Restraining Order After Hearing

Clerk stamps date here when form is filed.

DRAFT

7/7/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Person in (1) must complete (1), (2), and (3) only.

(1) Protected Person

a. Your Full Name: _____

Your Lawyer *(if you have one for this case)*
Name: _____ State Bar No.: _____
Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
Email Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(2) Restrained Person

(Give all the information you know. Information with a star (*) is required to add this order to the California police database. If age is unknown, give an estimate.)

*Full Name: _____ *Age: _____ Date of Birth: _____
*Race: _____ Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____
*Gender: ☐ M ☐ F ☐ Nonbinary Home Address: _____
City: _____ State: _____ Zip: _____
Relationship to Protected Person: _____

(3) ☐ Additional Protected Persons

In addition to the person named in (1), the following family or household members of that person are protected by the orders indicated below:

Full Name	Gender	Age	Lives with you?	How are they related to you?
_____	_____	_____	☐ Yes ☐ No	_____
_____	_____	_____	☐ Yes ☐ No	_____
_____	_____	_____	☐ Yes ☐ No	_____
_____	_____	_____	☐ Yes ☐ No	_____

☐ *Check here if there are additional persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use form MC-025,* Attachment.

(4) Expiration Date

This Order, except for any award of lawyer's fees, expires at

Time: _____ ☐ a.m. ☐ p.m. ☐ midnight on *(date):* _____

If no expiration date is written here, this Order expires three years from the date of issuance.

This is a Court Order.

Case Number:

5 Hearing

a. There was a hearing on *(date):* _____ at *(time):* _____ in Dept.: _____ Room: _____
(Name of judicial officer): _____ made the orders at the hearing.

b. These people were at the hearing:

(1) ☐ The person in 1. (3) ☐ The lawyer for the person in 1 *(name):* _____

(2) ☐ The person in 2. (4) ☐ The lawyer for the person in 2 *(name):* _____

☐ Additional persons present are listed at the end of this Order on Attachment 5.

c. ☐ The hearing is continued. The parties must return to court on *(date):* _____ at *(time):* _____.

To the Person in 2:

The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.

6 ☐ Personal Conduct Orders

a. You must **not** do the following things to the person named in 1

☐ and to the other protected persons listed in 3:

(1) ☐ Harass, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, abuse, destroy personal property of, or disturb the peace of the person.

(2) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by email, by text message, by fax, or by other electronic means.

(3) ☐ Take any action to obtain the person's address or location. If this item (3) is not checked, the court has found good cause not to make this order.

(4) ☐ Other *(specify):*

☐ Other personal conduct orders are attached at the end of this Order on Attachment 6a(4).

_____

b. Peaceful written contact through a lawyer or process server or other person for service of legal papers related to a court case is allowed and does not violate this Order.

7 ☐ Stay-Away Orders

a. You **must** stay at least _____ yards away from *(check all that apply):*

(1) ☐ The person in 1.

(2) ☐ Each person in 3.

(3) ☐ The home of the person in 1.

(4) ☐ The job or workplace of the person in 1.

(5) ☐ The school of the person in 1.

(6) ☐ The school of the children of the person in 1.

(7) ☐ The place of child care of the children of the person in 1.

(8) ☐ The vehicle of the person in 1.

(9) ☐ Other *(specify):*

_____

_____

_____

_____

b. This stay-away order does not prevent you from going to or from your home or place of employment.

This is a Court Order.

8 No Firearms (Guns), Firearm Parts, or Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get any prohibited items listed below in b.

b. **Prohibited items are:**

(1) Firearms (guns);

(2) Firearm parts, meaning receivers and frames, or any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531); and

(3) Ammunition.

c. If you have not already done so, you must:

- Within 24 hours of being served with this Order, sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any firearms (guns) and firearm parts in your custody or control or that you possess or own.
- File a receipt with the court within 48 hours of receiving this Order that proves that your firearms (guns) and firearm parts have been turned in, sold, or stored. (You may use *Receipt for Firearms and Firearm Parts* (form CH-800) for the receipt.)

d. ☐ The court has received information that you own or possess a firearm (gun), firearm parts, or ammunition.

e. ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Code of Civil Procedure section 527.9(f). Under California law, the person in (2) is not required to relinquish this firearm *(specify make, model, and serial number of firearm(s)):* _____

_____

The firearm must be in the physical possession of the person in (2) only during scheduled work hours and during travel to and from their place of employment. Even if exempt under California law, the person in (2) may be subject to federal prosecution for possessing or controlling a firearm.

9 ☐ Lawyer's Fees and Costs

The person in ___ must pay to the person in ___ the following amounts for

☐ lawyer's fees ☐ costs:

Item	Amount	Item	Amount
_____	$ _____	_____	$ _____
_____	$ _____	_____	$ _____

☐ Additional items and amounts are attached at the end of this Order on Attachment 9.

10 ☐ Possession and Protection of Animals

a. ☐ The person in (1) is given the sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by him or her, or reside in his or her household.
(Identify animals by, e.g., type, breed, name, color, sex.)

_____

_____

b. ☐ The person in (2) must stay at least _____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

This is a Court Order.

11 ☐ **Other Orders** *(specify):*

_____

_____

_____

☐ Additional orders are attached at the end of this Order on Attachment 11.

To the Person in 1:

12 **Mandatory Entry of Order Into CARPOS Through CLETS**

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, the person in 1 or his or her lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address *(City, State, Zip)*
_____	_____
_____	_____

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 12.

13 **Service of Order on Restrained Person**

a. ☐ The person in 2 personally attended the hearing, either physically or remotely (by telephone or videoconference). No other proof of service is needed.

b. ☐ The person in 2 did not attend the hearing.

(1) ☐ Proof of service of form CH-110, *Temporary Restraining Order,* was presented to the court. The judge's orders in this form are the same as in form CH-110 except for the expiration date. The person in 2 must be served with this Order. Service may be by mail.

(2) ☐ The judge's orders in this form are different from the temporary restraining orders in form CH-110. Someone—but not anyone in 1 or 3—must personally serve a copy of this Order on the person in 2.

14 ☐ **No Fee to Serve (Notify) Restrained Person**

The sheriff or marshal will serve this Order without charge because:

a. ☐ The Order is based on unlawful violence, a credible threat of violence, or stalking.

b. ☐ The person in 1 is entitled to a fee waiver.

15 Number of pages attached to this Order, if any: _____

Date: _____

_____

Judicial Officer

This is a Court Order.

Warning and Notice to the Restrained Person in (2):

You Cannot Have Firearms (Guns), Firearm Parts, or Ammunition

Unless item 8e is checked, you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get any prohibited items listed in item 8b on page 3 while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any firearms (guns) and firearm parts that you have or control as stated in (8) above. The court will require you to prove that you did so.

Instructions for Law Enforcement

Enforcing the Restraining Order

This Order is enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Restraining and Protective Order System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing (see (13)), the agency must advise the restrained person of the terms of the Order and then must enforce it. Violations of this Order are subject to criminal penalties.

Start Date and End Date of Orders

This Order *starts* on the date next to the judge's signature on page 4 and *ends* on the expiration date in (4) on page 1.

Arrest Required If Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed it, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; *or*
- The restrained person was at the restraining order hearing (see (13)) or was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this Order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

This is a Court Order.

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *Emergency Protective Order (EPO):* If one of the orders is an *Emergency Protective Order* (form EPO-001), provisions (e.g., stay-away order) that are more restrictive than in the other restraining/protective orders must be enforced. Provisions of another order that do not conflict with the EPO must be enforced.
2. *No-Contact Order:* If a restraining/protective order includes a no-contact order, the no-contact order must be enforced. Item 6a(2) is an example of a no-contact order.
3. *Criminal Protective Order (CPO):* If none of the orders include an EPO or a no-contact order, the most recent CPO must be enforced. (Fam. Code, §§ 6383(h)(2) and 6405(b).) Additionally, a CPO issued in a criminal case involving charges of domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil court order. (Pen. Code, § 136.2(e)(2).) All provisions in the civil court order that do not conflict with the CPO must be enforced.
4. *Civil Restraining Orders:* If there is more than one civil restraining order (e.g., domestic violence, juvenile, elder abuse, civil harassment), then the order that was issued last must be enforced. Provisions that do not conflict with the most recent civil restraining order must be enforced.

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Civil Harassment Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

EA-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

DRAFT

6/20/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

1 Elder or Dependent Adult in Need of Protection

a. Full Name: _____

☐ Person requesting protection for the elder or dependent adult, if different *(person named in item 3 of form EA-100)*:
Full Name: _____

Lawyer for person named above *(if any for this case):*
Name: _____ State Bar No.: _____
Firm Name: _____

b. Address for person named above *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer, give information for the person requesting the order. If you want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.):*
Address: _____
City: _____ State: ____ Zip: _____
Telephone: _____ Fax: _____
Email Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

2 Person You Want Protection From

Full Name: _____

The court will complete the rest of this form.

3 Notice of Hearing

A court hearing is scheduled on the request for restraining orders against the person in 2:

Hearing Date → Date: _____ Time: _____
Dept.: _____ Room: _____

Name and address of court if different from above:
_____
_____
_____
_____

To the person in 2:

- If you attend the hearing (in person, by phone, or by videoconference) and the judge grants a restraining order against you, the order will be effective immediately, and you could be arrested if you violate the order.
- If you do not attend the hearing, the judge may still grant the restraining order that could last up to five years. After you receive a copy of the order, you could be arrested if you violate the order.

4 Temporary Restraining Orders *(Any orders granted are on form EA-110, served with this notice.)*

a. Temporary Restraining Orders for personal conduct and stay-away orders as requested in form EA-100, *Request for Elder on Dependent Adult Abuse Restraining Orders,* are *(check only one box below):*

(1) ☐ All **GRANTED** until the court hearing.

(2) ☐ All **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

(3) ☐ Partly **GRANTED** and partly **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

4 Temporary Restraining Orders (Continued)

b. Reasons for denial of some or all of those personal conduct and stay-away orders as requested in form EA-100, *Request for Elder or Dependent Adult Abuse Restraining Orders*, are:

(1) ☐ The facts as stated in form EA-100 do not sufficiently show reasonable proof of a past act or acts of abuse of the elder or dependent adult by the person in 2.

(2) ☐ Other *(specify):* ☐ As stated on Attachment 4b.

5 Service of Documents by the Person in 1

At least ☐ **five** ☐ _____ **days before the hearing**, someone age 18 or older—**not you or anyone to be protected—**must personally give (serve) a court file-stamped copy of this form EA-109, *Notice of Court Hearing*, to the person in 2 along with a copy of all the forms indicated below:

a. EA-100, *Request for Elder or Dependent Adult Abuse Restraining Orders* (file-stamped)

b. ☐ EA-110, *Temporary Restraining Order* (file-stamped) **IF GRANTED**

c. EA-120, *Response to Request for Elder or Dependent Adult Abuse Restraining Orders* (blank form)

d. EA-120-INFO, *How Can I Respond to a Request for Elder or Dependent Adult Abuse Restraining Orders?*

e. ☐ Other *(specify):*

Date: ▶ *Judicial Officer*

To the Person in 1 :

- The court cannot make the restraining orders after the court hearing unless the person in 2 has been personally given (served) a copy of your request and any temporary orders. To show that the person in 2 has been served, the person who served the forms must fill out a proof of service form. Form EA-200, *Proof of Personal Service*, may be used.
- For information about service, read form EA-200-INFO, *What Is "Proof of Personal Service"?*
- You may ask to reschedule the hearing if you are unable to find the person in 2 and need more time to serve the documents, or for other good reasons. Read form EA-115-INFO, *How to Ask for a New Hearing Date*.
- You must attend the hearing if you want the judge to make any of the orders you requested on form EA-100, *Request for Elder or Dependent Adult Abuse Restraining Orders*. Bring any evidence or witnesses you have. For more information, read form EA-100-INFO, *Can a Restraining Order to Prevent Elder or Dependent Adult Abuse Help Me?*

Case Number:

To the Person in ❷ :

- If you want to respond to the request for orders in writing, file form EA-120, *Response to Request for Elder or Dependent Adult Abuse Restraining Orders*, and have someone age 18 or older—**not you or anyone to be protected—**mail it to the person in ❶ .
- The person who mailed the form must fill out a proof of service form. Form EA-250, *Proof of Service of Response by Mail*, may be used. File the completed form with the court before the hearing and bring a copy with you to the court hearing.
- Whether or not you respond in writing, go to the hearing if you want the judge to hear from you before making an order. You may tell the judge why you agree or disagree with the orders requested.
- You may bring witnesses and other evidence.
- **At the hearing, the judge may make restraining orders against you that could last up to five years and may order you to sell or turn in any firearms (guns) and firearm parts that you own or possess. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531).**
- If you are unable to attend your court hearing or need more time to prepare your case, you may ask to reschedule your court date. Read form EA-115-INFO, *How to Ask for a New Hearing Date*.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Disability Accommodation Request* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Court Hearing* is a true and correct copy of the original on file in the court.

Clerk's Certificate
[seal]

Date: _____ Clerk, by _____, Deputy

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

EA-130 Elder or Dependent Adult Abuse Restraining Order After Hearing

Clerk stamps date here when form is filed.

DRAFT

7/7/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Person in (1) must complete (1), (2), and (3) only.

(1) Elder or Dependent Adult Seeking Protection

a. Full Name: _____

☐ Name of person asking for the protection, if different *(This is the person named in item (3) of the request (form EA-100).)*

Full Name: _____

Lawyer for person named above *(if any for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(2) Restrained Person

(Give all the information you know. Information with a star (*) is required to add this order to the California police database. If age is unknown, give an estimate.)

*Full Name: _____ *Age: _____ Date of Birth: _____

*Race: _____ Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____

*Gender: ☐ M ☐ F ☐ Nonbinary Home Address: _____

City: _____ State: _____ Zip: _____

Relationship to Protected Person: _____

(3) ☐ Additional Protected Persons

In addition to the elder or dependent adult named in (1), the following family or household members or conservator of the elder or dependent adult named in (1) are protected by the orders indicated below:

Full Name	Gender	Age	Lives with Person in (1)?	Relation to Person in (1)
_____	_____	_____	☐ Yes ☐ No	_____
_____	_____	_____	☐ Yes ☐ No	_____

☐ *Check here if there are additional protected persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use form MC-025,* Attachment.

(4) Expiration Date

This Order, except for any award of lawyer's fees, expires at

Time: _____ ☐ a.m. ☐ p.m. ☐ midnight on *(date):* _____

If no expiration date is written here, this Order expires three years from the date of issuance.

This is a Court Order.

5 Hearing

a. There was a hearing on *(date):* _____ *at (time):* _____ in Dept.: _____ Room: _____ *(Name of judicial officer):* _____ made the orders at the hearing.

b. These people were at the hearing:
- (1) ☐ The elder or dependent adult in need of protection
- (2) ☐ The lawyer for the elder or dependent adult *(name):* _____
- (3) ☐ The person in (1) asking for protection (if not the elder or dependent adult)
- (4) ☐ The lawyer for the person in (1) asking for protection *(name):* _____
- (5) ☐ The person in (2)
- (6) ☐ The lawyer for the person in (2) *(name):* _____
- ☐ Additional persons present are listed at the end of this Order on Attachment 5.

c. ☐ The hearing is continued. The parties must return to court on *(date):* _____ at *(time):* _____.

To the Person in (2):

The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.

6 ☐ Personal Conduct Orders

a. You must **not** do the following things to the elder or dependent adult named in (1)

☐ and to the other protected persons listed in (3):

- (1) ☐ Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy personal property of, or disturb the peace of the person.
- (2) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by email, by text message, by fax, or by other electronic means.
- (3) ☐ Take any action to obtain the person's address or location. If this item (3) is not checked, the court has found good cause not to make this order.
- (4) ☐ Other *(specify):* _____
  - ☐ Other personal conduct orders are attached at the end of this Order on Attachment 6a(4).

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

7 ☐ Stay-Away Orders

a. You **must** stay at least _____ yards away from *(check all that apply):*

- (1) ☐ The elder or dependent adult in (1).
- (2) ☐ Each person in (3).
- (3) ☐ The home of the elder or dependent adult.
- (4) ☐ The job or workplace of the elder or dependent adult.
- (5) ☐ The vehicle of the elder or dependent adult.
- (6) ☐ Other *(specify):*

_____
_____
_____
_____

b. This stay-away order does not prevent you from going to or from your home or place of employment.

This is a Court Order.

8 ☐ Move-Out Order

You must immediately move out from and not return to *(address):*

_____

_____

and must take only the personal clothing and belongings you need.

9 ☐ Order for Counseling or Anger Management

a. The person in 2 is ordered to attend:

☐ clinical counseling for _____ *(specify number)* sessions; or

☐ an anger management course

provided by a professional (a counselor, psychologist, psychiatrist, therapist, clinical social worker, or mental or behavioral health professional licensed in the State of California to provide counseling or anger management courses).

b. The person in 2 must schedule clinical counseling or enroll in an anger management course by *(date):* _____ , or if no date is listed, within 30 days after this order is made. The person in 2 is ordered to file written proof of scheduling or enrollment with the court.

c. ☐ Written proof of completion of the ordered number of clinical counseling sessions or written proof of completion of the court-ordered anger management course must be filed with the court by *(date):* _____ , or the person in 2 must appear for a court date on

(date): _____ *at (time):* _____ in Dept.: _____ Room: _____

10 ☐ No Firearms (Guns), Firearm Parts, or Ammunition

This Order must be granted unless the abuse is financial only.

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get any prohibited items listed below in b.

b. **Prohibited items are:**

(1) Firearms (guns);

(2) Firearm parts, meaning receivers, frames, or any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531); and

(3) Ammunition.

c. If you have not already done so, you must:

- Sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any firearms (guns) and firearm parts in your immediate possession or control. This must be done within 24 hours of being served with this Order.
- File a receipt with the court within 48 hours of receiving this Order that proves that your firearms (guns) and firearm parts have been turned in, sold, or stored. (You may use form EA-800, *Receipt for Firearms and Firearm Parts*, for the receipt.)

d. ☐ The court has received information that you own or possess a firearm (gun), firearm parts, or ammunition.

This is a Court Order.

10 e. ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Code of Civil Procedure section 527.9(f). Under California law, the person in 2 is not required to relinquish this firearm *(specify make, model, and serial number of firearm):* _____

_____

The firearm must be in the physical possession of the person in 2 only during scheduled work hours and during travel to and from their place of employment. Even if exempt under California law, the person in 2 may be subject to federal prosecution for possessing or controlling a firearm.

11 Financial Abuse

This case ☐ does **not** ☐ does involve **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

12 ☐ Possession and Protection of Animals

a. ☐ The person in 1 is given the sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by him or her, or reside in his or her household.
(Identify animals by, e.g., type, breed, name, color, sex.)

_____

_____

_____

b. ☐ The person in 2 must stay at least _____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

13 ☐ Specific Debts

The court finds (decides) that the following debts were incurred as a result of financial abuse of the person in 1 by the person in 2.

Money Owed To:	For:	Amount:
_____	_____	$ _____
_____	_____	$ _____
_____	_____	$ _____

☐ Additional debts are attached at the end of this Order on Attachment 13.

14 ☐ Lawyer's Fees and Costs

You must pay to the person in 1 the following amounts for ☐ lawyer's fees ☐ costs:

Item	Amount	Item	Amount
_____	$ _____	_____	$ _____
_____	$ _____	_____	$ _____

☐ Additional amounts are attached at the end of this Order on Attachment 14.

This is a Court Order.

15 ☐ **Other Orders** *(specify):*

_____

_____

_____

_____

_____

☐ Additional orders are attached at the end of this Order on Attachment 15.

To the Person in 1 :

16 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof of service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof of service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, you or your lawyer should deliver a copy of the Order and its proof of service form to the law enforcement agency listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address *(City, State, Zip)*

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 16.

17 Service of Order on Restrained Person

a. ☐ The person in 2 personally attended the hearing, either physically or remotely (by telephone or videoconference). No other proof of service is needed.

b. ☐ The person in 1 was at the hearing. The person in 2 was not.

(1) ☐ Proof of service of form EA-110, *Temporary Restraining Order*, was presented to the court. The judge's orders in this form are the same as in form EA-110 except for the end date. The person in 2 must be served with this Order. Service may be by mail.

(2) ☐ Proof of service of form EA-110, *Temporary Restraining Order*, was presented to the court. The judge's orders in this form are different from the orders in form EA-110. Someone—but not anyone in 1 or 3—must personally serve a copy of this Order on the person in 2.

18 No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal serves this Order, they will do so for free.

19 Number of pages attached to this Order, if any: _____

Date: _____ _____

Judicial Officer

This is a Court Order.

Warning and Notice to the Restrained Person in 2:

You Cannot Have Firearms (Guns), Firearm Parts, or Ammunition

If the court grants the orders in 10 on page 3 (unless item 10e on page 4 is checked), you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get any prohibited items listed in item 10b on page 3 while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any firearms (guns) and firearm parts that you have or control as stated in 10. The court will require you to prove that you did so.

Instructions for Law Enforcement

Enforcing the Restraining Order

This order is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Restraining and Protective Order System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing (see 17), the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

Start Date and End Date of Order

This order *starts* on the date next to the judge's signature on page 5. The order *ends* on the expiration date in 4 on page 1.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; or
- The restrained person was at the restraining order hearing (see 17) or was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The order can be changed only by another court order. (Pen. Code, § 13710(b).)

This is a Court Order.

Case Number:

Instructions for Law Enforcement

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *Emergency Protective Order (EPO):* If one of the orders is an *Emergency Protective Order* (form EPO-001), provisions (e.g., stay-away order) that are more restrictive than in the other restraining/protective orders must be enforced. Provisions of another order that do not conflict with the EPO must be enforced.
2. *No-Contact Order:* If a restraining/protective order includes a no-contact order, the no-contact order must be enforced. Item 6a(2) is an example of a no-contact order.
3. *Criminal Protective Order (CPO):* If none of the orders include an EPO or a no-contact order, the most recent CPO must be enforced. (Fam. Code, §§ 6383(h)(2) and 6405(b).) Additionally, a CPO issued in a criminal case involving charges of domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil court order. (Pen. Code, § 136.2(e)(2).) All provisions in the civil court order that do not conflict with the CPO must be enforced.
4. *Civil Restraining Orders:* If there is more than one civil restraining order (e.g., domestic violence, juvenile, elder abuse, civil harassment), then the order that was issued last must be enforced. Provisions that do not conflict with the most recent civil restraining order must be enforced.

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Elder or Dependent Adult Abuse Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____ , Deputy

This is a Court Order.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

EA-309 Notice of Court Hearing to Allow Contact

Clerk stamps date here when form is filed.

DRAFT

6/20/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Elders or Dependent Adults

Full Name: _____

Full Name: _____

Full Name: _____

2 Person Alleged to Be Preventing Contact

Full Name: _____

3 Person Who Wants Contact With the Elders or Dependent Adults

Full Name: _____

4 Person Requesting Order

a. Full Name: _____

☐ Lawyer for person requesting order:

Name: _____

Firm Name: _____

b. ☐ Address for the person requesting order *(If you have a lawyer, give your lawyer's information. If you want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*

Address: _____

City: _____ State: ____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

The court will complete the rest of this form.

5 Notice of Hearing

A court hearing is scheduled on the request for restraining order allowing contact against the person in 2:

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

_____

_____

To the person in 2:

- If you attend the hearing (in person, by phone, or by videoconference) and the judge grants a restraining order against you, the order will be effective immediately, and you could be arrested if you violate the order.
- If you do not attend the hearing, the judge may still grant the restraining order that could last up to five years. After you receive a copy of the order, you could be arrested if you violate the order.

6 Service of Documents by the Person in 4

At least ☐ **five** ☐ _____ **days before the hearing**, someone age 18 or older—**not you or anybody else involved in the case—**must personally give (serve) a court file-stamped copy of this form EA-309, *Notice of Court Hearing to Allow Contact*, to the person in 2 along with a copy of all the forms indicated below:

a. EA-300, *Request for Elder or Dependent Adult Restraining Order Allowing Contact* (file-stamped)

b. EA-320, *Response to Request for Elder or Dependent Adult Restraining Order Allowing Contact* (blank form)

c. EA-320-INFO, *How Can I Respond to a Request for an Elder or Dependent Adult Restraining Order Allowing Contact?*

Date: _____ _____

Judicial Officer

To the Person in 4 :

- The court cannot make the restraining order requested unless the person in 2 has been personally given (served) a copy of your request. To show that the person in 2 has been served, the person who served the forms must fill out a proof of service form. Form EA-200, *Proof of Personal Service*, may be used.
- For information about service, read form EA-200-INFO, *What Is "Proof of Personal Service"?*
- You may ask to reschedule the hearing if you are unable to find the person in 2 and need more time to serve the documents, or for other good reasons. Read form EA-315-INFO, *How to Ask for a New Date for a Hearing to Allow Contact.*
- You must attend the hearing if you want the judge to make any of the orders you requested on form EA-300, *Request for Elder or Dependent Adult Restraining Order Allowing Contact*. Bring any evidence or witnesses you have. For more information, read form EA-300-INFO, *Can an Elder or Dependent Adult Restraining Order Allowing Contact Help Me?*

Case Number:

To the Person in ❷ :

- If you want to respond to the request for an order in writing, file form EA-320, *Response to Request for Elder or Dependent Adult Restraining Order Allowing Contact*, and have someone age 18 or older—**not you or anybody else involved in the case—**mail it to the person in ❹.
- The person who mailed the form must fill out a proof of service form. Form EA-250, *Proof of Service of Response by Mail*, may be used. File the completed form with the court before the hearing and bring a copy with you to the court hearing.
- Whether or not you respond in writing, go to the hearing if you want the judge to hear from you before making an order. You may tell the judge why you agree or disagree with the order requested.
- You may bring witnesses and other evidence.
- At the hearing, the judge may make a restraining order against you that could last up to five years.
- If you are unable to attend your court hearing or need more time to prepare your case, you may ask to reschedule your court date. Read form EA-315-INFO, *How to Ask for a New Date for a Hearing to Allow Contact*.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Disability Accommodation Request* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Court Hearing to Allow Contact* is a true and correct copy of the original on file in the court.

Clerk's Certificate
[seal]

Date: _____

Clerk, by _____ , Deputy

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

EA-330 Elder or Dependent Adult Restraining Order Allowing Contact After Hearing

Clerk stamps date here when form is filed.

DRAFT

7/7/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Person in (4) must complete (1), (2), (3), and (4) only.

(1) Elders or Dependent Adults

Full Names: _____

_____

(2) Person Preventing Contact

Full Name: _____

(3) Person Who Wants Contact With the Elders or Dependent Adults

Full Name: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(4) Person Requesting Order

a. Full Name: _____

Lawyer for person requesting order *(if any for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

(5) Expiration Date

This Order, except for any award of lawyer's fees, expires at

Time: _____ ☐ a.m. ☐ p.m. ☐ midnight on *(date):* _____

If no expiration date is written here, this Order expires three years from the date of issuance.

This is a Court Order.

6 Hearing

a. There was a hearing on *(date):* _____ *at (time):* _____ in Dept.: _____ Room: _____ *(Name of judicial officer):* _____ made the orders at the hearing.

b. These people were at the hearing:

(1) ☐ The elders or dependent adults to receive contact

(2) ☐ The lawyer for the elders or dependent adults *(name):* _____

(3) ☐ The person in 4 requesting the order *(name):* _____

(4) ☐ The lawyer for the person in 4 requesting the order *(name):* _____

(5) ☐ The person in 2 *(name):* _____

(6) ☐ The lawyer for the person in 2 *(name):* _____

☐ Additional persons present are listed at the end of this Order on Attachment 6.

c. ☐ The hearing is continued. The parties must return to court on *(date):* _____ at *(time):* _____.

To the Person in 2 :

The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.

7 ☐ Order Allowing Contact

a. ☐ You may not prevent the person in 3 from in-person or remote online or telephonic visits with the elders or dependent adults in 1.

b. ☐ Other terms of order allowing contact *(specify)*:

8 ☐ Other Orders *(specify):*

☐ Additional orders are attached at the end of this Order on Attachment 8.

This is a Court Order.

9 ☐ Lawyer's Fees and Costs

You must pay to the person who requested the order the following amounts for ☐ lawyer's fees ☐ costs:

Item	Amount	Item	Amount
	$		$
	$		$

☐ Additional amounts are attached at the end of this Order on Attachment 9.

To the Person in 4 :

10 Service of Order

a. ☐ The person in 2 personally attended the hearing, either physically or remotely (by telephone or videoconference). No other proof of service is needed.

b. ☐ The person in 2 was not at the hearing. Someone—but not anyone in 1 or 4—must personally serve a copy of this Order on the person in 2.

11 No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal serves this Order, they will do so for free.

12 Number of pages attached to this Order, if any: _____

Date: _____ _____

Judicial Officer

Instructions for Law Enforcement

Enforcing the Restraining Order

This order is enforceable by any law enforcement agency that has received the order or is shown a copy of the order. If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing (see 10) the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

Start Date and End Date of Order

This order *starts* on the date next to the judge's signature on page 3. The order *ends* on the expiration date in 5 on page 1.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; or
- The restrained person was at the restraining order hearing (see **10**) or was informed of the order by an officer.

If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

Conflicting Orders—Priority of Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *Emergency Protective Order (EPO):* If one of the orders is an *Emergency Protective Order* (form EPO-001), provisions (e.g., stay-away order) that are more restrictive than in the other restraining/protective orders must be enforced. Provisions of another order that do not conflict with the EPO must be enforced.
2. *No-Contact Order:* If a restraining/protective order includes a no-contact order, the no-contact order must be enforced. Item 5a(2) is an example of a no-contact order.
3. *Criminal Protective Order (CPO):* If none of the orders include an EPO or a no-contact order, the most recent CPO must be enforced. (Fam. Code, §§ 6383(h)(2) and 6405(b).) Additionally, a CPO issued in a criminal case involving charges of domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil court order. (Pen. Code, § 136.2(e)(2).) All provisions in the civil court order that do not conflict with the CPO must be enforced.
4. *Civil Restraining Orders:* If there is more than one civil restraining order (e.g., domestic violence, juvenile, elder abuse, civil harassment) then the order that was issued last must be enforced. Provisions that do not conflict with the most recent civil restraining order must be enforced.

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Elder or Dependent Adult Restraining Order Allowing Contact After Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

SV-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

DRAFT

6/20/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

1 Petitioner (Educational Institution Officer or Employee)

a. Name:

_____

Lawyer for Petitioner *(if any for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Address *(If you have a lawyer, give your lawyer's information.):*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

2 Student in Need of Protection

Full Name: _____

3 Respondent (Person From Whom Protection Is Sought)

Full Name: _____

The court will complete the rest of this form.

4 Notice of Hearing

A court hearing is scheduled on the request for restraining orders against the respondent:

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

_____

_____

To the person in 3:

- If you attend the hearing (in person, by phone, or by videoconference) and the judge grants a restraining order against you, the order will be effective immediately, and you could be arrested if you violate the order.
- If you do not attend the hearing, the judge may still grant the restraining order that could last up to five years. After you receive a copy of the order, you could be arrested if you violate the order.

5 Temporary Restraining Orders *(Any orders granted are on form SV-110, served with this notice.)*

a. Temporary Restraining Orders for personal conduct and stay-away orders as requested in form SV-100, *Request for Private Postsecondary School Violence Restraining Orders,* are *(check only one box below)*:

(1) ☐ All **GRANTED** until the court hearing.

(2) ☐ All **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

(3) ☐ Partly **GRANTED** and partly **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

b. Reasons that Temporary Restraining Orders as requested in form SV-100, *Petition for Private Postsecondary School Violence Restraining Orders,* for personal conduct or stay-away are denied are:

(1) ☐ The facts as stated in form SV-100 do not sufficiently show reasonable proof that the student has suffered a credible threat of violence made off the school campus or facility by the respondent, and that great or irreparable harm would result to the student if a temporary restraining order is not issued.

(2) ☐ Other *(specify):* ☐ As stated on Attachment 5b.

6 Service of Documents by the Petitioner

At least ☐ **five** ☐ _____ **days before the hearing**, someone age 18 or older—**not you or anyone to be protected—**must personally give (serve) a court file-stamped copy of this form SV-109, *Notice of Court Hearing,* to the respondent along with a copy of all the forms indicated below:

a. SV-100, *Petition for Private Postsecondary School Violence Restraining Orders (file-stamped)*

b. ☐ SV-110, *Temporary Restraining Order* (file-stamped) **IF GRANTED**

c. SV-120, *Response to Petition for Private Postsecondary School Violence Restraining Orders* (blank form)

d. SV-120-INFO, *How Can I Respond to a Petition for Private Postsecondary School Violence Restraining Orders?*

e. ☐ Other *(specify):* _____

Date: _____ _____
Judicial Officer

To the Petitioner:

- The court cannot make the restraining orders after the court hearing unless the respondent has been personally given (served) a copy of your request and any temporary orders. To show that the respondent has been served, the person who served the forms must fill out a proof of service form. Form SV-200, *Proof of Personal Service,* may be used.
- For information about service, read form SV-200-INFO, *What Is "Proof of Personal Service"?*
- You may ask to reschedule the hearing if you are unable to find the respondent and need more time to serve the documents, or for other good reasons. Read form SV-115-INFO, *How to Ask for a New Hearing Date*.
- You must attend the hearing if you want the judge to make any of the orders you requested on form SV-100, *Petition for Private Postsecondary School Violence Restraining Orders*. Bring any evidence or witnesses you have. For more information, read form SV-100-INFO, *How Do I Get an Order to Prohibit Private Postsecondary School Violence?*

Case Number:

To the Respondent:

- If you want to respond to the request for orders in writing, file form SV-120, *Response to Petition for Private Postsecondary School Violence Restraining Orders*, and have someone age 18 or older—**not you or anyone to be protected—**mail it to the petitioner.
- The person who mailed the form must fill out a proof of service form. Form SV-250, *Proof of Service of Response by Mail*, may be used. File the completed form with the court before the hearing and bring a copy with you to the court hearing.
- Whether or not you respond in writing, go to the hearing if you want the judge to hear from you before making an order. You may tell the judge why you agree or disagree with the orders requested.
- You may bring witnesses and other evidence.
- **At the hearing, the judge may make restraining orders against you that could last up to three years and may order you to turn in to law enforcement, or sell to or store with a licensed gun dealer, any firearms (guns) and firearm parts that you own or possess. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531).**
- If you are unable to attend your court hearing or need more time to prepare your case, you may ask to reschedule your court date. Read form SV-115-INFO, *How to Ask for a New Hearing Date*.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Disability Accommodation Request* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Court Hearing* is a true and correct copy of the original on file in the court.

Clerk's Certificate
[seal]

Date: _____

Clerk, by _____, Deputy

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

SV-130

Private Postsecondary School Violence Restraining Order After Hearing

Clerk stamps date here when form is filed.

DRAFT

7/7/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

1 Petitioner (Educational Institution Officer or Employee)

a. Name: _____

Lawyer for Petitioner *(if any, for this case)*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

2 Student (Protected Person)

Full Name: _____

3 Respondent (Restrained Person)

(Give all the information you know. Information with a star (*) is required to add this order to the California police database. If age is unknown, give an estimate.)

*Full Name: _____ *Age: _____ Date of Birth: _____

*Race: _____ Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____

*Gender: ☐ M ☐ F ☐ Nonbinary Home Address: _____

City: _____ State: _____ Zip: _____

Relationship to Protected Person: _____

4 ☐ Additional Protected Persons

In addition to the student, the following family or household members or other students are protected by the temporary orders indicated below:

Full Name	Gender	Age	Household Member?	Relation to student
_____	_____	_____	☐ Yes ☐ No	_____
_____	_____	_____	☐ Yes ☐ No	_____
_____	_____	_____	☐ Yes ☐ No	_____

☐ Additional protected persons are listed at the end of this Order on Attachment 4.

5 Expiration Date

This Order, except for any award of lawyer's fees, expires at

Date: _____ Time: _____ ☐ a.m. ☐ p.m.

If no expiration date is written here, this Order expires three years from the date of issuance.

This is a Court Order.

6 Hearing

a. There was a hearing on *(date):* _____ at *(time):* _____ in Dept.: _____ Room: _____
(Name of judicial officer): _____ made the orders at the hearing.

b. These people were at the hearing:

(1) ☐ The petitioner/school representative *(name):* _____

(2) ☐ The lawyer for the petitioner/school *(name):* _____

(3) ☐ The student (4) ☐ The lawyer for the student *(name):* _____

(5) ☐ The respondent (6) ☐ The lawyer for the respondent *(name):* _____

☐ Additional persons present are listed at the end of this Order on Attachment 6b.

c. ☐ The hearing is continued. The parties must return to court on *(date):* _____ at *(time):* _____.

To the Respondent:

The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.

7 Personal Conduct Orders

a. You are ordered **not** do the following things to the student

☐ and to the other protected persons listed in 4:

(1) ☐ Harass, molest, strike, assault (sexually or otherwise), batter, abuse, destroy personal property of, or disturb the peace of the person.

(2) ☐ Commit acts of violence or make threats of violence against the person.

(3) ☐ Follow or stalk the person during school hours or to or from the school.

(4) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by email, by text message, by fax, or by other electronic means.

(5) ☐ Enter the person's school.

(6) ☐ Take any action to obtain the person's address or locations. If this item is not checked, the court has found good cause not to make this order.

(7) ☐ Other *(specify):*

☐ Other personal conduct orders are attached at the end of this Order on Attachment 7a(7).

_____

_____

_____

_____

_____

_____

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

This is a Court Order.

8 Stay-Away Orders

a. You **must** stay at least _____ yards away from *(check all that apply):*

(1) ☐ The student.
(2) ☐ Each other protected person listed in 4.
(3) ☐ The school.
(4) ☐ The student's home.
(5) ☐ The student's job or workplace.
(6) ☐ The student's children's school.
(7) ☐ The student's children's place of child care.
(8) ☐ The student's vehicle.
(9) ☐ Other *(specify):*

_____
_____
_____
_____

b. This stay-away order does not prevent you from going to or from your home or place of employment.

9 No Firearms (Guns), Firearm Parts, or Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get any prohibited items listed below in b.

b. **Prohibited items are:**

(1) Firearms (guns);
(2) Firearm parts, meaning receivers, frames, or any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531); and
(3) Ammunition.

c. If you have not already done so, you must:

- Within 24 hours of being served with this Order, sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any firearms (guns) and firearm parts in your custody or control or that you possess or own.
- File a receipt with the court within 48 hours of receiving this Order that proves that your firearm (guns) and firearm parts have been turned in, sold, or stored. (You may use *Receipt for Firearms and Firearm Parts* (form SV-800) for the receipt.)

d. ☐ The court has received information that you own or possess a firearm (gun), firearm parts, or ammunition.

e. ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Code of Civil Procedure section 527.9(f). Under California law, the person in 3 is not required to relinquish this firearm *(specify make, model, and serial number of firearm(s)):*_____

_____

The firearm must be in the physical possession of the person in 3 only during scheduled work hours and during travel to and from their place of employment. Even if exempt under California law, the person in 3 may be subject to federal prosecution for possessing or controlling a firearm.

This is a Court Order.

10 ☐ Costs

You must pay the following amounts for costs to the petitioner:

Item	Amount	Item	Amount
	$		$
	$		$
	$		$

☐ Additional amounts are attached at the end of this Order on Attachment 10.

11 ☐ Other Orders *(specify):*

Additional orders are attached at the end of this Order on Attachment 11.

To the Person in 1:

12 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, the petitioner or the petitioner's lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address *(City, State, Zip)*

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 12.

13 Service of Order on Respondent

a. ☐ The respondent personally attended the hearing, either physically or remotely (by telephone or videoconference). No other proof of service is needed.

b. ☐ The respondent did not attend the hearing.

(1) ☐ Proof of service of form SV-110, *Temporary Restraining Order,* was presented to the court. The judge's orders in this form are the same as in form SV-110 except for the expiration date. The respondent must be served with this Order. Service may be by mail.

(2) ☐ The judge's orders in this form are different from the temporary restraining orders in form SV-110. Someone—but not the petitioner or anyone protected by this order—must personally serve a copy of this Order on the respondent.

This is a Court Order.

(14) No Fee to Serve (Notify) Restrained Person

The sheriff or marshal will serve this Order without charge because the Order is based on a credible threat of violence or stalking.

(15) Number of pages attached to this Order, if any: _____

Date: _____ _____

Judicial Officer

Warning and Notice to the Respondent:

You Cannot Have Firearms (Guns), Firearm Parts, or Ammunition

Unless item 9e is checked, you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get any prohibited items listed in item 9b on page 3 while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any firearms (guns) and firearm parts that you have or control as stated in (9) above. The court will require you to prove that you did so.

Instructions for Law Enforcement

Enforcing the Restraining Order

This Order is enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Restraining and Protective Order System (CARPOS). Agencies are encouraged to enter violation messages into CARPOS. If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing (see (13)), the agency must advise the restrained person of the terms of the Order and then must enforce it. Violations of this Order are subject to criminal penalties.

Start Date and End Date of Orders

This Order *starts* on the date next to the judge's signature on page 5 and *ends* on the expiration date in (5) on page 1.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this Order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

This is a Court Order.

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *Emergency Protective Order (EPO):* If one of the orders is an *Emergency Protective Order* (form EPO-001), provisions (e.g., stay-away order) that are more restrictive than in the other restraining/protective orders must be enforced. Provisions of another order that do not conflict with the EPO must be enforced.
2. *No-Contact Order:* If a restraining/protective order includes a no-contact order, the no-contact order must be enforced. Item 7a(4) is an example of a no-contact order.
3. *Criminal Protective Order (CPO):* If none of the orders include an EPO or a no-contact order, the most recent CPO must be enforced. (Fam. Code, §§ 6383(h)(2) and 6405(b).) Additionally, a CPO issued in a criminal case involving charges of domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil court order. (Pen. Code, § 136.2(e)(2).) All provisions in the civil court order that do not conflict with the CPO must be enforced.
4. *Civil Restraining Orders:* If there is more than one civil restraining order (e.g., domestic violence, juvenile, elder abuse, civil harassment), then the order that was issued last must be enforced. Provisions that do not conflict with the most recent civil restraining order must be enforced.

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Private Postsecondary School Violence Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

WV-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

DRAFT

6/20/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Petitioner (Employer)

a. Name:

_____

Lawyer for Petitioner *(if any for this case):*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Address *(If you have a lawyer, give your lawyer's information.):*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

2 Employee in Need of Protection

Full Name: _____

3 Respondent (Person From Whom Protection Is Sought)

Full Name: _____

The court will complete the rest of this form.

4 Notice of Hearing

A court hearing is scheduled on the request for restraining orders against the respondent:

Hearing Date → Date: _____ Time: _____

Dept.: _____ Room: _____

Name and address of court if different from above:

_____

_____

_____

_____

To the person in 3:

- If you attend the hearing (in person, by phone, or by videoconference) and the judge grants a restraining order against you, the order will be effective immediately, and you could be arrested if you violate the order.
- If you do not attend the hearing, the judge may still grant the restraining order that could last up to five years. After you receive a copy of the order, you could be arrested if you violate the order.

5 Temporary Restraining Orders *(Any orders granted are on form WV-110, served with this notice.)*

a. Temporary Restraining Orders for personal conduct and stay-away orders as requested in form WV-100, *Request for Workplace Violence Restraining Orders*, are *(check only one box below):*

(1) ☐ All **GRANTED** until the court hearing.

(2) ☐ All **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

(3) ☐ Partly **GRANTED** and partly **DENIED** until the court hearing. *(Specify reasons for denial in b, below.)*

5 b. Reasons that Temporary Restraining Orders as requested in form WV-100, *Petition for Workplace Violence Restraining Orders*, for personal conduct or stay-away are denied are:

(1) ☐ The facts as stated in form WV-100 do not sufficiently show reasonable proof that the employee has suffered unlawful violence or a credible threat of violence by the respondent, and that great or irreparable harm to the employee would result if a temporary restraining order is not issued.

(2) ☐ Other *(specify):* ☐ As stated on Attachment 5b.

6 Service of Documents by the Petitioner

At least ☐ **five** ☐ _____ **days before the hearing**, someone age 18 or older—**not you or anyone to be protected—**must personally give (serve) a court file-stamped copy of this form WV-109, *Notice of Court Hearing*, to the respondent along with a copy of all the forms indicated below:

a. WV-100, *Petition for Workplace Violence Restraining Orders* (file-stamped)

b. ☐ WV-110, *Temporary Restraining Order* (file-stamped) **IF GRANTED**

c. WV-120, *Response to Petition for Workplace Violence Restraining Orders* (blank form)

d. WV-120-INFO, *How Can I Respond to a Petition for Workplace Violence Restraining Orders?*

e. ☐ Other *(specify):* _____

Date: _____ _____
Judicial Officer

To the Petitioner:

- The court cannot make the restraining orders after the court hearing unless the respondent has been personally given (served) a copy of your request and any temporary orders. To show that the respondent has been served, the person who served the forms must fill out a proof of service form. Form WV-200, *Proof of Personal Service*, may be used.
- For information about service, read form WV-200-INFO, *What Is "Proof of Personal Service"?*
- You may ask to reschedule the hearing if you are unable to find the respondent and need more time to serve the documents, or for other good reasons. Read form WV-115-INFO, *How to Ask for a New Hearing Date*.
- You must attend the hearing if you want the judge to make any of the orders you requested on form WV-100, *Petition for Workplace Violence Restraining Orders*. Bring any evidence or witnesses you have. For more information, read form WV-100-INFO, *How Do I Get an Order to Prohibit Workplace Violence?*

Case Number:

To the Respondent:

- If you want to respond to the request for orders in writing, file form WV-120, *Response to Petition for Workplace Violence Restraining Orders*, and have someone age 18 or older—**not you or anyone to be protected—**mail it to the petitioner.
- The person who mailed the form must fill out a proof of service form. Form WV-250, *Proof of Service of Response by Mail*, may be used. File the completed form with the court before the hearing and bring a copy with you to the court hearing.
- Whether or not you respond in writing, go to the hearing if you want the judge to hear from you before making an order. You may tell the judge why you agree or disagree with the orders requested.
- You may bring witnesses and other evidence.
- At the hearing, the judge may make restraining orders against you that could last up to three years and may order you to turn in to law enforcement, or sell to or store with a licensed gun dealer, any firearms (guns) and firearm parts that you own or possess. This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531).
- If you are unable to attend your court hearing or need more time to prepare your case, you may ask to reschedule your court date. Read form WV-115-INFO, *How to Ask for a New Hearing Date*.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Disability Accommodation Request* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Court Hearing* is a true and correct copy of the original on file in the court.

Clerk's Certificate
[seal]

Date: _____

Clerk, by _____, Deputy

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

WV-130 Workplace Violence Restraining Order After Hearing

Clerk stamps date here when form is filed.

DRAFT

7/7/2023

NOT APPROVED BY THE JUDICIAL COUNCIL

1 Petitioner (Employer)

a. Name: _____

Lawyer for Petitioner *(if any, for this case)*

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address *(If you have a lawyer, give your lawyer's information.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

2 Employee (Protected Person)

Full Name: _____

3 Respondent (Restrained Person)

(Give all the information you know. Information with a star (*) is required to add this order to the California police database. If age is unknown, give an estimate.)

*Full Name: _____ *Age: _____ Date of Birth: _____

*Race: _____ Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____

*Gender: ☐ M ☐ F ☐ Nonbinary Home Address: _____

City: _____ State: _____ Zip: _____

Relationship to Protected Person: _____

4 ☐ Additional Protected Persons

In addition to the employee, the following family or household members or other employees are protected by the temporary orders indicated below:

Full Name	Gender	Age	Household Member?	Relation to employee
_____	_____	_____	☐ Yes ☐ No	_____
_____	_____	_____	☐ Yes ☐ No	_____
_____	_____	_____	☐ Yes ☐ No	_____

☐ Additional protected persons are listed at the end of this Order on Attachment 4.

5 Expiration Date

This Order, except for any award of lawyer's fees, expires at

Date: _____ Time: _____ ☐ a.m. ☐ p.m.

If no expiration date is written here, this Order expires three years from the date of issuance.

This is a Court Order.

6 Hearing

a. There was a hearing on *(date):* _____ at *(time):* _____ in Dept.: _____ Room: _____
(Name of judicial officer): _____ made the orders at the hearing.

b. These people were at the hearing:
(1) ☐ The petitioner/employer *(name):* _____
(2) ☐ The lawyer for the petitioner/employer *(name):* _____
(3) ☐ The employee (4) ☐ The lawyer for the employee *(name):* _____
(5) ☐ The respondent (6) ☐ The lawyer for the respondent *(name):* _____
☐ Additional persons present are listed at the end of this Order on Attachment 6b.

c. ☐ The hearing is continued. The parties must return to court on *(date):* _____ at *(time):* _____.

To the Respondent:

The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.

7 Personal Conduct Orders

a. You are ordered **not** do the following things to the employee
☐ and to the other protected persons listed in 4:
(1) ☐ Harass, molest, strike, assault (sexually or otherwise), batter, abuse, destroy personal property of, or disturb the peace of the person.
(2) ☐ Commit acts of violence or make threats of violence against the person.
(3) ☐ Follow or stalk the person during work hours or to or from the place of work.
(4) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by email, by text message, by fax, or by other electronic means.
(5) ☐ Enter the person's workplace.
(6) ☐ Take any action to obtain the person's address or locations. If this item is not checked, the court has found good cause not to make this order.
(7) ☐ Other *(specify):*
☐ Other personal conduct orders are attached at the end of this Order on Attachment 7a(7).

_____
_____
_____
_____
_____
_____

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

This is a Court Order.

8 Stay-Away Orders

a. You **must** stay at least _____ yards away from *(check all that apply):*

(1) ☐ The employee.
(2) ☐ Each other protected person listed in 4.
(3) ☐ The employee's workplace.
(4) ☐ The employee's home.
(5) ☐ The employee's school.
(6) ☐ The employee's children's school.
(7) ☐ The employee's children's place of child care.
(8) ☐ The employee's vehicle.
(9) ☐ Other *(specify):*

_____
_____
_____
_____

b. This stay-away order does not prevent you from going to or from your home or place of employment.

9 No Firearms (Guns), Firearm Parts, or Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get any prohibited items listed below in b.

b. **Prohibited items are:**

(1) Firearms (guns);
(2) Firearm parts, meaning receivers, frames, or any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531); and
(3) Ammunition.

c. If you have not already done so, you must:

- Within 24 hours of being served with this Order, sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any firearms (guns) and firearm parts in your custody or control or that you possess or own.
- File a receipt with the court within 48 hours of receiving this Order that proves that your firearms (guns) and firearm parts have been turned in, sold, or stored. (You may use *Receipt for Firearms and Firearm Parts* (form WV-800) for the receipt.)

d. ☐ The court has received information that you own or possess a firearm (gun), firearm parts, or ammunition.

e. ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Code of Civil Procedure section 527.9(f). Under California law, the person in 3 is not required to relinquish this firearm *(specify make, model, and serial number of firearm(s)):* _____

_____

The firearm must be in the physical possession of the person in 3 only during scheduled work hours and during travel to and from their place of employment. Even if exempt under California law, the person in 3 may be subject to federal prosecution for possessing or controlling a firearm.

This is a Court Order.

10 ☐ Costs

You must pay the following amounts for costs to the petitioner:

Item	Amount	Item	Amount
	$		$
	$		$
	$		$

☐ Additional amounts are attached at the end of this Order on Attachment 10.

11 ☐ Other Orders *(specify):*

☐ Additional orders are attached at the end of this Order on Attachment 11.

To the Person in 1:

12 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, the petitioner or the petitioner's lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

Name of Law Enforcement Agency	Address *(City, State, Zip)*

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 12.

13 Service of Order on Respondent

a. ☐ The respondent personally attended the hearing, either physically or remotely (by telephone or videoconference). No other proof of service is needed.

b. ☐ The respondent did not attend the hearing.

(1) ☐ Proof of service of form WV-110, *Temporary Restraining Order,* was presented to the court. The judge's orders in this form are the same as in form WV-110 except for the expiration date. The respondent must be served with this Order. Service may be by mail.

(2) ☐ The judge's orders in this form are different from the temporary restraining orders in form WV-110. Someone—but not the petitioner or anyone protected by this order—must personally serve a copy of this Order on the respondent.

This is a Court Order.

(14) No Fee to Serve (Notify) Restrained Person

The sheriff or marshal will serve this Order without charge because the Order is based on a credible threat of violence or stalking.

(15) Number of pages attached to this Order, if any: _____

Date: _____ _____

Judicial Officer

Warning and Notice to the Respondent:

You Cannot Have Firearms (Guns), Firearm Parts, or Ammunition

Unless item 9e is checked, you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get any prohibited items listed in item 9b on page 3 while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any firearms (guns) and firearm parts that you have or control as stated in (9) above. The court will require you to prove that you did so.

Instructions for Law Enforcement

Enforcing the Restraining Order

This Order is enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Restraining and Protective Order System (CARPOS). Agencies are encouraged to enter violation messages into CARPOS. If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing (see (13)), the agency must advise the restrained person of the terms of the Order and then must enforce it. Violations of this Order are subject to criminal penalties.

Start Date and End Date of Orders

This Order *starts* on the date next to the judge's signature on page 5 and *ends* on the expiration date in (5) on page 1.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this Order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

This is a Court Order.

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *Emergency Protective Order (EPO):* If one of the orders is an *Emergency Protective Order* (form EPO-001), provisions (e.g., stay-away order) that are more restrictive than in the other restraining/protective orders must be enforced. Provisions of another order that do not conflict with the EPO must be enforced.
2. *No-Contact Order:* If a restraining/protective order includes a no-contact order, the no-contact order must be enforced. Item 7a(4) is an example of a no-contact order.
3. *Criminal Protective Order (CPO):* If none of the orders include an EPO or a no-contact order, the most recent CPO must be enforced. (Fam. Code, §§ 6383(h)(2) and 6405(b).) Additionally, a CPO issued in a criminal case involving charges of domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil court order. (Pen. Code, § 136.2(e)(2).) All provisions in the civil court order that do not conflict with the CPO must be enforced.
4. *Civil Restraining Orders:* If there is more than one civil restraining order (e.g., domestic violence, juvenile, elder abuse, civil harassment), then the order that was issued last must be enforced. Provisions that do not conflict with the most recent civil restraining order must be enforced.

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Workplace Violence Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____ , Deputy

This is a Court Order.

SPR23-30

Protective Orders: Service Requirements After Remote Appearances (Adopt Cal. Rules of Court, rules 3.1162 and 5.496; revise forms CH-109, CH-130, EA-109, EA-130, EA-309, EA-330, SV-109, SV-130, WV-109, and WV-130)

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

	Commenter	Position	Comment	DRAFT Committee Response
1.	Bay Area Legal Aid by Kemi Mustapha Family Law Supervising Attorney	NI	**Service Requirements After Remote Appearances (Item Number SPR23-30)** • *Rules 3.1162 and 5.496* BayLegal strongly supports the addition of Rules 3.1162 and 5.496 to the California Rule of Court so that remote appearances by restrained parties are treated the same as a physical appearance in court for purposes of enforcement of protective orders since courts are still routinely holding remote hearings for protective order cases.	The committees appreciate the information provided.
			BayLegal recommends that subsection (b) of both rules remove any ambiguity as what is considered a remote appearance by a restrained party by replacing "through the use of remote technology" with "by phone or video conference." Subsection (b) would read: (b) No additional proof of service required If the respondent named in an order issued after hearing appears at that hearing **by phone or video conference,** and through that appearance has received actual notice of the existence and substance of the restraining order after hearing, no additional proof of service is required for enforcement of the order. This suggested language aligns with the Judicial Council's proposed changes to the 109 forms, notifying the restrained party, "If you attend the	The committees decline this suggestion as the language in the proposed rules is consistent with California Rules of Court, rule 3.672 and Code of Civil Procedure section 367.75. Furthermore, the forms use the suggested language.

	Commenter	Position	Comment	DRAFT Committee Response
			hearing *(in person, by phone, or by videoconference)* and the judge grants a restraining order against you, the order will be effective immediately and you could be arrested if you violate the order." (emphasis added). With this change, BayLegal believes that the proposal addresses the stated purposes.	
			• *Proposed Changes to Notice of Court Hearing (form 109)* As mentioned above, BayLegal prefers the language in this form that makes clear to respondents that appearing by phone or video is considered a remote appearance. BayLegal also supports the need for notices to protected and restrained parties to be consistent, especially advising petitioners of the need to attend the hearing and bring witnesses and evidence. However, as currently drafted, petitioners are advised they have a right to continuance only if they need more time to serve respondent. **We propose that petitioners are advised of their right to also request a continuance for other good reasons (good cause).** This is consistent with the law in Family Code § 245 (b), for example ("Either party may request a continuance of the hearing, which the court shall grant on a showing of good cause.").	The committees appreciate the information provided. In light of this suggestion, the notice of hearing forms in the proposal now notifies petitioner that they may ask to reschedule the hearing if they are unable to effectuate service or "for other good reasons."

SPR23-30

Protective Orders: Service Requirements After Remote Appearances (Adopt Cal. Rules of Court, rules 3.1162 and 5.496; revise forms CH-109, CH-130, EA-109, EA-130, EA-309, EA-330, SV-109, SV-130, WV-109, and WV-130)

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

	Commenter	Position	Comment	DRAFT Committee Response
			• *Proposed Changes to Restraining Order After Hearing (form 130)* Again, BayLegal proposes clarifying or defining "remote technology" to include appearances by phone or video conference.	In light of this comment, the language has been revised to "either physically or remotely (by telephone or videoconference)."
2.	California Lawyers Association by Family Law Section Executive Committee	NI	Protective Orders: Service Requirements After Remote Appearances – SPR23-30 FLEXCOM agrees with this proposal as to adding Rule 5.496, and takes no position as to the remainder of the proposal.	The committees appreciate the information provided.
3.	Steven Ipson Commissioner Los Angeles	A	I agree with the proposed changes clarifying essentially that a remote appearance is treated the same as an in-person appearance at a restraining order hearing. I note that the proposed rules require the restrained party to have notice of the existence and substance of the order. Should the rule clarify that the court must read the order aloud? That is my practice whether the restrained person is in the courtroom or online. I don't see a problem with removing the requirement that the respondent receive a blank Form 250.	The committees decline this suggestion. The proposed rules already reference the respondent receiving "actual notice" of the existence and substance of the order. The committees appreciate the information provided, and recommend removing the requirement on the notice of hearing forms to serve a blank proof of service by mail form on respondent.
4.	Orange County Bar Association by Michael A. Gregg President	A		No response required.
5.	Superior Court of California, County of Los Angeles by Bryan Borys	AM	The following comments are submitted on behalf of the Los Angeles Superior Court.	The committees appreciate the information provided. However, given the extra burden serving the form places on petitioner the

SPR23-30

Protective Orders: Service Requirements After Remote Appearances (Adopt Cal. Rules of Court, rules 3.1162 and 5.496; revise forms CH-109, CH-130, EA-109, EA-130, EA-309, EA-330, SV-109, SV-130, WV-109, and WV-130)

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

	Commenter	Position	Comment	DRAFT Committee Response
	Director of Research and Data Management		General Comments: o Removing the requirement to serve the proof of service by mail (Form 250) on respondent with the notice of hearing may result in fewer respondents filing the proof of service of their response.	committees recommend removing the requirement on the notice of hearing forms to serve a blank proof of service by mail form on respondent.
			Regarding CH-130 Civil Harassment Restraining Order After Hearing (this comment also pertains to other Restraining Orders, series 130 & 330, forms): o Page 5, Instructions for Law Enforcement, Notice/Proof of Service: Suggest adding an additional bullet instructing law enforcement to refer to Section 13a (on CH-130), Section 17a (on EA-130), and Section 10a (on EA-330) to assist in their determination of whether the restrained person had notice of the order.	In light of this comment, such a reference has been made on the order after hearing forms in the proposal.
6.	Superior Court of California, County of Orange Family Law/Juvenile	NI	**Specific Comments** • *Does the Proposal appropriately address the stated purpose?* Yes.	The committees appreciate the information provided.
			• *Would removing the requirement to serve the proof of service by mail (form 250) on respondent along with the notice of hearing have any unintended consequences?* No	The committees appreciate the information provided.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not Indicated.

	Commenter	Position	Comment	DRAFT Committee Response
			• *Would the proposal provide cost savings? If so, please quantify.* No cost savings anticipated.	The committees appreciate the information provided.
			• *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?* This implementation would require notification of the change in Service requirements to courtroom and case processing staff, judicial officers, and the Protective Order Unit.	The committees appreciate the information provided.
			• *Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* Yes.	The committees appreciate the information provided.
			• *How well would this proposal work in courts of different sizes?* Our court is a large court, and this could work for Orange County.	The committees appreciate the information provided.
7.	Superior Court of California, County of Riverside by Susan Ryan Chief Deputy of Legal Services	A	The proposed edits are clear and no edits are proposed.	The committees appreciate the information provided.
			Does the proposal appropriately address the stated purpose? Yes. The proposed edits meet the purpose of the clearly explaining that the respondent for these specific restraining order hearings may appear	The committees appreciate the information provided.

SPR23-30

Protective Orders: Service Requirements After Remote Appearances (Adopt Cal. Rules of Court, rules 3.1162 and 5.496; revise forms CH-109, CH-130, EA-109, EA-130, EA-309, EA-330, SV-109, SV-130, WV-109, and WV-130)

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

	Commenter	Position	Comment	DRAFT Committee Response
			remotely and it will be tantamount to them being there in person. It is clearly stated that orders made at a hearing where there is a remote appearance will be effective immediately and no further service will be required.	
			Would removing the requirement to serve the proof of service by mail (form 250) on respondent along with the notice of hearing have any unintended consequences? The benefit of including the form is that it provides the respondent with all of their forms necessary to respond and serve (as is done in many other cases).	The committees appreciate the information provided. However, given the extra burden serving the form places on petitioner, the committees recommend removing from the notice of hearing forms the requirement to serve a blank proof of service by mail form on respondent.
			The court staff should anticipate that respondents will not realize the service requirements if the form is not included. An alternative automated notification to the respondent could be implemented in the case management system when proof of service on response has not been filed.	The committees appreciate the information provided.
8.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	A	**Request for Specific Comments** Does the proposal appropriately address the stated purpose? **Yes.**	The committees appreciate the information provided.
			Would the proposal provide cost savings? If so, please quantify. **No.**	The committees appreciate the information provided.
			What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training),	The committees appreciate the information provided.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not Indicated.

SPR23-30

Protective Orders: Service Requirements After Remote Appearances (Adopt Cal. Rules of Court, rules 3.1162 and 5.496; revise forms CH-109, CH-130, EA-109, EA-130, EA-309, EA-330, SV-109, SV-130, WV-109, and WV-130)

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

	Commenter	Position	Comment	DRAFT Committee Response
			revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **Updating internal procedures and local packets.**	
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes, provided the final versions of the forms are provided to the court at that time. This will ensure that the court is able to update local packets and obtain printed stock.**	The committees appreciate the information provided.
			How well would this proposal work in courts of different sizes? **It appears the proposal would work for courts of various sizes.** No additional Comments.	The committees appreciate the information provided.
9.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) (TCPJAC/CEAEC Joint Rules Subcommittee)	A	The proposal appropriately and adequately addresses the stated purpose. Removal of service of the blank proof of service form appears to be consistent with other motion processes. Although a short amount of training will likely be necessary to process the new form, the time and expense does not appear to be significant, particularly considering processes that were in place pursuant to Emergency Rule 8. Additionally, it would require a minor modification in coding for case management systems. Three months appears to be adequate to provide training and institute the change.	The committees appreciate the information provided, and recommend removing the requirement to serve a blank proof of service by mail form on respondent.

Item 30-Pulled

Item number: 31

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/22/23

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

Title of proposal: Traffic: Notice to Appear Forms

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend Cal. Rules of Court, rule 4.103; revise forms TR-130, TR 140, and TR INST; revoke forms TR-135 and TR-145

Committee or other entity submitting the proposal:
Traffic Advisory Committee

*Staff contact (*name, phone and e-mail*): Jamie Schechter, 415-865-5327, jamie.schechter@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*): 11/01/22
Project description from annual agenda: 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.

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

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

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

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

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

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

Judicial Council *of* California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-174
For business meeting on September 18–19, 2023

Title
Traffic: Notice to Appear Forms

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 4.103;
revise forms TR-130, TR-140, and TR-INST;
revoke forms TR-135 and TR-145

Recommended by
Traffic Advisory Committee
Hon. Gail Dekreon, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
August 1, 2023

Contact
Jamie Schechter, 415-865-5327
Jamie.Schechter@jud.ca.gov

Executive Summary

The Traffic Advisory Committee recommends amending a rule of court, revising the notice to appear form (commonly known as a "citation" or "traffic ticket") and revoking two redundant versions, revising the notice to correct violation, and revising the related instructions form. These changes are recommended to reflect recent statutory changes, improve litigants' understanding of the citation, and avoid redundant form requirements.

Recommendation

The Traffic Advisory Committee recommends that the Judicial Council, effective January 1, 2024:

1. Amend rule 4.103 of the California Rules of Court to remove references to revoked forms TR-135 and TR-145;

2. Revise *Traffic/Nontraffic Notice to Appear* (form TR-130) to improve litigants' understanding and reflect statutory changes;

3. Revise *Notice to Correct Violation* (form TR-140) to reflect statutory changes;

4. Revise *Notice to Appear and Related Forms* (form TR-INST) to conform with changes to forms TR-130 and TR-140 and remove references to revoked forms TR-135 and TR-145; and

5. Revoke *Electronic Traffic/Nontraffic Notice to Appear* (4-inch format) (form TR-135) and *Electronic Traffic/Nontraffic Notice to Appear* (3-inch format) (form TR-145) as redundant.

The proposed amended rule and revised and revoked forms are attached at pages 12–44.

Relevant Previous Council Action

Form TR-130 was developed prior to 1990. Since its adoption by the Judicial Council, as required by Vehicle Code section 40500(b), it has been revised several times and was last revised in 2015. In 2015, the Judicial Council adopted *Electronic Traffic/Nontraffic Notice to Appear* (4-inch format) (form TR-135) and *Electronic Traffic/Nontraffic Notice to Appear* (3-inch format) (form TR-145) for electronic citations.

In 2000, the Judicial Council adopted form TR-140, a standard notice to correct violation for law enforcement agencies.

Analysis/Rationale

Redesign of notice to appear (form TR-130)

Vehicle Code section 40500(b) requires the Judicial Council to prescribe the notice to appear used when a person is arrested for misdemeanor or infraction violations of the Vehicle Code. Penal Code section 959.1(d) permits a notice to appear issued on a form approved by the Judicial Council to be received and filed by a court in electronic form. When a notice to appear issued on a Judicial Council form is verified by the issuing officer, it constitutes a complaint in a criminal case. (Pen. Code, § 853.9; Veh. Code, § 40513(b).)

Each law enforcement agency prints its own citations or uses an e-citation platform. Form TR-130 has three key users: law enforcement agencies, courts, and litigants.

In 2021, the Traffic Advisory Committee convened a working group to consider changes to form TR-130 and related forms. The working group was comprised of Traffic Advisory Committee members and other stakeholders, including representatives from law enforcement agencies and the Department of Motor Vehicles, court administrators, and criminal defense attorneys. The working group undertook an extensive redesign process that consisted of reviewing statutory requirements, interviewing stakeholders and subject-matter experts, contemplating the design of citations in other states, and gaining an understanding of the workflow and processing of each citation. Ideas42, a behavioral science research firm that specializes in behaviorally informed design, recommended and supported design revisions to the form. The design was iterated numerous times to account for feedback from the working group and emerging legislation.

Revisions to improve litigants' understanding

As a result of this process, several proposed changes aim to improve litigants' understanding of the necessary steps to address their citations and avoid consequences such as a civil assessment fee or a warrant. Misdemeanors and infractions have different courses of action for the litigant; however, the current citation does not clearly distinguish between misdemeanors and infractions. This proposal divides the description of next steps on both the back and the front of the ticket into different courses of action for misdemeanors and infractions and aims to provide clearer instructions. This proposal also recommends moving the date of required action and the location of the court to the top of the citation for increased visibility. Additionally, this proposal adds a box that warns litigants of potential consequences for failing to act. This proposal also removes items from the top of the citation that may confuse the litigant, such as the form's title, check boxes for violation type, and case number.

On current form TR-130, boxes shaded in gray indicate optional fields for jurisdictions to customize to accommodate local needs. On proposed revised form TR-130, optional fields are now shaded in yellow; gray shading was added to improve readability and does not indicate optional language. Unless a field is shaded in yellow, it is mandatory on the proposed design.[1]

Specific proposed changes include the following:

- Move date of required action and court addresses to the top of the citation;
- Divide the required action for the litigant into two options, to differentiate requirements for infractions ("RESPOND TO CITATION BEFORE") and misdemeanors ("APPEAR IN COURT AT");
- Remove check boxes at top of the ticket for "Misdemeanor," "Traffic," and "Nontraffic";
- Remove "NOTICE TO APPEAR" at the top of the ticket and move the form's title to the bottom corner of the ticket;
- Replace "FOLLOW THE INSTRUCTIONS ON THE REVERSE" with "See back for detailed instructions";
- Add a warning to the top to emphasize consequences for failing to act;
- Add fields for litigant's cellphone number or email address at the bottom to facilitate court date reminders;
- Add "*('Fix-It')*" to correctable violations section;
- Change the wording of the attestation above the signature line;
- Increase the font size on the back of the citation;
- Separate the instructions for misdemeanors and infractions on the back of the citation;
- Change the language and improve the descriptions of the various options for resolving the citation;
- Emphasize the consequences of failing to act;
- Add information about translated forms and contacting the court; and

[1] The proposed changes to this form are not highlighted due to the substantial revision and reorganization as well as the use of highlights to indicate mandatory fields. The existing TR-130 is included as an attachment for reference.

- Add information about MyCitations.[2]

Revisions to improve law enforcement use

In addition to changes aimed at facilitating timely responses to citations, the committee recommends changes that will improve the form for law enforcement agencies. These changes include removing unnecessary data fields (thereby decreasing the time it takes to fill out a citation), updating language to reflect current law enforcement agency standard language, and reordering fields to match the fields on California driver's licenses. Specific recommended changes include the following:

- Remove redundant data fields ("Day of Week," "Age");
- Remove night court check box;
- Replace "Address" with "Current Address";
- Add "*(all states)*" to the Driver's License Number data field;
- Add the heading "CITATION DETAILS" to improve readability;
- Replace "Case No." with "Agency Case No.";
- Replace "Accident" with "Crash"; and
- Change the order and location of data fields to facilitate ease of filling out.

Revisions based on statutory changes

Assembly Bill 2773 (Stats. 2022, ch. 805) added section 2806.5 to the Vehicle Code to require, among other things, that beginning January 1, 2024, peace officers document the reason for a stop on the citation. This legislation also adds section 12525.5 to the Government Code to require all peace officer agencies to annually report to the Attorney General the data on all stops. Assembly Bill 2956 (Stats. 2022, ch. 295) removed the requirement to document evidence of financial responsibility on the citation. The committee recommends replacing "Evidence of Financial Responsibility" with "Reason for Stop" on the citation to comply with this legislation.

Correctable offense notice (form TR-140)

Unless certain disqualifying conditions exist, a law enforcement officer who chooses to take action on certain registration, license, or equipment violations of the Vehicle Code must issue a notice to appear that specifies the offense is correctable or a notice to correct violation. (Veh. Code, §§ 40303.5, 40533, 40610.) The notice to correct violation must be on a form approved by the Judicial Council. (Veh. Code, § 40610.) If an agency does not receive proof of correction, the agency can deliver to the court the signed promise with a certification that no proof of correction was received. (Veh. Code, § 40618.) If the notice to correct violation is prepared on a Judicial Council form, the promise and the certification together with the form constitute a complaint, and if the complaint is verified, the court may issue a warrant. (*Ibid.*)

[2] MyCitations is an online option developed by the Judicial Council and 7 superior courts that allows a litigant to request an ability-to-pay determination for infraction fines and fees without having to appear in court. With the passage of Assembly Bill 143 (Stats. 2021, ch. 79), each of the 58 trial courts will offer online ability-to-pay determinations using MyCitations by June 30, 2024.

A stakeholder requested form TR-140 be included in the form TR-INST packet and be available on the Judicial Council website. The committee agreed and recommends that form TR-140 be included. The data field for "Evidence of Financial Responsibility" would be replaced with a data field for "Reason for Stop" in the proposed revised form TR-140. These changes are proposed to comply with AB 2773 and AB 2956 as discussed above. The committee may consider a more extensive redesign of this form in the near future.

Additionally, proposed revised forms TR-130 and TR-140 would be identified as mandatory forms. Previously, these forms have never contained any printed designation, either as mandatory or optional. However, past Judicial Council meeting minutes refer to forms TR-130 and TR-140 as mandatory. Moreover, the Judicial Council is legislatively mandated to "prescribe the form of the notice to appear." (Veh. Code, § 40500(b).) Finally, per Vehicle Code section 40610(d), "Except as otherwise provided in subdivision (a), the notice to correct violation shall be on a form approved by the Judicial Council." Although law enforcement is not required to use the Judicial Council forms to cite violators, a citation must be on a Judicial Council form if it is to serve as a criminal complaint in court. (Pen. Code, § 853.9; Veh. Code, § 40513(b).)

Electronic notice to appear (forms TR-135 and TR-145)

Penal Code section 959.1(d) permits a notice to appear issued on a form approved by the Judicial Council to be received and filed by a court in electronic form. In 2015, the Judicial Council adopted *Electronic Traffic/Nontraffic Notice to Appear* (4-inch format) (form TR-135) and *Electronic Traffic/Nontraffic Notice to Appear* (3-inch format) (form TR-145) for electronic citations. At the time the forms were adopted, the committee determined it was appropriate to have separate paper and electronic citation forms.

Given technological advances, the committee concluded that separate electronic notice to appear forms are no longer necessary and that the redesigned form TR-130 can efficiently serve both paper and electronic formats. Forms TR-135 and TR-145 would be revoked. Law enforcement agencies may still prepare and file citations electronically using form TR-130.

Rule 4.103

Rule 4.103 would be amended to remove all references to forms TR-135 and TR-145, as these two forms would be revoked. The rule would still allow for electronic submission of citations using form TR-130.

The forms packet (form TR-INST)

Form TR-INST is a packet of traffic forms that includes forms TR-100, TR-106, TR-108, TR-115, TR-120, TR-130, TR-135, and TR-145. Form TR-INST provides instructions for all of these forms. For unknown reasons, form TR-140 has not previously been part of the TR-INST packet or available on the Judicial Council website, but it is still a valid form.

Form TR-INST would be revised to update the requirements for revised form TR-130, remove references to forms TR-135 and TR-145, and add information regarding form TR-140. TR-INST would also be revised to clarify that form TR-130 may be submitted electronically and used as a

guide for designing electronic citations. The instructions would be revised to include the following changes:

- Revision of the effective dates of form TR-INST;
- Deletion of Appendixes G and H, containing forms TR-135 and TR-145, respectively, and adding new Appendix G containing form TR-140;
- Revision of section 1.030 to remove reference to form TR-135;
- Revision of section 1.040 to remove references to forms TR-135 and TR-145 and specify that form TR-130 should be used to prepare electronic citations and may be modified as necessary to comply with technological specifications;
- Addition of new section 1.041 to include information about form TR-140;
- Revision of section 2.010 to remove references to forms TR-135 and TR-145 and clarify that form TR-130 may be used for electronic preparation submission of citations;
- Revision of section 3.010 to update effective dates of forms TR-130 and TR-140 and remove references to forms TR-135 and TR-145;
- Revision of section 4.010 to add “or respond” to the action a defendant promises to take;
- Revision of section 4.020 to add form TR-140, remove references to forms TR-135 and TR-145, and clarify that printed copies of electronic citations should closely resemble form TR-130 with modifications as necessary for varying court technological specifications;
- Revision of section 4.050 to remove references to forms TR-135 and TR-145 and to update requirements for form TR-130;
- Revision of Chapter 5 to update requirements for form TR-130;
- Revision of Chapter 6 to update requirements for form TR-130 and remove references to forms TR-135 and TR-145;
- Addition of new section 6.091 to make race or ethnicity a required data field on form TR-130;
- Revision of section 6.130 to replace the requirement for financial responsibility with the “reason for stop” requirement;
- Revision of section 6.190 to include the abbreviation “(approx.)”;
- Revision of Chapter 7 to update requirements for form TR-130 and remove references to forms TR-135 and TR-145.

Policy implications

The recommended revisions would provide litigants with accurate and clear information about next steps for addressing a citation. The recommended revisions also reflect legislative changes.

Comments

Throughout this process, the design of form TR-130 underwent extensive user testing. Feedback was sought from law enforcement officers, court clerks, and litigants to ensure that the design met the needs of all users. The proposed design is the result of over a year of research, stakeholder engagement, and iterative designs.

Once the design was finalized by the workgroup, staff sought feedback from the Criminal Law Advisory Committee, which expressed their support for the user-friendly design. They also offered feedback on the language and formatting that were incorporated into the proposal that circulated for comment. While the proposal was circulating for public comment, staff also contacted vendors of electronic citation devices as well as the California Highway Patrol (CHP) to discuss the revocation of the electronic citation forms. Staff presented the changes to the Court Executives Advisory Committee and received feedback from the Joint Rules Subcommittee of the Court Executives Advisory Committee and Trial Court Presiding Judges Advisory Committee. Staff also requested feedback from the CHP, California Peace Officers Association, California Police Chiefs, California Sheriff's Association and assembly and senate public safety leadership.

The proposal was circulated for public comment between March 30 and May 12, 2023. The committee received six public comments on this proposal: four superior courts (Orange, Placer, Stanislaus, and Ventura Counties), the Joint Rules Subcommittee, and the Orange County Bar Association. Two commenters agreed with the proposal. Two commenters agreed if the proposal were modified. Two commenters did not indicate their stance on the proposal and offered suggestions and questions for the committee. Four of the comments had several components. Some of the more significant comments are categorized by topic and provided below. The committee's specific responses to each comment are available in the attached comment chart at pages 45-57.

Collecting cellphone number and email address from litigants

Proposed revised form TR-130 includes fields for litigants to provide their cellphone number and an email address. This addition is to facilitate the growing use of court date reminders sent via text message and email. Either is optional for the litigant to provide. The email address field is optional for jurisdictions to include on the citation.

Three commenters indicated that on the proposal as circulated, it was not clearly optional for the litigant to provide their cellphone number and email address at the bottom of the citation. The committee agreed with this concern and added "Optional" next to the request for this information.

Resolving correctable violations

When an officer issues a citation that includes a correctable violation, litigants may take specific steps in order to have their violation dismissed. The proposal as circulated changed the language on the back of the current citation to attempt to make it more user-friendly and easier to understand. Two commenters were concerned that the revised language addressing how to resolve a correctable violation was potentially inaccurate as it did not clearly state the need for litigants to show their proof of correction to the court and suggested that dismissal was contingent on paying a transaction fee. Both proof of correction and a transaction fee are required for correctable violations, although payment of a transaction fee does not appear to be required to dismiss the violation. (Veh. Code, §§ 40522, 40611.) Instead, the fee would be outstanding, but the violation could be dismissed. The committee agreed with the suggestions

and incorporated changes to the form to separate the steps for proof of correction from payment of a transaction fee, and to emphasize the need for all litigants to return their proof of correction to the court.

Adding explanation for correctable violations
The Joint Rules Subcommittee requested that the committee add check boxes to each violation for officers to indicate why they chose to indicate that a violation is not correctable. The committee declined to make this change because there is insufficient space on the citation to include this explanation for more than one violation.

Construction zone and overweight violation check boxes
The Superior Court of Stanislaus County requested that the committee incorporate check boxes for construction zone and overweight violations into form TR-130. These check boxes are on the proposed revoked forms TR-135 and TR-145, but not on the current form TR-130. These check boxes are not necessary to include on the proposed revised form TR-130 as officers can write this information on the form when issuing a citation as they do currently. Additionally, individual jurisdictions can choose to include these boxes on their citation as a discretionary field.

Class of driver
The Joint Rules Subcommittee requested that the committee add "Class" back to the TR-130 so that law enforcement may indicate the class of a driver's license on the citation. This field is currently discretionary for jurisdictions to include on their citation, but it is on the current form TR-130. The committee agreed with the suggestion and added a discretionary "Class" field to the form since this box is used by many law enforcement agencies and appears on the current form.

MyCitations
One commenter indicated concern over including MyCitations (an online tool where litigants can request a fine reduction due to financial hardship) as Option A on the citation since it will not be available in every court as of the form's effective date, January 1, 2024. Another commenter suggested reversing the order of the items under Option A on the back of the citation (as circulated) to have MyCitations listed second. The committee decided to keep MyCitations listed on the citation since it should be available in all counties by June 30, 2024, and agreed with the suggestion to reverse the order of the items in Option A to have MyCitations listed after a pay option.

Forfeiting bail
The Superior Court of Orange County indicated concern about the language "guilty finding" in lieu of "bail forfeiture" on the proposed citation. When a litigant chooses to pay their traffic fine without contesting the ticket, they are forfeiting bail. Per Vehicle Code section 40512, for certain offenses a penalty in the form of a fine can be "forfeited" and cancel the need for any further court proceedings. Payment is treated as a conviction for the offense. (Veh. Code, § 13103.) Although the same consequences apply as for a guilty plea, the litigant is not technically pleading guilty, nor is the court necessarily making a finding of guilt. The committee and

working group considered the best terminology to use to describe forfeiting bail from the litigant's standpoint. After feedback from criminal defense attorneys, behavioral scientists, judicial officers, and court staff, the committee settled on "guilty finding." The committee recognizes that "bail forfeiture" is the correct legal term but recommended "guilty finding" on the proposed citation because this language was seen by experts on the workgroup and in user testing to be a clearer indicator of consequences of paying a ticket, as the bail forfeiture will be considered a conviction. "Guilty finding" also was understood in user testing to mean that the litigant would have a conviction on their record. Based on the feedback received from the commenter, the committee again discussed the term but declined to change it, determining that "guilty finding" is the preferred term from the litigant's standpoint.

Trial in absentia

The Joint Rules Subcommittee was concerned that there was no mention about trial in absentia—a process by which a litigant can be found guilty when the litigant fails to act in a timely manner in response to their ticket—as a potential consequence on the back of the proposed citation. Instead, the citation informs the defendant about a potential "guilty finding" for failure to act. While trial in absentia is the legal mechanism, the committee felt that the term "guilty finding" is more understandable to the litigant. The committee declined to use the term "trial in absentia," which may be unfamiliar to a litigant, and retained the phrase "guilty finding."

Owner's responsibility

The Superior Court of Orange County commented that owner's holds needed to be added to the list of consequences on the back of the citation. The Superior Court of Ventura County commented that the check box "To be notified" needed to be added back to the citation for owner's responsibility tickets.

When someone is issued an owner's responsibility ticket, there are slightly different processes than a standard citation. For example, there may be a registration hold on the owner's vehicle registration if the owner does not resolve the issue. And the court date will often be determined later when the vehicle owner receives notice of the citation. The current form TR-130 has a check box that says "To be notified" near the required date of action.

The committee agreed with both suggestions and made corresponding changes to the form.

Accurate language for civil assessment

On the citation form that circulated for comment, a warning stated, "ACT BY THIS DATE TO AVOID A WARRANT *OR* INCREASED FINES." The Superior Court of Orange County suggested that "fines or fees" be substituted for "fines" since civil assessments, the most common consequence for failing to respond to a ticket in a timely manner, are not fines. This commenter made the same suggestion for a sentence on the back of the citation that warned of a fine of up to $100. The committee agrees that a civil assessment is not a fine and made this change on the back of the citation. Although the correct terminology would be "fines, fees, or assessments," in order to fit the warning in the allotted space the committee changed the warning on the front to state, "ACT BY THIS DATE TO AVOID A WARRANT *OR* ADDED FEES."

Court communication
The Superior Courts of Orange and Ventura Counties commented that the advisement under "MORE INFORMATION" that litigants will receive more information from the court should be more prominently displayed. They expressed concerns that the citation encouraged litigants to contact the court before receiving their courtesy/reminder notice. These reminder notices are mandatory for courts to send and give the litigant more information about their next steps. The committee declined to take this suggestion as they understand that not all litigants will receive a reminder notice for a variety of reasons, and the committee intends for this citation to give the litigant as much information as possible prior to receiving the notice.

Separate check boxes for appearing and responding to citation
One of the primary purposes of the citation proposal is to clarify the different actions needed by a litigant who has received a citation for a misdemeanor versus an infraction. With this intention in mind, the committee is proposing two check boxes at the top of the citation, with officers writing a misdemeanor citation using the "APPEAR IN COURT ON" check box and officers writing most infraction citations using the "RESPOND TO CITATION BEFORE" check box. Two commenters expressed concern that these boxes may result in mistakes from the officers and that the space taken up by these two boxes is too large. The committee understands that there will be some training required for officers to learn which box to check for mandatory appearance infractions. However, given the priority of getting helpful information to litigants about their required next steps and the intention of the committee to enlarge and emphasize the date of required action or appearance, the committee declined to make any changes to this section of the citation.

Wording and formatting
Several of the commenters suggested minor and nonsubstantive formatting and wording changes to the citation. The committee agreed with many of these suggestions and incorporated them into the proposed revisions where possible. The committee also declined to take many of these suggestions due to space considerations on the citation.

Effective date
In addition to public comments received, committee staff received informal feedback from some law enforcement stakeholders concerned that the January 1, 2024, effective date did not allow sufficient time for printing and distribution of new citation booklets. However, given the legislative mandate of AB 2773, the committee declined to delay the effective date of the forms.[3] And, as noted above, CHP, California Peace Officers Association, California Police Chiefs, and the California Sheriff's Association have already been notified about this upcoming change. Additional outreach efforts to inform law enforcement agencies can continue to ensure awareness and compliance with the new form.

[3] Based on communication received from representatives of the CHP, the committee believes that the CHP will be ready to implement the new form as of January 1, 2024. However, smaller law enforcement organizations could conceivably need additional time after the effective date to transition over to its use.

Alternatives considered

The committee considered revising forms TR-135 and TR-145 to be consistent with changes to form TR-130. However, given the technological advancement of electronic citations and the need for electronic citation vendors to design forms that meet a variety of court specifications, the committee determined that revoking the forms and clarifying that form TR-130 should be used as the model for the design of electronic citations would better encourage the expansion in the use of electronic citations.

Because AB 2773 requires the reason for the stop be on the citation, the committee did not consider taking no action. The committee also considered recommending a longer implementation time but decided that action on the revision of forms TR-130 and TR-140 was necessary by January 1, 2024, the effective date of AB 2773. As stated above, the committee did not recommend changing the effective date of the forms, but the committee understands there may be complications.

Fiscal and Operational Impacts

Courts would be required to train court staff and judicial officers on the newly revised forms. Some training would be needed for law enforcement officers. In addition, costs would be incurred by law enforcement agencies to make and replace paper forms packets and work with vendors to incorporate changes to existing electronic citation systems.

Attachments and Links

1. Cal. Rules of Court, rule 4.103, at pages 12-13
2. Forms TR-130, TR-135, TR-140, TR-145, and TR-INST, at pages 14-44
3. Chart of comments, at pages 45-57
4. Attachment A: Form TR-130 (rev. eff. 2015)

Rule 4.103. Notice to appear forms

(a) Traffic offenses

A printed or electronic notice to appear that is issued for any violation of the Vehicle Code other than a felony or for a violation of an ordinance of a city or county relating to traffic offenses must be prepared and filed with the court on *Automated Traffic Enforcement System Notice to Appear* (form TR-115)~~,~~ or *Traffic/Nontraffic Notice to Appear* (form TR-130), ~~*Electronic Traffic/Nontraffic Notice to Appear* (4-inch format) (form TR-135), or *Electronic Traffic/Nontraffic Notice to Appear* (3-inch format) (form TR-145),~~ and must comply with the requirements in the current version of the Judicial Council's instructions, *Notice to Appear and Related Forms* (form TR-INST).

(b) Nontraffic offenses

A notice to appear issued for a nontraffic infraction or misdemeanor offense that is prepared on *Nontraffic Notice to Appear* (form TR-120)~~,~~ or *Traffic/Nontraffic Notice to Appear* (form TR-130), ~~*Electronic Traffic/Nontraffic Notice to Appear* (4-inch format) (form TR-135), or *Electronic Traffic/Nontraffic Notice to Appear* (3-inch format) (form TR-145),~~ and that complies with the requirements in the current version of the Judicial Council's instructions, *Notice to Appear and Related Forms* (form TR-INST), may be filed with the court and serve as a complaint as provided in Penal Code section 853.9 or 959.1.

(c) Corrections

Corrections to citations previously issued on *Continuation of Notice to Appear* (form TR-106), *Continuation of Citation* (form TR-108), *Automated Traffic Enforcement System Notice to Appear* (form TR-115), *Nontraffic Notice to Appear* (form TR-120), or *Traffic/Nontraffic Notice to Appear* (form TR-130)~~, *Electronic Traffic/Nontraffic Notice to Appear* (4-inch format) (form TR-135), or *Electronic Traffic/Nontraffic Notice to Appear* (3-inch format) (form TR-145)~~ must be made on *Notice of Correction and Proof of Service* (form TR-100).

(d) Electronic citation forms

A law enforcement agency that uses an electronic citation device to issue notice to appear citations on the Judicial Council's *Traffic/Nontraffic Notice to Appear* (form TR-130) ~~*Electronic Traffic/Nontraffic Notice to Appear* (4-inch format) (form TR-135) or *Electronic Traffic/Nontraffic Notice to Appear* (3-inch format) (form TR-145)~~ must submit to the Judicial Council an exact printed copy of the agency's current citation form that complies with the requirements in the most recent version

of the Judicial Council's instructions, *Notice to Appear and Related Forms* (form TR-INST).

AGENCY NAME/JURISDICTION INFO (CITATION NUMBER)

NOTICE TO:

☐ APPEAR IN COURT AT ____ ☐ AM ☐ PM **ON:**

OR

☐ RESPOND TO CITATION **BEFORE:**

DATE: ___ / ___ / _____

See back for detailed instructions

☐ To be notified

☐ Name of Court, Division of Court, Street Address, City, State ZIP ✆ XXX.XXX.XXXX ➥ **websiteurl.com**

☐ Name of Court, Division of Court, Street Address, City, State ZIP ✆ XXX.XXX.XXXX ➥ **websiteurl.com**

☐ Name of Court, Division of Court, Street Address, City, State ZIP ✆ XXX.XXX.XXXX ➥ **websiteurl.com**

☐ Name of Court, Division of Court, Street Address, City, State ZIP ✆ XXX.XXX.XXXX ➥ **websiteurl.com**

ACT BY THIS DATE TO AVOID A WARRANT *OR* ADDED FEES

Date of Violation *(mm/dd/yy)*	Time ☐ AM ☐ PM	Driver's License Number *(all states)*	Class	State

Name *(first, middle, last)*

Current Address *(no., street, city, state, zip)*

Date of Birth *(mm/dd/yy)*	Parent/Guardian Phone No. ☐ Juvenile	Commercial ☐ Y ☐ N	Insurance ☐ Y ☐ N

Race / Ethnicity	Sex	Hair	Eyes	Height	Weight

Vehicle License/VIN	State	Reg *(mm/yy)*	Year of Veh.	Make

Registered Owner/Lessee ☐ Same as driver ☐ Owner's responsibility (VC, § 40001)

Model	Body Style

Address *(no., street, city, state, zip)* ☐ Same as driver

Color

Reason for Stop

CHP / DOT / PUC / ICC

CITATION DETAILS

☐ Booking Required *(see reverse)*

Correctable (Fix-It)	Code/Section	Description	M = Misdemeanor I = Infraction (circle)
☐ Y ☐ N			M I
☐ Y ☐ N			M I
☐ Y ☐ N			M I
☐ Y ☐ N			M I

Approx. Speed	PF/Max Speed	Veh. Limit	Safe Speed	Radar/Lidar

☐ **Commercial Veh.** VC, § 15210(b)

☐ **Hazardous Mat.** VC, § 353

Location of Violation

City/County of Occurrence

Agency Case No.

Comments *(weather, road, traffic conditions)* ☐ Crash

☐ Violations not committed in my presence, declared on information and belief (VC, § 40600)

I declare under penalty of perjury under the laws of the State of CA that the foregoing is true and correct.

___/___/____ DECL. DATE _____ ARRESTING OR CITING OFFICER _____ SERIAL NO.

___/___/____ DECL. DATE _____ ARRESTING OFFICER, *(if different from above)* _____ SERIAL NO.

I promise to act by the date at the top of this citation. Signing DOES NOT admit guilt.

(_____)_____ CELLPHONE - OPTIONAL *(may be used for reminders)*

_____ EMAIL - OPTIONAL *(may be used for reminders)*

X _____ SIGNATURE

DEFENDANT COPY | FORM INFO

Continuation form ☐

FPO Barcode USS Code 39

Form Adopted for Mandatory Use
Judicial Council of California
TR-130, Traffic/Nontraffic Notice to Appear
[Rev. Jan. 1, 2024]
SEE REVERSE

Vehicle Code, §§40500(b), 40513(b), 40522, 40600; Pen. Code, §853.9

TAB AREA

WHAT YOU NEED TO DO

Step ❶ Which box is checked on the front of the citation:
APPEAR IN COURT ***or*** RESPOND TO CITATION?

Step ❷ Follow instructions based on the box checked on the front.

If **APPEAR IN COURT** *is checked on the front*

► **Your next step:** Go to court on the date, time and location on the front. Appearing in court is your **only option**. You can plead guilty or not guilty.
IMPORTANT: Missing court may result in a warrant for your arrest. Don't let that happen—go to court! The judge will explain next steps.

➔ *Helpful Tip: Put the court date in your calendar, set a reminder, start planning now.*
➔ **Juveniles:** If you were under 18 years old at the time of the violation, you must bring a parent or guardian with you to court.

If **RESPOND TO CITATION** *is checked on the front*

Citations can take up to 14 days to show up in the court system.
Keep checking to find your citation, and then complete Option A, B, C, or D by the date listed on front

► **Your next step:** Choose an option below and respond by the date.
IMPORTANT: Not responding by the date on the front can result in a "failure to appear" charge, a guilty finding, an additional fee of up to $100, and a hold on your car registration (owner's responsibility).
Choose one of the options below to avoid these penalties:

– **Option A:** ***Pay or Ask for a Reduction (Guilty Finding)***
  – Pay (online, call, in person). If you cannot pay in full now, contact the court (see front for contact information) to request a payment plan or extension.
  – Ask for a reduction at MYCITATIONS.COURTS.CA.GOV (takes about 10 minutes).

Note: This option may add points to your driving record and affect insurance.

– **Option B:** ***Request Traffic School*** To avoid points on your driving record, you can request traffic school. You pay the citation plus an additional traffic school fee and complete traffic school. Contact the court to see if you are eligible.

– **Option C:** ***Dispute the Citation (Plead Not Guilty)*** You can dispute the citation **in person** by requesting a court date for a trial (no cost) or **by mail** ("trial by written declaration"), which requires you to pay the fine up front (amount returned if citation is dismissed). Contact court for more details (court info on front of citation).

– **Option D:** ***Correctable ("Fix-It")*** If "Correctable" is checked on the front, first show an officer, authorized inspection agency, or DMV (license and registration issues only) that you fixed the issue, and they will sign the citation (below). Then, you must show the court that you fixed the issue to have the violation dismissed. You must also pay a transaction fee. For insurance issues, you must show the court you had insurance when you got the ticket and pay a transaction fee.

CERTIFICATE OF CORRECTION (MUST BE RETURNED TO COURT)

Section(s) Violated	Signature of Person Certifying Correction	Serial No.	Agency	Date

If **"Booking Required"** is checked on front, call xxx-xxx-xxxx to schedule an appointment before the court date. You will not be arrested and will attend your court date on your own.

MORE INFORMATION

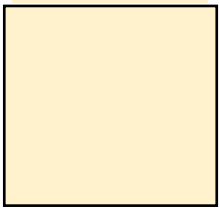
For **translations and general information** about the process, visit *https://www.courts.ca.gov/forms.htm*

To contact the court, see front of citation for court's website and phone number.
The court will send notice explaining next steps.

[Rev. Jan. 1, 2024]

(Circle one)

RIGHT or LEFT
THUMB PRINT



ELECTRONIC TRAFFIC/NONTRAFFIC NOTICE TO APPEAR
(Defendant's Copy)

Shaded areas indicate spaces subject to modification for local or agency requirements.

(NAME OF AGENCY AND JURISDICTION)
NOTICE TO APPEAR

☐ MISDEMEANOR ☐ TRAFFIC ☐ NONTRAFFIC (Citation No.)

Date of Violation 1. / /	Time	☐ AM ☐ PM	Day of Week	Case No.

Name *(First, Middle, Last)/(Company)* ☐ Owner's Responsibility (VC 40001)
2.

Address
3.

City State/Country ZIP Code ☐ Juvenile (Phone No.)
4. ( )

Driver Lic. No. State/Country 5.	Class	Commercial ☐ Yes ☐ No	Age	Birth Date / /	
Sex 6.	Hair	Eyes	Height	Weight	Race	Other Description

E-mail Address
7.

☐ **COMM. VEH. (VC 15210(b))**

Veh. Lic. No. or VIN 8.	State/Country	Reg. Mo/Yr Exp		
Yr. of Veh. 9.	Make	Model	Body Style	Color

☐ **HAZ. MAT. (VC 353)**

Evidence of Financial Responsibility CHP/DOT/PUC/ICC
10.

Registered Owner or Lessee ☐ Same as Driver
11.

Address City State/Country ZIP Code ☐ Same as Driver
12.

13. Veh. 2 Veh. Lic. No. or VIN State/Country Reg. Mo/Yr Exp.

14. Yr. of Veh. Make Model Body Style Color Type

15. ☐ VC 42009 Construction Zone ☐ VC 42010 Safety Zone ☐ School Zone

Correctable Violation (VC 40610) Yes/No	Code and Section	Booking Required (see below) Description	Overweight	Misdemeanor or Infraction
16. (Y/N)			lbs	M ☐ I ☐
17. (Y/N)			lbs	☐ ☐
18. (Y/N)			lbs	☐ ☐
19. (Y/N)			lbs	☐ ☐

Speed Approx. 20. >	P.F./Max Spd.	Veh. Lmt.	Safe	Radar	

Location of Violation(s) City/County of Occurrence
21. at

RIGHT / LEFT THUMB/ FINGER PRINT

Comments (Weather, Road & Traffic Conditions, Etc.) ☐ Accident
22.

23. ☐ Violations not committed in my presence, declared on information and belief.

24. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Citation # _____ Violation location _____ Executed at (place) _____

25. / / _____ Dec. Date — Arresting or Citing Officer — _____ Serial No. — Fm _____ To _____ Vac. Dates

26. / / _____ Dec. Date — Name of Arresting Officer, if different from Citing Officer — _____ Serial No. — Fm _____ To _____ Vac. Dates

27. **WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW.**
X *Signature*

28. WHEN: ON OR BEFORE THIS DATE: ____/____/____ Time: _____ ☐ AM ☐ PM
Time: _____ ☐ AM ☐ PM

WHAT TO DO: FOLLOW THE INSTRUCTIONS BELOW.

29. WHERE: [Name of court[s]]
[Section[s] or division[s], room no[s].]
[Street address[es]]
[Phone No.]

PHOTO

(Citation No.)

30. ☐ To be notified ☐ Contact the clerk to appear at a night court session.

DEFENDANT COPY

Judicial Council of California Form
New 06-26-15 (VC 40500(b), 40513(b), 40522, and 40600; PC 853.9 and 959.1) TR-135

FPO Barcode (USS Code 39)

ELECTRONIC TRAFFIC/NONTRAFFIC NOTICE TO APPEAR
(Continuation of Defendant's Copy)

Shaded areas indicate conditional fields for use when citing multiple vehicles or violations with a continuation page.

(NAME OF AGENCY AND JURISDICTION)
NOTICE TO APPEAR

☐ MISDEMEANOR ☐ TRAFFIC ☐ NONTRAFFIC (Citation No.)

Date of Violation	Time	☐ AM ☐ PM	Day of Week	Case No.
1. / /				

Name *(First, Middle, Last)/(Company)* ☐ Owner's Responsibility (VC 40001)
2.

Address
3.

City 4. | State/Country | ZIP Code | ☐ Juvenile (Phone No.) ( )

Driver Lic. No. 5.	State/Country	Class	Commercial ☐ Yes ☐ No	Age	Birth Date / /

Sex 6.	Hair	Eyes	Height	Weight	Race	Other Description

E-mail Address
7.

8. ☐ VC 42009 Construction Zone ☐ VC 42010 Safety Zone ☐ School Zone

Correctable Violation (VC 40610) Yes/No	Code and Section	☐ Booking Required (see below) Description / Overweight		Misdemeanor or Infraction M	I
9. (Y/N)			lbs	☐	☐
10. (Y/N)			lbs	☐	☐
11. (Y/N)			lbs	☐	☐
12. (Y/N)			lbs	☐	☐
13. (Y/N)			lbs	☐	☐
14. (Y/N)			lbs	☐	☐
15. (Y/N)			lbs	☐	☐
16. (Y/N)			lbs	☐	☐
17. (Y/N)			lbs	☐	☐
18. (Y/N)			lbs	☐	☐
19. (Y/N)			lbs	☐	☐
20. (Y/N)			lbs	☐	☐

	Veh. Lic. No. or VIN	State/Country	Reg. Mo/Yr	Expiration Date
21.				

22. Veh. 3	Veh. Lic. No. / VIN		State/Country		Reg. Mo/Yr	Exp.	
23.	Yr. of Veh.	Make	Model	Body Style	Color	Type	
24. Veh. 4	Veh. Lic. No. / VIN		State/Country		Reg. Mo/Yr	Exp.	
25.	Yr. of Veh.	Make	Model	Body Style	Color	Type	
26. Veh. 5	Veh. Lic. No. / VIN		State/Country		Reg. Mo/Yr	Exp.	
27.	Yr. of Veh.	Make	Model	Body Style	Color	Type	

Location of Violation

28. ☐ Violations not committed in my presence, declared on information and belief.

29. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Citation# Violation location Executed at (place)

30. / / Dec. Date _____ Arresting or Citing Officer

31. / / Dec. Date _____ Name of Arresting Officer, if different from Citing Officer

Serial No. Fm To Vac. Dates

Serial No. Fm To Vac. Dates

(Citation No.)

32. **WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED.**
X *Signature*

Judicial Council of California Form New 06-26-15 (VC 40500(b), 40513(b), 40522, and 40600; PC 853.9 and 959.1) TR-135

FPO Barcode (USS Code 39)

ELECTRONIC TRAFFIC/NONTRAFFIC NOTICE TO APPEAR
(Defendant's Instructions)

(Citation No.)

LOCAL INFORMATION FOR THE CITATION IS AVAILABLE ONLINE AT [*website address*]

IMPORTANT — READ CAREFULLY

WARNING: If you fail to appear in court as you have promised, you may be arrested and punished by 6 MONTHS IN JAIL AND/OR A $1,000 FINE regardless of the disposition of the original charge. (Veh. Code, § 40508, or Pen. Code, § 853.7.) In addition, any person who fails to appear as provided by law may be deemed to have elected to have a trial by written declaration (in absentia) pursuant to Vehicle Code section 40903(a) upon any alleged infraction, as charged by the arresting/citing officer.

JUVENILE: If you were under age 18 at the time the citation was issued, you must appear in court with your parent or guardian.

COURTESY NOTICE: A courtesy notice **may** be mailed to the address shown on your citation, indicating the required deposit of money (bail) that may be forfeited instead of your appearing in court. If you do not receive such courtesy notice, you are still required to comply with the items below by the appearance date.

WHAT TO DO

You are required to appear at court for a misdemeanor violation. For all violations, your court date/time/place are provided above in this notice to appear. Have the citation with you when contacting the court. In all infraction cases, you must do one or more of the following for each violation:

- Pay the fine (bail).
- Appear in court.
- Contest the violation.
- Correct the violation (traffic cases, when applicable).
- Request traffic school (traffic cases, when applicable).
- Request trial by written declaration (traffic cases).

If you do not do one of the above actions, then a "failure to appear" charge will be filed against you (Veh. Code, § 40508(a)) and your driver license may be withheld, suspended, or revoked. In some courts you may be charged an amount in addition to the bail amount and the case may be turned over to a collection agency. (Pen. Code, § 1214.1.)

1. If you do NOT contest the violation:

a. (Pay the bail amount) Contact the court for bail information. You will not have to appear in court. You will be convicted of the violation, and it will appear on your record at the Department of Motor Vehicles (DMV). A point count may be charged to your DMV record, and your insurance may be adversely affected.

b. (Traffic school) You may be able to avoid the point count by completing traffic school. You must pay the bail amount as a fee, and you may have to pay other fees. Contact the court to request traffic school.

c. (Correctable violations) If the "Yes" box is checked above, the violation is correctable. Upon correction of the violation, have a law enforcement officer or an authorized inspection/installation station agent sign below. (Veh. Code, § 40616.) Registration and driver license violations may also be certified as corrected at an office of the DMV or by any clerk or deputy clerk of a court. The violation will be dismissed by the court after PROOF OF CORRECTION and payment of a transaction fee are presented to the court by mail or in person by the appearance date. Violations of Vehicle Code section 16028 (automobile liability insurance) will be dismissed **only** upon (1) your **showing or mailing to the court** evidence of financial responsibility valid at the time this notice to appear was issued, and (2) your payment of a transaction fee.

CERTIFICATE OF CORRECTION (MUST BE RETURNED TO COURT)				
Section(s) Violated	Signature of Person Certifying Correction	Serial / ID No.	Agency	Date

2. If you contest the violation (select a or b):

a. (Court trial) Send a certified or registered letter postmarked not later than five days prior to the appearance date or come to the court by the appearance date to request a court trial on a future date when an officer and any witnesses will be present. **You may be required to submit the bail amount. Go online or call the court for information on going to court without paying bail —OR—**

b. (Trial by written declaration (traffic infractions)) Send a certified or registered letter postmarked not later than five days prior to the appearance date or come to the court on or before the appearance date to request a trial by written declaration. **Submit the bail amount.** You will be given forms to allow you to write a statement and to submit other evidence without appearing in court. An officer will also submit a statement. The judicial officer will consider the evidence and decide the case.

3 Make check/money order payable to **Clerk of the Court**. Write your citation number and driver license number on your check or money order. You may pay in person, by mail, or by phone.

4. If "Booking Required" is checked, you must appear for booking on a weekday prior to your court date at _____ between the hours of _____ and _____ and bring the signed verification to your court appearance. Call _____ for more information.

Booking Verification: I declare under penalty of perjury under the laws of the State of California that _____ was booked on _____
Defendant's name Date

Officer_____ Serial / ID No. _____

Shaded areas indicate spaces subject to modification for local or agency requirements.

NOTICE TO CORRECT VIOLATION
(Face of Violator's Copy)

(Name of Agency and Jurisdiction)
NOTICE TO CORRECT VIOLATION (Citation No.)

1. Date of Violation / /	Time	☐AM ☐PM	**Day of Week** **S M T W T F S**	**Case No.**

2. Name *(First, Middle, Last)* ☐ Owner's Responsibility (Veh. Code, § 40001)

3. Mailing Address

4. City State ZIP Code

5. Driver Lic. No. State	**Class**	Age	Birth Date / /	☐ **Juvenile (Tel. No.)** ( )	
6. Sex	Hair	Eyes	Height	Weight	**Race** / **Other Description**

7. Veh. Lic. No. or VIN State					☐**COMMERCIAL VEHICLE (Veh. Code, § 15210(b))**
8. Yr. of Veh.	Make	**Model**	Body Style	**Color**	☐**HAZARDOUS MATERIAL (Veh. Code, § 353)**
9. Veh. Lic. No. or VIN State					
10. Yr. of Veh.	Make	Model	Body Style	Color	CHP/DOT
11. Reason for Stop					PUC/ICC

12. Registered Owner or Lessee ☐Same as Driver

13. Address City State ZIP Code ☐Same as Driver

Violation(s) Code and Section	Description
14.	
15.	
16.	
17.	
18. Location of Violation(s)	**City/County**
19.	

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.
20. Executed at California

21. Citing Officer	ID	Vacation Dates From To

I PROMISE TO CORRECT THE VIOLATION(S) LISTED ABOVE AND PROVIDE PROOF OF CORRECTION TO THE ISSUING AGENCY AS INSTRUCTED BELOW WITHIN 30 DAYS.

22. ***X SIGNATURE***

WHEN: CORRECT VIOLATION(S) IMMEDIATELY. CONTINUED OPERATION WITHOUT CORRECTION MAY RESULT IN ARREST AND PENALTY.

WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE.

WHERE: PROVIDE PROOF OF CORRECTION TO THE ISSUING AGENCY'S ADDRESS LISTED ON THE REVERSE.

FPO Barcode

DEFENDANT COPY

Adopted for Mandatory Use
Judicial Council of California, *www.courts.ca.gov*
TR-140, Notice to Correct Violation, [Rev. Jan. 1, 2024]

SEE REVERSE
Vehicle Code, §§ 40610(d), 40618

Shaded areas on the sample form indicate spaces subject to modification for local or agency requirements.

REVERSE OF VIOLATOR'S COPY

INSTRUCTIONS TO DRIVER-OWNER

WHAT TO DO

METHODS FOR OBTAINING CERTIFICATION OF CORRECTION (Veh. Code, § 40616):
This Notice to Correct Violation may be cleared upon correction of the violation by providing satisfactory proof of correction within 30 days of this notice, as specified below, either in person at the issuing agency's office at [*address*] during normal business hours or by mail postmarked within 30 days of this notice to the issuing agency's address indicated below.

Violations may be certified as corrected on this form (as indicated below) in the following manner:

1. Brake, lamp, smog device, or muffler violations may be certified as corrected by any station licensed to inspect and certify for the specific violation(s).
2. Driver license and registration violations may be certified as corrected at offices of the DMV by an appropriate employee thereof, or by any clerk or deputy clerk of a court.
3. Any violation may be certified as corrected by a law enforcement agency regularly engaged in the enforcement of the California Vehicle Code.

DO NOT STOP AN OFFICER ON ANY FREEWAY, EXPRESSWAY, OR BRIDGE FOR CERTIFICATION OF CORRECTION.

NOTE: INSPECTION STATIONS MUST LIST THEIR ARD LICENSE NUMBER ISSUED BY THE BUREAU OF AUTOMOTIVE REPAIR IN THE SPACE PROVIDED BELOW.

WARNING: Any person willfully violating a written promise to correct or willfully failing to deliver proof of correction is guilty of a misdemeanor (Veh. Code, § 40616), which may lead to arrest, penalty, and additional fees. In addition, the Department of Motor Vehicles (DMV) will WITHHOLD the issuance or renewal of your driver license, and may revoke or suspend your driving privilege for Vehicle Code offenses. YOU MUST RETURN THE COMPLETED CERTIFICATE OF CORRECTION TO THE ISSUING AGENCY.

CERTIFICATE OF CORRECTION **(RETURN TO THE ISSUING AGENCY)**				
Section(s) Violated	Signature of Person Certifying Correction	ID or ARD License No.	Agency or Certified Inspection Station	Date

[Name of Agency]
[Section[s] or division[s], room no[s].]
[Street address]

POSTMASTER: If undeliverable return to Name and Mailing Address on reverse

FIRST CLASS POSTAGE REQUIRED

Rev. Jan. 1, 2024

Shaded areas on the sample form indicate spaces subject to modification for local or agency requirements.

REVERSE OF COURT COPY

TO BE EXECUTED IN CASE OF FAILURE TO DELIVER PROOF OF CORRECTION

DEFENDANT HEREIN FAILED TO DELIVER PROOF OF CORRECTION IN VIOLATION OF HIS/HER SIGNED PROMISE, AND IN VIOLATION OF VEHICLE CODE SECTION 40616.

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED AT _____ **CALIFORNIA, ON** _____
DATE

BY: _____ _____
PRINT OR TYPE NAME **TITLE**

_____ _____
SIGNATURE **ID/BADGE NUMBER**

ADDRESS:

FOR COURT USE ONLY

(Circle one)

RIGHT or LEFT
THUMB PRINT

Rev. Jan. 1, 2024

Shaded areas on the sample form indicate spaces subject to modification for local or agency requirements.

ELECTRONIC TRAFFIC/NONTRAFFIC NOTICE TO APPEAR (Defendant's Copy)

Shaded areas indicate spaces subject to violation details or modification for local or agency requirements.

Agency: *(Name and Jurisdiction)*

NOTICE TO APPEA R Citation: (No.)

Misdemeanor: (*Y/N*) Traffic: (*Y/N*) Nontraffic: (*Y/N*)

Violation Date: (*Day of Week*) / / Time: (*AM/PM*) Case No.:

Owner's Responsibility: (*Y/N*) (VC 40001)

Name:*(First, Middle, Last)/(Company)*

Address:

City: State/Country: ZIP:

Juvenile (Phone #): ( ) E-mail Address:

Driver Lic.: (*No.*) State/Country: Class: Comm. Lic.: (*Y/N*)

Birth Date: / / Age: Juvenile: (*Y/N*)

Sex: Hair: Eyes: Ht: Wt: Race: Other Descr.:

Veh. Lic. or VIN: (*No.*) State/Country: Reg.: (*Mo/Yr*) Exp

Yr. of Veh.: Make: Model:

Body Style: Color:

COMMERCIAL VEH. (VC 15210(b)): (*Y/N*) HAZ. MAT. (VC 353): (*Y/N*)

Evid. of Financial Resp.: CHP/DOT/PUC/ICC

Registered Owner or Lessee: *(First, Middle, Last/Company)*

Address:

City: State/Country: ZIP:

Veh. 2: Veh. Lic. or VIN: (*No.*) State/Country: Reg.: (*Mo/Yr*) Exp

Yr. of Veh.: Make: Model: Body Style: Color:

Veh. 3: Veh. Lic. or VIN: (*No.*) State/Country: Reg.: (*Mo/Yr*) Exp

Yr. of Veh.: Make: Model: Body Style: Color:

Veh. 4: Veh. Lic. or VIN: (*No.*) State/Country: Reg.: (*Mo/Yr*) Exp

Yr. of Veh.: Make: Model: Body Style: Color:

Construction-VC 42009 (*Y/N*) Safety Zone-VC 42010 (*Y/N*) School Zone (*Y/N*)

Correctable Violation (VC 40610) (Yes/No) Code Section Description Booking Required: (*Y/N*) (see reverse)

Overweight	Misd./Infrac.
lbs	**(*M/I*)**
lbs	**(*M/I*)**
lbs	**(*M/I*)**
lbs	**(*M/I*)**
lbs	**(*M/I*)**
lbs	**(*M/I*)**

Speed Approx: P.F./Max Spd.: Veh. Lmt.: Safe: Radar: (*Y/N*)

Location of Violation(s) at: (*City/County of Occurrence*)

Conditions: (*Weather, Road & Traffic Conditions, Etc.*)

Remarks:

Accident (*Y/N*)

RIGHT / LEFT THUMB / FINGER PRINT

WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW.

X *Signature*

WHEN: ON OR BEFORE THIS DATE: __/__/____ Time: (*AM/PM*)

WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE.

WHERE: BEFORE A JUDGE OR CLERK OF THE
(Name of court[s])
(Section[s] or division[s], room no[s].)
(Street address[es])
(Phone No.)

PHOTO

To be notified (*Y/N*) Contact the clerk to appear at a night court session: (*Y/N*)

☐ Violations not committed in my presence, declared on information or belief.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Executed at: (*Place*) Violation Location:

____(*Signature*)_____ __/__/____
Arresting or Citing Officer Declaration Date

_____(*Name*)_____ __/__/____
Arresting Officer, if different from Citing Officer: Declaration Date

Serial / ID: _____ Dates Off: __/__/__ to __/__/____

Judicial Council of California Form New 06-26-15 (VC 40500(b), 40513(b), 40522, and 40600; PC 853.9 and 959.1) TR-145 DEFENDANT COPY

FPO Barcode
USS Code 39

LOCAL INFORMATION FOR THE CITATION IS AVAILABLE ONLINE AT [*website address*]

IMPORTANT — READ CAREFULLY

WARNING: If you fail to appear in court as you have promised, you may be arrested and punished by 6 MONTHS IN JAIL AND/OR A $1,000 FINE regardless of the disposition of the original charge. (Veh. Code, § 40508 or Pen. Code, § 853.7.) In addition, any person who fails to appear as provided by law may be deemed to have elected to have a trial by written declaration (in absentia) pursuant to Vehicle Code section 40903(a) upon any alleged infraction, as charged by the arresting/citing officer.

JUVENILE: If you were under age 18 at the time the citation was issued, you must appear in court with your parent or guardian.

COURTESY NOTICE: A courtesy notice **may** be mailed to the address shown on your citation, indicating the required deposit of money (bail) that may be forfeited instead of your appearing in court. If you do not receive such courtesy notice, you are still required to comply with the items below by the appearance date.

WHAT TO DO

You are required to appear at court for a misdemeanor violation. For all violations, your court date/time/place are provided above in this notice to appear. Have the citation with you when contacting the court. In all infraction cases, you must do one or more of the following for each violation:

- Pay the fine (bail).
- Appear in court.
- Contest the violation.
- Correct the violation (traffic cases, when applicable).
- Request traffic school (traffic cases, when applicable).
- Request trial by written declaration (traffic cases).

If you do not do one of the above actions, then a "failure to appear" charge will be filed against you (Veh. Code, § 40508(a)) and your driver license may be withheld, suspended, or revoked. In some courts you may be charged an amount in addition to the bail amount and the case may be turned over to a collection agency. (Pen. Code, § 1214.1.)

1. If you do NOT contest the violation:

a. (Pay the bail amount) Contact the court for bail information. You will not have to appear in court. You will be convicted of the violation, and it will appear on your record at the Department of Motor Vehicles (DMV). A point count may be charged to your DMV record and your insurance may be adversely affected.

b. (Traffic school) You may be able to avoid the point count by completing traffic school. You must pay the bail amount as a fee, and you may have to pay other fees. Contact the court to request traffic school.

c. (Correctable violations) If the "Yes" box is checked above, the violation is correctable. Upon correction of the violation, have a law enforcement officer or an authorized inspection/installation station agent sign below. (Veh. Code, § 40616.) Registration and driver license violations may also be certified as corrected at an office of the DMV or by any clerk or deputy clerk of a court. The violation will be dismissed by the court after PROOF OF CORRECTION and payment of a transaction fee are presented to the court by mail or in person by the appearance date. Violations of Vehicle Code section 16028 (automobile liability insurance) will be dismissed **only** upon (1) your **showing or mailing to the court** evidence of financial responsibility valid at the time this notice to appear was issued, and (2) your payment of a transaction fee.

CERTIFICATE OF CORRECTION
(MUST BE RETURNED TO COURT)

Section Violated	Signature Certifying Correction	Serial/ ID No.	Agency	Date

2. If you contest the violation (select a or b):

a. (Court trial) Send a certified or registered letter postmarked not later than five days prior to the appearance date or come to the court by the appearance date to request a court trial on a future date when an officer and any witnesses will be present. **You may be required to submit the bail amount. Go online or call the court for information on going to court without paying bail.—OR—**

b. (Trial by written declaration (traffic infractions)) Send a certified or registered letter postmarked not later than five days prior to the appearance date or come to the court on or before the appearance date to request a trial by written declaration. **Submit the bail amount.** You will be given forms to allow you to write a statement and to submit other evidence without appearing in court. An officer will also submit a statement. The judicial officer will consider the evidence and decide the case.

3 Make check/money order payable to **Clerk of the Court**. Write your citation number and driver license number on your check or money order. You may pay in person, by mail, or by phone.

4. If "Booking Required" is checked you must appear for booking on a weekday prior to your court date at _____ between the hours of _____ and _____ and bring the signed verification to your court appearance.

Call _____ for more information.

Booking Verification: I declare under penalty of perjury under the laws of the State of California that ___(*Defendant's Name*)___ was booked on _____(*Date*)_____

Officer: _____

Serial / ID No.: _____

(*L*/ *R*) THUMB/ FINGER PRINT

NOTICE TO APPEAR AND RELATED FORMS
(Form TR-INST)

Revised Effective ~~June 26, 2015~~ January 1, 2024

JUDICIAL COUNCIL *of* CALIFORNIA

455 Golden Gate Avenue
San Francisco, California 94102-3688

ACKNOWLEDGMENTS

The Judicial Council gratefully acknowledges the contributions and cooperation of those representatives from the judicial community, law enforcement agencies, and special interest groups who made this manual possible.

TABLE OF CONTENTS

Chapter 1 PURPOSE OF FORMS

1.000. Definitions

For the purposes of these instructions the following words are synonymous: (a) Notice to Appear, citation; (b) violation, offense, allegation, charges; (c) defendant, violator, person, individual, citee, driver; (d) court, court of jurisdiction; (e) officer, arresting officer, citing officer, issuing officer.

1.010. In General

Notice to Appear forms are designed to meet statutory requirements and, to the extent possible, address the procedural requirements of local courts and law enforcement agencies. Notices to Appear should provide the defendant with pertinent information regarding the charges and what steps the defendant must take to answer the allegations.

The uniform language and data fields assist law enforcement and the courts in the timely and accurate processing of the citation information. The design also ensures statewide conformity of advisements important to the defendant and that those advisements are clear and explicit.

1.020. Notice to Appear

(a) Whenever a person is arrested for any violation declared to be an infraction or misdemeanor, or for a violation of any city or county ordinance, and the person is not immediately taken before a magistrate, the arresting officer must prepare a Notice to Appear form.[1]

(b) When the Notice to Appear is prepared on a form approved by the Judicial Council it constitutes a complaint to which the defendant may enter a plea.[2]

1.030. Continuation Form

(a) The *Continuation of Notice to Appear* or *Continuation of Citation* form must be used when multiple offenses are charged and the Notice to Appear form does not provide sufficient space for the listing of all the charges. A *Continuation of Citation* is a multipurpose form intended for use with either a Notice to Appear form or a Notice to Correct Violation form.

(b) A second Notice to Appear must not be issued in lieu of a continuation form.

(c) The Notice to Appear and the corresponding continuation form must be treated as one law enforcement document and contain the same citation number.

[1] ~~Per~~ Veh. Code, § 40500(a)~~;~~ ~~and~~ Pen. Code, § 853.6.

[2] ~~Per~~ Veh. Code, § 40513(b)~~;~~ ~~and~~ Pen. Code, § 853.9.

~~d) Form TR-135, *Electronic Traffic/Nontraffic Notice to Appear* (4-inch format), may, when necessary, include a short-version continuation page to allow for citing multiple offenses or offenses that involve multiple vehicles.~~

1.040. Electronic Notice to Appear

(a) ~~The~~ An electronic Notice to Appear issued on ~~either form TR-135, Electronic Traffic/Nontraffic Notice to Appear (4-inch format) or form TR-145, Electronic Traffic/Nontraffic Notice to Appear (3-inch format)~~ form TR-130, *Traffic/Nontraffic Notice to Appear*, eliminates those citation-processing problems caused by the illegibility of handwritten information. The use of an electronic Notice to Appear also reduces the amount of information that must be entered into law enforcement and court computer systems.

(b) A court is authorized to receive and file a Notice to Appear in an electronic form if all of the following conditions are met:[3]

(1) The information is on a form approved by the Judicial Council.

(2) The Notice to Appear is transmitted to the court by a law enforcement agency.

(3) The court has the facility to electronically store the information for the statutory period of record retention.

(4) The court has the ability to reproduce the Notice to Appear in physical form upon the demand and payment of the reproduction costs.

(c) ~~Requirements for citations issued by an electronic citation device on form TR-135 or form TR-145 that differ from those for preprinted citations are specified below where necessary.~~ Any Notice to Appear prepared electronically must include all mandatory data fields and notices to the defendant that are on form TR-130. The formatting and spacing may vary depending on the software used to prepare the citation.

1.041. Notice to Correct Violation

Unless certain disqualifying conditions exist, a law enforcement officer who chooses to take action on certain registration, license, or equipment violations of the Vehicle Code must issue a Notice to Appear that specifies that the offense is correctable or a Notice to Correct Violation. (Veh. Code, §§ 40610, 40522, 40303.5.) If an agency does not receive proof of correction on a Notice to Correct, the agency can deliver to the court the signed promise with a certification that no proof of correction was received. (*Id.*, § 40618.) The Judicial Council adopted form TR-140, *Notice to Correct Violation*, in 2000. (See Appendix G.)

[3] ~~Per~~ Pen. Code, § 959.1.

1.050. Notice of Correction and Proof of Service

Form TR-100, *Notice of Correction and Proof of Service*, must be used for any corrections to the original Notice to Appear citation.[4] (See Appendix A.)

Chapter 2 AUTHORITY TO PRESCRIBE FORMAT

2.010. Judicial Council

(a) The Judicial Council has ~~adopted five~~ three forms for the Notice to Appear:

(1) Form TR-115, *Automated Traffic Enforcement System Notice to Appear*,[5] to be used in conjunction with violations of sections 22451, 21453, and 22101 recorded by an automated traffic enforcement system. (See Appendix D.)

(2) Form TR-120, *Nontraffic Notice to Appear*,[6] to be used for violations other than traffic offenses. (See Appendix E.)

(3) Form TR-130, *Traffic/Nontraffic Notice to Appear*,[7] to be used for both infraction and misdemeanor offenses. If form TR-130 is prepared and submitted electronically, a computer-generated paper citation is issued to the defendant at the time of arrest and a copy is filed with the court either electronically when permitted or as a paper copy. (See Appendix F.)

~~4) Forms TR-135 and TR-145[8] to be used for both infraction and misdemeanor offenses. (See Appendix G and Appendix H.) A computer-generated paper citation is issued to the defendant at the time of arrest and a copy is filed with the court either electronically when permitted or as a paper copy.~~

(b) Form TR-106, *Continuation of Notice to Appear*, and form TR-108, *Continuation of Citation*, are intended for use in conjunction with form TR-120, *Nontraffic Notice to Appear*, and form TR-130, *Traffic/Nontraffic Notice to Appear*. (See Appendix B and Appendix C.)

(c) The Judicial Council has not adopted a form for, nor established guidelines governing, the following: (1) parking citations, (2) arrest/booking reports, and (3) court bail courtesy notices.

[4] ~~Per~~ Veh. Code, § 40505.

[5] ~~Per Veh. Code~~ *Id.*, § 40518.

[6] ~~Per~~ Pen. Code, § 853.9.

[7] ~~Per~~ Veh. Code, §§ 40500(b), 40513(b), 40522~~,~~; ~~and~~ Pen. Code, § 853.9.

Chapter 3 REVISION DATES

3.010. Judicial Council

(a) Periodically, the Judicial Council will ~~adopt revisions of~~ revise Notice to Appear forms. **Law enforcement must use the revised Notice to Appear form by the effective date of the revised form if it is to serve as a complaint. ~~adopted by the Judicial Council~~.** (See section 6.030 for exception.) Depending on changes in statutory requirements, effective dates are established to allow law enforcement as much time as possible to deplete any existing supplies of the old form, print and disseminate new forms, and, if necessary, develop new procedures and train personnel regarding the revisions.

(b) The council ~~adopted forms TR-135 and TR-145~~ revised forms TR-130 and TR-140, effective January 1, 2024, and ~~revised~~ forms TR-115 and ~~,~~TR-120, ~~and TR-130,~~ effective June 26, 2015.~~,~~ ~~with implementation as soon as reasonably possible, but no later than November 15, 2015. The council adopted~~ Forms TR-100, TR-106, and TR-108 ~~with~~ have an effective date of January 1, 2004.

Chapter 4 FORM SPECIFICATIONS

4.010. Required Copies

The arresting officer must prepare the Notice to Appear form, at a minimum, in triplicate with a copy delivered to the court and the issuing agency for Vehicle Code violations[8] and in duplicate for all other violations.[9] The copy of the citation issued to the arrested person must include all of the information on the copy of the citation filed with the court, including any signature for the defendant's promise to appear or respond.[10] Before printing or programming Notice to Appear forms, law enforcement agencies should contact their local court to determine if there are any local requirements for the court's case management system.

4.020. Size and Color

The size and color of Notice to Appear copies for printed forms TR-106, TR-108, TR-120, ~~and~~ TR-130, and TR-140 should conform with the requirements of the courts in which they are filed. Printed copies of forms completed electronically should comply as closely as possible with these specifications but may vary depending on the courts' or law enforcement agency's technological capabilities. The Judicial Council recommends the following minimum size and other form specifications:

[8] ~~Per~~ Veh. Code, §§ 40500(a), ~~and~~ 40506.

[9] ~~Per~~ Pen. Code, § 853.6.

[10] ~~Per~~ Veh. Code, § 40505.

(a) A "trim" size of 4-1/4 inches wide and 7-1/2 inches long; 5/8-inch tabs on the top or bottom of the form.

(b) Original (Court's copy), white, 15-pound paper stock. Print head-to-head.

(c) Duplicate (Police agency's copy), pink, 15-pound paper stock. No printing on reverse.

(d) Triplicate (Officer's copy), green, 15-pound paper stock. Print reverse head-to-head.

(e) Quadruplicate (Defendant's copy), yellow, 20-pound paper stock. Print reverse head-to-head.

(f) The colors of the "Court's copy" and "Police agency's copy" correspond with rule 1:3-1 of the "Model Rules Governing Procedure in Traffic Cases" adopted by the National Conference of Commissioners on Uniform State Laws.

~~Form TR-135 has a "trim' size of 4 inches wide, and form TR-145 has a "trim" size of 3 inches wide.~~

4.030. Paper Stock

Paper stock for hand-written citations must be pressure sensitive and have a shelf life of at least five years. The citation text must be reproducible on photocopy equipment.

4.040. Serial Numbers

(a) The serial numbers of the form sets must be sequential. There must be no "duplication" of numbers between form sets.

(b) The format of the serial numbers is at the discretion of local law enforcement with the approval of the court.

4.050. Printing Format

(a) A vertical format is required, except for the Proof of Service on form TR-100, which is printed horizontally to facilitate mailing.

(b) All text on the forms must be printed in black ink, except the warning at the top of form TR-130, which should be printed in white ink. All text on citation forms TR-115~~,~~ and TR-120~~, TR-130, TR-135, and TR-145~~ must have a minimum font size of 6.0 points. All text on form TR-130 must have a minimum font size of 5.0 points. Serial numbers may be printed in red ink. The box for the defendant's signature and the box for the warning may be printed in red ink. Form TR-130 may include gray shading around the appearance and response information, the citation details section, and each section on the back of the citation to improve readability.

4.060. Printing Expenses

The printing of the forms and the associated costs are not the responsibility of the Judicial Council; printing is to be arranged in accordance with local custom.

Chapter 5 VARIATIONS OF MANDATORY LANGUAGE/DATA FIELDS

5.000. In General

Mandatory language and data fields are indicated by unshaded areas on examples of Judicial Council ~~adopted~~ forms ~~by unshaded areas~~; see section 5.010 for exceptions. On form TR-130, yellow shading indicates fields that can be customized.

5.010. Permitted Variations

(a) To meet the unique customs and/or needs of local law enforcement agencies and courts, the Judicial Council form permits limited variations in ~~the "time," "place," and "proof of correction certification"~~ specified data fields~~, among others~~. To indicate that variations may be permitted, these data fields are identified by shaded areas. On form TR-130, this shading is yellow. Shading should not appear on printed forms.

(b) The California Highway Patrol is permitted to alter the format and location of the fields for the name of the court, court address, and phone number and to add a field for the location of a CHP Inspection Facility on the face of a form TR-130, *Traffic/Nontraffic Notice to Appear*, for their form CHP-215X.

(c) Formatting for the bracketed information that is required in the "Where" field on notice to appear forms may be modified to include information for multiple court locations. On form TR-130, formatting for the information in the yellow box containing the court addresses may be modified as necessary to include the desired number of court locations.

Chapter 6 MANDATORY LANGUAGE/DATA FIELDS

6.000. In General

The mandatory language and data fields vary between the various Notice to Appear forms depending on the purpose of the form. All language and data fields in unshaded (or nonyellow, for form TR-130) areas on the forms are mandatory, even if not discussed below. Mandatory text or data fields of the forms may not be reworded or omitted, except for references to statutory authorities, which may be abbreviated differently. ~~Electronic Notice to Appear citations issued on forms TR-135 and TR-145~~ Citations prepared electronically may abbreviate terms to facilitate printing of forms.

Law enforcement agencies should be aware that if a written Notice to Appear is not prepared on an approved council form, a court may conclude that it does not constitute a complaint to which a defendant may enter a plea. (Veh. Code, § 40513(b).) If a defendant pleads other than "guilty" or "nolo contendere" and the court concludes that the Notice to Appear is defective, it could be necessary to refile the charges by a formal complaint. (Veh. Code, § 40513(a).)

6.010. Agency Name

The name of the citing agency and jurisdiction must appear near the top of the form.

6.020. Title of Form

The title of the form must be printed near the top of the form, or in the bottom corner, for form TR-130.

6.030. Serial Number

(a) A sequential serial number for each multipart set of Notice to Appear forms must appear horizontally near the top right corner of each form.

(b) To facilitate the filing systems of some courts, statewide law enforcement agencies must also print the serial number in the lower right margin of the court's copy. Statewide law enforcement agencies must comply with this requirement as specified in section 3.010. Local law enforcement agencies must comply with the requirement for the duplication of the serial number in the right margin within one calendar year of a request from a local court.

(c) The serial number may be preprinted on the Notice to Appear.

(d) The serial number on continuation form TR-106 or TR-108 must be the same as that on the corresponding Notice to Appear; the duplication of the serial number in the right margin is not required.

(e) Bar coding of the serial number permits those courts with bar code readers to improve the timeliness and accuracy of processing Notice to Appear forms. Within the following parameters, the bar coding of the serial number must be placed on the face of the court's copy of the Notice to Appear form:

(1) The bar code must appear as near as practical to the bottom of the form and is the USS Code 39 barcode data format.

(2) The bar code should have a 1/4-inch area (quiet zone) that is clear and free of all printing preceding the start character and the following stop character.

(3) Statewide law enforcement agencies must comply with the bar code requirement as specified in section 3.010.

(4) Local law enforcement agencies must comply with the bar code requirement within one calendar year of a request from a local court.

6.040. Misdemeanor Check Box

To facilitate processing, the citing officer must check "Respond to Citation before" on form TR-130 or the misdemeanor box at the top of the other Notices to Appear if one of the offenses charged is a misdemeanor. The misdemeanor check box does not appear on the *Automated Traffic Enforcement System* notice, form~~,~~ TR-115.

6.050. Date and Time

(a) The date and time of the issuance of the Notice to Appear must be indicated near the top of the form.

(b) The "Date of Violation" data field must be Mo./Day/Yr.

(c) A check box "A.M./P.M." format is provided as an optional field to indicate the time. Indicating the time in the form of "A.M./P.M." is more easily understood by most defendants than the use of the 24-hour clock (military time).

6.060. Defendant's Name

(a) The defendant's name is required on the Notice to Appear.[11]

(b) The sequence of the defendant's name must be First/Middle/Last. This sequence corresponds with the California Driver License/Identification Card.

6.070. Defendant's Address

(a) The defendant's current address must be indicated on the Notice to Appear.[12]

(b) The address must be the defendant's mailing address. The mailing address allows the court to mail a courtesy notice and/or other correspondence to the defendant.

(c) A street address may also be indicated in addition to the mailing address.

6.071. Defendant's Class and Category of Driver's License

(a) The defendant's class of driver's license may be specified on the Notice to Appear.

[11] ~~Per~~ Veh. Code, §§ 40500(a), 40518(b); ~~and~~ Pen. Code, § 853.6.

[12] ~~Per~~ Veh. Code, §§ 40500(a), 40518(b); ~~and~~ Pen. Code, § 853.6.

(b) Notice to Appear forms TR-115 and~~,~~ TR-130~~, TR-135, and TR-145~~ must specify whether the defendant's driver's license is a commercial driver's license.

6.080. Defendant's ~~Age and~~ Birth Date

(a) The defendant's ~~age and~~ birth date is required on the Notice to Appear. The sequence of the birth date must be~~:~~ Mo./Day/Yr.

(b) The birth date data field is designed to accept a numerical entry.

6.090. Defendant's Physical Description

(a) The defendant's sex, hair, color of eyes, height, and weight are required on the Notice to Appear. See section ~~7.020~~ 6.091 for the policy regarding the defendant's race/ethnicity.

(b) Data fields for the recording of the defendant's physical description are designed to accept the standard abbreviations of physical descriptors.

6.091. Defendant's Race/Ethnicity

(a) A specific data field for the defendant's race or ethnicity must be added to the Notice to Appear form. The data field should be located on the same line as other physical descriptors.

(b) If the defendant's race or ethnicity is to be indicated, the Judicial Council recommends the use of a single alpha character. Reference: California Department of Justice's Electronic Disposition Reporting Manual.

6.100. Commercial Vehicle

If the vehicle involved in an offense when a notice to appear is issued is a commercial vehicle,[13] the citing officer must mark the check box within the data field, "**COMMERCIAL VEHICLE** (Veh. Code, § 15210(b))."

6.110. Hazardous Material

If the vehicle involved in an offense when a notice to appear is issued was transporting hazardous material, the citing officer must mark the check box within the data field, "**HAZARDOUS MATERIAL** (Veh. Code, § 353)."~~.~~

[13] *Commercial vehicle* is defined in Vehicle~~.~~ Code~~,~~ ~~§~~ section 15210(b). The requirement to indicate if offense involves a motor vehicle is per Vehicle~~.~~ Code~~,~~ ~~§~~ section 40300.2.

6.120. Vehicle Description

The year, make, model, body style, and color of the vehicle operated by the defendant at the time of the offense must be indicated on the Notice to Appear.[14]

6.130. ~~Financial Responsibility~~ Reason for Stop

The officer must write the ~~driver's evidence of financial responsibility on the Notice to Appear.[15] A person issued a Notice to Appear for a violation of this section may submit to the clerk of the court, in person or by mail, written evidence that the driver was in compliance with this section at the time of the citation.~~ reason for the stop on notices used for traffic stops (forms TR-130 and TR-140).[15]

6.140. Name of Registered Owner/Lessee

(a) The Notice to Appear must contain the name of the registered owner or lessee.[16]

(b) The name must be indicated on the Notice to Appear in the sequence First/Middle/Last~~,~~ unless a company is listed as the registered owner of the vehicle or vehicles.

6.150. Address of the Registered Owner/Lessee

(a) The address of the registered owner/lessee must be indicated on the Notice to Appear.[17]

(b) The address must be the registered owner's mailing address.

6.160. Correctable Violation Advisement and Check Boxes

(a) Whenever a person is arrested for violations specified in Vehicle Code section 40303.5 and none of the disqualifying conditions set forth in Vehicle Code section 40610(b) exist, and the officer issues a Notice to Appear, the notice must specify the offense charged and note in a form approved by the Judicial Council that the charge will be dismissed upon proof of correction.[18]

(b) For offenses identified in Vehicle Code section 40303.5 the citing officer must indicate by marking the appropriate "Yes" or "No" check box whether or not the offense is eligible for dismissal upon proof of timely correction. Marking the "No" box denotes that disqualifying conditions specified in Vehicle Code section 40610(b) exist.

[14] ~~Per~~ Veh. Code, § 40500(a).

[15] ~~Per Veh. Code, § 16028 Per~~ Veh. Code, § 1656.3

[16] ~~Per Veh. Code~~ *Id.*, § 40500(a).

[17] ~~Per Veh. Code~~ *Ibid.*, ~~§ 40500(a)~~.

[18] ~~Per Veh. Code~~ *Id.*, § 40522.

(c) The correctable violation advisement and the check boxes do not appear on the *Automated Traffic Enforcement System* notice form, TR-115.

6.170. Booking Required

The officer may either book the arrested person prior to release~~,~~ or indicate on the Notice to Appear that the arrested person must be booked before appearing in court.[19] If the "Booking Required" check box is checked on form TR-120 or~~,~~ TR-130, ~~TR-135, or TR-145~~ the arresting agency must complete the verification of booking section on the defendant's copy of the form. The "booking required" check box does not appear on the *Automated Traffic Enforcement System* notice, form~~,~~ TR-115.

6.180. Violations

The Notice to Appear must state the offenses charged.[20] ~~Forms TR-135 and TR-145 may include special data fields to cite construction zone violations (Veh. Code, § 42009), Safety Enhancement-Double Fine Zone violations (Veh. Code, § 42010), and overweight violations (Veh. Code, §§ 42030 and 42030.1).~~

6.190. Speed

A Notice to Appear charging a speeding violation must specify the approximate speed ("approx."), prima facie or maximum speed, and any other speed limit exceeded.[21]

(a) The "safe speed" box is provided so that the officer can indicate a speed different from the maximum or prima facie (posted) speed when the Notice to Appear is prepared charging a violation of the basic speed law (Veh. Code, § 22350). Conditions affecting the safe speed limit should be noted on the Notice to Appear (e.g., fog, rain, etc.).

(b) When a speed violation is charged, both the approximate speed and the prima facie speed applicable to the street or highway should be indicated.

(c) Entry of the maximum speed limit pertaining to the particular type of vehicle, or combination of vehicles, is only required if the defendant is cited for exceeding the speed limit for that vehicle.

6.200. Location of Violation

The Notice to Appear must state the location of where the offenses charged occurred.

[19] ~~Per~~ Pen. Code, § 853.6.

[20] ~~Per~~ Veh. Code, § 40500(a)~~;~~ ~~and~~ Pen. Code, § 853.6.

[21] ~~Per~~ Veh. Code, § 40503.

6.210. Officer's Declaration on Information and Belief

The officer must indicate on the Notice to Appear (check box) when the offense was not committed in ~~his/her~~ the officer's presence and that ~~his/her~~ the officer's declaration is on information and belief. A citizen's complaint and a collision investigation are examples of a situation that may result in the officer checking the box. The declaration is separate and distinct from the officer's declaration under penalty of perjury discussed in section 6.220.

6.220. Officer's Declaration Under Penalty of Perjury

The Notice to Appear must contain the officer's dated declaration, under penalty of perjury, subscribed by the officer, that the information regarding the violations is true and correct.[22] The date of the declaration must appear in the declaration date field when completed by either an arresting or a citing officer.

6.230. Other Officer

The name of the arresting officer, if different from the name of the officer completing the Notice to Appear, must be stated on the Notice to Appear. This policy was adopted to address situations in which there are teams of officers working radar enforcement or aerial patrol. This option is not available on the *Automated Traffic Enforcement System Notice to Appear*. (See section 6.231.)

6.231. Declarant-Automated Traffic Enforcement System Citations

The name of the government agency or law enforcement representative making the declaration, "Violation was not committed in my presence. The above is declared on information and belief and is based on photographic evidence," must be stated on the *Automated Traffic Enforcement System Notice to Appear*.

6.240. Defendant's Signature

To secure release from arrest, the defendant must give his/her written promise to appear.[23] The defendant's signature on the defendant's copy of the citation must be identical to the signature on the copy of the citation filed with the court. The requirement for a signed promise to appear does not apply to citations issued for violations recorded by an *Automated Traffic Enforcement System Notice to Appear*.

The defendant has the option to provide their cellphone information when they sign the citation. This information may be used by the court to send reminders about mandatory appearances and deadlines.[24]

[22] ~~Per~~ Code Civ. Proc., § 2015.5.

[23] ~~Per~~ Veh. Code, § 40504; ~~and~~ Pen. Code, § 853.6.

[24] Cal. Rules of Court, rule 4.107.

6.250. Time to Appear or Deadline to Respond

(a) The time specified in a Notice to Appear issued for a traffic offense must be a specific date which is at least 21 days after arrest; the court having jurisdiction over the offense charged may authorize the arresting officer to specify on the Notice to Appear that the appearance may be made before the time specified.[25]

(b) When a Notice to Appear has been issued for a violation recorded by an automated traffic enforcement system, it must be mailed within 15 days of the violation date to the current address of the registered owner of the vehicle on file with the Department of Motor Vehicles, with a certificate of mailing obtained as evidence of service.[26] The time to appear must be at least ten days after the Notice to Appear is delivered.[27]

(c) The time to appear placed on Notice to Appear for a nontraffic offense must be at least 10 days after the date of arrest for a nontraffic violation. (Pen. Code, § 853.6.)

(d) In the case of juveniles, the court having jurisdiction over the offense charged may require the arresting officer to indicate on the Notice to Appear "to be notified" rather than a specific date.[28]

6.260. Place to Appear

The place specified on the Notice to Appear must be one of the following:

(a) Before a magistrate or judge.[29]

(b) Before a person authorized to receive a deposit of bail.[30]

(c) Before the juvenile court, juvenile court referee, or juvenile hearing officer.[31]

6.270. Night Court

If the court identified in the Notice to Appear holds night sessions, the notice must include a statement advising the defendant.[32]

[25] ~~Per~~ Veh. Code, § 40501(a).

[26] ~~Per Veh. Code~~ *Id.*, § 40518(a).

[27] ~~Per Veh. Code~~ *Id.*, § 40518(b).

[28] ~~Per Veh. Code~~ *Id.*, § 40501(b).

[29] ~~Per Veh. Code~~ *Id.*, § 40502(a)~~–~~, (b); ~~and~~ Pen. Code, § 853.6.

[30] ~~Per~~ Veh. Code, § 40502(c); ~~and~~ Pen. Code, § 853.6.

[31] ~~Per~~ Veh. Code, § 40502(d).

[32] ~~Per Veh. Code~~ *Ibid.*~~, § 40502(d)~~.

6.280. Legend

The lower left corner of the Notice to Appear forms must denote that the form is a Judicial Council form and specify the council's form number.

Chapter 7 DISCRETIONARY LANGUAGE/DATA FIELDS

7.000. In General

The discretionary (shaded or yellow) areas on the forms (see Appendixes) depict language and data fields that are frequently included at the option of the court or law enforcement agency (with the consent of the court in which the Notice to Appear is to be filed).

Because of limited space, not all of the discretionary language and data fields used throughout the state can be shown on the sample forms. The following are narrative descriptions of several discretionary data fields.

7.010. Bail Statement

If the offense is bailable, the magistrate must fix the amount of bail and endorse the following statement on the warrant for arrest.[33]

BAIL:

The defendant is to be admitted to bail in the sum of ____ dollars.

_____

Judge

Note: The mandatory requirement that the above statement appear on the reverse of the court's copy disrupts the processing of Notice to Appear forms in those automated courts that use the space for cash register validations, automated traffic system notations, and notes of court proceedings. These courts use a separate form when issuing a warrant for arrest. For those reasons, the warrant for arrest statement is now discretionary.

~~*7.020. Defendant's Race/Ethnicity*~~

~~a) A specific data field for the defendant's "Race" or "Ethnicity" may be added to the Notice to Appear form. The data field should be located on the same line as other physical descriptors.~~

~~b) The defendant's "Race" or "Ethnicity" may be indicated in the "Other Description" data field.~~

[33] ~~Per~~ Pen. Code, § 815(a).

~~c) If the defendant's "Race" or "Ethnicity" is to be indicated, the Judicial Council recommends the use of a single alpha character. Reference: California Department of Justice's Arrest and Disposition Instruction Manual.~~

7.030. Defendant's Thumbprint

(a) The defendant's thumbprint may be placed on the Notice to Appear in situations in which there is a question in the citing officer's mind as to the true identity of the defendant. The court will then have the option of comparing thumbprints in those cases where the defendant alleges that another person has committed the cited offense.[34]

(b) The Judicial Council recommends that the thumbprint on form TR-120 or TR-130 be placed in a one-inch square area located on the reverse of the court's copy in the lower left corner. For electronic citations ~~on forms TR-135 or TR-145~~, a digitized thumbprint or fingerprint may be printed on the defendant's paper copy of the citation and filed with the court as part of the notice to appear. If the defendant's thumbprint or fingerprint is captured electronically as a digital image, but not included as part of the notice to appear, the digital image may be retained by the arresting agency for use as provided in Penal Code sections 853.5 and 853.6 and Vehicle Code sections 40500 and 40504 and any other purposes permitted by law.

(c) The thumbprint item does not appear on the *Automated Traffic Enforcement System Notice to Appear*.

Chapter 8 PROHIBITED LANGUAGE/DATA FIELDS

8.010. Defendant's Social Security Number

The defendant's social security number must not be indicated on the Notice to Appear, unless the social security number is also the driver's license number and/or the defendant holds a commercial driver's license.

To protect an individual's civil rights, federal statutes allow a very restricted compulsory use of a person's social security number for the purpose of establishing identity.[35]

Federal statutes do permit an agency having administrative responsibility for driver's license and motor vehicle registration laws to use a person's social security number to establish that person's identity as it relates to the laws within the agency's jurisdiction.[36]

[34] ~~Per~~ Veh. Code, § 40500(a); ~~and~~ Pen. Code, § 853.6.

[35] ~~Per~~ Pub. ~~lic~~ L. ~~aw~~ No. 93-579, § 7.

[36] ~~Per~~ 42 U.S.C. § 405~~,~~ (c)(2)~~(c)~~(C)(i)–(iv).

The California Department of Motor Vehicles requires an individual to disclose ~~his or her~~ their social security number in order to obtain a driver's license or identification card.[37] A number of other states use the individual's social security number as the driver's license number.

[37] ~~Per~~ Veh. Code, §§ 1653.5, ~~and~~ 12801.

SPR 23-31

Traffic and Criminal Law: Notice to Appear Forms (amend Cal. Rules of Court, rule 4.103; revise forms TR-130, TR-140, and TR-INST; revoke forms TR-135 and TR-145)

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

	Commenter	Position	Comment	Committee Response
1.	Superior Court of Orange County By Iyanna Doherty, Courtroom Operations Supervisor	A	No concerns regarding the new format and elimination of the former notices created for filing of electronic citations. This will take coordination with SecureOne and Law Enforcement agencies to comply with the new format. Also, will need to look into our interface to determine whether the new data elements need to be transmitted electronically and stored within Vision. For example, do we want to receive and store the "Reason for Stop" data element in Vision? Also, need to change wording in Vision/ELF from Accident to Crash for consistency.	No response required.
			New disclaimer "ACT BY THIS DATE TO AVOID A WARRANT OR INCREASED FINES" - Suggest it state fines or fees as a Civil Assessment for failure to appear is a fee that is included, not a fine	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			Since we still send registration holds for Owner's tickets, suggest that owner's holds be mentioned on the back of the citation or modify the "ACT BY THIS DATE" message	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			Instead of Case Agency No., seems like it would make more sense to have it read "Agency Case No.".	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			In regard to the Reason for Stop field, since this citation will be used for eCitations as well, suggest that the Judicial Council identify data limits for that field for those courts that do want to store that information when filed electronically	The committee appreciates this input. The Traffic Advisory Committee has purview over the design of the TR-130. Individual courts can work with law enforcement agencies to design the data that is inputted and processed through the citation.
			If the officer's reason is lengthy, is there a continuation form they will use for just that field or would it be the existing continuation form?	The committee appreciates this input. The officers will use the existing continuation form. The committee may consider revisions to the continuation form in a future cycle and may consider adding a field for Reason for Stop.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Response
			Suggest that the signature line go above the cellphone and email entries as it would be directly below the statement that "Signing does not admit guilt"	The committee appreciates this input. The committee considered the location of the signature line during user testing and determined that litigants were more likely to supply contact information if the signature line was below the cell phone line.
			Cell Phone should be changed to Mobile Phone	The committee appreciates this input. The committee prefers the use of Cell Phone to save space on the ticket and use language familiar to the litigant.
			Do we need to get them to state that they want reminders via email or phone provided instead of stating "may be used to send reminders"? Meaning, can they state they don't want it used for that purpose?	The committee agrees with this suggestion and has incorporated it, with minor alterations, into revisions that it is recommending for adoption.
			Back page APPEAR IN COURT section, Your next step: should read: "Go to court on the date, time and location listed on the top right corner of the front of your citation"	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			Back page RESPOND TO CITATION section, should state "Citations can take up to 14 days to show up in the court system" also, if the officer checks the incorrect box (there are some mandatory infractions) violations that cannot be paid) will lead to possible confusion	The committee agrees with the first suggestion and has incorporated it into the revisions that it is recommending for adoption. The committee appreciates this input and understands that there will be some training required for officers to learn which box to check for mandatory appearance infractions. However, the committee determined the proposed revision still allows officers to make that distinction while providing the litigant with useful information.

	Commenter	Position	Comment	Committee Response
			IMPORTANT section, it states "Not acting by the date . . ., should be consistent with the section, should state "Not responding by the date. . . "	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			In the same section, same comment about the $100 fine as in the front, it is not a fine, it is a civil assessment	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			Option A – not all courts will be up on the MYCITATIONS.COURTS.CA.GOV by January 1st, 2024, also to pay it is not a finding of guilty, it is a bail forfeiture as a finding of guilty is done by a judge after a trial	Since majority of courts will be online by January 1, 2024 and all courts will be on MyCitations by July 1, 2024, the committee is making this revision now given the time needed to adopt new citation forms. The committee agrees that bail forfeiture is the correct legal term. When a litigant chooses to pay their traffic fine without contesting the ticket, they are forfeiting bail. Per Vehicle Code section 40512, for certain offenses a penalty in the form of a fine can be "forfeited" and cancel the need for any further court proceedings. Payment is treated as a conviction for the offense. (Veh. Code, § 13103.) Although the same consequences apply as for a guilty plea, the litigant is not technically pleading guilty, nor is the court necessarily making a finding of guilt. The committee and working group considered the best terminology to use to describe forfeiting bail from the litigant's standpoint. After feedback from criminal defense attorneys, behavioral scientists, judicial officers, and court staff, the committee settled on "guilty finding." The committee recognizes that "bail

	Commenter	Position	Comment	Committee Response
				forfeiture" is the correct legal term but recommended "guilty finding" on the proposed citation because this language was seen by experts on the workgroup and in user testing to be a clearer indicator of consequences of paying a ticket, as the bail forfeiture will be considered a conviction. "Guilty finding" also was understood in user testing to mean that the litigant would have a conviction on their record. Based on this comment, the committee again discussed the term but declined to change it, determining that "guilty finding" is the preferred term from the litigant's standpoint.
			Note about paying may add points, should give them a website they can go to (DMV) to view whether their violation is a point	The committee appreciates this input. The committee declines to take this suggestion as the DMV does not currently have such a resource.
			In that same section, it states to contact the court for eligibility, should reference the Violation Information Notice that is required for all citations by rule of court, having them contact the court will lead to an increase in calls, letters or personal appearance when it is not necessary	The committee appreciates this input. The committee understands that due to several obstacles, many litigants do not receive their reminder notice. The committee intends for this information to give the litigant a starting place for information before they receive their notice.
			Option C again refers the defendant to contact the court for more information, specifically trial by declaration, should refer them to the judicial council website for the form	The committee appreciates this input. Individual courts have their own procedures for requesting trials by declaration. The committee does not recommend referring litigants to the Judicial Council website for that purpose.

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	Commenter	Position	Comment	Committee Response
			Option D I believe is incorrect, it was determined that the proof of correction results in the dismissal, it is not tied to the payment of the fee so may need to re-word that	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			Suggest moving the statement "The Court will send notice explaining next steps" higher up so that they wait for the notice before contacting the court	The committee appreciates this input. The committee understands that due to several obstacles, many litigants do not receive their reminder notice. The committee intends for this information to give the litigant a starting place for information before they receive their notice.
			For translations, what site should be listed here? Is the Court required to have translation services for citations or a copy of the citation in different languages?	The Judicial Council will post the translation on its website. This URL has been updated on the revised proposal.
2.	Superior Court of Placer County, by Jake Chatters, Executive Officer	NI	The proposed revisions to the TR-130 are welcome and make for a more readable citation form. One suggestion is to modify the sub-options for the defendant under Option A. Specifically to list as follows: • Pay (online, call, in person) or request an extension. • Ask for a reduction at mycitations.courts.ca.gov or through the court (online, call, in person). • See front for the court's contact information. Thank you for considering.	The committee agrees with the suggestion to modify the order of the bullet points under Option A and has incorporated it into the revisions. Due to space considerations, the committee declines to modify the language or add an additional bullet point.
3.	Superior Court of Stanislaus County by Hugh Swift, Executive Officer	NI	In response to the Invitation to Comment to the proposed changes in the Notice to Appear forms, the Court attaches its responses to the request for specific comments. In addition, the Court offers the following general comments:	The committee appreciates this input. The committee declines to take this suggestion. Currently, law enforcement officers are indicating these violations on the TR-130 without the specific boxes. Courts can work with law

	Commenter	Position	Comment	Committee Response
			The Court requests the following items from form TR-135, be incorporated into proposed form TR-130: • The check boxes for VC 42009-Construction Zone, VC 42010-Safety Zone, and School Zone violations. o These boxes clearly specified for the officers and Court staff regarding the specific violation alleged. o Eliminates the need for officers to provide a narrative and reduces the possibility that the officer transposes the number of the Vehicle Code Section allegedly violated. • The check boxes for overweight violations, as wells the space designated to indicate the pounds overweight. o Eliminates the need for officers to provide a narrative and reduces the possibility that the officer transposes the number of the Vehicle Code Section allegedly violated. o These boxes clearly specified the citation was for an overweight violation and provided a space for the office to provide specific information regarding weight alleged. Thank you for providing us with an opportunity to comment.	enforcement agencies to include these fields if desired.
			Does the proposal appropriately address the stated purpose? Yes, the purpose is stated appropriately. **Would any of the changes to form TR-130 pose challenges in developing a revised printed citation form for officers typing in data on a handheld or mobile terminal in their cars?** The Court defers to Law Enforcement.	No response required.

	Commenter	Position	Comment	Committee Response
			Is revised TR-130 sufficient for designing an electronic citation printout? Are forms TR-135 and TR-145 necessary for the development of an electronic citation printout? Yes, the TR-130 is sufficient for an electronic cite printout. No, the TR-135 and TR-145 are not necessary for the development. **Does form TR-130 provide sufficient customizable (shaded in yellow) data fields for law enforcement agencies and/or courts?** Yes, the customizable fields are sufficient for the Court. **Form TR-130 does not currently include a mandatory field for vehicle type; should such a field be added as a mandatory field, or should it remain a field that jurisdictions can choose to include in a customizable field?** The vehicle type is not needed. **Should any of the mandatory fields (fields not shaded in yellow) on proposed form TR-130 not be mandatory?** The email section should not be mandatory. **Is the new "Reason for Stop" field in a logical place on proposed forms TR-130 and TR-140?** Yes, the "Reason for Stop" is in a logical place on the TR-130. **Are the instructions on the back of proposed form TR-130 clear for the litigant?** Yes. **Is form TR-140 necessary or commonly used in your jurisdiction?** Yes, the TR-140 is used in the Stanislaus jurisdiction. **Would the proposal provide cost savings? If so, please quantify.**	

	Commenter	Position	Comment	Committee Response
			No, the proposal will not provide a cost savings. **How well would this proposal work in courts of different sizes?** The proposal will work well for Stanislaus once all of the changes have been implemented.	
			Is it clear that the cell phone field (which may be used by courts to facilitate reminders) on proposed form TR-130 is optional for the litigant to fill out? No, it's not clear the cell phone filed is optional. It should reflect "optional".	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			Should the litigant's email field on proposed form TR-130 be optional for jurisdictions to include on the citation? Yes, the email field should be optional for jurisdictions to include.	The committee appreciates this input. The form as circulated includes email as an optional field for jurisdictions.
			What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? The implementation would require one-week to revise Clerk's Office procedures and to train clerks. It will require six-months to ensure a complete and successful modification to the robotic process automation process used by the Court. **Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation for courts?** Six-months would be more realistic for a successful implementation.	The committee appreciates this input and understands that these changes will require work for courts and law enforcement to implement. The committee would be inclined to give organizations more time. However, given the January 1, 2024 deadline for including Reason for Stop on the citation, the committee declined to recommend a later date.
4.	Superior Court of Ventura County	AM	"Appear in/Respond to" area of citation is too large. Two separate areas for a date may cause confusion for officers knowing which box they are to check/write their date.	The committee appreciates this input. The appear in/respond to area is large to draw the litigant's attention to the required date of appearance or

	Commenter	Position	Comment	Committee Response
	By Denise Gooding, Senior Manager – Court Operations			response. The committee understands that there will be some training required for officers to learn which box to check for mandatory appearance infractions. However, the committee believes that the proposed revision still allows officers to make that distinction while providing the litigant with useful information.
			Court information box is too small/font too small.	The committee appreciates this input. The form circulated offers an example of how a court could fit numerous locations in one box. The font can be larger for agencies that do not need all four locations listed.
			Add "suffix" to Name area	The committee appreciates this input. The committee declines to take this suggestion as the current TR-130 does not contain suffix. Courts can work with law enforcement agencies to add this field if they desire.
			"Reason for Stop" will this information be required for JBSIS reporting?	The JBSIS (Judicial Branch Statistical Information System) compiles aggregate counts of high-level workload indicators such as filings and dispositions, which are reported in the annual Court Statistics Report that is available on the courts.ca.gov website. "Reason for Stop" will not be required for JBSIS reporting.
			Missing "to be notified" box for owner's responsibility tickets. (Agency is required to mail notice to the registered owner pursuant to VC 40002.)	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

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	Commenter	Position	Comment	Committee Response
			"Booking Required" please enlarge font.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			List "vehicle limit" before "safe speed"	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Cell phone number should be listed as (optional). It is not clear that the cell phone field is optional.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Email address should be listed as (optional). Email field should be listed as optional.	The committee appreciates this input. The form as circulated includes email as an optional field for jurisdictions. The committee agrees that it should be clearer to the litigant that it is optional to fill in this information and has incorporated this into the revisions that it is recommending for adoption.
			"Continuation form" box should be listed in "citation details" beneath 4th alleged violation area.	The committee appreciates this input but concluded the proposed order is a better placement.
			Country should be added in the address field for mailing purposes.	The committee appreciates this input. The committee declines to take this suggestion as the current TR-130 does not contain country. Courts can work with law enforcement agencies to add this field if they desire.
			Thumb print section is missing from the new TR-130 form. This is used when potential wrong defendants are brought to court.	The committee appreciates this input. The third page of the TR-130 did not circulate for comment and no changes are being made. The form

	Commenter	Position	Comment	Committee Response
				recommended for adoption will contain the thumbprint page.
			Move "courtesy notice" advisement from "More Information" section bottom right-hand corner and list it beneath "Keep checking to find your citation, and then complete Option A, B, C, or D." "The court may mail a courtesy notice explaining your next steps."	The committee appreciates this input. Per California Rules of Court, rule 4.107, courts are required to mail reminder notices to litigants. The committee understands that due to several obstacles, many litigants do not receive their reminder notice. The committee intends for this information to give the litigant a starting place for information before they receive their notice.
			Update traffic school language in option B from, "Contact the court (see front of citation) to check your eligibility" to "Contact the court to see if you are eligible."	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Option D – Add language, "you must show proof to court to have the corrected violation dismissed and pay a transaction fee."	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			Booking details problematic. Needs to be in a much larger font.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			TR-130 should include a mandatory field for "vehicle type." When researching vehicles in the DMV system, the clerks need to know the type of vehicle to identify the code needed for entry in the DMV system.	The committee appreciates this input. The committee declines to take this suggestion since there are conflicting answers from different courts. Courts can work with law enforcement agencies to add this field if they desire.
			There will be no cost savings for the court. Our CMS system, VCIJIS (VISION), will require reprogramming.	No response required.

	Commenter	Position	Comment	Committee Response
			Staff training will need to take place but should not require too much time. Ventura Court has contracted our citations to be entered by a private third party. Updates will be necessary. Electronic citation submissions to court may be affected and may cause additional time to work through errors once implemented. Amount of time is unknown. Three months notification prior to the effective date is sufficient time for the court to implement.	
5.	Trial Court Presiding Judge Advisory Committee, Court Executive Advisory Committee Joint Rules Subcommittee	AM	Legislation requires that the officer document the reason for the stop. TR-130 should be modified to include this requirement. (Note that the statute requiring this change is VC 2806.5, not VC 1656.3.) No additional comments on the form being mandatory, other than the generalized value of uniformity. Amend Rule 4.103 to remove reference to TR-135 and TR-145. Revision of Form TR-130 - It appears a lot of thought and collaboration went into this, so we defer to the modifications, with only the following comments:	No response required.
			Correctable Offense Notice Form Unless certain disqualifying conditions exist, an officer who chooses to take action on certain registration, license, or equipment violations must issue a notice to appear that specifies the offense is correctable or a notice of violation.	The committee appreciates this input. The committee declines to take this suggestion because the current TR-130 does not contain space for officers to provide this information and there is not sufficient room on the ticket to add this option for every violation.

	Commenter	Position	Comment	Committee Response
			Under correctable violations, when an officer checks the "No" box it is because the officer made a finding that one of the four facts in VC 40610(b) exist. Neither the current or proposed form provide any indication why the officer made this finding, or which of the four applies. Consider an item on the form that has the officer check a box that supports officer's finding. VC 40610(b) (1)[ ] (2)[ ] (3)[ ] (4) [ ]. This way the driver and the court know why the person cannot just easily correct the violation.	
			Commercial Vehicle box appears twice in proposed TR-130. This is redundant.	The committee appreciates this input. One of these boxes is to indicate a commercial license, the other is to indicate a commercial vehicle.
			The box identifying class of driver is deleted. Sometimes this is important.	The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.
			Box stating Evidence of Financial Responsibility deleted. No explanation for this. This assists in ensuring compliance with VC 16020, 16028.	The committee appreciates this input. This box was removed due to recent legislation. Assembly Bill 2956 (Stats. 2022, ch. 295) removed the requirement to document evidence of financial responsibility on the citation. Now, the Vehicle Code only requires verification. There is an Insurance checkbox with options for Yes and No on the proposed form.
			Why change "Accident" to "Crash"? Accident may address broader circumstances than "crash" and is language in VC 40300.5.	The committee appreciates this input. The committee made this change to be consistent with the current language used by law enforcement, National Highway Traffic Safety Administration, the Governor's Highway Safety Association, and the federal government in the Model Minimum

	Commenter	Position	Comment	Committee Response
				Uniform Crash Criteria (MMUCC), which serves as the national standard for crash reporting.
			Section 6.190 of the Manual (Form TR-INST) provides that the "approximate speed" must be stated on the Notice to Appear. The word "approximate" has been deleted.	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			On back page, advisement about potential trial in abstentia has been deleted. No explanation for this.	The committee appreciates this input. The form as proposed warns litigants that they may be found guilty if they fail to act. Although the language "trial in absentia" is not used, the committee prefers to use plain language that will be better understood by the litigant.
			Is there a place for thumbprint? Manual 7.030.	The committee appreciates this input. The third page of the TR-130 did not circulate for comment and no changes are being made. The form recommended for adoption will contain the thumbprint page.
6.	Orange County Bar Association By Michael A. Gregg, President	A	The above listed proposals appropriately addresses the stated purpose.	No response required.

TRAFFIC/NONTRAFFIC NOTICE TO APPEAR
(Face of Court's Copy)

(NAME OF AGENCY AND JURISDICTION)
NOTICE TO APPEAR

☐ MISDEMEANOR ☐Traffic ☐Nontraffic (Citation No.)

Date of Violation	Time	☐ AM ☐ PM	Day of Week	Case No.
1. / /			S M T W T F S	

Name *(First, Middle, Last)* ☐ Owner's Responsibility (Veh. Code, § 40001)
2.

Address
3.

City 4. | State/Country | ZIP Code | E-mail Address

Driver Lic. No. 5.	State	Class	Commercial ☐ Yes ☐ No	Age	Birth Date / /

Sex 6.	Hair	Eyes	Height	Weight	Race	☐ Juvenile (Phone No.) ( )

Veh. Lic. No. or VIN 7. | State | Reg. MO/YR

Yr. of Veh. 8.	Make	Model	Body Style	Color

Evidence of Financial Responsibility 9. | CHP/DOT/PUC/ICC

☐ **COMMERCIAL VEHICLE (Veh. Code, § 15210(b))**

☐ **HAZARDOUS MATERIAL (Veh. Code, § 353)**

Registered Owner or Lessee 10. ☐ Same as Driver

Address 11. ☐ Same as Driver

City 12. | State | ZIP Code

Correctable Violation (Veh. Code, § 40610) ☐ Booking Required (see reverse)

Yes	No	Code and Section	Description	Misdemeanor or Infraction (Circle)
13. ☐	☐			M I
14. ☐	☐			M I
15. ☐	☐			M I
16. ☐	☐			M I

Speed Approx. 17.	P.F./Max Spd.	Veh. Lmt.	Safe	Radar	☐ Continuation Form Issued	N

Location of Violation(s) 18. at | **City/County of Occurrence** | **W** **E**

Comments (Weather, Road & Traffic Conditions) 19. ☐ **Accident** **S**

❑ Violations not committed in my presence, declared on information and belief.
20.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Executed at (place) Violation Location

21. ___/___/___ _____ Arresting or Citing Officer — _____ **Serial No.** — ____ to ____ **Dates Off**
Dec. Date

22. ___/___/___ _____ Name of Arresting Officer, if different from Citing Officer — _____ **Serial No.** — ____ to ____ **Dates Off**
Dec. Date

23. **WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW.**
X *Signature*

24. WHEN: ON OR BEFORE THIS DATE: ____/____/____ **Time:** _____ ☐ **AM** ☐ **PM**
Time: _____ ☐ **AM** ☐ **PM**

WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE.

25. WHERE: [Name of court[s]]
[Section[s] or division[s], room no[s].]
[Street address[es]]
[Phone No.]

26. ☐ To be notified ☐ **You may arrange with the clerk to appear at a night session of the court.**

FPO Barcode (USS Code 39)

DEFENDANT COPY

Judicial Council of California Form **SEE REVERSE**
Rev. 06-26-15 (Veh. Code, §§ 40500(b), 40513(b), 40522, 40600; Pen. Code, § 853.9) TR-130

Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

TRAFFIC/NONTRAFFIC NOTICE TO APPEAR
(Reverse of Defendant's Copy)

IMPORTANT — READ CAREFULLY

LOCAL INFORMATION FOR THE CITATION IS AVAILABLE ONLINE AT [*website address*]

WARNING: If you fail to appear in court as you have promised, you may be arrested and punished by 6 MONTHS IN JAIL AND/OR A $1,000 FINE regardless of the disposition of the original charge. (Veh. Code, § 40508 or Pen. Code, § 853.7.) In addition, any person who fails to appear as provided by law may be deemed to have elected to have a trial by written declaration (in absentia) pursuant to Vehicle Code section 40903(a) upon any alleged infraction, as charged by the arresting/citing officer.

JUVENILE: If you were under age 18 at the time the citation was issued, you must appear in court with your parent or guardian.

COURTESY NOTICE: A courtesy notice **may** be mailed to the address shown on your citation, indicating the required deposit of money (bail) that may be forfeited instead of your appearing in court. If you do not receive such courtesy notice, you are still required to comply with the items below by the appearance date.

WHAT TO DO

You are required to appear at court for a misdemeanor violation. For all violations, your court date/time/place are on the front of this notice to appear. Have the citation with you when contacting the court. In all infraction cases, you must do one or more of the following for each violation:

- Pay the fine (bail).
- Appear in court.
- Contest the violation.
- Correct the violation (traffic cases, when applicable).
- Request traffic school (traffic cases, when applicable).
- Request trial by written declaration (traffic cases).

If you do not do one of the above actions, then a "failure to appear" charge will be filed against you (Veh. Code, § 40508(a)) and your driver license may be withheld, suspended, or revoked. In some courts you may be charged an amount in addition to the bail amount and the case may be turned over to a collection agency. (Pen. Code, § 1214.1.)

1. If you do NOT contest the violation:

a. (Pay the bail amount) Contact the court for bail information. You will not have to appear in court. You will be convicted of the violation, and it will appear on your record at the Department of Motor Vehicles (DMV). A point count may be charged to your DMV record and your insurance may be adversely affected.

b. (Traffic school) You may be able to avoid the point count by completing traffic school. You must pay the bail amount, and you may have to pay other fees. Contact the court to request traffic school.

c. (Correctable violations) If the "Yes" box is checked on the front of your ticket, the violation is correctable. Upon correction of the violation, have a law enforcement officer or an authorized inspection/installation station agent sign below. (Veh. Code, § 40616.) Registration and driver license violations may also be certified as corrected at an office of the DMV or by any clerk or deputy clerk of a court. The violation will be dismissed by the court after PROOF OF CORRECTION and payment of a transaction fee are presented to the court by mail or in person by the appearance date. Violations of Vehicle Code section 16028 (automobile liability insurance) will be dismissed **only** upon (1) your **showing or mailing to the court** evidence of financial responsibility valid at the time this notice to appear was issued, and (2) your payment of a transaction fee.

CERTIFICATE OF CORRECTION (MUST BE RETURNED TO COURT)

Section(s) Violated	Signature of Person Certifying Correction	Serial No.	Agency	Date

2. If you contest the violation (select a or b):

a. (Court trial) Send a certified or registered letter postmarked not later than five days prior to the appearance date or come to the court by the appearance date to request a court trial on a future date when an officer and any witnesses will be present. **You may be required to submit the bail amount.**
Go online or call the court for information on going to court without paying bail. —OR—

b. (Trial by written declaration (traffic cases)) Send a certified or registered letter postmarked not later than five days prior to the appearance date or come to the court on or before the appearance date to request a trial by written declaration. **Submit the bail amount.** You will be given forms to allow you to write a statement and to submit other evidence without appearing in court. An officer will also submit a statement. The judicial officer will consider the evidence and decide the case.

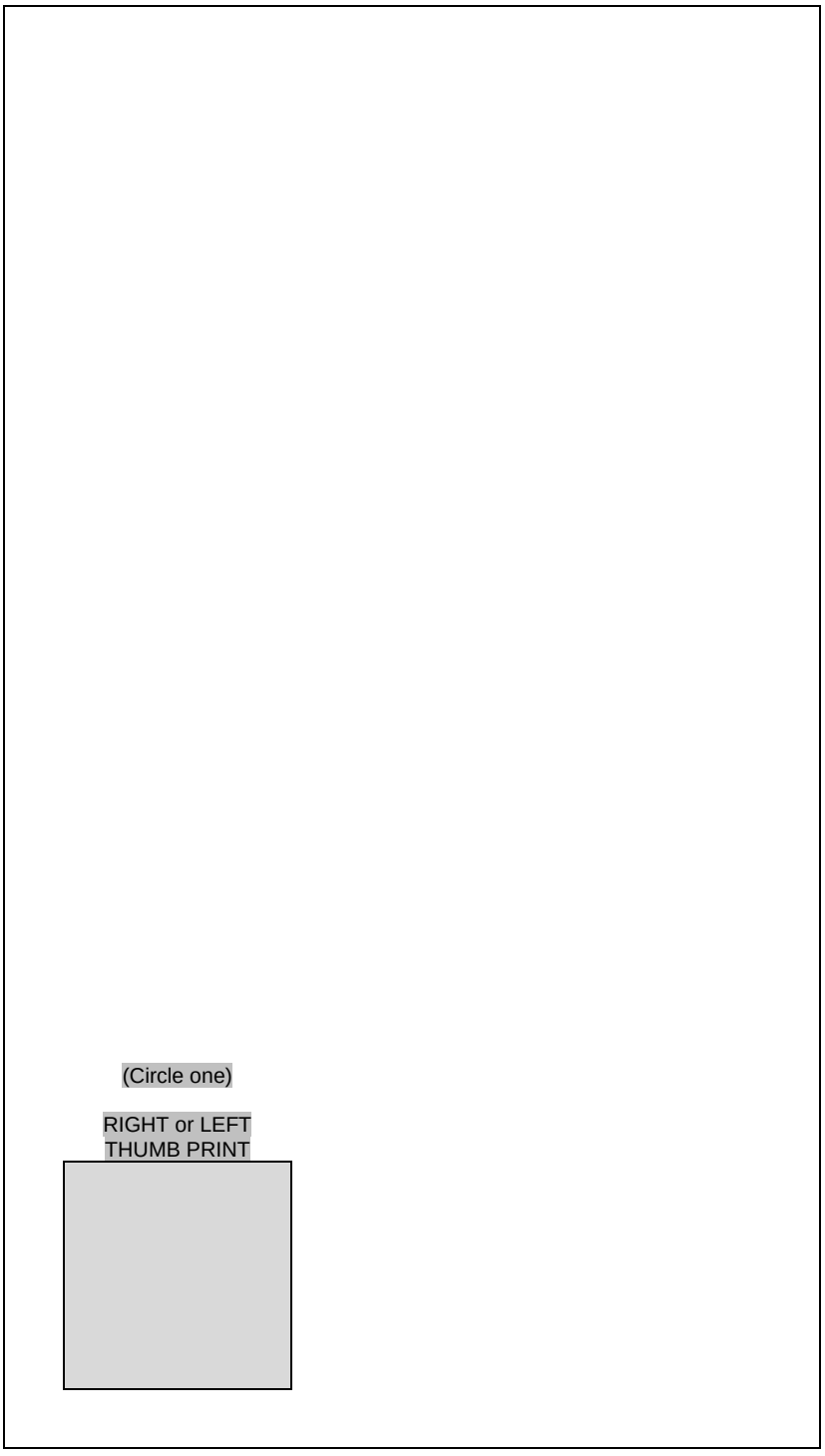
3. Make check/money order payable to **Clerk of the Court**. Write your citation number and driver license number on your check or money order. You may pay in person, by mail, or by phone.

4. If "Booking Required" is checked, you must appear for booking on a weekday prior to your court date at: _____ between the hours of ___ and ___ and bring the signed verification to your court appearance. Call _____ for more information.
Booking Verification: I declare under penalty of perjury under the laws of the State of California that

_____ was booked on _____ _____ _____
Defendant's name Date Officer Serial No.

Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

TRAFFIC/NONTRAFFIC NOTICE TO APPEAR
(Reverse of Court's Copy)



Shaded areas on the form indicate spaces subject to modification for local or agency requirements.

Item number: 32

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 8/22/23

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

Title of proposal: Rules and Forms: Miscellaneous Technical Changes to Traffic Rules and Forms

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend Cal. Rules of Court, rule 4.107; revise forms TR-235, TR-300, TR-300o, TR-310, TR-310o

Committee or other entity submitting the proposal:
Traffic Advisory Committee

*Staff contact (*name, phone and e-mail*): Jamie Schechter, 415-865-5327, jamie.schechter@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*):
Project description from annual agenda:

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.)
The recommendations are non-controversial technical changes to comply with statutory changes.

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

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

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

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

Judicial Council *of* California

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-159
For business meeting on: September 18–19, 2023

Title
Rules and Forms: Miscellaneous Technical Changes to Traffic Rules and Forms

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 4.107; revise forms TR-235, TR-300, TR-300o, TR-310, TR-310o

Recommended by
Traffic Advisory Committee
Hon. Gail Dekreon, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
August 8, 2023

Contact
Jamie Schechter, 415-865-5327
Jamie.Schechter@jud.ca.gov

Executive Summary

The Traffic Advisory Committee recommends amending one rule of court and revising five traffic forms to incorporate changes resulting from legislation and correct a statutory reference. These changes are technical, minor, and noncontroversial. The committee recommends making the necessary corrections to conform to statues and avoid causing confusion for court users, clerks, and judicial officers.

Recommendation

The Traffic Advisory Committee recommends that the Judicial Council, effective January 1, 2024:

1. Amend rule 4.107 of the California Rules of Court to update the maximum civil assessment fee amount that was reduced by Assembly Bill 199 (Stats. 2022, ch. 57);

2. Revise *Officer's Declaration* (form TR-235) to resolve an incorrectly cited statute;

3. Revise *Agreement to Pay and Forfeit Bail in Installments* (form TR-300) and *Online Agreement to Pay and Forfeit Bail in Installments* (form TR-300o) to delete a field for

administrative fees that were repealed by AB 177 (Stats. 2021, ch. 257), and delete a warning regarding consequences from the Department of Motor Vehicles for failure to pay that were repealed by Assembly Bill 2746 (Stats. 2022, ch. 800); and

4. Revise *Agreement to Pay Traffic Violator School Fees in Installments* (form TR-310) and *Online Agreement to Pay Traffic Violator School Fees in Installments* (form TR-310o) to update a warning regarding consequences from the Department of Motor Vehicles for failure to pay that were repealed by Assembly Bill 2746.

The proposed amended rule and revised forms are attached at pages 3–13.

Relevant Previous Council Action

Although the Judicial Council has acted on these rules and forms previously, this proposal recommends only minor corrections unrelated to any prior action.

Analysis/Rationale

The changes to these forms are necessary to conform to statutory changes and correct references.

Policy implications

This proposal promotes accuracy and consistency with statutes and forms.

Comments

This proposal was not circulated for public comment because the recommended changes are corrections, and minor modifications to directly implement statutory changes that are unlikely to create controversy, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

The committee considered revising the forms later, alongside more substantive revisions, including considering the need for the separate online form versions. However, recommending these minor revisions to the forms at this time appears to be the better option, to avoid courts and court users continuing to rely on inaccurate forms for an unforeseen amount of time. Additional changes may be made as time and resources allow.

Fiscal and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are minor, case management systems are unlikely to need updating to implement them.

Attachments and Links

1. Cal. Rules of Court, rule 4.107, at page 3
2. Forms TR-235, TR-300, TR-300o, TR-310, and TR-310o, at pages 4–13

Rule 4.107. Mandatory reminder notice—traffic procedures

(a) * * *

(b) Minimum information in reminder notice

In addition to information obtained from the Notice to Appear, the reminder notice must contain at least the following information:

(1)–(5) * * *

(6) The potential consequences for failure to appear, including a driver's license hold or suspension, a civil assessment of up to ~~$3~~ 100, a new charge for failure to appear, a warrant of arrest, or some combination of these consequences, if applicable;

(7) The potential consequences for failure to pay a fine, including a driver's license hold or suspension, a civil assessment of up to ~~$3~~ 100, a new charge for failure to pay a fine, a warrant of arrest, or some combination of these consequences, if applicable;

(8)–(12) * * *

NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: TELEPHONE:	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA VS. DEFENDANT:	
OFFICER'S DECLARATION **(Trial by Written Declaration—Vehicle Code, § 40902)**	

RETURN DATE:	ARRESTING/CITING OFFICER NAME/ID NO.:	CITATION NUMBER/DATE ISSUED:
AGENCY NAME:	OFFICE [IF ANY]:	CASE NUMBER:

INSTRUCTIONS: The defendant in the case listed above has opted for trial by written declaration pursuant to Vehicle Code section 40902. The officer named above shall check all statements that apply, date, sign, and complete and return this form to the court named above by the return date.

1. **OFFICER'S DECLARATION:** Except as expressly stated below, I have personal knowledge of the facts stated herein. The events occurred in the County of *(specify)*: at about the date, time, and location stated in the citation.
   a. ☐ At the time of the citation I was a peace officer on-duty ☐ for the exclusive or main purpose of traffic enforcement ☐ not for the exclusive or main purpose of traffic enforcement, and I ☐ was ☐ was not wearing a uniform as required by the Vehicle Code section 40800. Any vehicle used by me complied with Vehicle Code section 40800.
   b. ☐ The offense(s) were not committed in my presence.
   c. ☐ Any statement(s) made by the defendant were voluntary, recorded ☐ verbatim ☐ not verbatim and is/are reasonably complete and accurate in substance.
   d. ☐ Safety is an element of the violation alleged. In my opinion, the defendant's operation of the vehicle was unsafe.
   e. ☐ Any equipment used by me to gather evidence in support of this violation was properly maintained, in good working order, and I have been trained in its use.
   f. ☐ Any traffic sign, signal, or device mentioned was official and properly located, maintained, in good working order, and clearly visible to a driver of a vehicle controlled, governed, or affected by such sign, signal, or device.
   g. ☐ Any diagram(s) submitted is/are not exact or to scale, but is/are reasonably complete, accurate, and fairly depict(s) the location, situation, and events described.
   h. ☐ Speed supported by the patrol vehicle's speedometer was a significant factor. Pursuant to department policy, the patrol vehicle used in connection with this citation was officially calibrated on *(date)*:
      The result was *(specify)*:
      The calibration was considered by me in determining defendant's speed.
   i. ☐ Defendant was identified by Driver's License ☐ or other *(specify)*:

2. **THE METHOD(S) USED TO DETERMINE THE SPEED OF THE INVOLVED VEHICLE WAS/WERE:**
   a. ☐ Odometer
   b. ☐ Visual estimation
   c. ☐ Pacing
   d. ☐ Radar (see items 4, 5, 6, below)
   e. ☐ Laser
   f. ☐ Aircraft
   g. ☐ Other *(specify)*:

3. ☐ Engineering and traffic survey (ETS) not required per Vehicle Code section 40802, subdivision (a)(2).
4. ☐ ETS completed within five (5) years prior to date of alleged violation.
   a. ☐ ETS attached.
   b. ☐ ETS on file with the court.
5. ☐ ETS completed within five (5) and seven (7) years prior to date of alleged violation.
   a. ☐ ETS attached.

(Continued on reverse)

PEOPLE v. DEFENDANT *(Name)*:	CASE NUMBER:

5. b. ☐ ETS on file with the court.
   c. ☐ Arresting/citing officer has successfully completed a radar operator course of not less than 24 hours approved and certified by the Commission on Peace Officer Standards and Training (POST).
   d. ☐ Laser or other electronic device was used to measure speed. Arresting/citing officer successfully completed an additional training course of not less than two hours approved and certified by POST.
   e. ☐ The speed measuring device used to measure the speed of defendant (Serial No:) meets or exceeds the minimum operational standards of the National Highway Traffic Safety Administration (NHTSA) and was last calibrated on *(date)*: by an independent certified laser/radar repair and testing/calibration facility.
   f. ☐ Equipment accuracy check conducted on *(date)*: at *(time)*: and again *on (date):* at *(time)*:

6. ☐ ETS completed within seven (7) and ten (10) years prior to the date of the alleged violation.
   a. ☐ A registered engineer has evaluated the section of the highway in question and has determined that no significant changes in roadway or traffic conditions have occurred.
   b. ☐ All of the elements marked under item 5, above, which are applicable.

7. **FACTS AND CIRCUMSTANCES** *(Type or print only. State what happened)*:

☐ Continued on attachment.

8. **OTHER EVIDENCE AND STATEMENTS** *(Explain any other evidence and statements)*:

☐ Continued on attachment.

9. **DIAGRAM(S)** *(specify)*:
   ☐ Attached.

10. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE)

ID Number: _____

Agency NCIC Number: _____

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA **vs.** DEFENDANT:	CITATION NUMBER: CASE NUMBER:

AGREEMENT TO PAY AND FORFEIT BAIL IN INSTALLMENTS (Vehicle Code, § 40510.5)

TO BE COMPLETED BY THE COURT

Read carefully and, if you agree, sign and return the form to the clerk.

1. I am the defendant in this case and I have been charged with the following infraction violation(s) of the Vehicle Code that do not require me to go into court:

   a. § b. § c. § d. § e. §

2. My court appearance date or extension date has not passed, and I am providing proof of correction for any correctable violations.
3. I want to pay and forfeit bail for the violation(s) listed above. I understand that the court does not have to allow me to make installment payments.
4. I understand that by signing below, each violation that is reportable to the Department of Motor Vehicles (DMV) and has no proof of correction will be reported as a conviction.
5. **TERMS OF THE AGREEMENT:**

   Total bail (including penalties) is $ _____

   Initial Payment (10% minimum): $ _____

   Remaining balance after first payment: $ _____

   ( ) I agree to pay the remaining balance in monthly installments of at least $ _____ due on the _____ day of each month, starting on *(date):* _____ and until paid in full on or before *(date):* _____.

   ( ) Other *(explain):* _____

   I agree that: All payments must be made by the due date and there is no grace period.
   If I do not make a payment on time, I may have to pay the rest of my unpaid bail immediately.

   I understand that if I do not make the payment by each due date the court may:

   Charge me with a failure to appear or pay under Vehicle Code section 40508.
   Charge a civil assessment of up to $100 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.
   Assign my case to a collection agency or the State Franchise Tax Board for collection.

   I understand that if I pay as agreed and if any proof of correction has been filed with the court as required, my bail forfeiture will be complete, and at that time, the case will be closed.

By signing below, I affirm that I have read, understood, and accepted the above terms and conditions. I also affirm that I have read and understood my rights printed on the reverse side, and that I choose to give them up.

_____ (SIGNATURE OF DEFENDANT)

_____ (DATE)

_____ (TYPE OR PRINT NAME)

_____ (DRIVER'S LICENSE/ID NUMBER)

_____ (ADDRESS)

_____ (CITY, STATE, AND ZIP CODE)

_____ (TELEPHONE NUMBER)

☐ **[I have provided a cellular phone number, and I authorize the court to send me SMS text messages or call reminders regarding payments that I owe under this agreement.] [Optional]**

_____ (EMAIL ADDRESS)

☐ **[I have provided an email address, and I authorize the court to send me electronic notices regarding payments that I owe under this agreement.] [Optional.]**

CLERK OF THE SUPERIOR COURT

ACCEPTED *(date):* _____ BY: _____ (DEPUTY CLERK)

Form Adopted for Mandatory Use
Judicial Council of California
TR-300 [Rev. January 1, 2024]

ADVISEMENT OF RIGHTS

By choosing to pay and forfeit bail in installments and not go into court, you will be giving up these rights:

- To appear in court without deposit of bail for formal arraignment, plea, and sentencing;
- To ask for community service (if available) instead of paying the total amount due;
- To request and have a court trial, to challenge the charges without deposit of bail, unless the court orders bail;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses under oath testifying against you; and
- To remain silent and not testify.

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay**.** If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service (if available) instead of paying the total amount due, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request.

[If you do not make a payment, please contact the court as soon as possible to make arrangements.] [Optional]

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	***FOR COURT USE ONLY*** **DRAFT** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA **vs.** DEFENDANT:	
ONLINE AGREEMENT TO PAY AND FORFEIT BAIL IN INSTALLMENTS (Vehicle Code, § 40510.5)	

TICKET NUMBER:

CASE NUMBER:

TO BE COMPLETED BY THE COURT

Read carefully, and if you agree, type your name below and submit the form.

1. I am the defendant in this case, and I have been charged with the following infraction violation(s) of the Vehicle Code that do not require me to go into court:
   a. § b. § c. § d. § e. §
2. My court appearance date or extension date has not passed [and I have provided proof of correction for any correctable violations (if applicable).]
3. I want to forfeit and pay bail for the violation(s) listed above. I understand that the court does not have to allow me to make installment payments.
4. I understand that by completing this agreement, each violation that is reportable to the Department of Motor Vehicles (DMV) and has no proof of correction will be reported as a conviction.
5. **TERMS OF THE AGREEMENT:**

   Total bail (including penalties) is $ _____

   Initial Payment (10% minimum): $ _____

   [Online transaction fee (if applicable): $ _____]

   Total amount due today: $ _____

   Remaining balance after first payment: $ _____

   I agree to pay the remaining balance in monthly installments of at least $ _____ due on the _____ day of each month, starting on *(date):* _____ and until paid in full on or before *(date):* _____.

   I agree that: All payments must be made by the due date and there is no grace period.
   If I do not make a payment on time, I may have to pay the rest of my unpaid bail immediately.

   I understand that if I do not complete my payment plan, the court may:

   Charge me with a failure to appear or pay under Vehicle Code section 40508.
   Charge a civil assessment of up to $100 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.
   Assign my case to a collection agency or the State Franchise Tax Board for collection.

   I understand that if I pay as agreed [and if any proof of correction has been filed with the court as required], my bail forfeiture will be complete, and at that time, the case will be closed.

I have read and understood my rights as explained in this agreement and attachment, and I choose to give them up. (See Attachment 1.) I have read, understood, and agreed to the terms and conditions stated above.
I understand that by electronically filing this document, it will be deemed signed. (Code Civ. Proc., § 1010.6(b)(2)(A) and Cal. Rules of Court, rule 2.257(b).)

_____ (TYPE NAME OF DEFENDANT)

_____ (DRIVER'S LICENSE/ID NUMBER)

_____ (ADDRESS)

_____ (CITY, STATE, AND ZIP CODE)

_____ (TELEPHONE NUMBER)

☐ **[I have provided a cellular phone number, and I authorize the court to send me SMS text messages or call reminders regarding payments that I owe under this agreement.] [Optional]**

_____ (EMAIL ADDRESS)

☐ **[I have provided an email address, and I authorize the court to send me electronic notices regarding payments that I owe under this agreement.] [Optional.]**

ACCEPTED *(date):* _____ BY: _____
CLERK OF THE SUPERIOR COURT

Form Adopted for Mandatory Use
Judicial Council of California
TR-300 (online) [Rev. January 1, 2024]

ADVISEMENT OF RIGHTS

By choosing to pay and forfeit bail in installments and not go into court, you will be giving up these rights:

- To appear in court without deposit of bail for formal arraignment, plea, and sentencing;
- To ask for community service (if available) instead of paying the total amount due;
- To request and have a court trial, to challenge the charges without deposit of bail, unless the court orders bail;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses under oath testifying against you; and
- To remain silent and not testify.

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay**.** If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service (if available) instead of paying the total amount due, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request.

[If you do not make a payment, please contact the court as soon as possible to make arrangements.] [Optional]

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA **vs.** DEFENDANT:	CITATION NUMBER: CASE NUMBER:

AGREEMENT TO PAY TRAFFIC VIOLATOR SCHOOL FEES IN INSTALLMENTS
(Vehicle Code, § 42007)

TO BE COMPLETED BY THE COURT

Read carefully and, if you agree, sign and return the form to the clerk.

1. I am the defendant in this case. I have been charged with the following infraction violation(s) that do not require me to go into court and that are eligible for confidential conviction(s) for completion of traffic violator school:

   a. § b. § c. § d. § e. §

2. My court appearance date or extension date has not passed, and I am providing proof of correction for any correctable violations.

3. I want to pay the traffic violator school fees for the violation listed above. I understand that the court does not have to allow me to make installment payments.

4. **TERMS OF THE AGREEMENT:**

   The total fee (including an administrative fee of $ _____) is $ _____

   Initial Payment (10% minimum): $ _____

   Remaining balance after first payment: $ _____

   ( ) I agree to pay the remaining balance within 90 days. I will pay in monthly installments of at least $ _____ due on the day of each month, starting on *(date):* _____ and until paid in full on or before *(date):* _____.

   ( ) Other *(explain):* _____

   I agree that: All payments must be made by the due date and there is no grace period.
   If I do not make a payment on time, I may have to pay the rest of my unpaid fees immediately.

   I understand that if I do not complete my payment plan the court may:

   Charge me with a failure to pay under Vehicle Code section 40508.
   Charge a civil assessment of up to $100 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.
   Report convictions to the Department of Motor Vehicles.
   Assign the case to a collection agency or the State Franchise Tax Board for collection.

   I understand that my case will continue to be open until the date that my last installment is paid. If I pay as agreed and if my proof of completion of traffic school is reported, a confidential conviction will be reported to the DMV and no further proceedings will be held.

By signing below, I affirm that I have read, understood, and accepted the above terms and conditions. I also affirm that I have read and understood my rights printed on the reverse side, and that I choose to give them up.

_____ (SIGNATURE OF DEFENDANT) _____ (DATE) _____ (TYPE OR PRINT NAME)

_____ (DRIVER'S LICENSE/ID NUMBER) _____ (ADDRESS) _____ (CITY, STATE, AND ZIP CODE)

_____ (TELEPHONE NUMBER) ☐ **[I have provided a cellular phone number, and I authorize the court to send me SMS text messages or call reminders regarding payments that I owe under this agreement.] [Optional]**

_____ (EMAIL ADDRESS) ☐ **[I have provided an email address, and I authorize the court to send me electronic notices regarding payments that I owe under this agreement.] [Optional.]**

CLERK OF THE SUPERIOR COURT

ACCEPTED *(date):* _____ BY: _____ (DEPUTY CLERK)

Form Adopted for Mandatory Use
Judicial Council of California
TR-310 [Rev. January 1, 2024]

AGREEMENT TO PAY TRAFFIC VIOLATOR SCHOOL FEES IN INSTALLMENTS
(Traffic Infractions)

Vehicle Code, § 42007
www.courts.ca.gov

ADVISEMENT OF RIGHTS

By choosing to pay traffic violator school fees in installments and not go into court, you will be giving up these rights:

- To appear in court without deposit of bail for formal arraignment, plea, and sentencing;
- To ask for community service (if available) instead of paying the total amount due;
- To request and have a court trial, to challenge the charges without deposit of bail, unless the court orders bail;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses under oath testifying against you; and
- To remain silent and not testify.

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service (if available) instead of paying the total amount due, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request. If the court grants your request, you may no longer be eligible for traffic school.

[If you do not make a payment, please contact the court as soon as possible to make arrangements.] [Optional]

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA **vs.** DEFENDANT:	
ONLINE AGREEMENT TO PAY TRAFFIC VIOLATOR SCHOOL FEES IN INSTALLMENTS (Vehicle Code, § 42007)	

TICKET NUMBER:

CASE NUMBER:

TO BE COMPLETED BY THE COURT

Read carefully and, if you agree, type your name below and submit the form.

1. I am the defendant in this case. I have been charged with the following infraction violation(s) of the Vehicle Code that do not require me to go into court and that are eligible for confidential conviction(s) for completion of traffic violator school:
   a. § b. § c. § d. § e. §
2. My court appearance date or extension date has not passed [and I have provided proof of correction for any correctable violations.]
3. I want to pay the traffic violator school fees for the violation(s) listed above. I understand that the court does not have to allow me to make installment payments.
4. **TERMS OF THE AGREEMENT:**

   The total fee (including an administrative fee of $ _____) is $ _____

   Initial Payment (10% minimum): $ _____

   [Online transaction fee: $ _____]

   Total amount due today: $ _____

   Remaining balance after first payment: $ _____

   I agree to pay the remaining balance within 90 days. I will pay in monthly installments of at least $ _____ due on the day of each month, starting on *(date):* _____ and until paid in full on or before *(date):* _____.

   I agree that: All payments must be made by the due date and there is no grace period.
   If I do not make a payment on time, I may have to pay the rest of my unpaid fees immediately.

   I understand that if I do not complete my payment plan the court may:

   Charge me with a failure to pay under Vehicle Code section 40508.
   Charge a civil assessment of up to $100 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.
   Report convictions to the Department of Motor Vehicles (DMV).
   Assign the case to a collection agency or the State Franchise Tax Board for collection.

   I understand that my case will continue to be open until the date that my last installment is paid. If I pay as agreed and if my proof of completion of traffic school is reported, a confidential conviction will be reported to the DMV and no further proceedings will be held.

   I have read and understood my rights as explained in this agreement and attachment, and I choose to give them up. (See Attachment 1.) I have read, understood, and agreed to the terms and conditions stated above.

I understand that by electronically filing this document it will be deemed signed. (Code Civ. Proc., § 1010.6(b)(2)(A) and Cal. Rules of Court, rule 2.257(b).)

_____ (TYPE NAME OF DEFENDANT)

_____ (DRIVER'S LICENSE/ID NUMBER)

_____ (ADDRESS)

_____ (CITY, STATE, AND ZIP CODE)

_____ (TELEPHONE NUMBER)

☐ **[I have provided a cellular phone number, and I authorize the court to send me SMS text messages or call reminders regarding payments that I owe under this agreement.] [Optional]**

_____ (EMAIL ADDRESS)

☐ **[I have provided an email address, and I authorize the court to send me electronic notices regarding payments that I owe under this agreement.] [Optional.]**

ACCEPTED *(date):* _____ BY: _____ (CLERK OF THE SUPERIOR COURT)

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- To ask for community service (if available) instead of paying the total amount due;
- To request and have a court trial, to challenge the charges without deposit of bail, unless the court orders bail;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses under oath testifying against you; and
- To remain silent and not testify.

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service (if available) instead of paying the total amount due, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request. If the court grants your request, you may no longer be eligible for traffic school.

[If you do not make a payment, please contact the court as soon as possible to make arrangements.] [Optional]

Item number: 33

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Indian Child Welfare Act (ICWA): Discretionary Tribal Participation

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend Cal. Rules of Court, rules 5.482 and 5.530; approve form ICWA-042

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee and the Tribal Court–State Court Forum

*Staff contact (*name, phone and e-mail*): Ann Gilmour, 415-865-4207 ann.gilmour@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*): Family and Juvenile Law Advisory Committee:Item #13 at page 17 of the Annual Agenda approved by the Rules Committee on November 1, 2022.
Tribal Court - State Court Forum: Item 4 on page 5 of the Annual Agenda approved by the Executive and Planning Committee on March 20, 2022
Project description from annual agenda: Family and Juvenile Law Advisory Committee:The Indian Child Welfare Act (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.
Tribal Court - State Court Forum: The Indian Child Welfare Act (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.

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

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

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

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

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

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

Judicial Council *of* California

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: SPR23-32
For business meeting on September 18–19, 2023

Title
Indian Child Welfare Act (ICWA): Discretionary Tribal Participation

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.482 and 5.530; approve form ICWA-042

Recommended by
Tribal Court–State Court Forum
Hon. Abby Abinanti, Cochair
Hon. Joyce Hinrichs, Cochair

Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Cochair
Hon. Amy M. Pellman, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2024

Date of Report
July 28, 2023

Contact
Ann Gilmour, 415-865-4207
ann.gilmour@jud.ca.gov

Executive Summary

Although California law protects the relationship between tribes and their children beyond the scope of the Indian Child Welfare Act (ICWA) and permits tribal participation in juvenile cases in various situations where ICWA does not apply, tribal leaders and other advocates report that courts often decline to permit tribes to participate in juvenile cases if ICWA does not apply. The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend amending two rules of court and approving a form to clarify the process and set standards consistent with California statutes for the court's exercise of discretion to permit the participation of a tribe in juvenile cases involving a child affiliated with the tribe, even when there is no express statutory right to participate or intervene under ICWA and Welfare and Institutions Code section 224.4.

Recommendation

The Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective January 1, 2024:

1. Amend California Rules of Court, rules 5.482 and 5.530 to clarify the process for tribes seeking to participate in juvenile cases where ICWA does not apply; and

2. Approve *Request for Tribal Participation* (form ICWA-042) for a tribe seeking permission to participate in a juvenile case.

The proposed amended rules and new form are attached at pages 11–13.

Relevant Previous Council Action

The federal Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) was enacted in 1978 and establishes minimum federal standards that apply in all state court proceedings involving an Indian child where the child could be involuntarily placed in the custody of a nonparent, or where the parental rights of a parent could be terminated. The Judicial Council has acted numerous times to implement and improve compliance with ICWA, including:

- 1995 amendments to former rules 1431, 1432, and 1463 to assure proper notice consistent with ICWA and adoption of former rule 1439;

- 1998 amendments to former rule 1439 and forms JV-100 and JV-110 to better identify Indian children and comply with ICWA; and

- 2000 and 2005 amendments to former rule 1439 and revisions to various juvenile and family law forms to clarify when and how notice should be given under ICWA.

In 2006, California enacted Senate Bill 678 (Stats. 2006, ch. 838) (see Link A) to substantially incorporate provisions of ICWA into the Family Code, Probate Code, and Welfare and Institutions Code. Following enactment of SB 678, the Judicial Council adopted implementing rules of court and forms.[1] In 2019, substantial revisions were made to these rules of court and forms to align with statutory changes in Assembly Bill 3176 (Waldron; Stats. 2018, ch. 833) (see Link B), as well as changes to governing federal regulations and guidelines.[2]

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[1] Judicial Council of Cal., Advisory Com. Rep., *Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes* (Sept. 12, 2007), *www.courts.ca.gov/documents/102607ItemA27.pdf*.

[2] Judicial Council of Cal., Advisory Com. Rep., *Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children* (Sept. 5, 2019), *https://jcc.legistar.com/View.ashx?M=F&ID=7684873&GUID=52B4C6B1-F704-458F-BF42-EB1AA4F82000*; see updated federal regulations, *www.ecfr.gov/current/title-25/chapter-I/subchapter-D/part-23*, and updated federal guidelines, *www.federalregister.gov/documents/2015/02/25/2015-03925/guidelines-for-state-courts-and-agencies-in-indian-child-custody-proceedings*.

Analysis/Rationale

Background

ICWA provides certain legal rights to federally recognized Indian tribes with respect to child custody proceedings involving an Indian child, defined as any unmarried person who is under age 18 and is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe and who is the biological child of a member of an Indian tribe. Among the rights that ICWA recognizes is the tribe's right to intervene at any time in a case involving an Indian child. When ICWA applies, but the tribe chooses not to intervene, rule 5.534(e)(2) of the California Rules of Court[3] still provides the child's tribe with certain rights to participate in a case involving an Indian child.

The California Legislature has also acted to protect the relationship between Native American and Indian children[4] and their tribes and tribal communities. In Welfare and Institutions Code section 224,[5] the Legislature states that California is committed to

> protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with [ICWA] and other applicable state and federal law, designed to prevent the child's involuntary out-of-home placement and, whenever that placement is necessary or ordered, by placing the child, whenever possible, in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.

California law goes beyond ICWA in several relevant ways. Section 306.6[6] authorizes the court to permit a tribe not recognized to have tribal status under federal law (also known as an "unrecognized tribe") to participate in dependency proceedings. In 2019, the Legislature amended section 16001.9 (often referred to as the "Foster Care Bill of Rights") to include protections for the cultural and political connection of all Native American and Indian children in foster care.[7] These protections are separate and apart from the requirements of ICWA.

This proposal addresses three specific categories of cases where ICWA may not apply, but where either the tribal group or the child may have a right to some manner of tribal participation in a juvenile case:

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[3] All further references to rules are to the California Rules of Court unless otherwise noted.

[4] The term "Indian child" is used for children who meet the definition of Indian child in ICWA. The term "Native American child" is used for children who are affiliated with a tribe but do not meet the definition of Indian child.

[5] All further unspecified statutory references are to the Welfare and Institutions Code.

[6] Added by Sen. Bill 678, which wove many provisions of ICWA into the Welfare and Institutions Code, the Family Code, and the Probate Code.

[7] See Assem. Bill 175 (Stats. 2019, ch. 416).

- Cases involving Indian children who are in the juvenile court because of an act that would be a crime if it were committed by an adult or as to whom ICWA does not apply for some other reason;

- Cases involving children from unrecognized tribes; and

- Children whose parents are members of tribes and are considered part of the tribal community but who do not meet the definition of Indian child, often referred to as "heritage cases."

In each of these situations, the law recognizes a relationship between the tribe and the child notwithstanding that ICWA does not apply. Section 306.6 specifically provides the court with discretion to allow a child's unrecognized tribe to participate in dependency proceedings. Sections 346 and 676 permit juvenile courts to allow anyone with a "direct and legitimate interest" in a case to be admitted to a juvenile court hearing. Several courts have adopted standing orders under the authority of these sections to create a presumption that tribes be permitted to participate in proceedings involving children affiliated with the tribe.[8]

The proposed rule amendments and new form would provide guidance for the exercise of that discretion and the role of a tribe when it is permitted to participate. The role set out in proposed amended rule 5.530 is consistent with section 306.6 and rule 5.534(e)(2), which addresses participation of non-intervening tribes in ICWA cases.

Delinquency cases

Indian children who are placed into foster care are entitled to all the same rights as other foster children under section 16001.9 (see Link D) and have unique protections for their cultural and political identity as Indian children. These protections apply equally whether they are placed in foster care under section 300 (the juvenile dependency code section) or under 601 or 602 (the juvenile delinquency code sections)—even though ICWA does not apply to most juvenile justice cases. Specifically, this section protects the child's right to:

- A placement that upholds the prevailing social and cultural standards of the child's Indian community, including but not limited to family, social, and political ties (§ 16001.9(a)(1));

- Be provided with names and contact information for representatives of the child's Indian tribe and to communicate with these individuals privately (§ 16001.9(a)(11));

[8] See *In the Matter of: Tribal Participation in Juvenile Dependency and Juvenile Justice Cases Not Governed by the Indian Child Welfare Act* (Super. Ct. San Diego County, Apr. 25, 2022) (order authorizing informal notice to and participation by tribes in juvenile court proceedings), *www.sdcourt.ca.gov/sites/default/files/sdcourt/juvenile3/policiesproceduresandprotocols/juvpoliciesproceduresandprotocolsforms/order_author_tribes.pdf*; Super. Ct. Inyo County, Local Rules, rule 9.1 (referencing standing orders dealing with this issue), *www.inyo.courts.ca.gov/system/files?file=localrules.pdf*.

- Have contact with tribal members and members of the child's Indian community consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe (§ 16001.9(a)(14));

- Engage in traditional Native American religious practices (§ 16001.9(a)(15));

- Have probation personnel who have received instruction on ICWA and on cultural competency and sensitivity relating to, and best practices for, providing adequate care to Indian children in out-of-home care (§ 16001.9(a)(20));

- Have recognition of the child's political affiliation with an Indian tribe or Alaskan village, including a determination of the child's membership or citizenship in an Indian tribe or Alaskan village; receive assistance in becoming a member of an Indian tribe or Alaskan village in which the child is eligible for membership or citizenship; receive all benefits and privileges that flow from membership or citizenship in an Indian tribe or Alaskan village; and be free from discrimination based on the child's political affiliation with an Indian tribe or Alaskan village (§ 16001.9(a)(21));

- Have a representative of the child's Indian tribe in attendance during hearings (§ 16001.9(a)(34)); and

- Have a case plan that includes protecting the essential tribal relations and best interests of the Indian child by assisting the child in establishing, developing, and maintaining political, cultural, and social relationships with the child's Indian tribe and Indian community (§ 16001.9(a)(37)).

These provisions recognize a strong beneficial relationship between an Indian child and the child's tribe including in juvenile justice cases.

Unrecognized tribes

Section 306.6 (see Link E) permits the court to allow an unrecognized tribe from which a child is descended to participate in a dependency proceeding. In addition, section 16001.9, as amended in 2019, provides protection of certain rights of all children in foster care that may be particularly important to those children who identify as Native American, and will apply even if their tribe is not federally recognized. These include the right to:

- Receive adequate clothing, grooming, and hygiene products that respect the child's culture and ethnicity (§ 16001.9(a)(3));

- Be placed with a relative or nonrelative extended family member if an appropriate and willing individual is available (§ 16001.9(a)(5));

- Attend religious services, activities, and ceremonies of the child's choice, including but not limited to engaging in traditional Native American religious practices (§ 16001.9(a)(15)); and

- Participate in extracurricular, cultural, racial, ethnic, personal enrichment, and social activities (§ 16001.9(a)(16)).

Section 306.6 states:

> (d) This section is intended to assist the court in making decisions that are in the best interest of the child by permitting a tribe in the circumstances set out in subdivision (a) to inform the court and parties to the proceeding about placement options for the child within the child's extended family or the tribal community, services and programs available to the child and the child's parents as Indians, and other unique interests the child or the child's parents may have as Indians. This section shall not be construed to make [ICWA], or any state law implementing [ICWA], applicable to the proceedings, or to limit the court's discretion to permit other interested persons to participate in these or any other proceedings.
>
> (e) The court shall, on a case-by-case basis, make a determination if this section is applicable and may request information from the tribe, or the entity claiming to be a tribe, from which the child is descended for the purposes of making this determination, if the child would otherwise be an Indian child pursuant to subdivision (a).

Heritage cases

Sometimes a child's parents are members of a tribe, but the child is not a member or eligible for membership. This can be because the tribe's membership rolls are closed, or because the child does not meet one or more of the tribe's specific membership criteria. These children may still live on tribal lands, be eligible for tribal services, and be considered members of the tribal community. Under section 16001.9, these children have the same rights as described above for children from unrecognized tribes to maintain their cultural and political connections to the tribe.

Protection of these rights is furthered by the participation of the tribe with which the child and family are affiliated, notwithstanding that the child does not meet the definition of Indian child under ICWA. Sections 346 and 676 permit the judicial officer presiding over a case to admit to a hearing such persons as are deemed to have a direct and legitimate interest in the case or work of the court. As discussed above, several courts have adopted local standing orders creating a presumption that tribes have a direct and legitimate interest in cases involving their children.

Allowing tribal participation in non-ICWA cases

This proposal responds to a concern identified by tribal advocates and leaders that courts often will not allow a tribe to participate in a juvenile case if ICWA does not apply. It advances the judicial branch's goal of access to justice by protecting the rights of Native American and Indian children and their tribes to maintain cultural and political connections. This proposal would provide guidance and ensure consistency in accordance with the statutes discussed above, in

cases falling within the three categories where ICWA does not mandate, but state laws allow tribal participation in a juvenile case.

Tribes, particularly unrecognized tribes, often have limited resources. They may participate in court via a tribal representative rather than an attorney. It can be challenging for tribal advocates to draft requests for orders without additional guidance. This proposal would create a process and provide a form for tribes to use when they want to participate in actions involving their children when ICWA does not apply. It provides presumptions that are consistent with state policies in furthering tribal participation.

Rule 5.482

Rule 5.482, which currently implements section 204.4 governing tribal intervention in cases where ICWA mandates apply, would be amended by adding subdivision (d)(2). The new subdivision would direct parties to rule 5.530(g) in situations where the tribe does not have a right of intervention because ICWA does not apply, but the court has discretion to allow the tribe to participate in a juvenile proceeding.

Rule 5.530

Rule 5.530, which governs who may be present at a juvenile hearing, would be amended to add subdivision (g) governing discretionary tribal participation in the three situations discussed above where ICWA does not mandate, but where state laws allow tribal participation. Each of the three case types is set forth in a separate paragraph (subdivision (g)(1)–(3)) because each relies on different sections of the Welfare and Institutions Code that provide slightly different protections to Native American and Indian children and their tribes. Each of those paragraphs establishes a presumption that a child's tribe should be permitted to participate. A fourth paragraph (subdivision (g)(4)) lists, for tribes whose request to participate has been granted, the actions they may take to participate in the proceedings. This list mirrors the extent of participation that the Legislature has established in section 306.6 for unrecognized tribes and that the council has provided in rule 5.534(e)(2) for tribes that choose not to intervene in ICWA cases.

***Request for Tribal Participation* (form ICWA-042)**

New, optional form ICWA-042 may be used by tribes to make a request to participate in a case.

Policy implications

Proposed amended rule 5.530 would create a presumption that a tribe should be permitted to participate in a proceeding where the court has discretion to permit such participation absent a finding by the court that the tribe's participation would not assist the court in making decisions that are in the best interest of the child.

The committees believe that this presumption is consistent with the intent of the Legislature in enacting sections 224, 306.6, and 16001.9. In section 224, the Legislature expressly stated California's commitment to protecting an Indian child's tribal relations and best interest through efforts to prevent the child's involuntary removal from the home and, where out-of-home

placement is necessary, by prioritizing a placement that reflects the values of the child's tribal culture and is best able to assist the child in developing and maintaining ties with the child's tribe and tribal community. As noted above, California law goes beyond ICWA in several relevant ways. Section 306.6 authorizes an unrecognized tribe to participate in dependency proceedings. In 2019 the Legislature amended section 16001.9 to include protections for the cultural and political connection of all Native American and Indian children in foster care.[9] These protections are separate and apart from the requirements of ICWA.

As discussed above, tribal leaders and representatives report that when ICWA does not apply to a case, courts often deny tribal requests to participate, possibly unaware of the state provisions. This is not consistent with the protections for the legal relationships set out in California law.

Comments

The proposal circulated for public comment from March 31 through May 12, 2023, as part of the spring 2023 invitation-to-comment cycle. It was sent to the standard mailing list for family and juvenile law proposals that includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, Court Appointed Special Advocate (CASA) programs, and other juvenile and family law professionals. It was also sent to tribal leaders, tribal advocates, and tribal attorneys and distributed through the California Department of Social Services Office of Tribal Affairs list serve to reach those with an interest in the Indian Child Welfare Act and tribal issues.

Six comments were received. None of the comments opposed the proposal. Four did not take a position; one approved if amended; and one approved of the proposal as circulated.

The Superior Court for the County of San Diego approved if amended. The amendments suggested by the court to clarify that the provisions apply only in juvenile cases and other minor language changes were adopted. The Orange County Bar Association approved the proposal. California Indian Legal Services suggested minor revisions to the form that were adopted.

As circulated for comment, the substantive provisions of the proposal were in Title 5 (Family and Juvenile Rules), Division 2 (Rules Applicable in Family and Juvenile Proceedings), Chapter Two (Indian Child Welfare Act) of the rules, at rule 5.482(d) (which currently addresses the right of tribal intervention in cases in which ICWA applies) with a cross reference in rule 5.530 (which addresses who may be present and participate in juvenile court proceedings). Several commenters, including the Alliance for Children's Rights, the California Tribal Families Coalition, and the Sacramento County Counsel's Office, expressed concern that the substance of the rule would be better placed in rule 5.530, rather than as a subdivision of rule 5.482. Commenters were concerned that placement within rule 5.482 might cause confusion because that rule governs cases where ICWA applies and applies to cases arising under the Family Code

[9] See Assem. Bill 175 (Stats. 2019, ch. 416).

and Probate Code as well as to cases arising under the Welfare and Institutions Code. (Rule 5.530 is in Division 3 (Juvenile Rules) of Title 5, which applies only to cases in juvenile court.) The committees agreed that because the content of the new rule applies only to juvenile cases where ICWA does not apply and recognizes the discretion of the juvenile court to permit a tribe to participate, rather than a right of tribal intervention, placement within the ICWA rules could create confusion.

The main substantive change made in response to the comments was to move the provisions governing discretionary tribal participation from rule 5.482(d) to the newly created subdivision (g) of rule 5.530. Rule 5.482 was revised to add a cross-reference to rule 5.530(g), as suggested by the Alliance for Children's Rights.

As circulated for comment, the form would have required signature under penalty of perjury. The committees noted in the Invitation to Comment that the statute did not require a signature under penalty of perjury, and they were considering removing the requirement. No comments were received on this issue. The committees decided to remove the requirement.

The full text of all comments and the committees' responses are in the chart attached at pages 14–24.

Alternatives considered

The committees considered taking no action, considering whether educational resources or job aids would be sufficient to address the issues raised by tribal leaders and advocates. Given the complexity of the legal issues and the importance of the interests and rights of tribal children and tribes that are at stake, the committees decided that rules and a new form were the best way to protect those rights and interests and bring consistency to the exercise of discretion across courts.

Fiscal and Operational Impacts

The committees do not anticipate fiscal or operational impacts beyond the updating of systems to reflect the new form and some training on the new process and form. By providing greater clarity and creating a process and a form, the committees believe that this proposal will ultimately reduce contested motions.

Attachments and Links

1. Cal. Rules of Court, rules 5.482 and 5.530, at pages 11–12
2. Form ICWA-042, at page 13
3. Chart of comments, at pages 14–24
4. Link A: Sen. Bill 678 (Stats. 2006, ch. 838), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200520060SB678*
5. Link B: Assem. Bill 3176 (Stats. 2018, ch. 833), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3176*
6. Link C: Assem. Bill 175 (Stats. 2019, ch. 416), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB175*

7. Link D: Welf. & Inst. Code, § 16001.9, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC&sectionNum=16001.9*
8. Link E: Welf. & Inst. Code, § 306.6, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC&sectionNum=306.6*

Rules 5.482 and 5.530 of the California Rules of Court are amended, effective January 1, 2024, to read:

Rule 5.482. Proceedings after notice

(a)–(c) * * *

(d) Intervention

(1) The Indian child's tribe and Indian custodian are entitled to intervene, orally or in writing, at any point in the proceedings. The tribe may, but is not required to, file with the court ~~the~~ *Notice of Designation of Tribal Representative in a Court Proceeding Involving an Indian Child* (form ICWA-040) to give notice of its intent to intervene.

(2) A tribe that is not entitled to intervene may request permission to participate in the proceedings in accordance with rule 5.530(g).

(e)–(g) * * *

Rule 5.530. Persons present

(a)–(f) * * *

(g) Discretionary tribal participation (§§ 224, 306.6, 346, 676, 827, 16001.9)

(1) The tribe of a child may request to participate in a case, using *Request for Tribal Participation* (form ICWA-042). The court should exercise its discretion as follows:

(A) In a proceeding involving an Indian child, the child's tribe may request permission to participate in the proceedings under section 346 or 676. Consistent with sections 224 and 16001.9, there is a presumption that the tribe has a direct and legitimate interest in the proceedings under section 346 or 676 and the request should be approved absent a finding by the court that the tribe's participation would not assist the court in making decisions that are in the best interest of the child.

(B) In a proceeding involving a child described by section 306.6, the tribe from which the child is descended may request permission to participate in the proceedings. Consistent with sections 224 and 16001.9, the request should be approved absent a finding by the court that the tribe's participation would not assist the court in making decisions that are in the best interest of the child.

(C) When a child does not meet the definition of an Indian child but either of the child's parents is a member of a tribe and the tribe wishes to participate in juvenile proceedings involving the child, the parent's tribe may request permission to participate in the proceedings under section 346 or 676. Consistent with sections 224 and 16001.9, there is a presumption that the tribe has a direct and legitimate interest in the proceedings under section 346 or 676 and the request should be approved absent a finding by the court that the tribe's participation would not assist the court in making decisions that are in the best interest of the child.

(2) Upon approval of a request, the court must instruct the tribe as to the confidentiality of the proceedings and, although the tribe does not become a party unless the court orders otherwise, the tribe is authorized to:

(A) Be present at the hearing;

(B) Address the court;

(C) Request and receive notices of hearings;

(D) Request to examine court documents relating to the proceeding consistent with section 827;

(E) Present information to the court that is relevant to the proceeding;

(F) Submit written reports and recommendations to the court; and

(G) Perform other duties and responsibilities as requested or approved by the court.

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	**DRAFT Not approved by the Judicial Council**
EMAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CHILD'S NAME:		
REQUEST FOR TRIBAL PARTICIPATION		CASE NUMBER: RELATED CASES *(if any):*

TO ALL PARTIES:

1. The *(name of tribe):* ☐ is a federally recognized tribe (25 U.S.C.§ 1903(8)) ☐ is a tribe not recognized to have tribal status under federal law. (Welfare and Institutions Code section 306.6.)

2. The above named child or children are *(select one):*
   a. ☐ Members of the tribe;
   b. ☐ Eligible for membership in the tribe and the biological children of a member; or
   c. ☐ Otherwise affiliated with the tribe and considered members of the tribal community.

3. The tribe is *(select one):*
   a. ☐ requesting to participate in the proceedings involving an Indian child but to which the Indian Child Welfare Act (ICWA) (25 U.S.C section 1901 et seq.) does not apply. (Welfare and Institutions Code sections 346 and 676.)
   b. ☐ requesting to participate in the proceedings involving a child who would otherwise be an Indian child but for the status of the child's tribe. (Welfare and Institutions Code section 306.6.)
   c. ☐ requesting to participate in the proceedings involving a child who is affiliated with the tribe but who does not meet the definition of an Indian child. (Welfare and Institutions Code sections 346 and 676.)

4. The tribe requests that notice of all proceedings be sent to:
   Name:
   Title:
   Address:
   City: State: Zip Code:
   Telephone: Fax: Email:

5. ☐ Check here and attach *Attachment to Judicial Council Form* (form MC-025) to provide more information to support the request for tribal participation.

Date: _____

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE)

Form Approved for Optional Use
Judicial Council of California
ICWA-042 [New January 1, 2024]

Welf. & Inst. Code, §§ 306.6, 346, 676, 16001.9
www.courts.ca.gov

SPR23-32

Indian Child Welfare Act (ICWA): Discretionary Tribal Participation (Amend Cal. Rules of Court, rules 5.482 and 5.530; approve form ICWA-042)

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

	Commenter	Position	Comment	Committee Response
1.	Alliance for Children's Rights Kristin Power, Vice President, Policy and Advocacy	N/I	**Does the proposal adequately address the stated purpose?** As currently drafted, the proposal does not adequately address its stated purpose. The proposal states the purpose is to "provide guidance and ensure consistency" in discretionary tribal participation in three instances. However, because of where the new language is proposed within the California Rules of Court, the new language may create confusion and inconsistency for tribes who have a federal and state statutory right to formally intervene in cases governed by ICWA. The proposed rule would add language to Rule 5.482(d), in Chapter 2 of the Rules of Court, and provides guidance in instances when ICWA applies. However, the proposed language primarily provides guidance for instances when ICWA does not apply. We recommend the language be placed elsewhere in the Rules of Court so as not to cause confusion with intervention rules. For example, the proposed language drafted as 5.482(d)(2) may better fit directly in Rule 5.530 because that rule pertains to all persons present for juvenile court proceedings. We propose that if Judicial Council is going to adopt this request, which is to move proposed rule 5.482(d)(2) to fit under Rule 5.530, language should be added to Rule 5.482(d) that refers those not familiar with ICWA who happen to land in this section, to also review	The committees agree and have moved the substance of the proposal to rule 5.530 as recommended. The proposal was revised in response to this comment.

SPR23-32

Indian Child Welfare Act (ICWA): Discretionary Tribal Participation (Amend Cal. Rules of Court, rules 5.482 and 5.530; approve form ICWA-042)

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

	Commenter	Position	Comment	Committee Response
			Rule 5.530 for guidance to promote clarity and transparency. **Recommended Language:** **Rule 5.482** (d)(2) A tribe that is not entitled to intervene that seeks court authorization to participate in proceedings may request permission to participate in the proceedings in accordance with Rule 5.530. We further recommend, regardless of the status of the drafted 5.482(d)(2) language, that the proposed language "When the Indian Child Welfare Act applies, Tt" in 5.482(d)(1), is not included. We think this is unnecessarily limiting language and could have unintended consequences in practice.	The proposal was revised in response to this comment. The proposal was revised in response to this comment. The proposal was revised in response to this comment.
2.	California Indian Legal Services Hannah Reed, Staff Attorney This should be comment #2	N/I	For the ICWA-042 Form: - Paragraph 1 should add a code reference to the box "federally recognized tribe" – e.g., "is a federally recognized tribe pursuant to the definition in 25 U.S.C. 1903(8)." - I think there should be a Paragraph 5 allowing the Tribe to attach an addendum for other information, like some other Judicial Council forms do.	The form was revised in response to this comment. The form was revised in response to this comment.
3.	California Tribal Families Coalition Michelle Castagne, Co-Executive Director	N/I	Request for Specific Comments *1. Does the proposal adequately address the stated purpose?* As currently drafted, the proposal does not adequately address its stated purpose. The proposal states the purpose is to "provide guidance and ensure consistency" in tribal	

SPR23-32

Indian Child Welfare Act (ICWA): Discretionary Tribal Participation (Amend Cal. Rules of Court, rules 5.482 and 5.530; approve form ICWA-042)

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

	Commenter	Position	Comment	Committee Response
			intervention in juvenile court proceedings and discretionary tribal participation in three specific instances. However, because of where the new language is proposed within the California Rules of Court, the new language may create confusion and inconsistency for tribes who have a federal and state statutory right to formally intervene in cases governed by the Indian Child Welfare Act (ICWA). The proposed rule would add language to Rule 5.482(d) which is in Chapter 2 of the Rules of Court and provides guidance in instances when ICWA applies. However, the proposed language primarily provides guidance for instances when ICWA does not apply. If the proposed language moves forward, we recommend it be placed elsewhere in the Rules of Court so as not to cause confusion with rules governing tribal intervention. For example, the proposed language drafted as 5.482(d)(2) may better fit directly in Rule 5.530 because that rule pertains to all persons present for juvenile court proceedings. We further recommend, regardless of the status of the drafted 5.482(d)(2) language, the proposed language "When the Indian Child Welfare Act applies, Tt" in 5.482(d)(1), does not move forward. This is unnecessary limiting language. Overall, CTFC member tribes have not yet reached consensus on the substance of the amendments proposed in 5.482(d)(2). So, we ask the Tribal Court-State Court Forum and	The proposal was revised in response to this comment. The proposal was revised in response to this comment. The committees considered this request but determined that it was important to move forward with this proposal. Should the commenter

SPR23-32

Indian Child Welfare Act (ICWA): Discretionary Tribal Participation (Amend Cal. Rules of Court, rules 5.482 and 5.530; approve form ICWA-042)

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

	Commenter	Position	Comment	Committee Response
			Family and Juvenile Law Advisory Committee to allow more time for stakeholder feedback and tribal consultation before amending the Rules of Court. As the Invitation to Comment states, the proposed rule concerns complex legal issues and important interests and rights of tribes are at stake. We ask the Forum and Committee to instead reconsider creating the alternatives listed in the Invitation to Comment including educational resources and job aids as an important first step to address the issues raised by tribal leaders and advocates that this rule aims to address.	eventually develop suggestions for different rules, the advisory committee will consider them in the future, as time and resources allow. The committees will consider creating educational resources and job aids in addition to the rule and form.
4.	Orange County Bar Association, Michael A. Gregg, President	A	While the proposed additions to the Rule of Court address the stated purpose, the presumption regarding the tribe's interest seems to have weak statutory underpinnings and would be better addressed by the Legislature than via a change to the Rules of Court.	The committees considered whether there was sufficient statutory authority to support the proposed rules and determined that the proposed rules were not inconsistent with.
5.	Sacramento County Counsel's Office Katherine Covert, Supervising Deputy County Counsel	N/I	**Question**: Does the proposal appropriately address the stated purpose? The proposals generally address the state purpose of providing discretionary tribal participation in dependency proceedings. However, there are some areas that could be clarified to provide the juvenile court participants clarity in its application. Rule 5.482: Proceedings after notice As to subsection (d) Intervention and tribal participation, overall: The subsections of rule 5.482 could be further broken down between intervention in subsection (d) and tribal	 In light of this and other comments, the proposal was revised to clarify the difference between intervention as of right in situations where ICWA applies and discretionary participation when

	Commenter	Position	Comment	Committee Response
			participation in subsection (e), which would require other subsequent subsections to be re-identified. Or subsection (d) could be divided into (d)(1) for intervention and (d)(2) for participation. Such a division would provide greater clarity to distinguish between intervention consistent with and pursuant to ICWA being applicable and participation when ICWA does not apply, but there is a tribe that would like to participate in the proceedings and the court has determined it is in the child's best interest. As to (d)(2)(A): A further clarification could be made in the currently written proposed section of (d)(2)(A). The proposed language is: "(A) In cases involving an Indian child…" On page two, at footnote one, discussing the background for this proposed rule of court, the footnote states that, "The term "Indian child" is used for children who meet the definition of Indian child in ICWA. The term Native American child is used for children who are affiliated with a tribe but do not meet the definition of Indian child." Applying this distinction to (d)(2)(A) would change the proposed wording to, "(A) In cases involving a Native American child," since this specific subsection is for tribal participation due to ICWA not being applicable. As to subsections (d)(2)(A), (B), and (C): In subsections (d)(2)(A), (B), and (C), the proposed language indicates that tribal	ICWA does not apply, by moving the substance of the rule governing discretionary tribal participation to the new subdivision (g) of rule 5.530. Contrary to the commenter's suggestion that this subsection is not intended to apply to children who meet the definition of Indian child, this specific subsection is intended to address cases involving an Indian child but to which ICWA does not apply for instance, because the proceedings are based upon an act which would be considered a crime if committed by an adult. In these situations where an Indian child is involved in a juvenile justice case to which ICWA does not apply, the unique rights of the Indian child under Welf. & Inst. Code 16001.9 still apply.

	Commenter	Position	Comment	Committee Response
			participation for non-Indian child cases is "Consistent with sections 224 and 16001.9 of the Welfare and Institutions Code.…" It would be more accurate to indicate that the "principles embodied" (or similar language) in 224 and 16001.9 are being applied to tribal participation when an Indian child is not involved. This is so because section 224 applies to an "Indian child" and an "Indian tribe," as defined per section 224.1. Similarly, the subsections of WIC section 16001.9 cited in the proposed rule apply to "Indian tribes" and "Indian children" as defined in WIC section 224.1.	The committees considered this comment but did not believe the revision was necessary. Section 16001.9 applies to all Native American children as well as to those meeting the definition of Indian child under ICWA, although the rights afforded are slightly different.
			Additionally, these subsections create a presumption that tribal participation outweighs a child's best interests, which is not found in the law. Juvenile court law (commencing at WIC section 202) is primarily focused on the child's best interest, therefore, having the court affirmatively and independently make a finding that it is in the child's best interest for the tribe to participate would be consistent with California law. The court should then make findings that: 1) the tribe has an interest in participating and 2) that it is in the child's best interest for the tribe to participate.	This comment misreads the proposal. The proposal does not create a presumption that participation outweighs the child's best interest. The rule specifically states that the request should be approved "…absent a finding by the court that the tribe's participation would not assist the court in making decisions that are in the best interest of the child." Therefore, if the court finds that tribal participation is not in the child's best interest, the court can deny the request to participate.
			As to subsection (d)(2)(D): Additional clarifications could be made in (d)(2)(D) regarding the specifics of tribal participation. The introductory sentence of (D) could be clarified by stating, "(D) Upon approval of a	The committees considered this comment but did not feel the change was necessary.

	Commenter	Position	Comment	Committee Response
			request, a tribe becomes a participant to the proceedings and unless the court orders otherwise, the tribe is authorized to…." As to (D)(iv), a clarification that upon a tribe's request to examine court documents relating to a proceeding, a court order would be necessary to for the tribe to examine the court documents so as not to violate WIC section 827(f), which applies only to a child who is a member of or who is eligible for membership in that tribe. As to (D)(vi), allowing the tribe to submit written reports and recommendations to the court, it would be helpful to clarify whether the tribe would be responsible for disseminating that information to all parties or whether the court would then be responsible for disseminating the written reports and/or recommendations to all parties within a specific time frame. Rule 5.530: Persons present As to Rule 5.530, Persons present, in the newly proposed subsection (g), it appears there is a contradiction because the proposed wording states, "When a proceeding not governed by the Indian Child Welfare Act involves an Indian child." If an Indian child were involved, then the proceeding would be governed by the Indian Child Welfare Act. A clarification of this proposed language would be to either strike "an Indian child" or to instead use "a Native	The proposal was revised to clarify that all requests to examine court documents are subject to the requirements of section 827. However, it does not state that a court order is always required because under 827(f) a court order would not always be required. For example, it would not be required in a juvenile justice case involving an Indian child. The committees considered this comment but did not feel it was necessary to include such a requirement. In most juvenile justice proceedings, the Indian Child Welfare Act does not apply even if the proceedings involve an Indian child.

	Commenter	Position	Comment	Committee Response
			American child," which is consistent with the definition of terms in footnote one, on page two, of the proposal. ICWA-042: Request for Tribal Participation The proposed new form, ICWA-042, Request for Tribal Participation, also generally meets with the proposed purpose of allowing tribes who have an interest in a matter to participate. In section (3) of the forms, each subsection for (a), (b), and (c) state "requesting leave to participate" and then the specific reason why the tribe is requesting permission to participate. It is confusing to state "requesting leave" and would be clear to state "requesting to participate" on each section.	The proposal was revised in response to this comment.
6.	Superior Court of California, County of San Diego Mike Roddy, Executive Officer	AM	• Does the proposal appropriately address the stated purpose? **Yes.** • Would the proposal provide cost savings? If so, please quantify. **Probably. The proposal saves juvenile courts the time and effort that would be required to develop these forms on their own or to include all the new required findings and orders in their case management systems.** • 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	No response required. No response required.

	Commenter	Position	Comment	Committee Response
			management systems? **In addition to those already mentioned, courts would need to inform their judicial officers and their justice partners (child welfare agency, probation department, tribal agencies, attorney offices, CASA offices, et al.) of the amended rules of court and the new form.**	No response required.
			• Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.**	No response required.
			• How well would this proposal work in courts of different sizes? **This proposal would work fine in the San Diego Superior Court (a large court).**	No response required.
			Additional comments: • **Consider whether rule 5.482 should address the applicability or inapplicability of the new tribal participation provisions to the proceedings listed in rule 5.480(3), (4), (5) (proceedings under the Family Code and Probate Code).**	This concern was addressed by moving the substance of the proposal to rule 5.530 as discussed above which clarifies that the discretionary tribal participation is limited to juvenile proceedings and does not apply in Family Law or Probate proceedings.
			• **Rule 5.482(d)(2)(D)(iv) authorizes non-party tribes to "Request to examine court documents relating to the proceeding." Should courts require non-party tribes to file petitions for access under WIC § 827**	The proposal was revised in response to this comment to confirm that requests are subject to Welfare and Institutions Code section 827.

SPR23-32

Indian Child Welfare Act (ICWA): Discretionary Tribal Participation (Amend Cal. Rules of Court, rules 5.482 and 5.530; approve form ICWA-042)

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

	Commenter	Position	Comment	Committee Response
			if and when they make such a request?	
			• **Consider whether rule 5.482(d) should include a provision requiring the court, upon approval of a request, to admonish the tribe about the confidentiality of the proceedings?**	The proposal was revised in response to this comment.
			• **ICWA-042, item 2 – If one ICWA-042 form can be used for more than one child ("child or children"), then consider whether the blank box for "CHILD'S NAME" above the title of the form should be changed to "CHILD(REN)'S NAME(S)." Alternatively, consider instructing users to complete a separate form for each child, and change the first line to "The above named <u>child</u> or children are <u>is</u> (select one)."**	The committees considered this comment but declined to make this revision to maintain consistency with the other forms in the ICWA series.

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: August 22, 2023

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

Title of proposal: Rules and Forms: Miscellaneous Technical Changes

*Proposed rules, forms, or standards (*include amend/revise/adopt/approve*):*
Amend rule 8.13, and Appendix B; revise form DV-105, DV-140, DV-500-INFO, DV-505-INFO, and JV-240

Committee or other entity submitting the proposal:
Judicial Council Staff

*Staff contact (*name, phone and e-mail*): Anne M. Ronan, 415-865-8933, anne.ronan@jud.ca.gov*

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

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*
This proposal was not circulated for public comment because it is noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

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

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

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

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

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

Judicial Council *of* California

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-142
For business meeting on September 18–19, 2023

Title
Rules and Forms: Miscellaneous Technical Changes

Rules, Forms, Standards, or Statutes Affected
Amend rule 8.13, and Appendix B; revise form DV-105, DV-140, DV-500-INFO, DV-505-INFO, JV-240

Recommended by
Judicial Council staff
Anne M. Ronan, Supervising Attorney
Legal Services

Agenda Item Type
Action Required

Effective Date
July 1, 2023 and January 1, 2024

Date of Report
August 9, 2023

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

Executive Summary

Various members of the judicial branch, members of the public, and Judicial Council staff have identified errors in the California Rules of Court and Judicial Council forms resulting from input errors, as well as minor changes needed to conform to changes in law or previous council actions. Judicial Council staff recommend making the necessary corrections to ensure that the rules and forms conform to law and to avoid causing confusion for court users, clerks, and judicial officers.

Recommendation

Judicial Council staff recommend that the council, take the following actions:

Effective July 1, 2023:

1. Amend Appendix B of the California Rules of Court to adjust the maximum liability of the parent or guardian having custody and control of a minor for the willful misconduct of the minor, under Civil Code section 1714.1(a) or (b), from $47,100 to $52,700.

Effective January 1, 2024:

2. Amend rule 8.13 to change the cross-reference to the Supreme Court rules in division 5 of title 8, to division 7 of title 8, where the referenced rules are now located.

3. Revise *Request for Child Custody and Visitation Orders* (form DV-105) to add to item 7b "Child's Employment (including volunteer and unpaid positions)," as an option, to make it consistent with the order form (DV-140).

4. Revise *Child Custody and Visitation Order* (form DV-140) to replace an incorrect reference to "DV-105" in item 3, with the correct reference to "DV-140." Additionally, add "county" as an option in item 4, consistent with the request form (DV-105) which allows the requester to ask for a no travel order for specified counties.

5. Revise *Can a Domestic Violence Restraining Order Help Me?* (form DV-500-INFO) to update two hyperlinks to the California self-help guide.

6. Revise *How to Ask for a Domestic Violence Restraining Order* (form DV-505-INFO), to add back "form CLETS-001" under the information in Part 1 as a form that must be completed to request a domestic violence restraining order (this was inadvertently omitted in the last set of revisions to this form), and update a hyperlink to the California self-help guide.

7. Revise *Notice of Request for Approval of Short-Term Residential Therapeutic Program or Community Treatment Facility Without a Hearing* (form JV-240) to delete the first sentence and check boxes in item 3. The changes are technical in nature and necessary to remove content that is duplicative of item 2 and likely to cause confusion because it is not relevant to the information provided in item 3.

The revised appendix, rule, and forms are attached at pages 5–23.

Relevant Previous Council Action

Appendix B is revised by the Judicial Council every second year to reflect changes in the California Consumer Price Index. The council has acted on the other rules and forms previously as well. This proposal addresses minor corrections of items that were inadvertently omitted in the prior actions.

Analysis/Rationale

Appendix B

Civil Code section 1714.1(a) and (b)[1] imputes liability to the parent or guardian having custody and control of a minor for any act of willful misconduct of the minor that results in injury or

[1] All further statutory references are to the Civil Code, unless otherwise indicated.

death to another person, injury to the property of another, or the defacement of the property of another by paint. Both subdivisions state that the maximum liability of the parent or guardian shall not exceed $25,000 for each tort of the minor but note that the maximum amount is subject to subdivision (c). Subdivision (c) requires the Judicial Council to compute an adjustment to the maximum amount every two years to reflect increases in the cost of living, as indicated by the annual average of the CCPI, and to publish the adjusted maximum amounts of liability on or before July 1 of each odd-numbered year.[2]

The formula for determining each adjustment is published in Appendix B to the California Rules of Court, which gives the adjustments and calculations a permanent place for reference.[3] Applying that formula and the annual average of the 2022 CCPI of 285.315, the adjusted liability limit as of July 1, 2021, should be $52,700, as shown in the attached amended Appendix B.[4]

This amendment to Appendix B will be published—as required by section 1714.1(c)—on the California Courts (judicial branch) website, as are all amendments to the California Rules of Court.

Other Recommendations

The changes to the other rules and forms are technical in nature and necessary to correct inadvertent omissions or incorrect references. They are needed to ensure that the rules and forms are correct and conform to the law.

Policy implications

There are no policy implications to this proposal.

Comments

This proposal was not circulated for public comment because the changes are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

None.

[2] Although the required biennial adjustment for 2021 has not yet been adopted, an adjustment effective July 1, 2021, is appropriate because subdivision (d) of Civil Code section 1714.1 provides that the maximum amount of liability is the one so authorized at the time the act of willful misconduct occurred. Any claims for such misconduct occurring after July 1, 2021, are unlikely to have been adjudicated at this time.

[3] A copy of the letter from the Department of Finance setting out the formula for the original adjustment, which has been followed since 1997, is available as Attachment A.

[4] The California Consumer Price Index is published each year by the California Department of Industrial Relations. A copy of the most recent chart is available at *https://www.dir.ca.gov/oprl/CPI/EntireCCPI.PDF*.

Fiscal and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are technical corrections, case management systems are unlikely to need updating to implement them.

Attachments and Links

1. Cal. Rules of Court, Appendix B and rule 8.13, at pages 5–6
2. Forms DV-105, DV-140, DV-500-INFO, DV-505-INFO, and JV-240, at pages 7–23
3. Attachment A: April 21, 1997, letter from Department of Finance, at page 24
4. Link A: California Consumer Price Index, *www.dir.ca.gov/oprl/CPI/EntireCCPI.PDF*

Appendix B of the California Rules of Court is amended, effective July 1, 2023, to read:

Appendix B
Liability Limits of a Parent or Guardian Having Custody and Control of a Minor for the Torts of a Minor (Civ. Code, § 1714.1)

Formula

Pursuant to Civil Code section 1714.1, the joint and several liability limit of a parent or guardian having custody and control of a minor under subdivisions (a) and (b) for each tort of the minor shall be computed and adjusted as follows:

$$\text{Adjusted limit} = \left(\frac{\text{Current CCPI} - \text{January 1, 1995, CCPI}}{\text{January 1, 1995, CCPI}} + 1 \right) \times \text{January 1, 1995, limit}$$

Definition

"CCPI" means the California Consumer Price Index, as established by the California Department of Industrial Relations.

July 1, 20~~21~~23, calculation and adjustment

The joint and several liability of a parent or guardian having custody and control of a minor under Civil Code section 1714.1, subdivision (a) or (b), effective July 1, 20~~21~~23, shall not exceed **~~$47,100~~** **$52,700** for each tort.

The calculation is as follows:

$$\text{~~\$47,081.68~~ \$52,677.23} = \left(\frac{\text{~~285.315~~ 319.224} - 151.5}{151.5} + 1 \right) \times \$25{,}000$$

Under section 1714.1, subdivision (c), the adjusted limit is rounded to the nearest hundred dollars, so the dollar amount of the adjusted limit is rounded to ~~$47,100~~ $52,700.

Rule 8.13 of the California Rules of Court is amended, effective January 1, 2024, to read:

Rule 8.13. Amendments to rules

Only the Judicial Council may amend these rules, except the rules in division ~~5~~ 7, which may be amended only by the Supreme Court. An amendment by the Judicial Council must be published in the advance pamphlets of the Official Reports and takes effect on the date ordered by the Judicial Council.

DV-105 Request for Child Custody and Visitation Orders

Case Number:

This form is attached to form DV-100. *(Use this form to request orders for children you have with the person in (2).)*

(1) Your Information

Name: _____

Relationship to children: ☐ Parent ☐ Legal Guardian ☐ Other *(describe):* _____

(2) Person You Want Protection From

Name: _____

Relationship to children: ☐ Parent ☐ Legal Guardian ☐ Other *(describe):* _____

(3) Children Under 18 Years Old *(list from oldest to youngest)*

a. Name: _____ Date of birth: _____

b. Name: _____ Date of birth: _____

c. Name: _____ Date of birth: _____

d. Name: _____ Date of birth: _____

☐ *(Check here if you need more space. Write "DV-105, Children" at the top and attach it to this form.)*

(4) City and State Where Children Lived

a. Have all the children listed in (3) lived together for the last five years?

☐ Yes *(Complete section 4b.)*

☐ No *(If no, do not complete the section below. Instead, use form DV-105(A)).*

b. List where the child or children have lived for the last five years. Start with their current location.

Dates (month/year)	City, State, and Tribal Land	Children lived with *(check all that apply):* Me	Person in (2)	Other*
From: _____ To present	_____ ☐ Check here if you want to keep your current location private. List the state only.	☐	☐	☐
From: _____ Until: _____	_____	☐	☐	☐
From: _____ Until: _____	_____	☐	☐	☐
From: _____ Until: _____	_____	☐	☐	☐
From: _____ Until: _____	_____	☐	☐	☐
From: _____ Until: _____	_____	☐	☐	☐
From: _____ Until: _____	_____	☐	☐	☐

Other* *(relationship to child):* _____

This is not a Court Order.

5 History of Court Cases Involving Your Children

a. Do you know about any other case involving any child listed in 3?

☐ No

☐ Yes *(If yes, complete section below.)*

(Check all that apply. List where it was filed (city, state, or tribe), year it was filed, and case number, if known.)

☐ Custody _____

☐ Divorce _____

☐ Juvenile Court *(child welfare, juvenile justice)* _____

☐ Guardianship _____

☐ Criminal _____

☐ Other *(example: child support case)* _____

b. Is there a current order for custody or visitation in effect?

☐ No

☐ Yes *(Complete the section below.)*

What did the judge order? *(Examples: who has custody of the children and what is the visitation schedule)*

_____

_____

_____

_____

_____

(Attach a copy of the order, if you have one.)

Why do you want to change the order?

_____

_____

_____

_____

_____

c. If there is another parent or legal guardian besides you and the person in 2, complete the section below.

Name: _____ ☐ Parent ☐ Legal Guardian

This is not a Court Order.

Orders a Judge Can Make to Protect Your Children

To ask for orders to protect your children, answer the questions below.

6 Do you want to limit where the person in 2 can travel with your children?

☐ No

☐ Yes *(Complete the section below):*

I ask the judge to order that the person in 2 must have written permission from me, or a court order, to take the children outside:

☐ The county of *(list):* _____

☐ California

☐ Other places *(list):* _____

7 Do you want the person in 2 to have access to the children's records or information?

☐ Yes

☐ No *(Complete the section below):*

a. I ask the judge to order that the person in 2 **not** access or have access to the records or information for:

☐ All the children listed in 3.

☐ Only the children listed here *(names):* _____

b. For the following records or information *(check all that apply):*

☐ Medical, dental, and mental health

☐ School and daycare

☐ Extracurricular activity, including summer camps and sports teams

☐ Child's employment (including volunteer and unpaid positions)

☐ Other *(describe):* _____

(If the judge makes this order, providers will not be able to release the protected information to the person in 2.)

8 Do you believe the person in 2 might abduct (kidnap) your children?

☐ No

☐ Yes (To ask for orders to help prevent abduction, you must complete form DV-108, *Request for Orders to Prevent Child Abduction,* and attach it to this form.)

This is not a Court Order.

Child Custody

You can ask a judge to make custody orders for your children. There are two types of custody in California: legal and physical custody.

- **Legal custody** means the person that makes decisions about the child's health, education, and welfare.
- **Physical custody** means the person that the child regularly lives with.

For both types of custody, parents can share custody (joint) or one parent can have full custody (sole).

9 Do you want the judge to make child custody orders?

☐ No

☐ Yes *(Complete the section):*

Legal Custody *(check one):*

☐ Sole to me
☐ Sole to person in 2
☐ Jointly (shared) by me and person in 2.
☐ Other *(describe):*

_____

Physical Custody *(check one):*

☐ Sole to me
☐ Sole to person in 2
☐ Jointly (shared) by me and person in 2.
☐ Other *(describe):*

_____

Visitation (Parenting Time) with Children

You can ask a judge to make decisions about when your child spends time with the person in 2. This is called parenting time or visitation. It means the schedule and exact times each parent spends with the child. If a parent does not get custody, that parent can have parenting time with the child if a judge believes it is safe and in the child's best interest. Answer the questions below to tell the judge what parenting time you want right now for person in 2. Any orders the judge makes are temporary for now. They last until the court date (about three weeks away). On your court date, the judge can change or extend the orders.

10 Do you want the person in 2 to have visits (parenting time) with the children?

☐ No, I ask the judge to order that person in 2 have no visits. (*Stop here. You have finished completing this form.*)

☐ Yes (*Go to* 11.)

11 Do you want visits with the children to be supervised (monitored) by a third-party?

(To learn about supervised visitations, go to: *https://selfhelp.courts.ca.gov/guide-supervised-visitation*.)

☐ Yes (*Go to* 12.)

☐ No (*Go to* 13.)

12 Details of Supervised (Monitored) Visits

(Complete a and b):

a. Who do you want to supervise the visits?

(Check one):

☐ Nonprofessional, like a trusted relative or friend *(list name, if known):* _____

☐ Professional *(list name, if known):* _____

Professional fees paid by: Me ____ % Person in 2 ____ % Other: _____ ____ %

b. How often and how long should the visits be?:

(Check one):

☐ Once a week, for *(number of hours):* _____

☐ Twice a week, for *(number of hours):* _____ each visit.

☐ Other *(describe):* _____

☐ Check here if you want to use the chart listed below for a schedule.

Schedule for Supervised Visits

*(List the days and times the **person in** 2 should visit with the children.)*

	Time	Person to bring children to and from visit	Location of drop-off/pick-up
Monday	Start:		
	End, if applies:		
Tuesday	Start:		
	End, if applies:		
Wednesday	Start:		
	End, if applies:		
Thursday	Start:		
	End, if applies:		
Friday	Start:		
	End, if applies:		
Saturday	Start:		
	End, if applies:		
Sunday	Start:		
	End, if applies:		

Follow the schedule listed above *(check one):*

☐ Every week ☐ Every other week ☐ Other _____

Start date for visits *(month, day, year)* _____

(! If you completed 12, you are done completing this form. Do not complete 13.)

Case Number:

13 Details of Unsupervised Visits

(Complete a and b):

a. If the judge allows the person in (2) to have unsupervised visits with your children, you will have to tell the judge how you want to handle drop-off and pick-up of the children, also called child exchanges. Do you want child exchanges to be supervised by a third-party?

☐ No

☐ Yes *(Complete the section below):*

Who do you want to supervise the exchanges? *(Check one):*

☐ Nonprofessional, like a trusted relative or friend *(list name, if known):* _____

☐ Professional *(list name, if known):* _____

Professional fees paid by: Me ____ % Person in (2) ____ % Other: _____ ____ %

b. Describe the parenting time you want the person in (2) to have with the children.

(Use the lines **or** chart below to explain what days and times the person in (2) should visit with the children. Give details including when visits will happen, how often the visits should be, and who will be responsible for transporting the children.)

_____

_____

_____

Schedule for Unsupervised Visits

	Time	Person to bring children to and from visit	Location of drop-off/pick-up
Monday	Start:		
	End, if applies:		
Tuesday	Start:		
	End, if applies:		
Wednesday	Start:		
	End, if applies:		
Thursday	Start:		
	End, if applies:		
Friday	Start:		
	End, if applies:		
Saturday	Start:		
	End, if applies:		
Sunday	Start:		
	End, if applies:		

Follow the schedule listed above *(check one):*

☐ Every week ☐ Every other week ☐ Other _____

Start date for visits *(month, day, year)* _____

DV-140 Child Custody and Visitation Order

Case Number:

This form is attached to *(check one):* ☐ DV-110 ☐ DV-130

1 Name of Protected Person: _____

Relationship to children: ☐ Parent ☐ Legal Guardian ☐ Other *(describe):* _____

2 Name of Restrained Person: _____

Relationship to children: ☐ Parent ☐ Legal Guardian ☐ Other *(describe):* _____

3 ☐ Children Under 18 Years Old

a. Name: _____ Date of birth: _____
b. Name: _____ Date of birth: _____
c. Name: _____ Date of birth: _____
d. Name: _____ Date of birth: _____

☐ (Check here if you have more children to list. On a separate piece of paper write "DV-140, Children" at the top and attach it to this form.)

4 ☐ No Travel With Children Without Permission

☐ Person in 1 ☐ Person in 2 ☐ Other *(name):* _____

must have written permission from the other parent, or a court order, to take the children outside of:

a. ☐ County of *(list):* _____
b. ☐ State of California
c. ☐ United States
d. ☐ Other place(s) *(list):* _____

5 ☐ Stop Access to Children's School, Health, and Other Information

a. The person in 2 must not access or have access to the records or information for:
   ☐ All the children listed in 3.
   ☐ Only the children listed here *(names):* _____

b. From the following *(check all that apply):*
   ☐ Medical, dental, and mental health providers
   ☐ School and daycare providers
   ☐ Extracurricular activity providers, including summer camps and sports teams
   ☐ Child's employers (including volunteer and unpaid positions)
   ☐ Other *(describe):* _____

If you are a provider listed above, you must not release information or records regarding the children listed in 5a to the person in 2.

This is a Court Order.

6 ☐ **Judge's Decision on Request for Orders to Prevent Child Abduction** *(attach form DV-145)*

7 ☐ **Child Custody**

a. Legal Custody *(The person that makes decisions about the child's health, education, and welfare.)*
☐ Sole to Person in (1) ☐ Jointly (shared) by persons in (1) and (2).
☐ Sole to Person in (2) ☐ Other *(describe):* _____

b. Physical Custody *(The person that the child regularly lives with.)*
☐ Sole to Person in (1) ☐ Jointly (shared) by persons in (1) and (2).
☐ Sole to Person in (2) ☐ Other *(describe):* _____

c. If the judge granted sole or joint custody to the person in (2), the judge must explain why.
(For judge to complete. Check all that apply):
☐ Judge's reasons given at the hearing *(See minute order or ask for the transcript.)*
☐ Judge's reasons listed here: _____

8 ☐ **Person in (2) must have no visitation with children until further order of the court.**
(If this form is attached to form DV-110, *Temporary Restraining Order*, this means that the judge has stopped your right to visit with your children temporarily. If you do not agree with this order, attend your court hearing.)

9 ☐ **Supervised (Monitored) Visitation with Children**

a. Person to be supervised: ☐ Person in (1) ☐ Person in (2) by:
☐ Nonprofessional *(name and relationship to child, if known):* _____
☐ Professional *(name, if known):* _____
(1) Fees paid by: Person in (1) ____ % Person in (2) ____ % Other: _____ %
(2) Person in (1) contact provider by *(date):* _____
Person in (2) contact provider by *(date):* _____

b. Provider's contact information, if known
Address: _____ Telephone: _____

c. Schedule of supervised visits
(1) ☐ Once a week, for *(number of hours):* _____
(2) ☐ Twice a week, for *(number of hours):* _____ each visit.
(3) ☐ Follow the Visitation Schedule listed in (12).
(4) ☐ Other schedule *(describe):* _____

This is a Court Order.

10 ☐ Supervised (Monitored) Child Exchanges *(Use item 11 to describe visitation schedule.)*

a. Person to be supervised: ☐ Person in 1 ☐ Person in 2 by:

☐ Nonprofessional *(name and relationship to child):* _____

Safe location for exchanges: _____

(For more information on safe locations, go to *https://selfhelp.courts.ca.gov/guide-supervised-visitation*.)

☐ Professional *(list name, if known):* _____

(1) Fees paid by: Person in 1 ____ % Person in 2 ____ % Other: _____ ____ %

(2) Person in 1 contact provider by *(date):* _____
Person in 2 contact provider by *(date):* _____

(3) Location of exchanges to be decided by provider.

b. Provider's contact information, if known:
Address: _____ Telephone: _____

11 ☐ Visits With No Supervision (Unmonitored)

a. If the judge granted unsupervised visits to the person in 2, the judge must explain why.

(For judge to complete. Check all that apply):

☐ Judge's reasons given at the hearing *(See minute order or ask for the transcript.)*

☐ Judge's reasons listed here: _____

b. ☐ Person in 1 ☐ Person in 2 will visit with the children as follows:

(1) ☐ Visitation schedule described below:

(2) ☐ Follow the Visitation Schedule listed in 12 .

This is a Court Order.

12 ☐ Visitation Schedule for Person in 2

	Time	Person to bring children to and from visit	Location of drop-off/pick-up
Monday	Start:		
	End, if applies:		
Tuesday	Start:		
	End, if applies:		
Wednesday	Start:		
	End, if applies:		
Thursday	Start:		
	End, if applies:		
Friday	Start:		
	End, if applies:		
Saturday	Start:		
	End, if applies:		
Sunday	Start:		
	End, if applies:		

Follow the schedule listed above *(check one):*
☐ Every week ☐ Every other week ☐ Other _____

Start date for visits *(month, day, year)* _____

13 ☐ Other Orders

(Describe additional orders or refer to an attachment (e.g., FL-341(C), Children's Holiday Schedule Attachment)):

_____

_____

14 Country of Habitual Residence

The country of habitual residence of the child or children in this case is ☐ The United States or ☐ Other *(specify):* _____.

15 Jurisdiction and Notice

This court has jurisdiction to make child custody orders in this case under the Uniform Child Custody Jurisdiction and Enforcement Act (part 3 of the California Family Code starting with section 3400). The responding party was given notice consistent with the laws of the State of California.

16 Penalties for Violating This Order

If you violate this order, you may be subject to civil or criminal penalties, or both.

This is a Court Order.

DV-500-INFO Can a Domestic Violence Restraining Order Help Me?

What is a "domestic violence restraining order"?

It is a court order that can help protect people who have been abused by someone they've had an intimate relationship with, are closely related to, or have lived with as more than just roommates.

How can a restraining order help me?

A judge can order the restrained person to:

- Not contact you, your children or relatives, or people you live with;
- Stay away from you, your children or relatives, or people you live with, your home, your job, etc.;
- Not have any firearms (guns, including "ghost guns"), firearm parts, or ammunition;
- Move out of a home that you live in;
- Obey child custody and visitation orders;
- Pay child support;
- Pay spousal support;
- Pay debt for property; and
- Give you control of property (examples: cell phone, car, home).

Does this request cost money to file?

No, filing this request with the court is free.

How long can a restraining order last?

If the judge makes a temporary order, it will last until your hearing date (court date). Your hearing is usually three weeks after you turn in your court papers. At your hearing, the judge will decide whether to grant you a long-term restraining order that can last up to five years.

How soon can I get the order?

If you decide to ask for a restraining order, you will need to complete court papers. Once you turn in your court papers, a judge will decide the same day or next business day on whether to grant you a temporary restraining order.

How old must I be to ask for one?

To ask for a restraining order on your own, you must be 12 years old or older. In some cases, the judge may ask that an adult (someone 18 years old or older), like a trusted relative, help you in your case.

What if I don't have a green card?

You can get a restraining order even if you are not a U.S. citizen. If you are worried about deportation, you may want to talk with an immigration lawyer.

Can a restraining order protect my children?

Yes, you can ask the judge to protect your children. If you are asking for a restraining order against someone you have children with, you can also ask the judge to make child custody and visitation orders. And if you think that the other parent might abduct (kidnap) your children, you can ask for orders to prevent kidnapping.

Can I use a restraining order to get divorced or terminate a registered domestic partnership?

No. These forms will not end your marriage or registered domestic partnership. You must file other forms to end your marriage or registered domestic partnership.

DV-500-INFO Can a Domestic Violence Restraining Order Help Me?

Am I eligible?

To qualify for a domestic violence restraining order, you must have a (1) required relationship and (2) show that the person you want a restraining order against has been abusive.

Required relationship

- Your spouse, ex-spouse, registered domestic partner, or ex-registered domestic partner;
- Someone you have a child with;
- Your parent, child, sibling, or grandparent (includes in-laws and step relationships);
- Someone you live with or used to live with (more than just roommates);

Abuse

Abuse can be spoken, written, or physical. It can be physical, sexual, or emotional. It includes threats to harm you or your family, stalking, harassment, destroying personal property, repeated contact, and disturbing the peace.

What does disturbing the peace mean?

It means to destroy someone's mental or emotional calm. Disturbing the peace includes coercive control**.** Coercive control means a number of acts that unreasonably limit the free will and individual rights of any person**.** Examples include:

- Isolating someone from their friends, relatives, or other support;
- Keeping them from food or basic needs;
- Controlling or keeping track of them, including their movements, contacts, actions, money, or access to services;
- Threats to immigration status;
- Making them do something that they don't want to do; and
- Controlling or interfering with someone's contraception (birth control, condoms); pregnancy or ability to become a parent; or access to health information.

What if I don't qualify for a domestic violence restraining order?

There are other kinds of restraining orders you can ask for. Here are some examples:

- Civil harassment order (can be used for neighbors, roommates, cousins, uncles, and aunts).
- Dependent adult or elder abuse restraining order (if you are at least 65 or a dependent adult).
- Gun violence restraining order (to prevent someone from hurting themselves or others with a firearm).

Note that all restraining orders include a firearms and ammunition restriction. A gun violence restraining order gives limited protection because it only restrains the person from having firearms and ammunition. To learn more about other kinds of restraining orders, go to: *https://selfhelp.courts.ca.gov/restraining-orders.*

How do I ask for a domestic violence restraining order?

See form DV-505-INFO, *How to Ask for a Domestic Violence Restraining Order*. The forms are available online at *www.courts.ca.gov/forms*. If you want a paper copy, go to any California courthouse. You can also check with your county's law library.

Will I have a court hearing (court date)?

Yes. The court will give you a day and time to attend court. If you want to attend court remotely (by phone or videoconference), go to the court's website to find out how to attend remotely. To learn more about what to expect at your hearing, read form DV-520-INFO, *Get Ready for Your Restraining Order Court Hearing*, or go to: *https://selfhelp.courts.ca.gov/DV-restraining-order/prepare-court-date*.

Do I need a lawyer to make this request?

No, but this type of request can be hard to get through on your own. Free help may be available at your local court's self-help center. (See below.)

Where can I find a self-help center?

Find your local court's self-help center at *www.selfhelp.courts.ca.gov/find*. Self-help center staff will not act as your lawyer but may be able to give you information to help you decide what to do in your case, and help you with the forms.

What if I need an interpreter?

If you decide to ask for a restraining order, you will need to talk to a judge. If you need an interpreter, use form INT-300 to request an interpreter or ask the court clerk how you can request one.

I have a disability. How can I get help?

You may use form MC-410 to request assistance. Contact the disability or ADA coordinator at your local court for more information.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms.htm* for *Disability Accommodation Request* (form MC-410). (Civil Code section 54.8.)

Confidential Address Program

If you are a victim of domestic violence or live with a victim of domestic violence, there is a special program called Safe At Home that you can apply for. It is a free program that would help you keep your address private. To learn more about the program, go to: *https://www.sos.ca.gov/registries/safe-home/*. Note that it may take several weeks to be approved.

For more information on other steps of the process

- Form DV-505-INFO, *How to Ask for a Domestic Violence Restraining Order*
- Form DV-200-INFO, *What Is "Proof of Personal Service"?*
- Form DV-520-INFO, *Get Ready For Your Restraining Order Court Hearing*
- Form DV-530-INFO, *How to Enforce Your Restraining Order*

Information about the court process is also available online

https://selfhelp.courts.ca.gov/DV-restraining-order/process.

Where can I find other help?

The National Domestic Violence Hotline provides free and private safety tips. Help is available every day, 24 hours a day, and in over 100 languages. Visit online at *www.thehotline.org* or call 1-800-799-7233; 1-800-787-3224 (TTY).

DV-505-INFO How to Ask for a Domestic Violence Restraining Order

Part 1: Complete court forms

You will need to complete at least three forms to ask for a domestic violence restraining order:

Required forms:

- Form DV-100;
- Form DV-109;
- Form DV-110; and
- Form CLETS-001.

Optional forms:

If you have a child or children with the other side, you can ask for additional protection, like child custody orders. To make these requests, you must complete two more forms:

- Form DV-105; and
- Form DV-140.

If you want to ask for child support or spousal support, make the request on form DV-100 (see item 24 or 25) and complete one more form:

- Form FL-150.

Most court forms are public documents. What does "public" mean?

When you file papers with the court, those papers become "public." This means that anyone may ask the court to see the information you put on your papers. Also, the person you are asking for protection from will see all the information on your court papers, because you will have to have these papers personally delivered to the them. This is called "personal service," and more information is available on form DV-200-INFO, *What Is "Proof of Personal Service"?*

How old must I be to ask for my own restraining order against someone?

To ask for a restraining order, you must be 12 years old or older. In some cases, the judge may ask that an adult (someone 18 years old or older), like a trusted relative, help you in your case.

Tips for completing form DV-100

Required relationship

At item 3, you must have one of the listed relationships between you and the person you want protection from. If none apply, go to *https://selfhelp.courts.ca.gov/restraining-orders*. for information on other types of restraining orders you might qualify for.

Describe the abuse

At items 5–7, you must describe the abuse that happened. This part is important, because a judge will decide whether to give you a restraining order based on the information you give. For more information of what abuse means under the law, see form DV-500-INFO, *Can A Domestic Violence Restraining Order Help Me?*

I don't want people to see my address

You may not want someone to be able to see certain information, like your address. You do not have to give the address to where you live on form DV-100, item 1. You can use a different address, like a friend's address or P.O. box. Just be sure to get the person's permission to use their address first, because any papers the court or other side mails to you will go to the address you list in item 1. And make sure that person will tell you right away if you get mail from the court.

I don't want people to see information I provide about a child (minor)

You can ask the court to make some of the information you provide about a child private (confidential). If the court makes information about a child private, the public will not be able to see this information on your court papers. See form DV-160-INFO for help with asking the court to make a child's information private.

What if the other side has firearms (guns) or ammunition?

In item (9), list information you have about any firearms (guns), firearm parts, or ammunition that the other side might own or have access to. This information is important to the judge. The judge can notify law enforcement about any firearms, including illegal or untraceable firearms called “ghost guns.” Once notified, law enforcement must do what they can to get the firearms if there is a restraining order in place.

What does "Other orders" (item (14)) mean?

This section allows you to make any special requests that you need to prevent more abuse by the other side.

What is the difference between "Pay Debts Owed for Property (item (22)) and "Pay Expenses Caused by the Abuse (item (23))?

If you want the other side to pay a debt owed for property, like a car or mortgage, you can make this request at item (22). If you want the other person to pay you back for damage that happened because of their abuse, like breaking your cellphone or for medical bills, you can make this request at item (23).

What is "Spousal Support" (item (25))?

If you are married to the person you want protection from or in a registered domestic partnership, you can ask a judge to order them to pay you spousal support. The amount of spousal support depends on different factors, including how much you make versus how much the other side makes. It is important to know that in California, you cannot get spousal support for "common law" marriages, where parties have lived like a married couple but never legally married. California does not recognize "common law" marriage.

What is a "Batterer Intervention Program" (item (27))?

In most cases, it is a year-long program that helps a person recognize abusive behavior so that they will stop the abuse. Unlike anger management programs, the goal of batterer intevention programs is to stop a person from using power and control in their relationships. If ordered to complete the program by a judge, the restrained person will have to pay program fees. The program will keep track of progress and attendance.

Part 2: File your court papers

Filing is when you turn in your completed court papers to the court. To file your court papers, you can call the court clerk to see find out which courthouse to go to. If you want to file online (e-file), check your local court's website for more information. To find your local court or their website, go to:

www.courts.ca.gov/find-my-court.htm.

Part 3: Get your papers from court

After you turn in your court papers, you will need to get them back from the court. Your papers will be ready the same day or the next business day. Ask the court clerk when your court papers will be ready. You may have to return to the courthouse to pick up your papers if the court cannot return them to you electronically. Look at your papers to see if the judge granted you a temporary restraining order, on form DV-110.

- If the judge **granted** you temporary protection and you want it to last longer, make sure you attend your court hearing (listed on form DV-109).
- If the judge **did not** grant you a temporary restraining order, the judge can grant you a restraining order at your court hearing (listed on form DV-109).

Part 4: Have someone serve your papers

You must have an adult personally give a copy of all your court papers to the person you want a restraining order against. It cannot be you or anyone listed on the restraining order. Serving papers can be a dangerous situation. If you want the sheriff to serve your papers, they will do so for free. For more information on service, read form DV-200-INFO, *What Is "Proof of Personal Service"?*

Part 5: Get ready for and go to your court hearing

At your court hearing, the judge will decide whether to grant you a long-term restraining order that can last up to five years. You have the option of attending your hearing in-person or remotely (by phone, or videoconference if available). For information on how to attend your hearing remotely, go to the court's website. Some courts may require advance notice. At the hearing, you and the other side will have the opportunity to tell your side of the story. For more information, read form DV-520-INFO, *Get Ready for the Restraining Order Court Hearing*. If you need more time to prepare your case, you may ask for a new court date. Read form DV-115-INFO, *How to Ask For a New Hearing Date*, for more information.

Information about the process is also available online

https://selfhelp.courts.ca.gov/DV-restraining-order/process.

Where can I find free help?

Free legal help is available at your court's self-help center. Find your local court's self-help center at *www.selfhelp.courts.ca.gov/find*. Self-help center staff will not act as your lawyer but may be able to give you information to help you decide what to do in your case, and help you with the forms. Staff may also refer you to other agencies who may be able to help you.

What if I am worried about my safety?

The National Domestic Violence Hotline provides free and private safety tips. Help is available every day, 24 hours a day, and in over 100 languages. Visit online at *www.thehotline.org* or call 1-800-799-7233; 1-800-787-3224 (TTY).

JV-240

Notice of Request for Approval of Short-Term Residential Therapeutic Program or Community Treatment Facility Without a Hearing

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Important: The agency listed in (1) has asked the judge to approve a placement for a child or nonminor dependent. If you do not agree to the placement listed in (2), you must file form JV-236, *Input on Placement in Short-Term Residential Therapeutic Program or Community Treatment Facility*. If you have a lawyer, talk to your lawyer right away if you do not agree with the placement.

Fill in court name and street address:

Superior Court of California, County of

(1) Agency requesting review: _____

Name of person filing the form: _____

Title of person filing the form: _____

Address: _____

Phone: _____

Fill in child's/nonminor's name and date of birth:

Child's/Nonminor's name:

Child's/Nonminor's date of birth:

Court fills in case number when form is filed.

Case Number:

(2) Placement of child or nonminor dependent

a. Name of placement: _____

b. This is a *(check one):*

☐ short-term residential therapeutic program.

☐ community treatment facility.

c. Date of placement: _____

(3) The agency listed in (1) has asked the judge to approve the placement without a court hearing. If you do not agree to the placement listed in (2), you must file form JV-236. If you do not file form JV-236, the court hearing currently scheduled for *(date of court hearing):* _____ may be canceled.

(4) Signature of agency representative

Date: _____

_____
Name of agency representative

▶ _____
Signature of agency representative

DEPARTMENT OF FINANCE
915 L STREET
SACRAMENTO, CA 95814-3706

CO-97-07

Attachment A

April 21, 1997

Ms. Cara Vonk
Judicial Council of California
Administrative Office of the Courts
303 Second Street, South Tower
San Francisco, CA 94107

Dear Ms. Vonk,

The updated number calculated in accordance with Civil Code section 1714.1 subdivision c is $25,900.00. Proper escalation procedure divides the difference of the end-of-period number and the beginning-of-period number by the beginning-of-period number. Next add one and multiply by the original number in this case $25,000.00.

The California Consumer Price Index (CCPI) formula is established by the Department of Industrial Relations (DIR). The Department of Finance, using the DIR formula for the CCPI, calculates the January 1, 1995 CCPI as 151.5, for January 1, 1996 (154.0), and for January 1, 1997 (157.1). The calculation rests on the assumption that the figure of $25,000.00 originates January 1, 1995 as you stated in our conversation this morning.

$$25{,}925.00 = \left[\frac{(157.1 - 151.5)}{151.5} + 1\right] x 25{,}000.00$$

Subdivision c requires the number to be rounded to the nearest one hundred dollars producing $25,900.00. My phone number is (916) 322-2263 x2423; where I can be reached to answer to any questions. I have included CCPI data tables for purposes of documentation.

Sincerely

Jason Barnhart