Judicial Council of California
Rules Committee

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

RULES COMMITTEE

MINUTES OF OPEN VIDEOCONFERENCE MEETING

Thursday, April 10, 2025
12:10 – 1:40 p.m.

Rules Committee Members Present:	Hon. Carin T. Fujisaki (Chair), Hon. Joan K. Irion (Vice-chair), Hon. Khymberli S. Apaloo, Hon. Bunmi O. Awoniyi, Hon. Charles S. Crompton, Hon. Ryan Davis, and Mr. Charles Johnson
Rules Committee Members Absent:	Ms. Kate Bieker, Hon. Ricardo R. Ocampo, Mr. Craig M. Peters, and Mr. Maxwell V. Pritt
Rules Committee Staff Present:	Mr. James Barolo, Mr. Eric Long, and Ms. Benita Downs
Advisory Bodies Chair(s) and Staff Present	Deirdre Benedict, Tony Cheng, Sarah Fleischer-Ihn, Jenny Grantz, Anne Hadreas, Frances Ho, Sarah Jacobvitz, Stephanie Lacambra, Paarth Malkan Sarah Saria, Gabrielle Selden, Marino Soto, Corby Sturges, and Jeremy Varon
Other JC Staff Present	Kristin Burford, David Caldwell, Art Dirk, Audrey Fancy, Michael Giden Donna Ignacio, Anna Maves, Maddie Orcutt, Lollie Roberts, Leah Rose-Goodwin, Christy Simon, and Greg Tanaka

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:11 p.m., and Ms. Downs took roll call.

Approved minutes of the March 13, 2025, meeting.

DISCUSSION AND ACTION ITEMS (ITEMS 01–22)

APPELLATE

Invitation to Comment–Recommend Circulation for Comment

Item 01/SPR25-01

Remote Appearances at Oral Argument in the Appellate Division

The committee reviewed a proposal from the Appellate Advisory Committee to update the rules regarding oral argument in the appellate division to reflect modern videoconferencing technology and facilitate remote participation by both parties and appellate division judges. 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 23, 2025.

Item 02/SPR25-02

Appellate Procedure: Extension of Time in Misdemeanor and Infraction Appeals

The committee reviewed a proposal from the Appellate Advisory Committee to approve a new form for requesting extensions of time to file a brief in misdemeanor and infraction appeals. The proposal originated with a suggestion from the former Chief Justice's Appellate Caseflow Workgroup and a committee member.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

CIVIL

Invitation to Comment–Recommend Circulation for Comment

Item 03/SPR25-03

Rules and Forms: Comprehensive Adjudications of Groundwater Rights

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee to amend the rule that designates certain case types as provisionally complex to include comprehensive groundwater adjudications, along with adopting a rule setting out the procedure by which the presiding judge of the court of a county overlying the groundwater basin at issue can request that the Chair of the Judicial Council assign a judge to adjudicate the dispute.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 04/SPR25-04 (joint with the Court Executives Advisory Committee)

Rules and Forms: New Case Categories for Civil Case Cover Sheet

The committee reviewed a joint proposal from the Civil and Small Claims Advisory Committee and the Court Executives Advisory Committee to add new case categories and case types to Civil Case Cover Sheet (form CM-010). The addition of the comprehensive groundwater adjudication case type is to be consistent with Code of Civil Procedure section 838(b) and the concurrent amendment to rule 3.400. The addition of the Asbestos and Employment Development Department (EDD) case categories will fulfill new data reporting requirements in an upcoming version of the Judicial Branch Statistical Information System (JBSIS) and eliminate manual data reporting by courts.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 05/SPR25-05

Civil Practice and Procedure: Deadlines for Motions to Certify or Decertify a Class

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee to amend California Rules of Court, rule 3.764 to lengthen each of the briefing deadlines for motions to certify or decertify a class or to amend or modify an order certifying a class. The proposal aims to address concerns that the deadline for filing a reply provides insufficient time for courts to review the briefing prior to the hearing. The concerns were raised by a superior court judge who regularly hears such motions.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 06/SPR25-06

Civil Practice and Procedure: Implementation of Assembly Bill 2837

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee to adopt three forms and to revise thirteen forms to implement Assembly Bill 2837 (Stats. 2024, ch. 514) which made numerous changes to the laws regarding enforcement of judgment, including a new requirement to verify the judgment debtor's address before the sheriff can serve papers related to enforcement of a judgment for personal debt; changes to the start of the earnings withholding period; and new requirements for orders on claims of exemption from enforcement of judgment.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 07/SPR25-07

Civil Practice and Procedure: Form Revisions to Reflect the Repeal of COVID-19 Legislation

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee to revise five forms and to revoke ten forms to implement Assembly Bill 2347 (Stats. 2024, ch. 512), which changed the deadline to respond to a summons in unlawful detainer proceedings and other summary proceedings for obtaining possession of real property.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 08/SPR25-08

Civil Practice and Procedure: Amendment of the Collections Case Rule

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee to amend the monetary limit in California Rules of Court, rule 3.740, which governs collections cases, to match the

current jurisdictional limit for limited civil cases, which was recently raised by Senate Bill 71 (Stats. 2023, ch. 861) to $35,000 effective January 1, 2024. The committee also proposed amending the rule's time for service and default judgment provisions.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 09/SPR25-09

Civil Practice and Procedure: Confidential Information Form for Doxing Cases

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee to revise one form to allow plaintiffs in doxing cases to use a pseudonym, as required by law.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 10/SPR25-10

Civil Practice and Procedure: Authorization to Appear on Behalf of a Party in Small Claims Cases (Revise form SC-109)

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee to revise form SC-109 to ensure it fully complies with Code of Civil Procedure section 116.540, which allows others to appear in small claims court on behalf of the plaintiff or defendant in certain circumstances.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

CRIMINAL

Invitation to Comment–Recommend Circulation for Comment

Item 11/SPR25-11

Criminal Law: Findings and Orders for Pretrial Release or Detention

The committee reviewed a proposal from the Criminal Law Advisory Committee to approve a new form for optional use to assist courts with making appropriate findings and orders for pretrial release or detention as articulated in In re Humphrey (2021) 11 Cal.5th 135.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 12/SPR25-12

Criminal Law: Implementation of Recent Legislation Regarding Criminal Protective Orders

The committee reviewed a proposal from the Criminal Law Advisory Committee to repeal a rule of court, to revise three existing criminal protective order forms, and to approve four new forms and an information sheet. The committee also proposed the adoption of a new confidential California Law Enforcement Telecommunications System form for use with criminal protective orders, and amending California Rules of Court, rule 1.51 to require prosecuting agencies to use the form.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 13/SPR25-13

Criminal Law: Mental Competency Proceedings

The committee reviewed a proposal from the Criminal Law Advisory Committee to adopt California Rules of Court, rule 4.132, to amend rule 4.130, to amend rule 4.131, and to renumber former rule 4.131 as new rule 4.133 to implement legislative changes, as well as additional amendments to clarify procedures, remove language duplicative of statute, and improve organization, clarity, and concision.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 14/SPR24-14

Criminal Law: Findings and Orders Regarding Prohibited Items While on Diversion

The committee reviewed a proposal from the Criminal Law Advisory Committee to approve a new order form for optional use to assist courts with making the appropriate findings and orders prohibiting a defendant from owning or possessing firearms, other deadly weapons, and ammunition while on mental health or military diversion. The initial request for a form memorializing the court's findings came from the Department of Justice, Division of Law Enforcement, Bureau of Firearms.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

FAMILY AND JUVENILE

Invitation to Comment–Recommend Circulation for Comment

Item 15/SPR25-15

Family Law: Rules and Forms to Determine Parental Relationship Based on Gestational Carrier Agreement

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee to adopt six forms for mandatory use and to approve five forms for optional use in a new form series for parties (intended parents) who conceive a child with a surrogate (a gestational carrier) under the terms of a gestational carrier agreement (also called "an assisted reproduction agreement for gestational carriers") and then seek a judgment in family court determining a parental relationship under Family Code sections 7960–7962. The committee also proposed the adoption of a new rule of court, amending several rules of court, repealing one rule, and revising three forms specific to gestational surrogacy cases. The proposal originated from judicial officers and attorneys who shared their ideas for uniform and streamlined rules and forms, specific to gestational surrogacy cases, that would increase efficiencies in processing these cases for the benefit of family court judges, court clerks, the parties, and their attorneys.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 16/SPR25-16

Family Law: Standards for Computer Software Used to Assist in Determining Support

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee to amend California Rules of Court, rule 5.275, which provides standards for computer software used to assist in determining child support and spousal support. The action is necessary to bring the rule into conformity with existing law as well as with Family Code provisions related to additional child support that were amended, effective September 1, 2024, by Senate Bill 343 (Stats. 2023, ch. 213). The proposal also would update terminology and clarify language relating to (1) computer hardware and software and (2) guideline calculator software testing and certification.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 17/SPR25-17

Juvenile Law: Retention of Jurisdiction and Petitions Requesting Juvenile Case Files of Deceased Children

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee to adopt one rule of the California Rules of Court, to amend three rules of court, to approve one form, to adopt six forms, and to revise six forms to implement Assembly Bill 1756 (Stats. 2023, ch. 478, § 62) and Senate Bill 1161 (Stats. 2024, ch. 782, § 12), and to clarify the different legal standards for petitions seeking

release of a delinquency file or living child's juvenile dependency case file under Welfare and Institutions Code section 827(a)(1)(Q) and a deceased child's juvenile dependency case file under section 827(a)(2).

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 18/SPR25-18

Juvenile Law: Racial Justice Act Forms

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee to approve five new forms to assist litigants and juvenile courts with claims under the Racial Justice Act.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 19/SPR25-19

Juvenile Law: Sex Offender Registration

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee to revise Information on Filing a Petition to Terminate Juvenile Sex Offender Registration (form JV-915-INFO) to correct legally inaccurate statements in the form. The form currently states that the Department of Justice determines the registration tier for individuals required to register due to a juvenile adjudication and that a subsequent violent felony conviction or a conviction for an offense requiring sex offender registration disqualifies an applicant from requesting termination of juvenile sex offender registration. Because neither of those statements reflect the controlling statutory provisions, the committee accordingly proposed their removal from the form.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 20/SPR25-20

Juvenile Law: Date a Child Entered Foster Care

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee to amend two definitions in rule 5.502 of the California Rules of Court to conform to recent changes to Assembly Bill 2664 (Bryan; Stats. 2024, ch. 412), which amended Welfare and Institutions Code section 361.49 to clarify the date a child is deemed to have entered foster care for the purpose of establishing timelines for the provision of reunification services.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 21/SPR25-21

Family Law: Joint Petition for Dissolution or Legal Separation

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee to amend four rules of court, to adopt three mandatory forms, and to approve two optional forms to implement Senate Bill 1427 (Stats. 2024, ch. 190), which authorizes parties who do not qualify to use the current summary dissolution process to file a joint summons and a joint petition to ask the court for a dissolution of the marriage or domestic partnership or for a legal separation.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

PROVIDING ACCESS AND FAIRNESS

Invitation to Comment–Recommend Circulation for Comment

Item 22/SPR25-22

Access and Fairness: Accommodations for Court Users to Pump or Express Breast Milk

The committee reviewed a proposal from the Advisory Committee on Providing Access and Fairness to adopt a new rule of court and to approve a new optional form to implement Senate Bill 949 (Stats. 2024, ch. 159), which requires superior courts to grant court users who are participating in court proceedings a reasonable amount of break time to express milk for their infant children.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

I. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

The Next Rules Committee meeting will be held on: April 11, 2025.

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:48 p.m.

Approved by the committee on

Judicial Council of California
Rules Committee

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RULES COMMITTEE

MINUTES OF OPEN VIDEOCONFERENCE MEETING

Friday, April 11, 2025
12:10 – 1:40 p.m.

Rules Committee Members Present:	Hon. Carin T. Fujisaki (Chair), Hon. Joan K. Irion (Vice-chair), Hon. Khymberli S. Apaloo, Hon. Bunmi O. Awoniyi, Hon. Charles S. Crompton, and Mr. Charles Johnson
Rules Committee Members Absent:	Ms. Kate Bieker, Hon. Ryan Davis, Hon. Ricardo R. Ocampo, Mr. Craig M. Peters, and Mr. Maxwell V. Pritt
Rules Committee Staff Present:	Mr. James Barolo, Mr. Eric Long, and Ms. Benita Downs
Advisory Bodies Chair(s) and Staff Present	James Barolo, Kerry Doyle, Ann Gilmore, Frances Ho, Julia Kaufman, Maddie Orcutt, Gabrielle Selden, and Corby Sturges
Other JC Staff Present	Kristin Burford, Audrey Fancy, Michael Giden, Jenny Grantz, Anne Hadreas, Christy Simons, and Greg Tanaka

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:11 p.m., and Ms. Downs took roll call.

DISCUSSION AND ACTION ITEMS (ITEMS 23–30)

PROBATE

Invitation to Comment–Recommend Circulation for Comment

Item 23/SPR25-23

Probate Conservatorship: Acceptance of Transfers Under the California Conservatorship Jurisdiction Act

The committee reviewed a proposal from the Probate and Mental Health Advisory Committee to amend one rule of court and to revise two optional forms to provide the court with information it needs for the transfer of conservatorships into California. The rule amendment would require a conservator appointed in another jurisdiction to include Confidential Supplemental Information (form GC-312) and Confidential Conservator Screening Form (form GC-314) with their petition for orders accepting the transfer of the conservatorship to California. The form revisions would clarify that a proposed Order Appointing Probate

Conservator (form GC-340) must be attached to each petition for orders accepting a transfer and an executed form GC-340 must be attached to each order accepting a transfer.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 24/SPR25-24

Probate Conservatorships: Rights of Conservatees

The committee reviewed a proposal from the Probate and Mental Health Advisory Committee to approve one form for the courts to use to provide the information required by section 1835.5 (form GC-342), to revise one form that lists the general rights of conservatees (form GC-341), and to revise the attachment to the second form (form GC-341(MA)) to conform to the revisions to the principal form.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

PROTECTIVE ORDERS

Invitation to Comment–Recommend Circulation for Comment

Item 25/SPR25-25

Family Law and Protective Orders: Implementation of SB 599 and AB 3072

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee to revise domestic violence restraining order forms and family law forms, to adopt a new rule of court, and to amend a standard of judicial administration. The committee also proposed minor technical changes to two domestic violence information forms.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 26/SPR25-26

Protective Orders: Changes to Domestic Violence and Juvenile Forms to Implement AB 2759

The committee reviewed a proposal from the Family and Juvenile Law Advisory Committee for changes to domestic violence and juvenile restraining order forms to reflect Assembly Bill 2759 (Stats. 2024, ch 535) and new requirements for granting a firearm exemption to a restraining order that includes a firearm or ammunition prohibition. The committee also proposed revisions to form CLETS-001 to include an instruction for petitioners of retail theft protective orders and to make other changes in response to suggestions from stakeholders

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 27/SPR25-27

Protective Orders: Civil Restraining Order Forms to Implement Senate Bill 899

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee to adopt and revise of numerous restraining order forms, including forms for restraining orders based on civil harassment, elder or dependent adult abuse, gun violence, postsecondary school violence, and workplace violence.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 28/SPR25-28

Protective Orders: Postsecondary School Violence Forms to Implement Assembly Bill 2096

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee to revise all 26 forms in the private postsecondary school violence form set to implement Assembly Bill 2096 (Stats. 2024, ch. 947), which goes into effect on January 1, 2026, and to make other necessary changes to accurately reflect current law. The committee also proposed revisions to implement Senate Bill 899 (Stats. 2024, ch. 544), as well as the adoption of four new forms to implement that law.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

Item 29/SPR25-29

Protective Orders: Civil Harassment Forms to Implement Senate Bill 554

The committee reviewed a proposal from the Civil and Small Claims Advisory Committee to revise two civil harassment restraining order forms to implement Senate Bill 554 (Stats. 2024, ch. 652).

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

TRIBAL COURT–STATE COURT FORUM

Invitation to Comment–Recommend Circulation for Comment

Item 30/SPR25-30 (joint with the Family and Juvenile Law Advisory Committee)

Juvenile Law: Indian Child Welfare Act (ICWA) Inquiry and Family Finding

The committee reviewed a joint proposal from the Family and Juvenile Law Advisory Committee and the Tribal Court–State Court Forum to amend 4 rules of court and to revise 22 forms. The proposal was in response to Assembly Bill 81 (Stats. 2024, ch. 656), which addressed the implementation of the Indian

Child Welfare Act (25 U.S.C. §§ 1901 et. seq.), including ICWA inquiry, and Assembly Bill 2929 (Stats. 2024, ch. 845), which addressed family finding in juvenile dependency cases. The proposal also responded to two recent decisions from the Supreme Court of California—In re. Kenneth D. and In re. Dezi C.—concerning ICWA inquiry. The proposal would also correct several technical issues in the rules and forms.

Action: The committee unanimously approved the proposal for circulation on the regular spring cycle through May 23, 2025.

I. Information Only Items (No Action Required)

The Next Rules Committee meeting will be held on: June 3, 2025.

Adjournment

There being no further business, the meeting was adjourned at 12:48 p.m.

Approved by the committee on

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 6/3/2025

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

Title of proposal: Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work

Proposed rules, forms, or standards (include amend/revise/adopt/approve)*:*
Adopt Cal. Rules of Court, rule 10.430; adopt Cal. Standards of Judicial Administration, standard 10.80

Committee or other entity submitting the proposal:
Artificial Intelligence Task Force

Staff contact (name, phone and email)*: Jessica Devencenzi, 916-263-1374, jessica.devencenzi@jud.ca.gov; Saskia Kim, 916-643-6951, saskia.kim@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*): N/A
Project description from annual agenda: The AI Task Force is not required to have an annual agenda. However, the task force is charged with "overseeing the development of policy recommendations to the council on the use of artificial intelligence (AI) in the judicial branch, with a particular emphasis on generative AI," and it "may also develop its own proposals."

Out of Cycle/Early Implementation: *If requesting July 1 effective date or out of cycle, explain why:*
This proposal is being made out of cycle with a September 1, 2025, effective date because the rule and standard in this proposal are needed to respond to the rapid, ongoing development of generative AI technologies.

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

- **Director Approval** (required for all invitations to comment and reports)
  This report or invitation to comment was:
  ☒ reviewed by EGG on *(date)* 5/13/2025
  ☒ approved by Office Director (or Designee) (*name*) Michael Giden
  on (date) 5/19/2025

If either of above not checked, explain why:

*Complete the following for all reports to be submitted to council (optional for ITCs)**:***

- **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 report 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.: 25-109
For business meeting on July 18, 2025

Title
Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 10.430; adopt Cal. Standards of Judicial Administration, standard 10.80

Recommended by
Artificial Intelligence Task Force
Hon. Brad R. Hill, Chair

Report Type
Action Required

Effective Date
September 1, 2025

Date of Report
May 20, 2025

Contact
Jessica Devencenzi, 916-263-1374,
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Executive Summary

The Artificial Intelligence Task Force recommends adopting one rule of court and one standard of judicial administration to address the use of generative artificial intelligence for court-related work. The task force developed this proposal as part of its charge from the Chief Justice to oversee the development of policy recommendations on the use of artificial intelligence in the judicial branch. Adopting the proposed rule and standard will help promote responsible innovation in court operations while protecting confidential information, ensuring appropriate oversight, and maintaining public trust in the judicial branch.

Recommendation

The Artificial Intelligence Task Force recommends that the Judicial Council, effective September 1, 2025, adopt California Rules of Court, rule 10.430 and California Standards of Judicial Administration, standard 10.80, to address the use of generative artificial intelligence for court-related work. The proposed rule and standard are attached at pages 15–19.

Relevant Previous Council Action

The Chief Justice created the Artificial Intelligence Task Force in May 2024 in response to growing interest in generative artificial intelligence (generative AI) and public concern about the impact of this technology on the judicial branch. The task force is responsible for overseeing the development of policy recommendations on the use of AI in the judicial branch.

Analysis/Rationale

Generative AI is an emerging technology that can generate content in many forms and languages and on almost any subject at a user's request. Generative AI has many potential benefits and appears to have particular promise for courts' management and administrative functions. Generative AI also poses significant risks, though many of these risks can be mitigated with careful training and use, coupled with oversight.

The Artificial Intelligence Task Force is working to address the benefits and risks of generative AI throughout California's judicial branch. Use of generative AI for court-related work is one of the task force's current areas of focus. At the February 2025 Judicial Council meeting, the task force announced the *Model Policy for Use of Generative Artificial Intelligence* (model policy), which is offered as a resource for courts wishing to permit the use of generative AI for court-related work. The model policy addresses the confidentiality, privacy, bias, safety, and security risks posed by generative AI systems and addresses supervision, accountability, transparency, and compliance when using those systems. Courts can adopt the model policy as written or add, modify, or delete provisions as needed to address specific goals or operational requirements.

The task force recommends adopting a rule of court and a standard of judicial administration to address the confidentiality, privacy, bias, safety, and security risks posed by use of generative AI in court-related work. Generative AI is a tool that can be used to assist judicial officers and court staff to fairly administer justice, and this recommendation aims to promote responsible innovation in court operations while protecting confidential information, ensuring appropriate oversight, and maintaining public trust in the judicial branch.

Rule 10.430

Under rule 10.430, any court that does not prohibit the use of generative AI by court staff or judicial officers must adopt a policy that applies to the use of generative AI by court staff for any purpose and by judicial officers for any task outside their adjudicative role. The rule applies to the superior courts, the Courts of Appeal, and the Supreme Court. As discussed below, standard 10.80 covers the use of generative AI by judicial officers for tasks within their adjudicative role.[1]

[1] Use of generative AI by Judicial Council staff will be covered by a separate policy, which is currently being developed by the Judicial Council Information Technology office.

Policies adopted under rule 10.430 must:

- Prohibit the entry of confidential, personal identifying, or other nonpublic information into a public generative AI system, meaning any system that is publicly available or that allows information submitted by users to be accessed by anyone other than judicial officers or court staff;

- Prohibit the use of generative AI to unlawfully discriminate against or disparately impact individuals or communities based on membership in certain groups, including any classification protected by federal or state law;

- Require court staff and judicial officers who create or use generative AI material to take reasonable steps to verify the accuracy of the material, and to take reasonable steps to correct erroneous or hallucinated output in any material used;

- Require court staff and judicial officers who create or use generative AI material to take reasonable steps to remove any biased, offensive, or harmful content in any material used;

- Require staff and judicial officers to disclose the use of or reliance on generative AI if the final version of a written, visual, or audio work provided to the public consists entirely of generative AI outputs; and

- Require compliance with all applicable laws, court policies, and ethical and professional conduct rules, codes, and policies when using generative AI.

Courts can comply with rule 10.430 by adopting the model policy or a policy that is substantially similar. The provisions marked "optional" in the model policy are not needed to comply with rule 10.430.

The task force considered several alternatives when drafting rule 10.430. First, the task force considered having the rule apply directly to court use of generative AI rather than requiring courts to implement policies meeting the rule's requirements. Second, the task force considered requiring courts to adopt the model policy instead of giving courts the option to adopt their own policy. Third, the task force considered making the rule more expansive to include the model policy's optional provisions.

The task force ultimately decided that the recommended version of rule 10.430 is preferable because it gives courts the flexibility to write a policy that will meet their specific goals and operational requirements while ensuring that all court policies address the major risks of generative AI. As discussed in the Advisory Committee Comment to subdivision (d), courts can comply with the rule by adopting a use policy that contains language substantially similar, but not identical, to subdivision (d). Courts can also adopt policies that are more restrictive than rule 10.430 or that have additional provisions not covered by the rule.

The task force also concluded that it will be beneficial to use the model policy to illustrate and expand on the rule's requirements rather than relying solely on a rule of court to set the parameters for court use of generative AI. The model policy can provide background, suggestions, examples, and other material that would not be suitable for a rule of court. The model policy can also be revised more quickly to respond to changes in generative AI technology and its uses.

Standard 10.80

Standard 10.80 covers the use of generative AI by judicial officers for tasks within their adjudicative role, and its provisions are similar to those in rule 10.430. The standard states that judicial officers:

- Should not enter confidential, personal identifying, or other nonpublic information into a public generative AI system;
- Should not use generative AI to unlawfully discriminate against or disparately impact individuals or communities based on membership in certain groups, including any classification protected by federal or state law;
- Should take reasonable steps to verify that generative AI material, including any material prepared on their behalf by others, is accurate, and should take reasonable steps to correct any erroneous or hallucinated output in any material used;
- Should take reasonable steps to remove any biased, offensive, or harmful content in any generative AI material used, including any material prepared on their behalf by others; and
- Should consider whether to disclose the use of generative AI if it is used to create content provided to the public.

Additionally, the Advisory Committee Comment to subdivision (b) reminds judicial officers to comply with applicable laws, court policies, and the California Code of Judicial Ethics when using generative AI.[2]

The task force considered having rule 10.430 cover the use of generative AI by judicial officers for any purpose but determined that a standard of judicial administration would be more appropriate for addressing the use of generative AI for tasks within a judicial officer's adjudicative role. The standard identifies the major risks of generative AI and allows judicial officers to determine the best way to address those risks in their adjudicative work.

[2] In particular, the task force anticipates likely future developments in ethical guidance relating to judicial officers' use of generative AI in their adjudicative work.

Policy implications

This proposal will create a rule of court and a standard of judicial administration to address the confidentiality, privacy, bias, safety, and security risks posed by use of generative AI in court-related work. Adopting the proposed rule and standard will help promote responsible innovation in court operations while protecting confidential information, ensuring appropriate oversight, and maintaining public trust in the judicial branch.

This proposal is, therefore, consistent with the *Strategic Plan for California's Judicial Branch*, specifically the goals of Independence and Accountability (Goal II) and Modernization of Management and Administration (Goal III).

Comments

This proposal was circulated for comment from March 13 to April 17, 2025, as part of a special invitation-to-comment cycle. The proposal received 19 comments: 3 from superior courts, 1 from the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, 2 from judicial officers, 2 from law professors, 2 from attorney or bar associations, 1 from a legal aid organization, 1 jointly from a public interest association and a labor union, 1 from a public interest association, 2 from legal technology companies, 2 from attorneys, and 2 from non-attorneys. Two commenters agreed with the proposal, six agreed with the proposal if modified, five did not agree with the proposal, and six did not state a position. A chart with the full text of the comments received and the task force's responses is attached at pages 20–136. The principal comments and the task force's responses are summarized below.

Scope of the rule and standard

Many commenters suggested changing the scope of the rule and standard. These commenters primarily argued that the rule and standard should be more restrictive, but some commenters argued that the rule and standard should be made more permissive or should be abandoned entirely.

Six commenters suggested revising the rule or standard to completely prohibit the use of generative AI for adjudicative tasks such as writing opinions and orders. Similarly, one commenter suggested that provisions applying to use of generative AI by judicial officers for tasks within their adjudicative role should be mandatory rather than discretionary. One commenter suggested that courts should be prohibited from using generative AI for anything other than nonjudicial, public-facing applications such as streamlining access to public records.

Two comments from judicial officers suggested that the rule and standard should not be adopted at all. One argued that the rule and standard are not needed because existing rules, laws, and canons address the task force's core concerns regarding generative AI, while the other argued that the proposed rule should be replaced with a prohibition on the use of generative AI in adjudicative work and then be revised in the future to include additional provisions once technology, education, and guidance have developed further. This commenter also questioned the need to adopt a standard on the use of AI in adjudicative work now, before ethical guidance

is issued. Additionally, two commenters suggested that rather than allowing courts to develop their own generative AI use policies, the Judicial Council should adopt a uniform set of rules for generative AI use that would apply to all courts.

The task force is not recommending changes in response to these suggestions for several reasons. First, the task force recognizes that the possibility that generative AI might be used to draft orders, opinions, and other adjudicative materials raises significant concerns. However, the task force concluded that this issue is more appropriately addressed by the California Code of Judicial Ethics and related ethical guidance. For example, the canons prohibit judicial officers from abrogating their responsibility to personally decide the matters before them and considering evidence and facts that were not properly judicially noticed, and require judicial officers to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."[3] The task force concluded that the canons therefore likely prohibit judicial officers from having generative AI decide issues or write their opinions for them, and that the Supreme Court's judicial ethics committees are the appropriate bodies to ask for guidance on this subject.

The task force also determined that regulating specific uses of generative AI is more difficult than it appears. For example, one commenter suggested prohibiting judicial officers from "us[ing] or rely[ing] on generative AI for any task that may affect the substance of an adjudicative decision," but this language would prohibit judicial officers from using legal research tools developed by trusted legal research providers, or even using a grammar-checking tool that uses a generative AI model to make grammar suggestions. While it is likely uncontroversial to say that judicial officers should not prompt ChatGPT to decide issues or draft an opinion for them, it is less clear whether and to what extent it is acceptable for judicial officers to use generative AI tools for tasks like researching and outlining legal arguments. The task force therefore concluded that judicial officers should have the discretion to decide whether specific uses of generative AI are appropriate for adjudicative tasks, consistent with the California Code of Judicial Ethics and any applicable ethical guidance.

Second, the task force determined that courts and judicial officers are in the best position to identify acceptable uses of generative AI to meet their specific needs. The risks of generative AI depend heavily on the specific tool and how it is used. The acceptability of some uses (such as legal research) depends on the tool (such as a purpose-built legal research tool or an all-purpose chatbot), and the acceptability of some tools depends on how they are used (such as improving grammar in a single paragraph versus writing large sections of a document). It would be extremely difficult for the task force to create a list of acceptable tools and uses, and such a list would likely be both under- and overinclusive because the task force would have to speculate about how specific tools work or how courts might use them. Additionally, putting such a list in a rule of court would make it difficult to keep up with technological advancements. For these

[3] Cal. Code Jud. Ethics, canons 2A, 3B(7).

reasons, the task force recommends that the rule and standard address specific risks of generative AI rather than specific generative AI tools or uses.

Third, the task force acknowledges that creating rules and standards to address emerging technology is challenging because those rules might become outdated, restrict innovation, or inadvertently exclude additional technologies posing the same risks the rules are meant to address. This concern was a significant factor in the task force's decision to recommend a rule and standard that focus on the overarching risks of generative AI, such as confidentiality, bias, accuracy, and transparency, rather than attempting to allow or prohibit specific generative AI tools and uses. The task force concluded that these risks must be addressed regardless of how the technology develops in the future and that it is therefore appropriate to recommend adoption of the rule and standard.

Finally, the current proposal strikes the best balance between uniformity and flexibility. Rule 10.430 will require all courts that do not prohibit the use of generative AI by court staff or judicial officers to impose specific requirements addressing its primary risks. However, the task force recognizes that use of generative AI will look very different depending on the court. For example, some courts might only permit use of things like purpose-built legal research tools and grammar checkers, while other courts might develop generative AI systems for internal uses such as answering questions about the court's human resources policies. Similarly, courts have differing levels of information technology staff and resources and will therefore have different answers to questions about how generative AI tools should be approved, deployed, and supervised. The task force determined that each court is in the best position to determine how it can meet rule 10.430's requirements and whether its generative AI use policy should be more restrictive or detailed than the rule.

Applicability of rule 10.430

Judge Karnow of the Superior Court of San Francisco County noted that as proposed in the invitation to comment, rule 10.430 would not apply to courts that are silent on the use of generative AI for court-related work because they neither permit nor prohibit its use. Instead, the rule requires courts to adopt a use policy only if they choose to permit generative AI use. The concern is that this leaves an unintended vacuum where the rule would not apply, yet use of generative AI for court-related work might still be occurring without the safeguards and protections contained in the rule.

Because this was not the intent of the proposal, the task force agrees with this concern and recommends that rule 10.430(b) read as follows: "Any court that does not prohibit the use of generative AI by court staff or judicial officers must adopt a generative AI use policy. This rule applies to the superior courts, the Courts of Appeal, and the Supreme Court."

The task force will provide a model policy courts can use if they wish to prohibit the use of generative artificial intelligence for court-related work.

Provisions requiring disclosure of the use of generative AI
Twelve commenters suggested revising rule 10.430(d)(5) and standard 10.80(b)(5), which concern disclosure of the use of generative AI in court-related work. As proposed in the invitation to comment, the rule would apply to court staff using generative AI for any purpose and to judicial officers using generative AI for tasks outside their adjudicative role and would require disclosure if generative AI outputs constitute a substantial portion of the content used in the final version of a written or visual work provided to the public. The standard states that judicial officers using generative AI for tasks within their adjudicative role should consider whether to disclose the use of generative AI if it is used to create content provided to the public.

Several commenters suggested that rule 10.430(d)(5) should require disclosure of any use of generative AI, including when generative AI outputs do not constitute a substantial portion of the work and when generative AI is used or relied upon only to develop drafts but not the final work. Similarly, several commenters suggested that standard 10.80(b)(5) should be mandatory rather than discretionary, and that it should require disclosure if judicial officers use generative AI to any extent in the creation of any document or statement shared with the public.

Conversely, several commenters suggested that rule 10.430(d)(5) should be made discretionary rather than mandatory, or that a disclosure requirement might be unnecessary in some or all circumstances. For example, a superior court suggested that, provided other mandatory safeguards were in place, requiring disclosure might sometimes "impose an undue administrative burden without meaningfully enhancing public trust or accountability and would likely discourage the use of generative AI in instances when it is appropriate."

Many commenters also suggested revising rule 10.430(d)(5) to define the term "substantial portion." The commenters were concerned that without a definition or examples of what it means to constitute a "substantial portion" of a work, it will be difficult for judicial officers and court staff to determine whether disclosure is required. For example, one commenter asked whether "substantial" is a percentage of the final text or a material part of the final text (even if only a small percentage of that final text). Several commenters also suggested revising the model policy to provide examples and further explanation of when disclosure is required.

The task force considered the approaches suggested by the commenters and ultimately determined that the disclosure requirement in rule 10.430 should be revised. The task force recommends that rule 10.430(d)(5) read as follows:

> Require disclosure of the use of or reliance on generative AI if the final version of a written, visual, or audio work provided to the public consists entirely of generative AI outputs. Disclosure must be made through a clear and understandable label, watermark, or statement that describes how generative AI was used and identifies the system used.

This disclosure requirement will cover things like generative AI chatbots because it is important to inform the public when they are interacting with AI and not a person, for example, as well as

in other circumstances where the final content provided to the public has not been created or edited by a person.

The task force considered keeping the previously proposed language and defining "substantial portion" but concluded that doing so would be premature because courts are only beginning to identify potentially beneficial uses of generative AI. At this stage in the development and use of generative AI, it is important to require courts to disclose when works provided to the public consist entirely of generative AI outputs. This enhances transparency and public confidence. It is much less clear whether and to what extent disclosure is necessary or helpful when generative AI is used as an assistive tool similar to non-AI tools that are already in use, such as when it is used for legal research or editing documents written by humans.

The task force is concerned that if the disclosure requirement is too broad, it is likely to sweep in uses of generative AI where disclosure might not convey meaningful information about the quality of the resulting work and might cause unjustified mistrust. As some commenters noted, generative AI disclosures may be seen as a signal that the resulting material is inherently unreliable or that humans were not involved in creating the material, even if the disclosure explains otherwise. For example, if a staff attorney uses a generative AI legal research tool from a trusted legal research provider to perform legal research, the use of generative AI might not pose any more risk than using a non-generative AI tool from the same provider. The task force is therefore concerned that a broad mandatory disclosure requirement could discourage use of generative AI tools, even for acceptable purposes, and that mandatory disclosure would not be an effective way to address concerns about the reliability or trustworthiness of generative AI outputs in many circumstances.

For these reasons, the task force plans to continue gathering information about how courts are using, or plan to use, generative AI and will determine whether a different disclosure requirement is needed once it is clearer how such a requirement will impact courts and the public and further enhance public trust and confidence.[4]

The task force is not recommending revisions to standard 10.80(b)(5). As explained in the discussion of the scope of the rule and standard, above, the task force determined that the question of whether and to what extent judicial officers may use generative AI for adjudicative tasks should be addressed by the California Code of Judicial Ethics and related ethical guidance.

The task force acknowledges that having different disclosure requirements depending on whether generative AI is used by a judicial officer for a task within their adjudicative role could create difficulties for courts, for example by making it difficult to determine whether the use of generative AI to create adjudicative material must be disclosed if a staff attorney wrote some of

[4] As noted above, the Advisory Committee Comment to subdivision (d) of rule 10.430 provides that courts adopting a generative AI use policy may make their policy more restrictive than the rule requires and may include provisions not covered by the rule. This means, for example, that a court may impose broader disclosure requirements than the requirements contained in the rule.

the material. However, because the task force does not believe the rule and standard should set mandatory requirements for judicial officers using generative AI within their adjudicative role, harmonizing the requirements in the rule and standard would require making the rule's requirement discretionary as well. The task force determined that it is preferable to require mandatory disclosure in some circumstances and that the more limited scope of the mandatory disclosure requirement in rule 10.430 will minimize the circumstances in which the rule and standard will come into conflict.

Finally, the task force anticipates that the other requirements in the rule, such as the requirements to address bias in generative AI materials and to take reasonable steps to verify accuracy, as well as existing ethical rules for judicial officers and attorneys, address the most significant risks of generative AI.

Definitions of "artificial intelligence," "generative AI," and "public AI system"
Several commenters suggested revising rule 10.430(a) and standard 10.80(a) to clarify the definitions of "artificial intelligence," "generative AI," and "public AI system." The commenters were concerned that the proposed definitions might make it difficult for judicial officers and court staff to determine whether a particular tool or system is covered by standard 10.80 or a use policy adopted to comply with rule 10.430. Two commenters suggested that the rule and standard should use existing or proposed statutory definitions, such as those in Civil Code section 3110.

The task force agrees that all three definitions should be revised in both rule 10.430(a) and standard 10.80(a). The task force recommends using the following definition of "generative artificial intelligence," which is based on one proposed by Loyola Law School professor Rebecca Delfino:

> "Generative artificial intelligence" means a computer-based system that uses machine learning or similar techniques to produce new content—such as text, images, audio, video, code, or data visualizations—in response to user inputs. Generative AI systems create content that is not pre-programmed or explicitly retrieved but synthesized based on underlying models trained on large datasets and may include integration with other sources, such as real-time access to proprietary databases.[5]

The task force also recommends deleting the definition of "artificial intelligence" from the rule and standard because it is no longer needed; the definition of "generative artificial intelligence" no longer refers to "artificial intelligence," and that term is not used elsewhere in the rule or standard.

[5] The definition proposed by Professor Delfino referred to "integration with real-time or domain-specific sources." The task force is concerned that these terms might be confusing to laypeople and has therefore revised the definition to refer to "other sources, such as real-time access to proprietary databases."

The task force concluded this revised definition of generative AI will more accurately describe existing and potential future generative AI systems. Additionally, although the task force agrees that consistency with statutory definitions can be beneficial in some circumstances, the existing statutory definitions, such as those in Civil Code section 3110, are not a good fit for the rule and standard. Those definitions are part of statutory schemes for regulating AI providers and use terminology that laypeople might find confusing, such as the reference in section 3110(a) to "explicit and implicit objectives."

The task force recommends changing the term "public AI system" to "public generative AI system" and revising the definition as follows, based on a suggestion from the Superior Court of San Francisco County:

> "Public generative AI system" means a generative AI system that allows anyone other than court staff or judicial officers to access the data that courts input or upload to the system, or to use that data to train AI systems. "Public generative AI system" does not include any system that the court creates or manages, such as a generative AI system created for internal court use, or any court-operated system the court uses to provide those outside the court with access to court data, such as a court-operated chatbot that answers questions about court services.

The task force concluded that this definition will make it clearer which generative AI systems are covered by rule 10.430(d)(1) and standard 10.80(b)(1), which prohibit entering nonpublic information into public generative AI systems. In particular, this definition will make it easier to understand what types of security features and user data policies to look for when determining whether nonpublic information can be entered into a particular generative AI system.

Definition of "adjudicative role"

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee suggested revising the rule and standard to define the term "adjudicative role" so that it is clearer which tasks are covered by the rule and which are covered by the standard.

Although the task force agrees that the term "adjudicative role" may seem vague, the task force is not recommending revisions in response to this suggestion. The task force concluded it is appropriate to leave the term undefined to avoid potential conflicts with other rules or guidance that use similar terms.[6] Additionally, judicial officers have discretion and are best situated to determine whether a particular task falls within their adjudicative role.

[6] For example, the task force notes that canon 2A of the California Code of Judicial Ethics refers to "performance of the adjudicative duties of the judicial office" but does not define "adjudicative duties."

Provisions addressing confidentiality
The Superior Court of San Francisco County suggested revising rule 10.430(d)(1), which prohibits entry of nonpublic information into public generative AI systems, to replace the word "nonpublic" with "nondisclosable" because nonpublic information is not necessarily confidential.

The task force recommends that rule l0.430(d)(1) continue to refer to "nonpublic" information. The task force expects that inputting nonpublic information into public generative AI systems may be problematic even if the nonpublic information is not confidential. For example, public generative AI systems can potentially be trained on any information users include in prompts or upload to the system, and information given to the system by one user can potentially appear in responses the system provides to other users.

Provisions addressing bias and discrimination
The Joint Rules Subcommittee suggested removing the world "unlawfully" from rule 10.430(d)(2) because it is "redundant and unnecessary."

The task force recommends that rule 10.430(d)(2) refer to unlawful discrimination. The task force acknowledges that it is not strictly necessary to prohibit the use of generative AI to unlawfully discriminate because such discrimination is already prohibited. The task force included this provision in the rule primarily to ensure courts are aware of the risk that generative AI systems can produce biased or discriminatory outputs.

Provisions requiring review of generative AI material
Mark Griffin, the interim chair of the California Lawyers Association's Law Practice Management and Technology Section, suggested requiring court staff and judicial officers to review their generative AI prompts (the user's queries or inputs into the generative AI system) for bias.

The task force is not recommending revisions in response to this suggestion. Although the task force agrees that court staff and judicial officers should be aware that biased prompts can lead to biased outputs, the task force is concerned that requiring prompts to be unbiased could make it more difficult for judicial officers and court staff to perform certain tasks. For example, a staff attorney conducting legal research for a case alleging bias or discrimination might have to write prompts describing biased or discriminatory language. The task force anticipates that this issue can more appropriately be addressed through education and guidance materials.

Separately, two commenters suggested revising the rule and standard to clarify that those who use generative AI are responsible not only for reviewing generative AI material for accuracy, completeness, and bias, but also for verifying and correcting any material that contains inaccurate, incomplete, or biased content. As proposed in the invitation to comment, the rule and standard could be read to require people to *review* their generative AI material without requiring them to *correct* the material.

The task force agrees with this concern and recommends that rule 10.430(d)(3) read as follows: "Require court staff and judicial officers who create or use generative AI material to take reasonable steps to verify that the material is accurate, and to take reasonable steps to correct any erroneous hallucinated output in any material used."

The task force recommends that rule 10.430(d)(4) read as follows: "Require court staff and judicial officers who create or use generative AI material to take reasonable steps to remove any biased, offensive, or harmful content in any material used."

The task force recommends similar revisions to standard 10.80(b)(3) and (4).

The task force recommends using the phrase "take reasonable steps" so that it will be possible to determine whether judicial officers and court staff have complied with the rule. The task force recommends removing the words "complete" and "incomplete" from rule 10.430(d)(3) for similar reasons.

Suggestions for additional provisions

Commenters suggested revising the rule and standard to cover additional topics, such as education and training requirements, benchmarking and documentation requirements, annual policy reviews, recordkeeping, and procurement. The task force appreciates these suggestions and is carefully considering them. The task force did not include these suggestions in its current recommendation because they cover topics that were not expressly covered by the invitation to comment.

Similarly, the task force appreciates the commenters' suggestions for the model policy. The task force will be updating the model policy to conform with changes made to the rule and standard in response to the public comments (such as changes to defined terms) and will consider whether and how to make the commenters' suggested revisions to the policy.

The task force will continue to consider how to address the risks posed by use of generative AI in court-related work. In addition to the proposed rule and standard and the model policy, the task force has developed a list of frequently asked questions and is considering whether additional guidance documents are needed. The task force will work with the Center for Judicial Education and Resources to ensure that judicial officers and court staff receive education and training regarding generative AI, including on emerging uses and risks. The task force has also been monitoring policy and other developments in jurisdictions outside California and will continue to do so.

Alternatives considered

The task force considered not recommending adoption of a rule or standard but ultimately determined that the proposal was warranted because it sets uniform requirements for courts that do not prohibit the use of generative AI for court-related work and because it helps courts, judicial officers, and court staff identify and address the primary risks of generative AI when used for court-related work. As discussed above, the task force considered several alternatives

when drafting the proposed rule and standard and in response to the public comments. The task force concluded that the current recommendation strikes the best balance between addressing the major risks of generative AI and giving courts the flexibility to address those risks in a way that will meet their specific goals and operational requirements.

Fiscal and Operational Impacts

Adopting rule 10.430 will require any court that does not prohibit the use of generative AI by court staff or judicial officers to adopt a generative AI use policy, which in turn might require training for judicial officers and court staff. Adopting standard 10.80 might also require training for judicial officers. The rule and standard in this proposal do not require courts to permit use of generative AI and therefore do not require courts to incur costs related to the purchase or use of generative AI tools.

The Superior Court of Los Angeles County commented that the proposed effective date of September 1, 2025, might not give courts enough time to implement tools to enforce their generative AI use policies. The court suggested a six-month implementation timeline. The court also noted that this proposal might be more difficult to implement for larger courts than for smaller courts due to their level of development and use of AI-related tools and applications. Similarly, the Superior Court of Placer County commented that a two-month implementation period is sufficient, but it might be helpful to provide a six-month grace period for compliance with adopted policies to allow courts time to coordinate with their vendors.

In response to these comments, the task force recommends revising rule 10.430(b) to state that courts that do not prohibit the use of generative AI must adopt a use policy by December 15, 2025. The rule will still become effective on September 1 if approved by the Judicial Council, but courts will have more time to create use policies and any tools necessary to implement those policies.

Attachments and Links

1. Cal. Rules of Court, rule 10.430, at pages 15–17
2. Cal. Standards of Judicial Administration, standard 10.80, at pages 18–19
3. Chart of comments, at pages 20–136

Rule 10.430 of the California Rules of Court is adopted, effective September 1, 2025, to read:

Title 10. Judicial Administration Rules

Division 2. Administration of the Judicial Branch

Chapter 6. Court Technology, Information, and Automation

Rule 10.430. Generative artificial intelligence use policies

(a) Definitions

As used in this rule, the following definitions apply:

(1) "Court staff" means all employees, contractors, volunteers, and any other persons working for or on behalf of the court.

(2) "Generative artificial intelligence" or "generative AI" means a computer-based system that uses machine learning or similar techniques to produce new content—such as text, images, audio, video, code, or data visualizations—in response to user inputs. Generative AI systems create content that is not pre-programmed or explicitly retrieved but synthesized based on underlying models trained on large datasets and may include integration with other sources, such as real-time access to proprietary databases.

(3) "Judicial officer" means all judges of the superior courts, all justices of the Courts of Appeal and the Supreme Court, all temporary and assigned judges, and all subordinate judicial officers.

(4) "Public generative AI system" means a generative AI system that allows anyone other than court staff or judicial officers to access the data that courts input or upload to the system or to use that data to train AI systems. "Public generative AI system" does not include any system that the court creates or manages, such as a generative AI system created for internal court use, or any court-operated system the court uses to provide those outside the court with access to court data, such as a court-operated chatbot that answers questions about court services.

(b) Generative AI use policies

Any court that does not prohibit the use of generative AI by court staff or judicial officers must adopt a generative AI use policy by December 15, 2025. This rule applies to the superior courts, the Courts of Appeal, and the Supreme Court.

(c) Policy scope

A use policy created to comply with this rule must cover the use of generative AI by court staff for any purpose and by judicial officers for any task outside their adjudicative role.

(d) Policy requirements

Each court's generative AI use policy must:

(1) Prohibit the entry of confidential, personal identifying, or other nonpublic information into a public generative AI system. Personal identifying information includes driver's license numbers; dates of birth; Social Security numbers; National Crime Information and Criminal Identification and Information numbers; addresses and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and any other content sealed by court order or deemed confidential by court rule or statute.

(2) Prohibit the use of generative AI to unlawfully discriminate against or disparately impact individuals or communities based on age, ancestry, color, ethnicity, gender, gender expression, gender identity, genetic information, marital status, medical condition, military or veteran status, national origin, physical or mental disability, political affiliation, race, religion, sex, sexual orientation, socioeconomic status, and any other classification protected by federal or state law.

(3) Require court staff and judicial officers who create or use generative AI material to take reasonable steps to verify that the material is accurate, and to take reasonable steps to correct any erroneous or hallucinated output in any material used.

(4) Require court staff and judicial officers who create or use generative AI material to take reasonable steps to remove any biased, offensive, or harmful content in any material used.

(5) Require disclosure of the use of or reliance on generative AI if the final version of a written, visual, or audio work provided to the public consists entirely of generative AI outputs. Disclosure must be made through a clear and understandable label, watermark, or statement that describes how generative AI was used and identifies the system used.

(6) Require compliance with all applicable laws, court policies, and ethical and professional conduct rules, codes, and policies when using generative AI.

Advisory Committee Comment

Subdivision (a). The definition of "court staff" in this subdivision is intended for use in this rule only.

Subdivision (c). California Standards of Judicial Administration, standard 10.80 covers the use of generative AI by judicial officers for any task within their adjudicative role.

Subdivision (d). This subdivision does not require any court to permit the use of generative AI by court staff or judicial officers. Courts may entirely prohibit the use of generative AI and may also set restrictions on how generative AI may be used for court-related work, such as allowing or prohibiting the use of specific generative AI tools, allowing use of generative AI only for particular tasks, or requiring approval for the use of generative AI. Courts that are required by subdivision (b) to adopt a use policy because they are not prohibiting the use of generative AI for court-related work can comply with subdivision (d) by adopting verbatim the nonoptional sections of the *Model Policy for Use of Generative Artificial Intelligence*, or by adopting a policy that uses substantially similar language. Courts adopting a generative AI use policy under this rule may make their policy more restrictive than the rule requires and may include provisions not covered by rule 10.430.

Standard 10.80 of the California Standards of Judicial Administration is adopted, effective September 1, 2025, to read:

Title 10. Standards for Judicial Administration

Standard 10.80. Use of generative artificial intelligence by judicial officers

(a) Definitions

As used in this standard, the following definitions apply:

(1) "Court staff" means all employees, contractors, volunteers, and any other persons working for or on behalf of the court.

(2) "Generative artificial intelligence" or "generative AI" means a computer-based system that uses machine learning or similar techniques to produce new content—such as text, images, audio, video, code, or data visualizations—in response to user inputs. Generative AI systems create content that is not pre-programmed or explicitly retrieved but synthesized based on underlying models trained on large datasets and may include integration with other sources, such as real-time access to proprietary databases.

(3) "Judicial officer" means all judges of the superior courts, all justices of the Courts of Appeal and the Supreme Court, all temporary and assigned judges, and all subordinate judicial officers.

(4) "Public generative AI system" means a generative AI system that allows anyone other than court staff or judicial officers to access the data that courts input or upload to the system or to use that data to train AI systems. "Public generative AI system" does not include any system that the court creates or manages, such as a generative AI system created for internal court use, or any court-operated system the court uses to provide those outside the court with access to court data, such as a court-operated chatbot that answers questions about court services.

(b) Use of generative artificial intelligence

A judicial officer using generative AI for any task within their adjudicative role:

(1) Should not enter confidential, personal identifying, or other nonpublic information into a public generative AI system. Personal identifying information includes driver's license numbers; dates of birth; Social Security numbers; National Crime Information and Criminal Identification and Information numbers; addresses and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial

information; account numbers; and any other content sealed by court order or deemed confidential by court rule or statute.

(2) Should not use generative AI to unlawfully discriminate against or disparately impact individuals or communities based on age, ancestry, color, ethnicity, gender, gender expression, gender identity, genetic information, marital status, medical condition, military or veteran status, national origin, physical or mental disability, political affiliation, race, religion, sex, sexual orientation, socioeconomic status, and any other classification protected by federal or state law.

(3) Should take reasonable steps to verify that generative AI material, including any material prepared on their behalf by others, is accurate, and should take reasonable steps to correct any erroneous or hallucinated output in any material used.

(4) Should take reasonable steps to remove any biased, offensive, or harmful content in any generative AI material used, including any material prepared on their behalf by others.

(5) Should consider whether to disclose the use of generative AI if it is used to create content provided to the public.

Advisory Committee Comment

Subdivision (a). The definition of "court staff" in this subdivision is intended for use in this standard only.

Subdivision (b). This subdivision provides guidelines to judicial officers for the use of generative AI for tasks within their adjudicative role. California Rules of Court, rule 10.430 covers the use of generative AI by judicial officers for tasks outside their adjudicative role. In addition to the guidelines provided in this subdivision, judicial officers should be mindful of complying with all applicable laws, court policies, and the California Code of Judicial Ethics when using generative AI.

SP25-01

Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work (adopt Cal. Rules of Court, rule 10.430; adopt Cal. Standards of Judicial Administration, standard 10.80)

All comments are verbatim unless indicated in a footnote.

	Commenter	Position	Comment	Committee Response
1.	Hon. Lamar Baker Associate Justice Court of Appeal, Second Appellate District, Division Five	N	The Artificial Intelligence Task Force is due great thanks for even taking on this difficult and complex issue. The proposed standard, however, does not reflect the humility and caution that is required under the circumstances. I am concerned the task force believed it was obligated to develop a standard specifying the conditions under which judges can use AI in adjudicating cases rather than considering a more fundamental question: whether courts, in the immediate future, should make any use of AI at all when deciding cases (other than, perhaps, as incorporated by the legal research functions of Lexis and Westlaw) and the degree to which such use will seriously undermine public confidence in the judiciary. According to the proposal memo, standard 10.80 "covers the use of generative AI by judicial officers for tasks within their adjudicative role." As I read it, the standard would permit an appellate judge to upload the appellate briefs and record in an appeal to a generative AI system or program (so long as the program is not public or the briefs and record do not include confidential or nonpublic information), ask the AI program to draft an opinion resolving the appeal, and file that AI-drafted opinion as the opinion of the court without informing the parties (and, it appears, even the other judges on the appellate panel) of the use of AI--so long as the authoring judge reads the opinion before filing it. In my view, sanctioning such a scenario is a mistake and will undermine public confidence in the judiciary by the standard's mere promulgation. Insofar as the task force believes the risks are mitigated by its anticipation, reflected in the proposal memo, of "likely future developments in ethical guidance relating to judicial officers' use of generative AI in their adjudicative work," I do not understand the need to promulgate a standard authorizing use of AI in adjudicative work now, before such ethical guidance issues. The two should, at a minimum, go hand in hand. AI is a very fast-moving field, but court policy need not, and should not, try to match that speed--and certainly not in a manner that might authorize what is later determined to be ethically questionable conduct.	The task force recommends adopting standard 10.80 because it has determined that the question of whether and to what extent judicial officers may use generative AI to carry out their adjudicative duties is more appropriately addressed by the California Code of Judicial Ethics and related ethical guidance. The canons likely prohibit judicial officers from having generative AI write their opinions for them, and the Supreme Court's judicial ethics committees are the appropriate bodies to ask for guidance on this subject. The task force therefore concluded that it should not recommend that the Judicial Council either permit or prohibit the use of generative AI by judicial officers. Instead, the task force recognizes that some judicial officers may choose to use generative AI tools for tasks within their adjudicative role, and it therefore recommends adopting standard 10.80 to provide guidance regarding the risks of those tools.

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			I accordingly recommend moving more slowly before authorizing changes that could rather dramatically change how courts decide cases. In my view, the only standard that needs to be promulgated now with respect to use of AI in a court's adjudicative work is a standard that says do not use it (except, perhaps, as incorporated by the legal research functions of Lexis and Westlaw). There is no rush. We have adequate time to continue with our traditional method of resolving cases while observing how AI develops and taking a more incremental approach to questions about the extent to which AI programs should be a part of the adjudicative process.	Additionally, the task force determined that it is necessary to recommend adoption of a rule and standard to address the risks of generative AI because generative AI can be used for tasks outside the adjudicative role and can likely be safely used for some adjudicative tasks, such as legal research using purpose-built legal research tools from trusted providers. Additionally, generative AI is increasingly being incorporated into existing software products and may already be difficult to avoid in some circumstances. The task force will continue to consider how to address the risks posed by use of generative AI in court-related work. In addition to the proposed rule and standard, the task force has developed FAQs and is considering whether additional guidance documents are needed. The task force will work with the Center for Judicial Education & Resources (CJER) to ensure that judicial officers and court staff receive education and training regarding generative AI,

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				including on emerging uses and risks.
			If the task force is unpersuaded and believes it is for some reason imperative to now allow judges to use AI when resolving disputes, I would at a minimum recommend doing so on a far more limited basis, akin to a small pilot program, with much greater public transparency about what courts involved in that program are doing (and not doing).	The task force appreciates the commenter's concern but concluded that individual courts are in the best position to determine which uses are appropriate for their specific needs and circumstances. The task force is concerned that placing branchwide limitations on specific uses of generative AI will unnecessarily limit innovation and will prevent courts from identifying safe, effective uses of generative AI that do not pose ethical risks.
2.	Susan J. Bassi Publisher, Investigative Journalist Public Records & Local News Advocate Los Gatos	N	As a Silicon Valley resident and member of the media covering California's courts and technology, I respectfully submit this public comment with respect to SP25-01, with strong opposition to the proposed adoption of laws, rules, or policies permitting the use of artificial intelligence (AI) by court staff or judicial officers in California's judicial system. For over a decade, our team of investigative reporters has closely monitored and reported on California's courts, particularly the family court system, where there is no jury oversight, and where the press is largely absent. In 2024, the California Commission on Judicial Performance reported that family court judges now account for the highest number of complaints filed against judicial officers, marking a troubling milestone since the agency began keeping records. These complaints followed the implementation of technology in the courts that has	Please see responses to Susan Bassi's specific suggestions below.

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			seen troubling patterns that would only worsen if judges and court staff were permitted to use AI, even with so- called proposed training. Our work has included the ***Tainted Trials, Tarnished Headlines, Stolen Justice*** investigative series, published in the Davis Vanguard, which exposed secret and undocumented meetings involving judges, prosecutors, family law attorneys, custody evaluators, and journalists from hedge fund–owned media outlets. These meetings were unrecorded, unregulated, and lacked transparency, raising serious concerns about bias and backchannel influence in legal proceedings. Our reporting has also highlighted: • Failures in the public disclosure of judicial conflicts, supported by requests made under California Rules of Court, Rule 10.500. • Mismanagement of courtroom technology, particularly in the Silicon Valley region where courts lag behind the private sector in tech competency. • Judicial misuse of social media during elections and politically sensitive cases, further indicating a lack of preparedness to ethically integrate emerging technologies like AI into court operations.	
			Why AI Has No Place in California Courtrooms—Yet Despite claims that AI could improve efficiency, multiple industry-wide studies and news investigations reveal that AI introduces serious risks, especially in contexts where human rights and liberties are at stake. These include: • **Bias and Discrimination:** The Stanford HAI Center and MIT Technology Review have documented how AI models reflect racial, gender, and socioeconomic biases in legal and hiring decisions. This has resulted in	The task force determined that it is necessary to recommend adoption of a rule of court and a standard of judicial administration to address the confidentiality, privacy, bias, safety, and security risks posed by use of generative AI in court-related work. The task force concluded that adopting the

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			discriminatory outcomes, something California's judiciary must avoid at all costs. • **Lack of Transparency**: AI systems, especially those driven by large language models, operate as "black boxes." The Harvard Berkman Klein Center warns that their logic and decision-making cannot be meaningfully audited or explained. This is incompatible with the requirement for transparency and judicial reasoning in constitutional law. • **Inaccuracies and Hallucinations**: Courts rely on facts, evidence, and precedent. However, AI models have a well-documented tendency to fabricate legal citations and misstate facts, a phenomenon known as "hallucination." Several attorneys have already been sanctioned for submitting AI-generated briefs containing fictitious case law (New York Times, 2023).	proposed rule and standard will help promote responsible innovation in court operations while protecting confidential information, ensuring appropriate oversight, and maintaining public trust in the judicial branch. Additionally, the task force will continue to consider how to address the risks posed by use of generative AI in court-related work. In addition to the proposed rule and standard, the task force has developed FAQs and is considering whether additional guidance documents are needed. The task force will work with the Center for Judicial Education & Resources (CJER) to ensure that judicial officers and court staff receive education and training regarding generative AI, including on emerging uses and risks.
			Constitutional and Ethical Implications The role of a judge is not merely clerical. It is interpretive, ethical, and deeply human. Judicial discretion involves empathy, context, and constitutional analysis, elements that AI cannot currently replicate. Further, California Government Code § 69957 mandates that a verbatim transcript be provided in certain cases (e.g., family	The task force determined that the question of whether and to what extent judicial officers may use generative AI to carry out their adjudicative duties is more appropriately addressed by the

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			law, custody, and domestic violence). Yet, over one million hearings per year go undocumented, and many judges refuse to allow litigants to record proceedings, leaving no historical record for AI. AI systems are trained on large datasets. So what data will be used to train these models in California courts? With so many hearings off-record, we risk developing AI that reflects gaps in transparency, unofficial influences, and judicial behavior that evades oversight. This makes AI deployment in California's courts particularly dangerous, not only ethically but also legally.	California Code of Judicial Ethics and related ethical guidance. The task force concluded that the canons likely prohibit judicial officers from having generative AI write their opinions for them, and that the Supreme Court's judicial ethics committees are the appropriate bodies to ask for guidance on this subject.
			Judicial Council's AI Task Force Concerns The composition of the Judicial Council's AI Task Force itself raises red flags. The Task Force is made up almost entirely of judges, CEOs of court systems, and insiders with limited technological expertise. At a recent presentation, the lack of baseline understanding about AI among task force members was evident, underscoring the need for education before regulation.	The task force believes that it can make fair and impartial recommendations and that it is sufficiently informed to make the recommendations in this proposal.
			Rather than drafting policy in isolation, the Judicial Council should: • Invite public interest technologists, civil liberties groups (e.g., ACLU), and academic AI ethicists into the conversation. • Prioritize training for judges and court staff in digital literacy and ethics. • Focus on modernizing public records access and ensuring all court data is equitably and transparently available before any AI model is used or trained.	The purpose of the invitation to comment is to invite all interested stakeholders into the conversation. To the extent this suggestion is beyond the scope of the current proposal, the task force may consider it as time and resources permit.

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			Efficiency vs. Accountability If AI is to be used at all, it should be limited to non-judicial, public-facing applications such as: • Streamlining access to public records • Automating clerical tasks like form completion • Improving notice systems for hearings and filings • **<u>Scrapping Judge and Court Staff 700 Forms to compare with court assignments and outcomes.</u>** However, any such use must be accompanied by: • Full public oversight • Independent audits (outside the courts and legal profession) • Strict data governance protocols Let's be clear: If attorneys are at risk of being replaced by AI, as some recent reports predict (Business Insider, 2024), then so are judges and court staff. Any public investment in AI must account for this potential displacement, not exacerbate it through premature or unregulated implementation.	The task force appreciates the commenter's concern but concluded that individual courts are in the best position to determine which uses are appropriate for their specific needs and circumstances. The task force is concerned that placing branchwide limitations on specific uses of generative AI will unnecessarily limit innovation and will prevent courts from identifying safe, effective uses of generative AI that do not pose ethical risks. Additionally, this suggestion is beyond the scope of the current proposal, but the task force may consider it as time and resources permit.
			Conclusion The analogy is simple: Allowing California courts to use AI today is like handing a modern teenager a payphone and expecting them to call their friends without any	Please see previous responses to Susan Bassi's specific suggestions.

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			coins. Individuals in the judiciary and employed in the courts simply lack the knowledge, infrastructure, and oversight to implement AI responsibly. For now, no new rule, law, or policy should be passed that allows judicial officers or court staff to use AI in any official capacity, especially in ways that affect legal rulings or public information. Instead, California must focus on: • Ensuring complete and accurate human-generated records of all proceedings • Improving public transparency • Educating both the legal community and the public on what AI is, what it is not, and how it might one day be used in the courts.	
3.	California Employment Lawyers Association by Barbara Figari Cowan, Chair	NI	On behalf of the California Employment Lawyers Association (CELA), a statewide organization of more than 1,300 attorneys who represent workers in employment and civil rights litigation, we respectfully submit this comment in response to SP25-01 regarding proposed standards on the use of generative artificial intelligence (AI) in the judicial branch.	Please see responses to CELA's specific suggestions below.
			CELA supports the Judicial Council's recognition of the growing impact of generative AI on the practice of law and the importance of proactive safeguards. However, we strongly urge the Council to adopt a single, uniform statewide standard that applies across all courts in California. Fragmented, local approaches would create unnecessary complexity and inequity for court users—particularly for self-represented litigants and those practicing in multiple jurisdictions. Consistency promotes fairness, transparency, and efficiency. Procedural fairness requires that all court users be able to rely on a predictable framework. Varying local rules around the use of AI—whether in filings, court-generated content, or internal judicial processes—could result in litigants receiving	The task force concluded that the current proposal strikes the best balance between uniformity and flexibility. Use of generative AI will look very different depending on the court, and each court is in the best position to determine how it can meet rule 10.430's requirements and whether its generative AI use policy should

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			different treatment depending solely on the venue. This is particularly concerning in employment and civil rights cases, where many of our clients already face significant barriers in accessing justice.	be more restrictive or detailed than the rule.
			We also express concern about the potential displacement of human jobs—particularly those held by court clerks, research attorneys, and legal support staff—if generative AI is integrated into court operations without strict limitations and transparency. These workers form the backbone of the judicial system and possess irreplaceable institutional knowledge, cultural competence, and human judgment. Replacing skilled staff with automated tools not only threatens livelihoods but risks eroding the quality and empathy of court services. As advocates for workers' rights, CELA urges the Judicial Council to explicitly consider the labor impact of AI adoption and to incorporate safeguards against unnecessary job loss or deskilling of essential roles.	While this suggestion is beyond the scope of the current proposal, the task force appreciates this information.
			Finally, we are also concerned about the potential for generative AI tools to introduce or replicate bias, misstate legal authority, or fabricate information ("hallucinations"). Courts must maintain strict standards to ensure that decisions are grounded in verified fact and law—not in machine-generated content that lacks human oversight. A uniform rule should clearly prohibit reliance on generative AI for legal reasoning or fact-finding in judicial decision-making, and should require clear disclosure whenever such tools are used in drafting any court-generated materials.	The task force appreciates with the commenter's concerns regarding the risks of generative AI tools and notes that it is recommending adoption of a rule of court and a standard of judicial administration to address the confidentiality, privacy, bias, safety, and security risks posed by use of generative AI in court-related work.
			Further, the integrity of the judicial system depends on public trust. That trust could be undermined if courts vary in their use of AI tools without clear guidance or explanation. A uniform rule reinforces the branch's commitment to transparency and high standards, especially as technology evolves faster than the law can respond.	Please see previous response on this issue.

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			In addition, a statewide rule would reduce administrative burden. Rather than asking every court to individually interpret, draft, and implement policy, one consistent standard allows for centralized oversight, training, and review. It also levels the playing field by ensuring that all litigants—regardless of location or resources—have the same expectations and protections when it comes to AI use in the courtroom.	
			We recommend that any rule adopted should (1) prohibit reliance on AI for legal conclusions or fact-finding by courts; (2) require that any use of AI tools in court-generated documents be disclosed; (3) confirm that parties are responsible for verifying any AI-generated content they submit; and (4) be subject to ongoing review as technology and use cases evolve.	The task force concluded that the question of whether and to what extent judicial officers may use generative AI to carry out their adjudicative duties is more appropriately addressed by the California Code of Judicial Ethics and related ethical guidance. The task force concluded that the canons likely prohibit judicial officers from having generative AI write their opinions for them, and that the Supreme Court's judicial ethics committees are the appropriate bodies to ask for guidance on this subject. In light of all the comments regarding requirements to disclose use of generative AI, the task force has recommended a revised version of rule 10.430(d)(5). However, the task force concluded that mandatory disclosure of use of generative AI

	Commenter	Position	Comment	Committee Response
				in all circumstances could unnecessarily prohibit courts from using generative AI in circumstances where the technology can be used safely and ethically, and that mandatory disclosure would not be an effective way to address concerns about the reliability or trustworthiness of generative AI outputs in many circumstances.
			CELA thanks the Judicial Council for addressing this important issue and for the opportunity to comment. We would welcome future participation in any discussions or working groups as the rule is developed and implemented.	No response required.
4.	Court Watch Silicon Valley [No further commenter information provided]	N	Court Watch Silicon Valley is an informal association of voters, parents, and grandparents working in or around Silicon Valley's technology sector, who have been directly impacted by practices in the local court system. We are writing to express our strong opposition to the Judicial Council's proposed rule changes under SP25-01, which would authorize and expand the use of artificial intelligence (AI) in both adjudicative and administrative functions within California's courts. Our concerns are particularly acute given the documented conduct of the Santa Clara County Superior Court, a jurisdiction at the heart of Silicon Valley and one deeply entangled in longstanding transparency and accountability issues.	The task force notes that the proposed rule and standard do not require courts to permit the use of generative AI by court staff or judicial officers. The proposed rule and standard also do not determine whether use of generative AI is appropriate for any particular task. Rather, the purpose of the rule and standard is to identify and address the risks of using generative AI in court-related work. The task force determined that it is necessary to recommend adoption of the rule and standard

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			* * *[1] **Conclusion** AI use in all industries depends on accurate information for input, which the courts simply cannot provide. Therefore, we urge the Judicial Council to limit the use of AI strictly to internal administrative functions aimed at improving public access, court efficiency, and technological modernization before incurring expense and risk to allow its use by judges and court staff. AI should not be used in adjudicative roles or for the analysis of confidential data until: • Accurate and complete digital records are maintained and publicly accessible. • Oversight mechanisms are in place to prevent misuse or selective access. • Ethical and privacy concerns are fully addressed. • Judicial officers and staff are properly trained, and TESTED for the responsible use of AI. California's courts must earn public trust through transparency and accountability before they can responsibly integrate artificial intelligence into the judicial process.	because there are circumstances where the technology can be used safely and ethically, such as legal research using purpose-built legal research tools from trusted providers. Additionally, generative AI is increasingly being incorporated into existing software products and may already be difficult to avoid in some circumstances. The task force is concerned that placing branchwide limitations on specific uses of generative AI will unnecessarily limit innovation and will prevent courts from identifying safe, effective uses of generative AI that do not pose ethical risks. The task force will continue to consider how to address the risks posed by use of generative AI in court-related work. In addition to the proposed rule and standard, the task force has developed FAQs and is considering whether additional guidance documents are needed. The task force will

[1] The commenter provided extensive comments here that did not address the proposal. These comments are, therefore, not included in this chart.

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				work with the Center for Judicial Education & Resources (CJER) to ensure that judicial officers and court staff receive education and training regarding generative AI, including on emerging uses and risks.
5.	Rebecca A. Delfino Associate Dean for Clinical Programs and Experiential Learning Faculty Director Moot Court Programs Law Professor Loyola Law School, Loyola Marymount University, Los Angeles	NI	**Introduction** The Judicial Council's Artificial Intelligence Task Force has taken an important and commendable first step in addressing the profound implications of the use of generative artificial intelligence (AI) by California courts. The proposed California Rule of Court, Rule 10.430 (Rule 10.430), California Standards of Judicial Administration Standard 10.80 (Standard 10.80), and the accompanying Model Policy for Use of Generative Artificial Intelligence in the California Courts (Model Policy) reflect the awareness that AI technologies—especially those capable of generating text, images, or legal analysis—will increasingly shape how courts operate, communicate, and render decisions. The proposals seek to guide the appropriate, ethical, and effective use of generative AI in court operations and ensure that generative AI tools are used to respect legal and constitutional obligations, safeguard public trust, and preserve the integrity of court functions. At the same time, as with any emergent regulatory framework, these initial proposals would benefit from further refinement. The rapid pace of generative AI development, the diversity of use cases within the courts, and the need to maintain public trust in judicial integrity all underscore the importance of ensuring that this framework is as clear, consistent, and comprehensive as possible. This comment builds upon the strong foundation in Rule 10.430, Standard 10.80, and Model Policy by offering specific, constructive recommendations to strengthen the proposed framework. Drawing on principles of good governance, institutional	Please see responses to Rebecca Delfino's specific suggestions below.

	Commenter	Position	Comment	Committee Response
			integrity, and practical implementation, the suggestions offered here aim to enhance the transparency of AI use, ensure accountability at both the institutional and individual levels, and reinforce the judiciary's leadership in the ethical deployment of advanced technologies. My recommendations are organized in two parts. Part I addresses general concerns that cross the entire framework of Rule 10.430, Standard 10.80, and the Model Policy. Part II of the comment provides specific and individual suggestions for the Rule and Model Policy, aimed at strengthening the proposals by adding accountability, clarifying obligations, and reinforcing public transparency.	
			I. Framework-Level Observations **A. Definition of "Generative AI"** The current definition of "generative AI" in Rule 10.430, Standard 10.80, and the Model Policy reads: "Generative AI means artificial intelligence trained on an existing set of data (which can include text, images, audio or video) with the intent to generate new data objects when prompted by a user. Generative AI creates new data objects contextually in response to user prompts, based only on the data it has already been trained on." This definition captures the general idea behind generative AI, but could be more precise, broader, and more adaptable.	No response required.
			First, the definition should be refined to enhance its clarity. It uses technical language such as "data objects," a term that may be unfamiliar or ambiguous to many users, including judicial officers and court staff. More intuitive language—such as "content," "text," or "images"—would make the definition more accessible. Moreover, the phrase "with the intent to generate" is problematic. The intent of the system's developers is difficult to assess and not always relevant for policy purposes. What matters more is the system's functionality: whether it can generate content in response to user input. Finally, the clause stating that the system responds "based only on the data it has already been trained on" may be misleading. Many modern generative AI tools incorporate additional capabilities such as retrieval-	The task force appreciates these suggested definitions and recommends revising the definition of "generative AI" in the rule and standard based on the commenter's suggestion. Additionally, in light of all the comments received on this issue, the task force is recommending a

	Commenter	Position	Comment	Committee Response
			augmented generation (RAG), which allows them to access external or real-time data in addition to their training set. Second, the definition does not reflect the full range of technologies it aims to cover. It focuses primarily on traditional large language models trained on static datasets. However, it does not account for a growing range of generative systems that produce not only text but also code, legal summaries, charts, and audio-visual outputs. Additionally, it omits multi-modal systems, interactive chat-based models, and domain-specific tools—such as legal research platforms—that combine generative AI with real-time access to proprietary databases. Third, the definition does not account for future developments. As generative AI continues to evolve—especially with systems that integrate static training data with real-time querying, embedded legal databases, and user-contextual interactions—the current language may prove too limited. A more forward-looking framework would help ensure lasting relevance. To address these concerns, the following revised definition is proposed: **"Generative artificial intelligence" means a computer-based system that uses machine learning or similar techniques to produce new content—such as text, images, audio, video, code, or data visualizations—in response to user inputs. Generative AI systems generate content that is not pre-programmed or explicitly retrieved but synthesized based on underlying models trained on large datasets and may include integration with real-time or domain-specific sources.** This revised definition avoids technical jargon, reflects the full range of generative capabilities, and anticipates the future evolution of AI systems used in the judicial context. It would help ensure that the rule and model policy remain effective and adaptable as technology advances.	revised definition of "public generative AI system" in the rule and standard, and recommends deleting the definition of "artificial intelligence" in the rule and standard because that definition is no longer needed due to the proposed revisions to the definition of "generative AI."

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			B. Transparency and Disclosure Requirements The requirements for court staff and judicial officers to disclose the use of generative AI in Rule 10.430,[1] Standard 10.80,[2] and Model Policy [3] reflect a shared goal: to promote public trust by ensuring that judicial use of generative AI is transparent when it meaningfully contributes to publicly available work. However, these provisions are framed with differing levels of obligation and clarity, and when read together, they reveal internal inconsistencies in language, legal effect, and implementation standards. Aligning these elements through more consistent language could help better advance the framework's intended goals. [1] Rule 10.430: "Each courts generative AI use policy must: (5) Require disclosure of the use or reliance on generative AI if generative AI outputs constitute a substantial portion of the content used in the final version of the written or visual work provided to the public." [2] Standard 10.80: "A judicial officer using generative AI for any task within their adjudicative role: (5) should consider whether to disclose the use of generative AI if it is used to create content provided to the public." [3] Model Policy. "VI Transparency: (a) If generative AI outputs constitute a substantial portion of the content used in the final version of a written work or visual work that is provided to the public, the. Work must contain a disclaimer or watermark. (b) Labels are watermarks used to disclose the use of generative AI should be easily visible and understandable, accurately informing the audience that generative AI has been used in the creation of the content and identifying the system used to generate it." Rule 10.430 helpfully establishes a clear, mandatory baseline: each court's policy on generative AI use must include a requirement to disclose when AI outputs constitute a substantial portion of a final written or visual work shared with the public. This language provides helpful clarity and a firm obligation. However, that clarity is somewhat diluted by the wording in Standard 10.80, which applies to individual judicial officers. Rather than requiring disclosure, it states that a judicial	In light of all the comments received on this issue, the task force has recommended a revised version of rule 10.430(d)(5). However, the task force concluded that mandatory disclosure of use of generative AI in all circumstances could unnecessarily prohibit courts from using generative AI in circumstances where the technology can be used safely and ethically, and that mandatory disclosure would not be an effective way to address concerns about the reliability or trustworthiness of generative AI outputs in many circumstances. Additionally, as time and resources permit, the task force will consider whether to revise the model policy to more specifically address the use of generative AI by research attorneys.

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			officer "should consider whether to disclose" the use of generative AI in public-facing content in their adjudicative work. This shift from a mandatory requirement in the Rule to a more discretionary guideline in the accompanying Standard may lead to variations in interpretation and practice across courts and individual judges. In addition, Rule 10.430, Standard 10.80, and the Invitation to Comment (SP25-01) fail to articulate a rationale for imposing a mandatory disclosure requirement when judicial officers employ generative AI in non-adjudicative contexts, while permitting discretion when the same technology is used in adjudicative decision-making. This distinction raises concerns. The adjudicative function—where legal reasoning is developed, decisions are rendered, and public confidence in impartiality is most essential—arguably demands the highest level of transparency. If the purpose of disclosure is to maintain public trust and to ensure accountability in the use of emerging technologies, it is unclear why that obligation should be stronger when a judicial officer uses AI to draft a standing order or informational notice but weaker when the same tool helps shape the resolution of a legal dispute. Without a clear policy rationale for this differentiation, the framework risks sending inconsistent signals about the values it seeks to uphold and the contexts in which transparency matters most. A uniform disclosure obligation—one that applies to both adjudicative and non-adjudicative use when the AI's contribution is substantial or material—would better reflect the core principles of judicial integrity and public accountability that underlie the framework. Furthermore, the Model Policy, intended to guide implementation, adds another layer of complexity. Like Rule 10.430, it states that a disclosure is required—specifically, that a disclaimer or watermark must be included if generative AI constitutes a substantial portion of a final written or visual work provided to the public. It also requires that this label be "easily visible and understandable" and that it identify the system used to generate the content. These detailed requirements are helpful, but they are found only in the Model Policy and not echoed in the Rule or the Standard. As a result, it is unclear whether the visibility and specificity requirements are binding, optional, or merely best practices. Divergent standards—	

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			mandatory, discretionary, and directive—send conflicting signals about whether disclosure is a firm requirement or optional practice and to whom it applies. These internal inconsistencies in the disclosure and transparency requirements across Rule 10.430, Standard 10.80, and the Model Policy are not merely theoretical—they create practical dilemmas for judicial officers and court staff. A clear example arises in the context of judicial drafting practices involving research attorneys. Imagine a scenario in which a research attorney prepares a draft opinion or memorandum in which a substantial portion of the content is generated with the assistance of a generative AI tool. Under Rule 10.430, which mandates that each court's AI policy "require disclosure of the use or reliance on generative AI if generative AI outputs constitute a substantial portion of the content used in the final version of the written or visual work provided to the public," the use of that AI-generated content triggers a disclosure obligation. Similarly, under the Model Policy, a substantial portion of AI-generated content in the final public-facing work would require a visible disclaimer or watermark. However, if the judge receives that draft from the research attorney and adopts it without independently knowing about or considering the AI-assisted drafting process, it is unclear whether the judge must disclose the AI use—especially in light of Standard 10.80, which merely states that a judicial officer "should consider" disclosure and does not contain a firm requirement. Because the standard relies on the judge's awareness and discretion, it creates a potential gap in disclosure when the generative AI use originates with staff rather than the judicial officer directly. This example highlights a compliance dilemma: the court's policy, under Rule 10.430, may require disclosure, and the Model Policy contemplates mandatory labeling, but the judge may not feel personally obligated to disclose under the permissive language of the Standard—particularly if the generative AI use occurred earlier in the drafting chain. This disconnect blurs the line of responsibility and opens the door to inconsistent outcomes, where disclosure depends not on the extent	

	Commenter	Position	Comment	Committee Response
			of AI use but on who used it and whether they viewed themselves as bound by a mandatory or discretionary standard. These inconsistencies could lead to under-disclosure, jeopardizing the transparency the framework seeks to ensure, or to overcautious practices where judges avoid useful AI tools altogether for fear of accidental non-compliance. Clarifying and harmonizing the obligations across all levels of court actors—judicial officers, staff attorneys, and court administrators—is essential to creating a workable, fair, and transparent system. Another concern involves striking the right balance between transparency and judicial independence, particularly regarding the use of generative AI by court staff and judicial officers for internal purposes. If a generative AI system is used solely for internal purposes—for example, to help summarize a case, draft a bench memo, or brainstorm issues—and the outputs are neither shared with the parties nor appear in any written or visual work provided to the public, then under the current language of Rule 10.430 and the Model Policy, no disclosure would be required. That result is consistent with a long-standing norm in judicial practice: internal deliberative tools and communications—including memos from law clerks or research attorneys—are not disclosed. The line drawn by the Rule and Model Policy around "written or visual work provided to the public" appears intentional and grounded in respect for this boundary. However, this limitation also raises a key policy tension: some internal uses of generative AI may materially shape judicial reasoning or decisions, even if those outputs never appear on the public record. The public may reasonably expect to be informed not only when AI drafts the text of a published ruling but also when it substantively influences the decision-making process. In an era where AI can go beyond rote summarization and actively generate legal arguments or identify perceived weaknesses in a claim, even internal use may carry normative weight.	

	Commenter	Position	Comment	Committee Response
			In this respect, excluding non-public uses may be technically consistent with the rule's drafting but normatively incomplete. By drawing the line strictly at "what is seen," the framework could enable significant, even outcome-determinative use of generative AI without disclosure—not out of bad faith, but because the current rule does not reach that far. That gap risks undermining transparency, especially if it becomes widely known that AI is playing an influential (albeit invisible) role in judicial decision-making. Beyond these inconsistencies, a misalignment in scope and triggering criteria also exists. The Rule and Model Policy reference the concept of a "substantial portion" of AI-generated content, but so not define what that means. The phrase "substantial portion," as used in Rule 10.430 and the accompanying Model Policy, is vague and potentially problematic for courts and judges seeking to comply with disclosure or certification requirements regarding the use of generative artificial intelligence. Its ambiguity stems primarily from the absence of a clear, objective threshold. The term "substantial" is inherently relative—it may mean a majority in some contexts or merely something of importance in others. Without a defined metric or standard, judges and court personnel are left to speculate whether a given use of AI qualifies as "substantial," which could lead to inconsistent interpretations and application across different judicial officers and courts. Moreover, the "substantial portion" is context-dependent. What might constitute a substantial use of AI in drafting a routine procedural order could differ significantly from its use in composing the reasoning of a complex opinion. This contextual variability further undermines uniformity and predictability in compliance. The phrase also lacks the support of an established body of judicial interpretations, unlike similar terms in copyright law or employment law, where courts have had decades to define and refine their meaning. In this context—where policies governing judicial reliance on AI are still emerging—such ambiguity risks either chilling the appropriate use of technology or, conversely, enabling under-disclosure of its influence on judicial reasoning.	

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			To resolve these problems, a single, unified standard should be adopted across the Rule, Standard, and Model Policy. First, disclosing the use of generative AI should be mandatory whenever AI contributes materially or substantially to any court work. This requirement should apply to both court staff and individual judicial officers in their adjudicative and non-adjudicative roles, closing the gap between institutional requirements and individual responsibility. Second, the threshold for disclosure should be clearly defined—for example, by stating that a "substantial portion" includes any AI-generated content that materially influences the reasoning, substance, or language of the final work or that comprises more than 20% of its content. Third, the requirement for a clear, visible, and understandable disclaimer or watermark that names the AI system used should be incorporated into the Rule and Standard and the Model Policy. Finally, rather than mandating disclosure of all internal uses—which would intrude into the judicial deliberative process and likely face resistance—a middle path could be adopted: **Proposed Harmonized Disclosure Provision (Model Language)** **Disclosure Requirement: "Judicial officers and court staff must disclose the use of generative artificial intelligence when (1) its outputs constitute a substantial portion of any written or visual content provided to the public, or (2) its use materially informs the reasoning, analysis, or resolution of a case, even if the AI-generated content does not appear in a written or visual work provided to the public."** **• "Materially informs" means that the use of generative AI contributes in a non-trivial way to the reasoning, analysis, or outcome of a judicial decision, including shaping conclusions, influencing legal interpretation, or framing the resolution of factual or legal issues, regardless of whether the AI-generated content appears in the final written work.** **• "Substantial portion" means any AI-generated text, analysis, or recommendation that materially influences the reasoning, outcome, or language of a final judicial decision, order, or final work or comprises more than 20% of the output. Disclosure must be made through a visible**	

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			and understandable label or watermark that identifies the use of generative AI and names the system used. This definition offers both a qualitative and quantitative benchmark, improving clarity, encouraging consistent application, and fostering transparency in the judicial use of generative AI. Furthermore, this approach would preserve judicial discretion over internal deliberation, recognize that some internal uses are minor or administrative and don't merit disclosure, and encourage greater transparency where AI plays a substantive, if hidden, role in shaping the outcome. Although the current rule's focus on public-facing work is justifiable, it may not go far enough to account for the evolving ways in which generative AI can influence judicial decision-making. A more nuanced, optional disclosure pathway for significant internal uses could better align with the spirit of transparency the framework seeks to uphold. By speaking in a single, consistent voice, the Rule, Standard, and Model Policy can more effectively achieve their shared goal: maintaining public confidence in the integrity and transparency of the courts in an era of rapidly evolving technology. Harmonizing the standards and adopting a clear, uniform approach fosters transparency while promoting responsible and consistent use of generative AI throughout the judiciary.	
			II. Specific Suggestions for Rule 10.430 and the Model Policy **A. Rule 10.430** While Rule 10.430 provides a useful starting point by requiring each California court to adopt a policy on generative AI use, the current version is too narrow in scope and lacks the structural safeguards necessary to ensure effective, ethical, and equitable implementation across the judicial system. Given the rapid evolution of generative AI tools and their increasingly sophisticated applications in legal and	Please see responses to individual suggestions below.

	Commenter	Position	Comment	Committee Response
			judicial contexts, the Rule should do more than merely mandate the adoption of a policy. It must establish a framework for ongoing oversight, transparency, staff education, and equitable deployment. The following additions to Rule 10.430 are designed to promote the principled use of Generative AI and preserve public trust in judicial integrity.	
			1. Regular Policy Review Generative AI systems are developing at a pace that far outstrips the ordinary cadence of rulemaking and administrative reform. Absent regular policy updates, courts risk operating under outdated assumptions about generative AI's capabilities, vulnerabilities, or ethical implications. A routine, mandated review cycle ensures that courts can respond in real-time to emerging threats—such as new forms of deepfake manipulation or data leakage vulnerabilities—and can integrate best practices as they are developed across jurisdictions. An annual review is not only good governance; it is essential to risk management in a dynamic technological landscape. To address these concerns, the additional language is proposed: **Each court shall review its generative AI policy at least annually, updating it to reflect technological advances, emergent risks, and evolving best practices.**	Revising the rule and standard to implement this suggestion would require further public comment because it is beyond the scope of issues presented in this invitation to comment. The task force may consider it as time and resources permit. Additionally, the task force will consider whether to implement this suggestion, and others that are beyond the scope of this invitation to comment, via other means including the model policy or other guidance documents.
			2. Encourage Transparency and Public Disclosure Public confidence in the judiciary depends not only on fair outcomes but also on institutional transparency. As courts increasingly rely on generative AI tools—whether for drafting notices, processing filings, or analyzing legal materials—litigants and the public have a legitimate interest in understanding the nature and limits of those tools. Posting generative AI policies online enables court users to understand when and how generative AI may be used in judicial or administrative communications. This form of transparency is a low-cost but high-impact	As discussed above, this suggestion is beyond the scope of the current proposal, but the task force may consider it as time and resources permit.

	Commenter	Position	Comment	Committee Response
			mechanism for reinforcing public trust, particularly when misinformation about AI use is widespread. To address these concerns, the additional language is proposed: **Courts are encouraged to publish their generative AI policies and summaries online for public access.**	
			3. Require Training for Judicial Officers and Court Staff Judicial decisions rest on informed and independent judgment. That judgment is compromised when those responsible for exercising it are unaware of the tools they are using. Given the black-box nature of many generative AI systems, meaningful use requires a baseline understanding of their technical architecture, strengths, and limitations. Regular training ensures that judicial officers and court personnel can recognize when generative AI outputs are unreliable, when bias may be introduced, and when human review is especially critical. Without this foundational knowledge, courts risk overreliance on tools that may generate plausible—but substantively incorrect—outputs. To address these concerns, the additional language is proposed: **Judicial officers and staff shall receive regular training on generative AI capabilities, limitations, risks, and approved court uses.**	As discussed above, this suggestion is beyond the scope of the current proposal, but the task force may consider it as time and resources permit.
			4. Add a Misuse Reporting Mechanism No technology is error-proof, and generative AI tools—especially those powered by probabilistic models—are uniquely prone to unintentional misuse, hallucinated outputs, and systemic bias. A clear mechanism for reporting incidents or suspected misuse is critical for early detection and course correction. Moreover, a uniform process for elevating serious or systemic issues to the Judicial Council would enable centralized tracking of trends, inform future policy, and ensure consistency across	As discussed above, this suggestion is beyond the scope of the current proposal, but the task force may consider it as time and resources permit.

	Commenter	Position	Comment	Committee Response
			jurisdictions. Just as courts have protocols for reporting security breaches or ethical misconduct, generative AI failures warrant formal oversight. To address these concerns, the additional language is proposed: **Each court shall establish an internal reporting process for Generative AI misuse or failures, with escalation to the Judicial Council where appropriate.**	
			5. Require Evaluation Before Adoption of New Tools Generative AI vendors often market tools without sufficient empirical support for their reliability or alignment with legal standards. Before integration into judicial workflows, generative AI products must undergo a vetting process to assess technical accuracy, adherence to data privacy standards (particularly when sensitive or confidential filings are involved), and bias mitigation protocols. This is especially important for tools that summarize legal arguments, predict outcomes or draft documents with legal effect. Procurement without prior evaluation exposes courts to reputational, legal, and operational risk. To address these concerns, the additional language is proposed: **Before procuring or deploying a generative AI tool, courts must evaluate its reliability, security, and alignment with privacy laws.**	As discussed above, this suggestion is beyond the scope of the current proposal, but the task force may consider it as time and resources permit.
			6. Address Access Disparities and Resource Inequity and Encourage Cross-Court Collaboration and Sharing of Best Practices Without centralized support, Rule 10.430 could exacerbate inequalities between well-resourced urban courts and smaller or rural jurisdictions. Wealthier courts may benefit from the cost and efficiency gains of vetted generative AI tools, while others may lack the personnel or technical infrastructure to deploy or evaluate such tools responsibly. Uniform access to vetted tools, shared training modules, and centralized policy templates would help prevent a two-tiered system in which only some courts can take advantage of innovation—or meet compliance burdens—	As discussed above, this suggestion is beyond the scope of the current proposal, but the task force may consider it as time and resources permit.

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			effectively. Equal access to reliable tools is essential to maintaining a fair and unified judicial system. The Judicial Council is encouraged to provide guidance and support to ensure smaller or under-resourced courts are not disadvantaged in implementing generative AI tools or policy compliance. Relatedly, while many courts will likely encounter similar challenges in deploying generative AI tools—ranging from staff training to tool evaluation—Rule 10.430 should promote shared learning and collective problem-solving. The challenges courts face in implementing generative AI are not unique. Issues such as vetting tools, managing training gaps, assessing risks, and communicating with the public will arise in every jurisdiction. Yet without a mechanism to promote information-sharing, courts may duplicate efforts, develop inconsistent approaches, or miss opportunities to learn from one another. By encouraging collaboration through the Judicial Council, the rule can help ensure that successes in one court inform practices in others—particularly beneficial for smaller or under-resourced courts. To address these concerns, the additional language is proposed: **Courts are encouraged to share lessons learned, policy templates, and successful use cases with the Judicial Council to support cross-jurisdictional innovation and consistency.** This provision recognizes that policymaking in the generative AI space is still evolving and that courts can be partners in that process. A culture of collaboration would reduce redundancy, promote higher-quality policies, and allow the Judicial Council to aggregate experiences and identify system-wide trends or challenges.	
			7. Establish Oversight Structures Rule 10.430 appropriately requires each court to adopt a policy governing generative AI use, but it is silent on who within the court is responsible for	As discussed above, this suggestion is beyond the scope of the current proposal, but the task

	Commenter	Position	Comment	Committee Response
			overseeing implementation or responding to questions about policy interpretation, compliance, or updates. For a generative AI policy to function effectively, courts must have clear lines of responsibility. Without designated oversight, questions about how the policy applies to specific tools or use cases may go unanswered. Moreover, regular policy review—essential to ensure alignment with evolving technologies—requires internal leadership. Whether oversight is assigned to an individual officer (e.g., a court executive or technology lead) or a committee, a formal point of accountability is critical to ensure compliance and support implementation. To address these concerns, the additional language is proposed: **Each court shall designate a responsible officer or committee to oversee generative AI policy implementation and updates.** This addition would promote internal accountability and ensure that generative AI policies are not merely aspirational documents but actively maintained, interpreted, and enforced. It also provides a designated point of contact for court staff with questions or concerns, enhancing operational clarity and promoting responsible adoption. By requiring internal oversight and encouraging external collaboration, the Judicial Council can move from mandating AI policy adoption to fostering a coherent, well-supported, and ethically grounded framework for judicial innovation.	force may consider it as time and resources permit.
			B. Model Policy for Use of Generative Artificial Intelligence As generative AI tools become more integrated into court operations, the absence of clearer limits, documentation practices, and vendor standards risks undermining public confidence in the judiciary and exposing courts to unintended harm. The following proposed revisions are intended to fortify the Model Policy by setting clearer expectations and promoting sound governance in the judicial use of generative AI.	The task force will consider these suggested revisions to the model policy as time and resources permit.

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All comments are verbatim unless indicated in a footnote.

	Commenter	Position	Comment	Committee Response
			1. Clarify Permitted and Prohibited Uses The Model Policy does not currently distinguish between acceptable administrative uses of generative AI and prohibited adjudicative uses. This omission leaves court personnel uncertain about the boundaries of permissible AI use and creates the risk that AI-generated content could be relied upon, even inadvertently, to resolve litigants' legal claims. While generative AI may provide efficiency in low-risk contexts, its use in drafting judicial decisions or analyzing legal arguments threatens to displace independent judicial reasoning. Courts need practical guidance to distinguish between operational assistance and adjudicative overreach. To address these concerns, the following additional language is proposed to provide examples of appropriate and inappropriate uses of the technology: ***Permitted Uses*: Preparing administrative memoranda, summarizing policy documents, generating FAQs or procedural information for court users.** ***Prohibited Uses*: Drafting judicial rulings or decisions, analyzing arguments from litigants, and generating materials representing authoritative judicial reasoning.**	The task force will consider these suggested revisions to the model policy as time and resources permit.
			2. Require Documentation and Accountability The absence of a documentation requirement in the Model Policy makes it difficult for courts to audit or evaluate how generative AI is used. As reliance on these tools grows, courts need internal records that trace which tools were used, for what purposes, and how the outputs were reviewed. This is especially true for medium- and high-risk applications, such as summarizing briefs, drafting communications to the public, or assisting with complex filings. Documentation not only ensures accountability but also provides a mechanism for institutional learning, quality control, and responsible innovation. To address these concerns, the following additional language is proposed:	The task force will consider these suggested revisions to the model policy as time and resources permit.

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

	Commenter	Position	Comment	Committee Response
			Courts must maintain detailed records of medium- and high-risk generative AI usage, specifying the generative AI tools employed, the purposes, reviewers involved, and final verification of outputs.	
			3. Annual Review and External Audits Generative AI is an evolving technology that regularly introduces new features, risks, and legal implications. Without periodic reassessment, courts may continue using tools that have become outdated, less secure, or noncompliant with new legal or ethical standards. While internal review is essential, high-risk applications—such as those that influence case processing or are visible to the public—also warrant external, independent evaluation. External audits provide objectivity, reveal blind spots, and reinforce public trust in court governance. To address these concerns, the following additional language is proposed: **Courts must review their generative AI policy annually and consider third-party audits for high-risk applications.**	The task force will consider these suggested revisions to the model policy as time and resources permit.
			4. Minimum Standards for Vendor Vetting Courts have a legal and ethical obligation to ensure that the technology they use aligns with public sector requirements for data privacy, non-discrimination, and transparency. Not all generative AI vendors meet these standards, and courts should not assume that commercial products are suitable for judicial use without independent review. A procurement framework with minimum vetting criteria will help safeguard against tools that embed bias, mishandle data, or fail to explain how their outputs are generated. To address these concerns, the following additional language is proposed: **Courts shall assess vendor compliance with privacy, nondiscrimination, and transparency standards before procuring generative AI tools.**	The task force will consider these suggested revisions to the model policy as time and resources permit.

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

	Commenter	Position	Comment	Committee Response
			5. Clarify Data Retention and Consent for Public Interactions Many generative AI platforms retain user input data and may use it to improve their models. If a court user submits information to an AI-powered system (for example, to receive procedural guidance), they may not realize that their input is being stored or that their interaction is with an AI system. Without clear policies on data retention and user consent, courts risk violating individual privacy rights and undermining transparency. Court users should be informed when interacting with an AI system and whether their data is stored or shared. To address these concerns, the following additional language is proposed: **Policies must clarify whether and how generative AI tools store input or output data and whether court users will be informed or required to consent when interacting with generative AI-generated materials.**	The task force will consider these suggested revisions to the model policy as time and resources permit.
			These additions to the Model Policy would transform it from a general statement of caution into a practical governance tool that supports the responsible, transparent, and ethical use of generative AI in judicial proceedings. As these technologies become more deeply embedded in court operations, clear standards will be essential to preserving judicial independence and public confidence in the administration of justice.	The task force will consider these suggested revisions to the model policy as time and resources permit.
			Conclusion The Judicial Council's Artificial Intelligence Task Force's proposed Rule 10.430, Standard 10.80, and Model Policy provide a thoughtful and forward-looking foundation for addressing the use of generative artificial intelligence in California's courts. The Judicial Council is to be commended for taking this important step. The initiative reflects a deep awareness of the promise and risks accompanying this emerging technology and a commitment to ensuring its use aligns with the judiciary's core values of integrity, impartiality, and public accountability.	No response required.

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			Even so, to fully achieve the stated goals of transparency, consistency, and ethical use, additional refinements would strengthen the overall framework. As this comment identifies, definitional ambiguities and internal inconsistencies, particularly in the disclosure standards and their scope, create uncertainty for courts and judicial officers. Likewise, the absence of certain structural safeguards, such as oversight roles, training requirements, and guidance on internal use, may limit the effectiveness and uniformity of implementation across jurisdictions. The suggested revisions support the creation of a clear, practical, and enduring framework. They are grounded in the shared goal of maintaining public trust in the courts while fostering thoughtful and appropriate innovation. By harmonizing language across the rule, standard, and policy, clarifying key terms, and incorporating governance best practices, the Judicial Council can further position California's judiciary as a national leader in the responsible integration of generative AI.	
6.	David Freeman Engstrom LSVF Professor of Law Co-Director, Deborah L. Rhode Center on the Legal Profession Stanford Law School	NI	I was honored to present to you last fall, and I commend you on the tremendous work that the Task Force has achieved since then. I am writing to offer public comment on the *Model Policy for Use of Generative Artificial Intelligence*. Below I detail several ways that the *Model Policy* as currently written may have implications for the ability of California courts to innovate. I focus in particular, but not exclusively, on the *Model Policy's* potential impacts court-university partnerships, which I see as a vitally important way that California's courts can continue their leadership at the frontier of justice innovation. As you may recall from our conversation, Stanford Law School's Deborah L. Rhode Center on the Legal Profession and Legal Design Lab are partnering with the Superior Court of Los Angeles County (LASC) to develop and implement a blueprint for more innovative, modern, and accessible courts. In a major report released earlier this month, Stanford and LASC detailed a pioneering plan for justice innovation that includes several projects that seek to leverage emerging generative AI technology.[1] As I interpret the *Model Policy*, when members of a university	Please see responses to David Freeman Engstrom's specific suggestions below.

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	Commenter	Position	Comment	Committee Response
			research team serve as research contractors to a California court, they would be considered "court staff" under its terms. [1] DAVID FREEMAN ENGSTROM ET AL., DEBORAH L. RHODE CTR. ON THE LEGAL PROF., A BLUEPRINT FOR EXPANDING ACCESS TO JUSTICE IN LOS ANGELES SUPERIOR COURT'S EVICTION DOCKET (2025), https://drive.google.com/file/d/11OGqy5_U1NFoZAod-9v1PacQTiEHxBsq/view.	
			I. The Definition of "Public Generative AI System" May Generate Confusion The *Model Policy* defines "public generative AI system" as "a system that is publicly available or that allows information submitted by users to be accessed by anyone other than judicial officers or court staff, including access for the purpose of training or improving the system."[2] I understand the need for the judiciary to create policies for high-risk categories of AI systems. The breadth of this definition, however, may be problematic. In practice, it may be difficult to delineate what is included in this high-risk category of tools and what is not. The examples of generative AI systems listed in the *Model Policy* include diverse tools with different risk profiles. The free versions of the foundation models (such as ChatGPT, Claude, Copilot) raise different privacy and security concerns than do the subscription-based versions of these same tools or proprietary, enterprise tools (such as Westlaw Precision and Lexis+AI). Additionally, as the *Model Policy* recognizes, public LLLMs have been integrated into many commonly used software systems. Many systems currently in use by California courts, and also a growing number going forward, may fall under this broad definition, limiting the tools available to court staff. To avoid implementation headaches, this definition could benefit from additional specificity and/or guidance—for example, by refocusing on acceptable security features and user data policies.	In light of all the comments received on this issue, the task force is recommending revised definitions of "generative AI" and "public generative AI system" in the rule and standard. The task force recommends deleting the definition of "artificial intelligence" in the rule and standard because it is not needed due to the proposed revisions to the definition of "generative AI."

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			Relatedly, while the *Model Policy* governs generative AI use by court staff and judicial officers, this definition is also potentially problematic when considering court-deployed, public-facing AI tools, which some courts are developing (including LASC and the Stanford team). The current definition seems to apply the same treatment to tools wherein users interact with AI outputs but cannot access underlying data and tools where underlying data is accessible. Yet these tools present fundamentally different risk profiles. [2] 10.430(5). Emphasis added.	
			II. The Disclosure Requirements for Generative AI Content May be Unnecessary Second, Rule 10.430(d)(5) would require court staff to disclose the use of generative AI in written or visual outputs if a substantial portion of the content was created using these tools. One of the many promising uses of generative AI for courts in widening access to justice is this technology's ability to create written self-help materials. Using generative AI tools, court staff can expedite the creation of self-help information, as well as streamline and simplify existing legal information resources. Under Rule 10.430(d)(3), court staff must review and ensure that content is accurate and complete. Given this mandated review, Rule 10.430(d)(5)'s disclosure requirement does not seem necessary in all instances. Further, such a disclosure on written legal information may have unintended consequences: readers may be less likely to trust content marked with a generative AI disclosure, perhaps anticipating hallucinations or inaccuracies or perhaps displaying reflexive (and, given review requirements, undue) aversion to machine-generated material. Instead of a brightline rule, the *Model Policy* could provide a series of considerations for making decisions about which pieces of generative-AI-facilitated content should be marked. Alternatively, the rule for court staff could be amended to reflect the discretion that is built into the analogous provision for judicial officers in Standard 10.80(b)(5): "*Should consider* whether to disclose the use of generative AI if it is used to create content provided to the public."[3]	In light of all the comments received on this issue, the task force has recommended a revised version of rule 10.430(d)(5). The task force understands the concern that requiring disclosure might limit courts' flexibility but concluded that mandatory disclosure is necessary in some circumstances to maintain public trust in the judicial branch.

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			[3] Emphasis added.	
			III. Additional Guidance Would Be Helpful on Compliance Measures Research contractors to California courts, and therefore "court staff" under the *Model Policy*, would benefit from additional guidance in two related areas.	No response required.
			First, the *Model Policy* understandably prohibits the use of generative AI to "unlawfully discriminate against or disparately impact individuals or communities…." What is unclear is what kind of testing or benchmarking must be undertaken to make the showing that a tool is not having this prohibited effect. The LASC-Stanford team is building an AI-powered, user-directed informational triage tool that allows litigants to self-sort into appropriate legal help pathways from a comprehensive database of legal assistance resources, based on certain case features and litigant needs and preferences. The *Model Policy* is unclear as to what documentation a court or research team must develop on an AI tool's operation and impact. More specific guidance on this essential issue can ensure trustworthy court use of AI while avoiding innovation-stymieing uncertainty about evaluation requirements.	The task force will consider these suggested revisions to the model policy as time and resources permit.
			Second, the *Model Policy* directs court staff and judicial officers to review generative AI material for accuracy and completeness. As detailed in our recent report, the LASC-Stanford team is also prototyping an AI-powered "default assistant" to aid Court staff in ensuring that default judgments are legally warranted. (While not reliant on just generative AI technology, this tool may be considered a public AI system under the broad definition in the *Model Policy*.) This tool will be available to select court clerks and research attorneys who will have the discretion to either accept or reject the tool's recommendations before entering a clerk judgment or sending a recommendation to the judicial officer. The tool is designed to streamline the otherwise time-consuming manual review process. Here, too, the *Model Policy* is unclear as to what documentation a research team must develop to	The task force will consider these suggested revisions to the model policy as time and resources permit.

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

	Commenter	Position	Comment	Committee Response
			demonstrate accuracy and reliability. More specific guidance can both ensure trustworthy court use of AI and avoid stymieing useful innovation. * * * I appreciate your consideration, and thank you, again, for your leadership on these critical issues.	No response required.
7.	Fortuna Arbitration by Kimo Gandall, CEO Cambridge, Massachusetts	NI	**Statement of Interest** Dear members of the Judicial Council, My name is Kimo Gandall. I am a third-year student at Harvard Law School, a Professional Registered Parliamentarian, and CEO of Fortuna-Insights. I am a lifelong Californian, born and raised in Orange County, and completed my undergraduate studies at UC Irvine (Zot, zot, zot!). My father moved to California from the Hawaiian Islands, and my mother relocated from Waco, Texas. Both of my parents continue to reside in California, as do I. My co-founder, Kenny McLaren, is also a native Californian. Together, Kenny and I founded several companies in California, including WildSafari Studios, during our high school years. Our current company, Fortuna-Insights, Inc., is the parent of Fortuna Arbitration ("Arbitrus.ai"), a legal artificial intelligence firm with significant business relationships in California, involving both investors and clients. We write this letter out of deep concern regarding SP25-01, which represents an impractical attempt to regulate artificial intelligence. Such regulation will substantially increase the cost of engaging private AI vendors. Fortuna supports what Ezra Klein describes in his recent book, Abundance, as "outcome-driven governance." On Governor Newsom's podcast, Klein and the Governor advocated shifting from a scarcity mindset toward policies that facilitate the construction of more housing, energy infrastructure, and other essential public	Please see responses to Fortuna Arbitration's specific suggestions below.

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			assets. That is, a mindset away from solely minimizing harm through regulation, and rather employing the government as a vehicle of public service to improve the lives of citizens. The judiciary plays a crucial role in this transformation, as the rule of law underpins a prosperous and healthy society. However, we remain deeply concerned about increasing costs and inefficiencies within California's public sector, particularly the judiciary. Current case backlogs and prolonged litigation processes not only impose financial burdens but also delay timely justice for Californians. As the Judicial Council considers regulations on generative AI, we urge a balanced approach that acknowledges AI's transformative potential while maintaining rigorous ethical standards and accountability. Embracing AI will help create a judicial system that is more efficient, cost-effective, and accessible for all Californians. Thus, it is out of love for the state of California that we write you to reconsider the implementation of SP25-01. Respectfully submitted, Kimo Gandall CEO, Fortuna Arbitration	
			Executive Summary Fortuna Arbitration appreciates the opportunity to provide comments on the proposed regulation SP25-01 concerning generative artificial intelligence (AI) in California's judicial system. Our primary concern is that the proposed regulations, particularly Rule 10.430 and Standard 10.80, while well-intentioned, may inadvertently increase costs, complicate judicial processes, and hinder the adoption of innovative technologies that can significantly improve judicial efficiency and accessibility.	Please see responses to Fortuna Arbitration's specific suggestions below.

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			California's judiciary currently faces budgetary constraints and significant case backlogs. Rather than imposing restrictive regulations that risk adding further inefficiencies, Fortuna Arbitration strongly recommends a balanced approach leveraging California's rich university resources and private-sector innovation for decentralized oversight and ongoing evaluation of AI tools. This strategy would enable rigorous ethical standards and technical accountability without sacrificing the transformative potential of AI technologies. Moreover, we express concern regarding the proposed standard's language addressing "disparate impact." While we unequivocally support anti-discrimination principles, we caution against a blanket prohibition that misunderstands how AI systems function; indeed, AI systems simply mirror historical biases present in legal precedents rather than generating discriminatory intent independently. We advocate instead for transparency in AI training processes, ongoing bias monitoring, and the mitigation of harmful outcomes, ensuring AI's responsible integration within existing legal frameworks. Fortuna Arbitration believes deeply in AI's potential to enhance the judicial process significantly. By adopting thoughtful, informed, and flexible regulatory frameworks, California can position itself as a leader in judicial innovation while upholding fairness, accountability, and accessibility for all. Fortuna Arbitration also recognizes that the psychology of humans revolves heavily around social accountability, consequences, and punishment as mechanisms to regulate behavior. People inherently understand that negative actions typically lead to repercussions, influencing their ethical and moral decisions. AI becomes unsettling precisely because it lacks this fundamental psychological restraint; it cannot experience guilt, fear consequences, or be genuinely punished. But the Judicial Council should also understand that these are real businesses, with real engineers and executives who stake their name to their product—entire enterprises defined by their opportunity to provide a quality service. Those people *do* care, are held accountable by the market, and can be independently regulated.	

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			We respectfully submit that the Judicial Council reconsider its implementation of SP25-01.	
			The Fortuna Team [Biographical and contact information omitted by the AI Task Force.][2]	No response required.
			Comment on the Implementation of Rule 10.430 and Model Policy Generally Fortuna's first comment is general opposition to the implementation of Rule 10.430 on the grounds of feasibility. The California judiciary is facing a $97 million dollar cut—and during a time when funds are scarce, the judiciary should take extraordinary action to innovate, not regulate. Blain Corren, J*udicial Council Allocates Funding to Trial Courts with $97 Million Required Cut*, https://newsroom.courts.ca.gov/news/judicial-council-allocates-funding-trial-courts-97-million- required-cut. Fortuna recommends that the Judicial Council instead focus on a decentralized regulatory regime, comprised of watchdogs from California's rich university system, and training for judges to review technical recommendations. To do otherwise, would impose regulatory costs on the judiciary and the judiciary's vendors that are not currently reasonable.	Please see responses to Fortuna Arbitration's specific suggestions below.
			Fortuna Recognizes the Potential Harm of Artificial Intelligence Fortuna recognizes the potential harms posed by artificial intelligence that accompany increased efficiency. Recent incidents underscore the dangers of unvetted AI outputs – for example, a New York attorney was sanctioned after citing	The task force determined it is necessary to recommend adoption of a rule of court and a standard of judicial administration to address the confidentiality,

[2] The task force has omitted the commenters' biographical information and redacted email addresses and phone numbers from this comment for privacy reasons.

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			fictitious cases produced by ChatGPT. Sara Merken, New York lawyers sanctioned for using fake ChatGPT cases in legal brief, REUTERS (2023), https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/#:~:text=New%20York%20lawyers%20sanctioned%20for%20using%20fake%20ChatGPT%%2020cases%20in%20legal%20brief,-By%20Sara%20Merken&text=NEW%20YORK%2C%20June%2022%20(Reuters,an%20artificial%20intelligence%20chatbot%2C%20ChatGPT. Moreover, studies reveal that general-purpose AI chatbots "hallucinate" (produce false information) in 58%–82% of legal queries; and specialized legal AI chatbots, such as Lexis and Westlaw, can hallucinate 17% and 33%, respectively. Magesh et al., Hallucination-Free? *Assessing the Reliability of Leading AI Legal Research Tools* (Preprint, 2024), https://dho.stanford.edu/wp-content/uploads/Legal_RAG_Hallucinations.pdf. But attorney misconduct is not unique to AI—indeed, lawyers are frequently sanctioned in California for various misconduct. See The State Bar of California, https://apps.calbar.ca.gov/discipline. In Los Angeles alone, there were 8 disbarments in 2024. Across the state, attorneys are frequently disciplined for comingling client funds, and improper conduct. While bots do currently hallucinate, there is no reason that the Judicial Council should treat them any differently than a non-lawyer legal assistant. That relationship is already governed by Rule 5.3 of California's Rules of Professional Conduct. *See Id.* ("Lawyers often utilize nonlawyer personnel, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning all ethical aspects of their employment."). There is no reason AI should be treated differently; just as if a paralegal invents or misrepresents a case still subjects his supervising attorney to liability, so does the	privacy, bias, safety, and security risks posed by use of generative AI in court-related work. The task force concluded that adopting the proposed rule and standard will help promote responsible innovation in court operations while protecting confidential information, ensuring appropriate oversight, and maintaining public trust in the judicial branch.

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			AI system. The managing of risks in each individual case—as Rule 5.3 already does—should be appropriated by private parties.	
			A Technical Review of AI We borrow the following passage from our foundational whitepaper, *We Built Judge.ai. And You Should Buy It*. We intend the following to be purely educational about the structure and architecture of AI systems, which will support our comment on managing the risks. Artificial intelligence, or AI, is a term introduced in 1955 by John McCarthy, an emeritus professor at Stanford. It broadly describes "the science and engineering of making intelligent machines." For many, AI is most familiar through applications like ChatGPT, which belong to a category of technologies known as "large-language models" (LLMs). These LLMs are a specific type of Deep Neural Network (DNN), which in turn are a subset of algorithms. For the sake of the lawyers who are still with us, let's start with the basics. An algorithm is simply a set of well-defined instructions or procedures designed to accomplish a specific task. Mathematical algorithms, like most quantitative methods, function by correlating independent variables, or "features," with dependent variables, or "labels." Among the types of mathematical algorithms AI users are most likely to encounter are Deep Neural Networks (DNN). . . . LLMs, likewise, are a form of DNN that employs a network architecture called a "transformer." Transformers excel in handling text data and have become the foundation for many advanced models in natural language processing due to their ability to efficiently capture long-range dependencies via selfattention mechanisms—that is, using a transformer allows a model to pinpoint and	No response required.

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			connect related pieces of information across long distances in text by simultaneously considering all words and assigning proper weight to their relationships, even those humans would not otherwise recognize. In an LLM, tokens are both the features and labels. Here's the basic process: LLMs will take any given text, tokenize it into discrete units (tokens), transform these units into embeddings containing a numerical vector value, and then feed into the prediction model. The tokens from the source are the feature; the token in the next sequence (think 'sentence') of the model is the label. These tokens serve as the features for the LLM, providing the necessary input to understand and generate text. Contra to the very many LinkedIn hype posts, the LLM is not 'learning' the truth value of any of these instances as mediated by experience—instead, the text itself is its own source of truth. Said again, humans experience language in relation to their experience and purpose; the LLM learns language only in proximity to external language. The LLM is like teaching a parrot to say "come in" when you knock on the door, learning by mere association. LLMs thus only understand language as a function of the next probable token. Type in "Knock, knock," and ChatGPT invariably replies, "who's there?" Whether or not this relationship indicates truth is a subject of debate. The Judicial Council should thus recognize that LLMs like, ChatGPT, generate text by predicting the next most probable word based on patterns in language, not through experiential knowledge or an understanding of 'truth.' Suppose the following example, which one might make based on the prior understanding of LLMs: … suppose you are a judge trying to make a decision (the output) based on a series of briefs; you have a group of clerks, each with a different subset of knowledge. Each clerk is a node, focusing on input information (the features)—such as case precedents or damage calculations. These clerks work collaboratively, sharing information that seeks a certain pattern of relationship. Each clerk then filters out information, repeating the process iteratively with	

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			other clerks (the layers), until a consensus is reached on the most probable answer. For a decision-making DNN, the label might be a discrete outcome based on what the court should do—affirm, reverse, or dismiss, for example. Alternatively, for a LLM it might be predicting the next sequence of tokens, which once finished, will constitute a whole case, or in the case of arbitration, the whole dispute. But as we also note, this example can be misinterpreted by public officials: In fact, it is debatable whether LLMs are capable of "understanding" or reason as we know or conceptualize those terms at all. While clerks can interpret ambiguous information and adapt their reasoning to the nuances of a case, nodes process input data blindly, relying entirely on numerical patterns. This fundamental limitation necessitates the use of vast amounts of labeled data to train DNNs. Through repeated exposure to examples, nodes can approximate understanding by identifying patterns—but this process is far removed from the intuitive reasoning employed by human clerks. When managing risks, the Judicial Council would do well to consider AI tools nothing more than a series of complex mathematical functions. Those functions do not harbor—and cannot harbor— racial, gender, or lifestyle animus, outside of those biases built into the legal system itself. We should not hold AI tools to a standard higher than we would any human actor. Finally, it is also critical to recognize that "AI" is not a monolithic concept. Different types of AI systems function in fundamentally different ways, and a regulatory approach that lumps them all together can misfire. In particular, traditional predictive or classifier models differ greatly from transformer-based generative models (such as large language models, *LLMs*). Each comes with distinct technical features, use cases, and risk profiles. **SP25-01's focus on generative AI** should be calibrated so as not to inadvertently envelop or stifle other AI-driven	

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			tools that courts already use or may soon adopt for legitimate purposes—especially when classifier models are used to self- regulate the outputs of LLM models.	
			Decentralized Oversight—Universities The Judicial Council of California should establish a decentralized oversight program for generative AI tools by partnering with multiple California universities (for example, Stanford, UC Berkeley, and others in the UC system). Rather than creating a new centralized AI oversight unit within the court system, the Council would invest in academic expertise to perform ongoing monitoring and evaluation of AI technologies used by the courts. These academic partners – drawing on their faculty, research staff, and advanced students in law and computer science – would operate as independent centers of excellence that collectively ensure AI tools meet the judiciary's standards for fairness and accuracy. And indeed, California universities are already leading the race in these programs—as cited above, universities such as Stanford are already the best of AI legal research in the country. Under this proposal, the Judicial Council would coordinate a consortium of university partners, each tasked with a specific scope of work. The Judicial Council should employ these preexisting resources, instead of creating new obligations for state courts. Key responsibilities of the academic partners would include: • **Bias Audits of AI Tools:** Regularly examining and identifying potential legal biases in generative AI systems that might impact court users. Universities would design tests (similar to audit studies) to detect racial, gender, or other biases in AI outputs. Findings would be documented and reported to the Council, enabling preemptive mitigation of any biased behaviors before they affect judicial decisions. Independent validation by different institutions will ensure that bias detection is thorough and credible. Many are already doing so.	This suggestion is beyond the scope of the current proposal, but the task force may consider it as time and resources permit.

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			• **Performance Benchmarking & Reliability Testing: Testing and documenting the performance** of generative AI tools on tasks relevant to court operations. This includes evaluating accuracy, tendency to hallucinate or err, and the tools' effectiveness in tasks like legal research, drafting orders, summarizing documents, and language translation. For example, a university partner might benchmark an AI legal research assistant against known case law queries to measure its error rate (as Stanford researchers recently did, listed above). • **Risk Assessment & Best-Practice Guidance:** Serving as an advisory panel to the Judicial Council on the risks, safeguards, and best practices for safe AI adoption. The academic partners would stay abreast of the latest developments in generative AI (a fast-moving field) and issue guidance on issues like data security, confidentiality, and appropriate use- cases for AI in courts. They could flag emerging concerns (e.g. a new form of AI-generated deepfake evidence) and recommend policy responses. They would also help develop educational programs for judges and court staff—demystifying AI and training personnel on how to use these tools cautiously and effectively. Crucially, this partnership model is decentralized: oversight duties are distributed across multiple institutions rather than vested in a single new government office. Each university partner would work independently within its expertise area (for instance, one might focus on bias and ethics, another on technical performance and security, etc.), and the Judicial Council would aggregate their insights. The Council could formalize this through memoranda of understanding or research grants that outline deliverables (e.g. annual bias audit reports, quarterly AI performance briefs, on- call advisory services for emergent issues, etc.). By empowering external experts, the Judicial Council can ensure that oversight keeps pace with innovation. This approach mirrors strategies already being embraced in California's broader AI governance: the state is encouraging collaborations between government, academia, and industry to respond to AI's rapid evolution. It recognizes that California's top	

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			universities are an invaluable resource for public sector innovation, especially in a field as complex as AI. It is notable that universities are already working with the court system to effectuate this process: in Los Angeles, a Law School team is already implementing several AI systems, including an automated 'default prove-up' system to "review default judgements," and a "referral tool" to help connect pro se litigants to legal tools. Stanford University, Human-Centered Artificial Intelligence, https://hai.stanford.edu/news/harnessing-ai-to-improve-access-to-justice-in-civil-courts.	
			Decentralized Oversight—Private Institutions California has one of the largest startup ecosystems—and for comparably minimal costs, private enterprises can work with the Court system to deploy automated systems across every internal vertical. This is already occurring. But more importantly, companies (like Fortuna) can assist the Judicial Council in providing comprehensive, peer-reviewed, and open-sourced analysis of their systems. If the court system must incorporate AI regulations, it is more efficient to price those regulations into each bid, with individual procurement officers placing those conditions into state contracts. Not all AI systems—including generative—need extensive (expensive) oversight. Some systems—like automated shepardization—work on an expedited workflow that only checks certain conditions. Others, like sentencing algorithms, clearly do, as they pose a high likelihood of imposing social costs if improperly deployed. The Judicial Council would do well in establishing a contractual framework for procurement officers to analyze bids, as opposed to imposing broad regulatory costs across the court system.	This suggestion is beyond the scope of the current proposal, but the task force may consider it as time and resources permit.
			Comment on Discrimination	Please see responses to Fortuna Arbitration's comments in the

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			Fortuna's second comment is on the policy of regulating AI "unlawful discrimination." Fortuna argues that new binding rules regarding discrimination that target AI are unnecessary and potentially redundant. California's courts are already bound by robust constitutional, statutory, and ethical constraints that prohibit bias, discrimination, and misuse of private information. These existing legal frameworks inherently extend to any tools courts use—including generative AI—ensuring accountability and fairness without the need for technology-specific mandates. Overly specific AI regulations could create confusion, stifle beneficial innovation, and imply a false gap in oversight where none truly exists. Instead of new binding rules, the Council should issue flexible **best- practice guidelines** on AI use, allowing courts to adopt new technology responsibly under the umbrella of existing law. This approach safeguards core principles (impartiality, privacy, and integrity) while promoting innovation and adaptability. The analysis below outlines the current legal and ethical constraints on court conduct and explains why they sufficiently govern AI usage in the judiciary.	"Policy Recommendation" section below.
			Existing Regulation for Discrimination From a broad state constitutional angle, guarantees of due process and equal protection apply fully to the judicial branch. *Article I, Section 7(a)* provides that no person may be denied equal protection under the laws by the state. This broad mandate means that **courts, as state actors, must not treat individuals differently based on protected characteristics**, whether decisions are made by humans or by relying on an AI tool. In addition, *Article I, Section 1* enshrines privacy as an inalienable right, added specifically to guard against modern threats to personal privacy aclunc.org. These constitutional provisions create a baseline: any court practice—including use of generative AI in proceedings or administration—that results in unlawful discrimination or undue intrusion on privacy would violate fundamental law.	Please see responses to Fortuna Arbitration's comments in the "Policy Recommendation" section below.

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			In terms of statutory requirements, California state law already forbids discrimination in any state- operated program on the basis of characteristics like race, religion, national origin, sex, disability, or other protected categories. Cal. Gov. Code, sec. 11135 (2024). This law applies to state entities and programs, which encompass the courts. Finally, the judiciary already has sufficient regulations to cover concerns over generative AI. Judicial officers are bound by the California Code of Judicial Ethics, which imposes explicit duties to prevent bias and ensure fairness. Canon 3 "Performing the Duties of Judicial Office Impartially and Diligently" states that "A judge shall perform judicial duties without bias or prejudice." This canon also requires judges to demand similar impartial conduct from others under their authority: "A judge shall require order and decorum in proceedings" and must ensure all staff and court personnel under the judge's direction uphold the same standards. This canon also requires judges to demand similar impartial conduct from others under their authority: *"A judge shall require order and decorum in proceedings"* and must ensure all staff and court personnel under the judge's direction uphold the same standards.	
			Comment on Disparate Impact SP25-01 is the Judicial Council's proposal to adopt Rule 10.430 and Standard 10.80, establishing policies for the use of generative AI in court-related work. Under the proposed Standard 10.80 (applicable to judges in their adjudicative role), judicial officers: **"Should not use generative AI to unlawfully discriminate against or disparately impact individuals or communities"** based on membership in any protected class (i.e. any classification protected by federal or state law). The intent behind the *disparate impact* language is clear and laudable: to prevent AI from injecting bias or causing unfair outcomes in the administration of justice. The	Please see responses to Fortuna Arbitration's comments in the "Policy Recommendation" section below.

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			concern arises from well- documented cases of algorithms exhibiting bias against racial minorities, women, or other protected groups. The Council's proactive stance recognizes that if generative AI is to be used in courts, it must not undermine principles of equal justice. **However, the phrasing of the clause raises practical questions and demonstrates a misunderstanding of the technical capabilities of AI:** generative AI itself has no consciousness or intent—it produces outputs based on preexisting patterns in its training data. If that training data (e.g. decades of case law or statutes) contains historical biases or systemic disparities, the AI's outputs may reflect those patterns. In such a scenario, is the AI "unlawfully discriminating," or is it simply mirroring biases inherent in the law? The distinction is crucial for policy. While we agree that unlawful discrimination should be prohibited, the Judicial Council would be well-advised to consider the potential harm of a blanket *disparate impact* prohibition. Instead, the Judicial Council should aim to introspectively examine preexisting harmful policies in California; correct those policies; and expressly change the system, instead of attempting to reduce mere mathematical functions representing the current system. Most importantly, this regulation creates a perverse incentive: because AI has no intent and is largely a reflection of previous training data, the only way to accommodate statutes that already cause disparate impact would be to manually weigh the model in favor of certain discriminated against parties (at least, for more traditional algorithms, like classifiers. For transformer models, such as LLMs, reinforcement training or simple prompting would likely suffice). To solve the social harm of disparate impact, the legislature should change the relevant statutes, and the judiciary should overturn the relevant caselaw. Likewise, because the judiciary should judge each case on its individual merits, the council should not adopt this rule.	

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			Impartiality in the Legal System It is an uncomfortable reality that the legal system—despite ideals of impartiality—has produced disparate outcomes for different communities over time. Numerous legal precedents and studies demonstrate that *protected groups (by race, ethnicity, gender, etc.) have faced unequal treatment or outcomes in practice*. These disparities form part of the corpus of "ground truth" on which any legal AI would be trained: • **Racial Bias in Sentencing and Death Penalty:** The U.S. Supreme Court in *McCleskey v.Kemp* (1987) was presented with a rigorous statistical study of Georgia's death penalty. The data showed defendants accused of killing white victims were 4.3 times more likely to be sentenced to death than those accused of killing Black victims. 481 U.S. 279, 287. Unadjusted figures were even starker: capital sentencing rates in cases with white victims were almost 11 times higher than in cases with Black victims. *Id*. at 326 (J. Brennan, Dissenting). The Court acknowledged a "discrepancy that appears to correlate with race" but ultimately declined relief, essentially reasoning that some level of racial bias in sentencing was "inevitable." *Id.* at 312. This precedent chillingly illustrates that systemic racial disparities in outcomes have been long recognized yet tolerated in law. An AI trained on the body of criminal case law, especially older cases, will inevitably read countless opinions that reflect or even accept such disparities. • **Disparities in Pretrial Decisions (Bail and Indictment):** Racial bias is not confined to sentencing – it can appear at the very start of a case. A 2023 empirical study of over 43,000 felony cases in New York City found that Black defendants faced higher bail amounts and were more likely to be indicted than similarly situated White defendants. Connor Concannon and Chongmin Na, *Examining Racial and Ethnic Disparity in Prosecutor's Bail Requests and Downstream Decision-making*, 16 Race and Social Problems	Please see responses to Fortuna Arbitration's comments in the "Policy Recommendation" section below.

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			1, 1 (2022), pmc.ncbi.nlm.nih.gov pmc.ncbi.nlm.nih.gov. These early decisions had *"significant indirect effects"* that cumulatively contributed to **unwarranted racial disparities** in pretrial detention and case outcomes. *Id.* Even though some later stages showed mixed effects, the study confirms that at critical decision points, race was a factor in practice. The judicial decisions and prosecutorial requests recorded in such data carry forward a legacy of disparate impact that an AI might learn as "normal" patterns of how bail is set or who gets indicted. The Judicial Council is likely aware of further studies proving the general point that the law is already embedded with elements of disparate impact. *Bias and disparate impacts are already woven into the fabric of our case law and legal data*. Race, gender, and other protected characteristics have, in various ways, influenced outcomes in courts. These influences might be unjust, yet they exist as part of the "ground truth" of the law as written and applied. Any AI ingesting tens of thousands of judicial opinions will inevitably learn patterns reflecting these disparities. This is not to say the law is *only* bias—of course, the law also contains neutral principles and protections against discrimination – but the historical record is mixed, and an AI does not inherently know which patterns are the "bad" biases to avoid and which are valid legal rules. It simply learns what it is given. Empirically, if that heritage includes systemic disparities, the model will learn them. A 2024 study by Bozdag et al. found that **Legal-BERT (a transformer model tuned for legal language) "inherits" gender bias from its training data**, which included U.S. and EU case law blog.genlaw.org. Similarly, Sevim et al. (2023) concluded that **legal text corpora contain significant gender bias** across countries, and NLP models trained on those corpora reflect that bias blog.genlaw.org. These findings confirm that biases present in source data are picked up by AI. The model does not independently concoct stereotypes – it statistically *learns* them from the patterns in the text. For example, if many judicial opinions subtly associate women with certain roles (or minorities with crime, etc.),	

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			a text-generating AI will likely reproduce such associations in its outputs unless corrective measures are taken. Given the above, we can draw a critical distinction: **Generative AI tools replicate patterns; they do not originate policy.** Any *disparate impact* observed in an AI's outputs is traceable to some pattern in its training data—which, in the case of legal AI, is our body of law and legal practice. If an AI tool used by a court produced an outcome that disproportionately affects a protected group, it is almost certainly because that outcome aligns with a precedent or rule in the training data that had the same effect. The AI did not on its own decide to treat one group worse than another; it statistically inferred that outcome from how similar cases have been treated or discussed in the legal record. This dynamic is why the "unlawfully discriminate or disparately impact" clause, as an oversight mechanism, could be problematic. It implicitly treats the AI as a potential *actor of discrimination*, akin to a human who might choose to apply a prejudiced rule. But the AI's "choices" are just regurgitations of human choices embedded in data. In other words, if we detect that an AI tool's use is causing a disparate impact, that is likely symptomatic of an underlying bias in our laws or precedents. The AI is highlighting it, not independently creating it. From a policy perspective, this suggests a need to focus on *data bias and outcome monitoring* rather than simply forbidding the tool from producing any biased result. We must ask: **Is it fair or useful to hold the AI to a higher standard than the source material it learned from?** If even our current human judges and juries—bound by existing law—produce disparate outcomes, expecting an AI trained on their outputs to somehow not produce disparate outcomes might be unrealistic without further intervention. In fact, a rigid application of the *disparate impact* prohibition might perversely result in banning AI tools that are merely truthfully reflecting the state of the law.	

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			Legal Considerations The language *"unlawfully discriminate or disparately impact"* lumps together two related but distinct concepts from discrimination law. *"Unlawful discrimination"* is straightforward – it refers to intentional disparate treatment or policies that explicitly violate anti-discrimination laws. No one would argue AI (or any tool) should be allowed to do that. However, *"disparate impact"* in legal doctrine refers to when a facially neutral practice has a disproportionate adverse effect on a protected group, even without discriminatory intent. *See Rosenfeld v. Abraham Joshua Heschel Day Sch., Inc., 226 Cal. App. 4th 886, 893 (Cal. App. 2014) (*"Disparate impact exists where, *"regardless of motive,* a facially neutral employer practice or policy, bearing no manifest relationship to job requirements, in fact had a disproportionate adverse effect on members of the protected class."). Under civil rights statutes (like Title VI for recipients of federal funds, or Title VII in employment), a disparate impact is not automatically illegal; it triggers an analysis of justification and a possible less-discriminatory alternative. In other words, **not every disparity is "unlawful"** – the law tolerates some disparities if they flow from legitimate practices and no less-biased alternative is feasible. The Supreme Court has even noted that requiring the elimination of all racial disparities in criminal justice would "throw into question the principles that underlie the entire system." By stating generative AI *"should not… disparately impact individuals or communities"*, the proposed policy risks holding AI to a near-zero-tolerance standard for any disparate outcome. That goes beyond how we treat most policies implemented by human actors. For instance, if a new judicial procedure for setting bail was found to inadvertently result in more detentions of indigent defendants (who might disproportionately be from certain racial groups), courts would carefully study if the procedure is justified or could be improved—but they might not automatically discard it unless it violates the law. With AI, the current wording suggests *any* disparate impact is unacceptable, even if the AI is faithfully following	Please see responses to Fortuna Arbitration's comments in the "Policy Recommendation" section below.

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			existing law. This could lead to a paradox: an AI tool could be deemed violative of policy for echoing the very disparities our legal system has produced (which themselves might not have been deemed unlawful enough to change by courts). Additionally, enforcing this clause raises challenging questions: How will courts determine if an AI tool has a disparate impact? What metrics or evidence will be used? Unlike a hiring algorithm where one can compare selection rates by race or gender, a generative AI might be used for varied tasks – summarizing a case, suggesting a sentence, drafting an order. The *impact* of those usages on communities is indirect and may be hard to isolate. Would we examine the AI's outputs over time for statistical bias? Or scrutinize a particular case outcome influenced by AI to see if it harmed a protected group? This is a nebulous area. There is a risk of **over-deterrence**: courts might avoid using AI at all for fear that any mistake or any appearance of bias could put them in violation of Rule 10.430/Standard 10.80. Such fear could rob the judiciary of efficiency gains and consistency that AI could offer in appropriate tasks.	
			Policy Recommendation 1. **Emphasize "Compliance with Anti-Discrimination Law" and Intent:** The rule should make clear that AI must not be used in ways that *violate existing anti-discrimination laws*. For example, *"Generative AI must not be used to engage in unlawful discrimination (such as basing decisions on protected characteristics in a manner prohibited by law)."* This covers the **intentional or direct misuse** of AI to target a protected class – which is clearly unacceptable. It also aligns with how courts understand discrimination (e.g., an AI should not be programmed with different rules for different races, etc.). This framing is stronger on *unlawful conduct*, and avoids the ambiguity of "disparate impact" by itself.	The task force is not recommending revisions in response to this suggestion. The task force concluded that the requirement not to "use generative AI to unlawfully discriminate" is the clearest way to inform users that they must keep their legal obligations in mind when using generative AI. The task force concluded that identifying specific potential means or forms of discrimination in the rule and standard could be

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				read to exclude certain unlawful behavior not specifically listed.
			2. Replace or Qualify "Disparately Impact" with "Identify and Mitigate Bias": Instead of a flat prohibition on any disparate impact, the policy could require that courts **assess and mitigate** potential biases in AI tools. For instance: *"Courts should evaluate generative AI outputs for potential biased or disparate patterns affecting any protected group, and take appropriate remedial action if such patterns are detected."* This shifts the role to one of vigilance and correction. It acknowledges that some bias may emerge (since the AI is trained on imperfect data), but insists that courts be proactive in catching it – much as the proposed standard already says judicial officers "should review generative AI material… for biased, offensive, or harmful output" courts.ca.gov. The difference is we treat disparate impact as a **risk to manage and minimize**, not an on/off switch that disqualifies the AI altogether. This approach is akin to how agencies handle disparate impact under civil rights laws: identify if it's happening, then adjust the practice or provide justification and seek less discriminatory alternatives justice.gov justice.gov. A court could similarly adjust how it uses AI or require tweaks in the AI system if a bias is found.	In light of all the comments received on this issue, the task force is recommending revisions to rule 10.430(d)(3) and (4) to require users to take reasonable steps to verify, correct, or remove inaccurate or biased material. The task force is recommending similar revisions to standard 10.80(b)(3) and (4).
			3. Require Transparency from AI Tools Regarding Training Data: To better align understanding, the policy could mandate that any AI tool used by courts document its training sources and known limitations. For example, a provision might state: *"Any generative AI system adopted should come with documentation of its training data (e.g., corpus of case law, statutes) and any bias testing performed. Courts should favor tools that have undergone bias audits and that allow for human interpretability of their outputs."* This doesn't appear in the current draft but would greatly help in oversight. If we know the AI was trained, say, on all California appellate cases from 1850–2024, we can anticipate that older cases in that set may carry historical prejudices, and we can guide users accordingly (or even filter out certain eras or terms). This addresses the issue upstream, by acknowledging bias in training data and demanding	The task force is not recommending revisions in response to this suggestion. The task force determined that imposing this requirement would prevent use of most generative AI systems, including those developed by trusted legal research providers. Additionally, this suggestion imposes a higher bar for generative AI research tools than other tools. For

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			clarity. Such transparency can inform judges and staff to be skeptical of certain outputs and cross-check them.	example, standard legal research systems do not warn about or filter case law from the 1800s.
			4. Continuous Monitoring and Feedback Loop: Finally, the Council might consider adding a requirement that the use of AI in courts be **continually monitored for impacts on different communities**, with periodic reports or audits. For instance: *"The Judicial Council (or a designated committee) should periodically review the effects of generative AI use in court operations, including any evidence of disparate impacts on litigants or communities, and update policies or training as needed."* This creates an ongoing oversight mechanism. If a pattern emerges where AI-assisted decisions appear skewed, the Council can take targeted action – maybe adjusting the tool or limiting its use in that context. This dynamic approach is more adaptive than a static prohibition and acknowledges that our understanding of AI bias will evolve. It also signals to communities that the judiciary is not complacent – it is actively watching for and addressing any inequitable outcomes.	This suggestion is beyond the scope of the current proposal, but the task force may consider it as time and resources permit.
			Fortuna writes today to recommend a change of the language "prohibit the use of generative AI to unlawfully discriminate against or disparately impact individuals..." to strike the "disparately impact. **Proposed Rewritten Clause:** In light of the above, a potential rewrite of the contentious clause in SP25-01 could be: *"Generative AI tools must be used in a manner consistent with all anti-discrimination laws. Courts and judicial officers should not rely on AI outputs to make decisions that would violate these laws or unjustly discriminate against individuals or groups. If a generative AI system produces recommendations or content that reflect historical biases or result in disparate impacts on protected classes, users should correct those biases, where expressly stated. Users should also make a conscious effort to promote Generative AI accountability and report any express discriminatory behavior. Courts shall take steps to mitigate*	Please see previous responses.

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			any such bias, including reviewing AI outputs for fairness and adjusting use or policy as necessary to prevent unjust outcomes." Such language maintains a **strong stance against discrimination** (no one wants AI that produces unjust results) but shifts the focus to *mitigation* and *responsibility* rather than an outright bar. It implicitly accepts that some bias may surface (since it references "if… reflect historical biases") but demands action when it does. This is more realistic and still aligns with the Judicial Council's ethical mandate. It treats AI similar to how we treat a junior clerk or an advisory guideline: a helpful input that must be checked and that must not be followed if it would lead to illegal or inequitable results.	
			Conclusion We wanted to end our comment with a sort of 'legal inspiration.' Right now, when you think of a "law", you think of words. It's a paragraph; it has subparts; it's got one of those § things. And you're right—but not for long. In short order, the law is going to be an AI. And there's a simple reason for that; to repeat our founding words: *Predictable, efficient, and cheap—very cheap.* Let us repeat that: The law is going to *be* an AI. We mean that literally. The AI will not merely read the statute and estimate what it means. It will *be* the *statute*—a statute that you can talk to, a statute you can ask for legal advice. And the Judiciary—celebrating California's innovation and output-driven government—should embrace this. Importantly, AI reflects the current system—if that system is discriminatory or has incidental disparate impacts, the legislature should either (1) change that system or (2) create social policies to minimize the incidents of disparate impacts. If sentencing has a racially disparate impact, then the solution is to solve the	No response required.

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			underlying issues of crime and poverty—not to engage in an increasingly popular luddite sentiment. AI is not to blame for bad law. *Californians have always been innovators—we must remain that way.* This is inevitable — and Fortuna-Insights is seeing it firsthand. We built Arbitrus, an AI arbitrator that adjudicates contract disputes by the parties' express stipulation. When Arbitrus performs this function, it's really not acting as a judge at all—it *is* the contract. Its statements are not opinions; they are truths about the contractual arrangement, and the parties have stipulated that the AI is always right. When they don't like the answer, they don't yell at Arbitrus; they change the contract—thus reprogramming the bot. And this dynamic doesn't just play out on the back end. With Arbitrus' predictive function, parties can ask it for legal advice *before* they've even acted. It's a revolutionary system — and we see it work for California companies every day. Make no mistake: That basic system is coming to state and federal judiciaries (and already is). As such legislators need to approach legal AI not as a "tool" for judges to use; it will start life as such a tool, but almost certainly will not end that way. When the machine perfects to the point that judges trust it implicitly and are right to do so, legal AI will represent nothing short of a new form of de facto government that collapses the judiciary and legislature into one hybrid entity. That's future is what California needs to be planning for now. Because it's not fifty years away. It might not even be *two*. Blink once? It's out from under you.	
8.	Mark G. Griffin, Esq. Attorney and Interim Chair of California Lawyers Association, Law Practice	AM	As drafted, the Judicial Council of California's Artificial Intelligence Task Force's ("Task Force") proposed rules, Cal. Rules of Court, rule 10.430, and Cal. Standards of Judicial Administration, standard 10.80, are well-written proposals. However, as drafted, the proposed rules overlook the biggest bias in artificial intelligence: human bias. Artificial intelligence is only as good as the human controlling it. To address	The task force appreciates the commenter's concerns but is not recommending revisions in response to this suggestion. Although the task force agrees

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	Management and Technology Section Hanson Bridgett LLP San Francisco		human bias, the Task Force should consider inserting the following language after Cal. Rules of Court, rule 10.430(d)(2): "Require court staff and judicial officers who generate or use generative AI material to review generative AI prompts for biased, offensive, or harmful input." Additionally, the Task Force should consider inserting the following language after Cal. Standards of Judicial Administration, standard 10.80(b)(2): "Should review generative AI prompts, including any generative AI prompts prepared on their behalf by others, for biased, offensive, or harmful input."	that court staff and judicial officers should be aware that biased prompts can lead to biased outputs, the task force is concerned that requiring prompts to be unbiased could make it more difficult for judicial officers and court staff to perform certain tasks. The task force concluded that this issue can more appropriately be addressed through education and guidance materials.
9.	Justin Xavier Howe Information Security/Security Operations Judicial Council of California San Francisco	NI	Suggested revision to JCC GenAI Policy **The use of non-creative AI models should always require disclosure of the false-positive-rate in Judicial Applications** Every statistical model, machine learning model, and Generative AI model has a false positive rate (or equivalently, a hallucination rate). This rate should be explicitly disclosed and documented in all judicial applications of this model, so that the sufficiency of such evidence can be evaluated. A model that exhibits a 10% false positive rate must be handled differently than a model exhibiting a 0.01% false positive rate within the Judiciary. The primary aim of this suggestion, is to remind Judicial Officers that every statistical model generates false positives. Warning: The JCC does not disclose these false-positive-rates in current publications, nor related 'goodness-of-fit' measures in the statistical analysis that it conducts.	The task force appreciates the commenter's concerns but is not recommending revisions in response to this suggestion. The task force determined that imposing this requirement would prevent use of most generative AI systems, including those developed by trusted legal research providers.

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			Pertinent Citations • *"We know AI [writing] detectors don't work (DO NOT USE THEM), so I hear about instructors using their gut to figure out who is cheating."* – Ethan Mollick o https://x.com/emollick/status/1699517598772125842 • *"There are at least seven confirmed cases of misidentification due to facial recognition technology, six of which involve Black people who have been wrongfully accused."* o https://innocenceproject.org/news/artificial-intelligence-is-putting-innocent-people-at-risk-of-being-incarcerated/	
10.	Hon. Curtis Karnow Judge, Superior Court of California, County of San Francisco	N	I write on my own behalf and not that of my court. I discuss these issues: (1) whether any rule or standard is needed at this time; (2) the definitions and terms used; and (3) recommendations on training and alerts which may address the Committee's underlying concerns. I recommend against issuing the rule and standard. 1. It may be awkward for a committee at least implicitly charged with developing new rules to decide that new rules are not worth the candle. But I suggest there is no current need for the new rule and standard; there are plenty of rules already, including those that address the underlying concerns of the current proposal. Courts and individual judges around the country have thought it necessary to come up with a plethora of rules, almost all of them useless.[1] The rules are a mixture of warnings and alerts, inconsistent definitions of AI, arbitrary barriers to using AI, requirements that the use of AI be noted without an apparent rationale; and, mostly, restatements of extant duties (such as that lawyers shouldn't fill briefs with made-up cases).	The task force appreciates the commenter's concerns but determined that it is necessary to recommend adoption of a rule of court and a standard of judicial administration to address the confidentiality, privacy, bias, safety, and security risks posed by use of generative AI in court-related work. The task force determined that adopting the proposed rule and standard will help promote responsible innovation in court operations while protecting confidential information, ensuring appropriate oversight, and maintaining public trust in the judicial branch.

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			[1] See generally, *The Duke Project*: https://rails.legal/resource-ai-orders/. These orders are generally targeted at lawyers, not court personnel. I suggest that rules should be reserved only for behaviors which may lead to sanctions. Alerts and cautions do not fit that bill, and they erode the signal we try to send when enacting a rule. Standards of judicial administration certainly need not meet that high bar; but should not issue if they duplicate existing duties and otherwise are unlikely to change people's behavior. The rush to have rules in this area parallels the rush among businesses to have "AI-enabled" services and products. Some of those efforts are just old products in new packages. The desire to be fashionable risks being unfashionably dated in the near future.[2] Courts, and especially the Judicial Council, should be wary of contributing to this. [2] For a blunt discussion of the hype, see e.g., Ed Zitron (Feb. 17, 2025) at https://www.wheresyoured.at/longcon/. Perhaps an animating concern here is to ensure that users of AI, such as court staff and judges, are aware of the risks. This sort of concern does not need a rule or standard. This sort of concern can be addressed with statements, alerts, and training for judicial officers and staff. Indeed, training and alerts are likely to be far more useful to users. There are real dangers in using AI products,[3] which caution against reliance on the systems, at least the current (early 2025) crop of them. And as this fast-moving area evolves, new alerts and modifications to training would be able to react on a time-scale far, far shorter than the process of enacting and revising new rules and standards. [3] I briefly describe some of them at https://works.bepress.com/curtis_karnow/70/. [This document, last edited earlier this year, is already out of date in some respects.] One of the central issues for developing AI is the alignment problem, and in that	

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			connection it has become increasingly clear that the risks of AI include, for example, cheating and deception. *Alignment Faking In Large Language Models,* https://time.com/7259395/ai-chess-cheating-palisade-research/; [Chrome extension redacted][3] https://arxiv.org/pdf/2412.14093 *discussed in* https://www.forbes.com/sites/craigsmith/2025/03/16/when-ai-learns-to-lie/. We don't know enough yet to formulate a response to actual, pervasive, problems in California state courts: which is the usual backdrop for new policies and rules. I understand wanting to get out in front of technology, but that goal is best addressed by having this Committee act as the eyes and ears of the state judiciary, collecting both legal and technology developments, identifying the specific risks and solutions, and publicizing those to people who work in our courts.	
			2. The comments below apply to both the proposed rule and standards.	No response required.
			Definitions "Public AI system" -The definition can be read to include as a 'Public AI system' access by contractors for training purposes when they work on a private (internal) system. They are likely bound to keep data confidential. So is this what the "drafters mean? -How will users know if the system is 'publicly available'? There are currently products which are available both as public and private systems. Furthermore, it very likely that in the near future AI will be embedded in larger applications and systems, in effect hidden from the view of the user, who will have no idea if the system is public or private. For example, one may imagine a seemingly ordinary auto-complete feature in a word processor which is guided by AI.	In light of all the comments received on this issue, the task force is recommending revised definitions of "generative AI" and "public generative AI system" in the rule and standard. The task force recommends deleting the definition of "artificial intelligence" in the rule and standard because it is not needed due to the proposed revisions to the definition of "generative AI."

[3] The task force has redacted a link to a Google Chrome extension.

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			"Artificial Intelligence" I do not envy the committee the task of defining this term. The definition here is not useful because the notion of "typically requiring human intelligence" is vague. We don't know if this applies to old-fashioned Westlaw research (reading a lot of cases and knowing which ones have certain words could be said to typically require human-like intelligence), or the relatively newer tools, marketed as "AI"-enabled by both Westlaw and Lexis, which are frequently used as 'super' search tools.[4] Human intelligence is also used to spell-check, but of course we don't mean to include that sort of tool in this definition. [4] E.g., https://legal.thomsonreuters.com/en/products/westlaw-edge. See https://nbi-sems.com/blogs/news/lexisnexis-and-westlaw-will-launch-ai-legal-research-tools. [The deeper reason why definition is difficult here: As technology advances and takes over tasks typically done by humans, the tasks no longer become implicitly defined as what humans can do. For example, both the games of chess and Go were (at different times) considered to be the exclusive domain of human thinking as *contrasted with* the capabilities of computers. Then as computers took over the top rankings in these games, excellence at the games no longer became part of the human definition. So too with AI and the law: as computerized systems get better than humans in tasks (from spell checking to reviewing documents for relevance and privilege)—excellence at those tasks is no longer thought to be an especially human ability or part of the 'human" definition.] The Committee's definition of 'artificial intelligence' in other words might refer to all currently available "AI" products, or none of them, of some of them. The definition provided is also confusingly close to the definition of artificial general intelligence [AGI], a system which can perform all intellectual tasks	

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			humans can do, and in many cases exceed human performance. The Committee I am sure does not mean to invoke AGI: AGI does not currently exist, and there are different views when if ever it will arrive. An informed opinion predicts its arrival in 2026 or 2027.[5] The Committee may well have very different views about the risks of AGI than it does about the current crop of AI products. [5] Kevin Roose, "Powerful A.I. Is Coming. We're Not Ready," *The New York Times* (March 14, 2025), https://www.nytimes.com/2025/03/14/technology/why-im-feeling-the-agi.html. Generative AI This definition exhibits the difficulty of having a rule or standard that would be useful for more than a few months, because the technology changes rapidly. The "only" clause here excludes most current AI products, because these products not only use data on which the product was trained but also, on a prompt-by-prompt basis, they reach into the internet {and other sources, especially in private systems}.[6] This current crop of products is excluded by your definition. [6] E.g., https://textcortex.com/post/ai-chatbots-with-web-browsing; https://community.openai.com/t/chatgpt-can-now-access-the-live-internet-can-the-api/401928 Another example: LLMs are no longer the sole inhabitant of the generative AI space:- we have small language model as well which are highly useful. Nor should the Committee think that LLMs are the last word in AI; within a year or so the structure of AI programs might well be wholly different [7] and not properly described as "generative AI" at all.[8] [7] G. Scali, "Exploring the Future Beyond Large Language Models" (12 July 2023), https://thechoice.escp.eu/tomorrow-choices/exploring-the-future-beyond-	

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			large-language-models/#:~:text=Beyond%20Large%20Language%20Models:%20The,learning%2C%20and%20meta%2Dlearning; Vivek Wadhwa, "The next wave of AI won't be driven by LLMs. Here's what investors should focus on instead," *Fortune* (Oct. 18, 2024), https://fortune.com/2024/10/18/next-wave-ai-llms-investor-focus-tech/ [8] https://www.linkedin.com/pulse/symbolic-ai-generative-whats-difference-darren-culbreath-mkvpe#:~:text=Generative%20AI%20%2D%20Creating%20Novel%20Content,music%2C%20or%20even%20writing%20stories.	
			Disclosure of substantial portion It's unclear how this applies. Generally the AI generated output is used as a first draft; sources are checked (to the extent possible) and the draft is edited; perhaps every sentence ends up with at least a light edit, or some bits are deleted and others added. Does the end product contain a "substantial" portion? "Substantial" might not refer to a percentage of the final text, but rather to the *material* parts of a text, such as when a certain input (e.g. from an AI) is the source of the most important chunk of the final product, although reflected only in a small percentage of the verbiage. Is that what the Committee means?	In light of all the comments received on this issue, the task force has recommended a revised version of rule 10.430(d)(5).
			Rule application The rule only applies if a court permits the use of generative AI. Most courts neither permit nor not permit it, and that can be expected to continue. So the rule then doesn't apply; is that correct?	The task force agrees that rule 10.430, as originally proposed, inadvertently excluded courts that do not take a position on use of generative AI. The task force recommends that rule 10.430(b) read as follows: "Any court that does not prohibit the use of generative AI by court staff or judicial officers must adopt a generative AI use policy. This

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				rule applies to the superior courts, the Courts of Appeal, and the Supreme Court."
			3. The core underlying concerns of the Committee are already handled by the current regime of rules, laws and Canons. Surely court staff and judges know that they should not publicize personal information like social security numbers; they know that they cannot be biased or discriminate against people in various groups; they know that their products should be accurate. They certainly know they are to comply "with all applicable law," and so on. None of that is really at issue, and prohibitions along these lines are gratuitous. Yet they constitute most of the proposed rule and standard. What is at issue, I suggest, is understanding how AI can be used, *unwittingly*, to produce harmful results. This requires an identification of the *underlying risks of AI*, and making users aware of those. Those underlying risks are e.g., (i) the alignment problem and AI's ability to cheat [see n.2], which may be more insidious than the sometimes obvious hallucinations that the Committee identifies; (ii) the bias which may be inherent in the AI's training including the biases of the humans involved. There are likely others; and the real risks may change over time, all of which can be handled by ensuring alerts and training materials are kept updated. These problems, however, are not addressed by the Committee's proposal.	The task force will continue to consider how to address the risks posed by use of generative AI in court-related work. In addition to the proposed rule and standard, the task force has developed FAQs and is considering whether additional guidance documents are needed. The task force will work with the Center for Judicial Education & Resources (CJER) to ensure that judicial officers and court staff receive education and training regarding generative AI, including on emerging uses and risks.
11.	LexisNexis by Aron Holewinski Field Client Manager	A	LexisNexis appreciates the opportunity to comment on SP25-01. As a trusted partner to the legal community and provider of secure generative AI tools through Lexis+ AI with Protégé, we support the Judicial Council's framework that encourages responsible adoption while protecting confidentiality, transparency, and public trust. We offer the following comments:	Please see responses to LexisNexis's specific suggestions below.

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			1. Disclosure Standard: Rule 10.430(d)(5) requires disclosure when AI outputs comprise a "substantial portion" of public-facing content. We recommend providing clarification or examples—particularly where courts use secure, court-approved systems that support administrative or non-adjudicative drafting.	In light of all the comments received on this issue, the task force has recommended a revised version of rule 10.430(d)(5).
			2. Use of Private AI Systems: We commend the proposal's clear prohibition on entering confidential information into public AI systems. Tools like Lexis+ AI with Protégé are designed with privacy-by-design principles, use AES-256 encryption, and do not share user input with any third party. These systems help courts responsibly integrate AI without risk of data exposure.	No response required.
			3. Secure Personalization: Protégé allows opt-in personalization (e.g., role, practice area, jurisdiction) while preserving user control and deletion rights. We suggest highlighting such personalization models as best practice for improving productivity without compromising neutrality or ethics.	In light of all the comments received on this issue, the task force is recommending a revised definition of "public generative AI system" in both the rule and standard. The revised definition outlines specific data privacy issues to be considered when using generative AI for court-related work.
			4. Benchmarking Against Peers: We support the Council's rulemaking approach and encourage drawing on peer frameworks such as New Jersey's Judiciary AI Principles, which emphasize independence, integrity, fairness, and service.	The task force has been monitoring policy and other developments in jurisdictions outside California and will continue to do so.
			5. Implementation Tools: We support the planned release of FAQs and sample use cases. We recommend including examples that distinguish between high-risk and low-risk uses of AI,	The task force will consider these suggested revisions to the FAQs as time and resources permit.

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			outline safe disclosure practices, and clarify options for internal vs. public deployment.	
			LexisNexis remains committed to supporting California courts with secure, ethical AI solutions tailored to the unique needs of public institutions.	No response required.
12.	Orange County Bar Association by Mei Tsang, President	AM	I. INTRODUCTION Thank you for the opportunity to review and comment on the Artificial Intelligence Task Force's proposal (SP25-01) [See www.courts.ca.gov/policyadmin-invitationstocomment.htm]. The emergence of generative AI raises complex issues concerning confidentiality, bias, privacy, security, and, especially, due process in the courts. We appreciate the task force's proactive efforts to provide guidance and safeguards for court-related use of this evolving technology. There exists an urgent need to address inconsistencies and omissions in the current proposal. Generative AI is too often treated as though it were a simple, standardized tool like a calculator. In reality, these models may incorporate extrarecord or third-party training data, inadvertently expose confidential information, or introduce bias. "Public AI systems" might silently train on user-provided data, thereby creating serious confidentiality and ex parte concerns. Furthermore, any reliance on AI for actual judicial decision-making could imperil a litigant's due process and constitutional rights.	Please see responses to Orange County Bar Association's specific suggestions below.
			II. OVERALL IMPRESSIONS OF THE PROPOSAL A. Positive Aspects The efforts of the AI Task Force to draft policy that regulates and standardizes the use of Generative AI in the judiciary is paramount to the ever increasing backlog of cases, which will undoubtedly be further exacerbated by the use of Generative AI by legal practitioners and pro se litigants to facilitate litigation and other adversarial or legal proceedings. The draft policy's proposed requirements, such as prohibitions	Please see responses to Orange County Bar Association's specific suggestions below.

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			on inputting confidential information and mandates to review AI-generated content for errors, demonstrate the need to address algorithmic bias and misinformation. We also support the separation of guidance for court staff (rule 10.430) and judicial officers in their adjudicative role (standard 10.80), which acknowledges the distinct responsibilities and ethical considerations each group faces. B. Key Concerns It is respectfully observed that adopting one rule and one standard to govern all uses of Generative AI in the judicial branch is ill-advised. Generative AI systems, the courts implementing them, and the roles of those who utilize them are too varied and complex to be effectively regulated under a single, uniform framework. Although uniformity can foster consistency, it risks oversimplifying the critical distinctions between relatively low-stakes administrative tasks and high-risk adjudicative responsibilities. This one-size-fits-all approach may inadvertently undermine fairness, transparency, and public trust by failing to address key nuances—ranging from confidentiality to due process—that arise in different contexts. The proposal identifies certain risks but does not fully explain how reliance on Generative AI for adjudicative tasks might impact or even compromise core judicial responsibilities. Reliance on AI-generated analyses or recommendations may, for example, compromise the transparency of a judge's legal reasoning or introduce extrarecord data. The reference to a "substantial portion of the content" as a threshold for disclosure is also ambiguous; even minor AI-assisted additions may significantly affect outcomes and should be disclosed for clarity and public confidence. Although courts can adopt stricter rules, the baseline standard might encourage minimal disclosures, potentially failing to ensure due process. Additionally, the proposal relies on permissive phrases such as "should" or "should consider"—particularly in the context of adjudicative roles—which may afford judicial officers broad latitude to rely on Generative AI with minimal oversight or	

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			transparency. When fundamental rights are at stake, due process demands more definitive language—such as "must" or "shall"—to underscore the necessity of compliance with strict rules concerning the use of Generative AI, understanding the inherent limits of technology in resolving substantive legal questions, and rigorous judicial oversight. III. DOES THE PROPOSAL ADDRESS ITS STATED PURPOSE? The proposal expressly aims to address the confidentiality, privacy, bias, safety, and security concerns posed by Generative AI in court-related work, while promoting responsible innovation in court operations and preserving public trust. A close reading of the proposal indicates that its ultimate goal is to establish uniform guidelines under which courts, judicial officers, and court staff may use emerging AI tools without compromising the integrity of judicial proceedings. The proposal attempts to meet these objectives by requiring disclosure, mandating oversight in certain scenarios, and prohibiting or limiting various AI-driven practices that could harm litigants or undermine fairness. The question remains, however, whether the proposed language and requirements meaningfully achieve these ends. The following sections examine specific areas to evaluate how effectively the proposal meets its stated purpose.	
			A. Confidentiality, Privacy, and Security 1. Confidentiality and Privacy The proposal takes an important step by prohibiting the entry of confidential or nonpublic information and personal identifying information into public AI systems. This restriction is designed to avoid unauthorized disclosure of sensitive data. However, additional measures could strengthen this protective framework:	Please see responses to Orange County Bar Association's specific suggestions below.

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			▪ Oversight and Auditing: The rule might outline how courts should periodically review or audit compliance with these prohibitions, taking into account the rapidly growing variety of generative AI platforms and plugins. ▪ Alignment with Local Ordinances: Courts in urban or highly populated regions may face stricter local mandates around privacy or data protection. Stating clearly that "federal or state law" includes any applicable municipal or county ordinance would help ensure consistent compliance.	
			2. Security Risks The proposal implicitly acknowledges cybersecurity concerns by cautioning against uploading nonpublic data. Yet Generative AI can also present broader vulnerabilities, such as breaches or hacking attempts that target external AI tools and APIs: ▪ Clear Cybersecurity Guidance: An explicit requirement for courts, judicial officers, and court staff to follow established cybersecurity protocols (e.g., secure credential management, penetration testing) would help protect against data exfiltration or model manipulation. ▪ Mandatory, Not Optional: Treating security as a core obligation—rather than an optional add-on—reinforces the high stakes for litigants whose data could be exposed.	Please see responses to Orange County Bar Association's specific suggestions below.
			B. Bias, Safety, and the Broader Legal Framework 1. Bias and Safety The proposal sensibly requires users to check AI-generated content for biased, offensive, or harmful outputs. Generative AI can inadvertently replicate or	Please see responses to Orange County Bar Association's specific suggestions below.

	Commenter	Position	Comment	Committee Response
			exacerbate societal biases, posing a real threat to equity and fairness. However, the text offers little detail on how or how often these checks should be performed: ▪ Structured Reviews: Courts could employ standardized, periodic assessments for high-risk uses of Generative AI, ensuring that repeated or systemic biases are identified and remedied rather than dismissed as one-off anomalies. ▪ Remedial Measures: Guidance on what to do if bias is discovered—such as immediate removal, correction, or mandatory re-review—would underscore a commitment to preventing discriminatory harm.	
			2. Local Ordinances and Additional Obligations Some jurisdictions may impose stricter or more targeted rules around anti-discrimination, consumer protection, or privacy. The proposal should affirm that compliance with "federal or state law" necessarily includes abiding by any relevant local requirements. This clarification avoids confusion in courts that operate under a patchwork of municipal and county rules.	The task force is not recommending revisions in response to this suggestion because the applicability of municipal, county, and other local ordinances to the courts can be more complicated than the applicability of state and federal law. Courts should advise judicial officers and court staff regarding any applicable local ordinances.
			C. Maintaining Public Trust Generative AI can enhance efficiency, but it also risks creating the perception that judges rely on automated decision-making rather than personal legal analysis. The proposal's disclosure requirement is one avenue to mitigate this concern: ▪ Strong Disclosure Protocols: A clear, user-friendly notification—whether appended to a public document or included in an official statement—assures litigants and the public that AI was used only for permissible purposes and that the judge or court staff verified its output.	Please see responses to Orange County Bar Association's specific suggestions below.

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

	Commenter	Position	Comment	Committee Response
			▪ Avoiding "Substantial Portion" Ambiguity: Even seemingly minor AI contributions can influence outcomes. Replacing the "substantial portion" threshold with any "material role" or "material influence" approach would promote transparency across the board.	
			D. Due Process and Judicial Integrity The proposal acknowledges that judges should not depend on AI to carry out adjudicative duties. However, the language around these limits is sometimes permissive, suggesting practices judges "should" or "should consider" rather than strictly prohibit or require: ▪ Prohibiting AI in Substantive Decision-Making: Due process demands that every judge personally weigh the facts and law before rendering a decision. Any meaningful framework must forbid AI-generated reasoning or factual determinations in final orders, rulings, or judgments. ▪ Clear Enforcement: Reinforcing that judicial officers are solely responsible for all substantive legal conclusions—without recourse to "the AI made me do it"—helps safeguard fundamental rights and anchors the public's faith in an impartial judiciary. Any model rule must specify clear repercussions for any judicial officer that improperly violates due process by relying on AI-generated reasoning or factual determinations in final orders, rulings, or judgments.	Please see responses to Orange County Bar Association's specific suggestions below.
			E. Extrarecord and Ex Parte Concerns Generative AI often relies on vast, behind-the-scenes datasets that may include information never presented or challenged in court: ▪ Extrarecord Data: A judge who inadvertently pulls in outside facts from an AI model, especially if those facts are inaccurate or incomplete, risks basing a ruling on material the parties had no opportunity to contest.	Please see responses to Orange County Bar Association's specific suggestions below.

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	Commenter	Position	Comment	Committee Response
			▪ Manipulation Risks: There is also a possibility that third parties could systematically "train" or influence public AI models to shape outputs in certain ways. This raises the specter of ex parte communications, where a judge essentially receives input from an unseen party. Any rule or standard must therefore alert judicial officers to the hidden path by which extrarecord data can creep into legal decisions, threatening the adversarial process and the reliability of the record. By explicitly addressing confidentiality, security, anti-bias safeguards, and due process protections, the proposal would more closely fulfill its stated purpose of guiding responsible and equitable implementation of Generative AI in the courts. Strengthened disclosure requirements, categorical prohibitions on AI in adjudicative tasks, and clear avenues for oversight all serve to preserve transparency and bolster public trust in judicial outcomes.	
			IV. SUGGESTED REVISIONS A. Prohibition on Substantive Adjudicative Use An express statement should clarify that Generative AI may not draft, decide, or substantively shape judicial rulings or orders. Allowing the use of Generative AI for administrative or preliminary research tasks is plausible, but the content of judicial decisions must remain a product of the judge's independent analysis. B. New Detail on Administrative vs. Adjudicative Functions Certain tasks—such as case scheduling, purely clerical tasks, or preliminary citation checks—may benefit from the use of AI while posing minimal due process risk. However, any aspect that informs the final merits of a case or affects legal conclusions should be off-limits, absent robust guardrails and mandatory disclosures. We urge the Judicial Council to define "adjudicative tasks" broadly	The task force is not recommending revisions in response to this suggestion. The task force determined that the question of whether and to what extent judicial officers may use generative AI to carry out their adjudicative duties is more appropriately addressed by the California Code of Judicial Ethics and related ethical guidance. The task force concluded that the canons likely prohibit judicial officers from having generative AI write their opinions for them, and that the Supreme Court's judicial ethics committees are the

	Commenter	Position	Comment	Committee Response
			enough to capture motions, dispositive orders, and factual or legal determinations at any stage of litigation.	appropriate bodies to ask for guidance on this subject. The task force determined that courts and judicial officers are in the best position to identify acceptable uses of generative AI to meet their specific needs. The risks of generative AI depend heavily on the specific tool and how it is being used. It would be extremely difficult for the task force to create a list of acceptable tools and uses, and such a list would likely be both under- and overinclusive because the task force would have to speculate about how specific tools work or how courts might use them. Putting such a list in a rule of court would make it difficult to keep up with technological advancements. For these reasons, the task force recommends that the rule and standard address specific risks of generative AI rather than specific generative AI tools or uses. Additionally, generative AI is increasingly being incorporated into existing software products

	Commenter	Position	Comment	Committee Response
				and may already be difficult to avoid in some circumstances. The task force is concerned that placing branchwide limitations on specific uses of generative AI will unnecessarily limit innovation and will prevent courts from identifying safe, effective uses of generative AI that do not pose ethical risks.
			C. Mandatory Disclosure Disclosure should be mandatory whenever AI contributes to an official document or statement that is shared with the public. The threshold of "substantial portion" could be replaced by a simple rule requiring disclosure of any material influence on the text or decision.	In light of all the comments received on this issue, the task force has recommended a revised version of rule 10.430(d)(5). However, the task force concluded that mandatory disclosure of use of generative AI in all circumstances could unnecessarily prohibit courts from using generative AI in circumstances where the technology can be used safely and ethically, and that mandatory disclosure would not be an effective way to address concerns about the reliability or trustworthiness of generative AI outputs in many circumstances.
			D. Certification of Compliance	In light of all the comments received on this issue, the task force is recommending revisions

	Commenter	Position	Comment	Committee Response
			In addition to disclosure, the court or judicial officer should certify in a verifiable manner (e.g., a short statement in the published ruling or accompanying document) that they reviewed and verified AI-generated content, took responsibility for its substance, and complied with all applicable rules. Such certifications are critical for ensuring accountability, especially if a litigant later challenges the AI-influenced ruling on appeal.	to rule 10.430(d)(3) and (4) to require users to take reasonable steps to verify, correct, or remove inaccurate or biased material. The task force is recommending similar revisions to standard 10.80(b)(3) and (4). The task force concluded this terminology will make clearer that courts cannot simply identify inaccurate or biased information in generative AI material; they must also verify the accuracy of the material and correct or remove any inaccurate or biased information.
			E. Removing Ambiguity Around "Substantial Portion" If the term "substantial portion" remains, it should be clearly defined. However, a better approach is to disclose all generative AI usage that informs the final document in any way.	Please see the committee's previous response to the Orange County Bar Association regarding the task force's recommended revisions to rule 10.430(d)(5).
			F. Emphasis on Due Process A clearer statement that due process concerns prohibit judges from delegating their legal analysis to AI would confirm the judiciary's commitment to fairness and transparency. This emphasis would assure litigants that final determinations remain firmly under human judicial control.	The task force is not recommending revisions in response to this suggestion. The task force concluded that the Supreme Court's judicial ethics committees are the appropriate bodies to ask for guidance on this subject.

	Commenter	Position	Comment	Committee Response
			G. Potential Appellate Remedies We call out the need for explicit remedies if a judicial officer violates these standards. If reliance on AI introduces overt errors, biased language, or fundamental defects in a ruling, it is unclear how that misconduct would be addressed on appeal. We encourage the Judicial Council to consider clarifying that demonstrable violations of these AI policies may form part of the record for appellate review or judicial disciplinary proceedings.	This suggestion is beyond the scope of the task force's charge.
			H. Training and Ongoing Education Additional or enhanced training would help judges and staff understand the limitations of Generative AI. Regular updates on best practices for validation, bias detection, and data protection would further mitigate the risks associated with rapidly evolving AI tools.	Revising the rule and standard to implement this suggestion would require further public comment because it is beyond the scope of issues presented in this invitation to comment. The task force may consider it as time and resources permit. Additionally, the task force will consider whether to implement this suggestion, and others that are beyond the scope of this invitation to comment, via other means including the model policy or other guidance documents.
			I. Alignment With Existing California Statutes The task force should align any new rule or standard with existing or pending California legislation defining Artificial Intelligence and Generative AI. Several bills (e.g., AB 2013, AB 2885, and SB 942) contain more precise definitions of "Artificial Intelligence," "Generative AI," and "Training Data." In particular, adopting these legislative definitions would create a consistent legal framework and	In light of all the comments received on this issue, the task force is recommending revised definitions of "generative AI" and "public generative AI system" in the rule and standard. The task force recommends deleting the

	Commenter	Position	Comment	Committee Response
			reduce confusion for practitioners who must reconcile the Rules of Court with other AI-specific statutes.	definition of "artificial intelligence" in the rule and standard because it is not needed due to the proposed revisions to the definition of "generative AI." However, although the task force agrees that consistency with statutory definitions can be beneficial in some circumstances, the existing statutory definitions, such as those in Civil Code section 3110, are not a good fit for the rule and standard. Those definitions are part of statutory schemes for regulating AI providers and use terminology that laypeople might find confusing, such as the reference in section 3110(a) to "explicit and implicit objectives."
			SUGGESTED REVISIONS V. RULE 10.430. GENERATIVE ARTIFICIAL INTELLIGENCE USE POLICIES A. Section "(a) Definitions" - Original Text Title 10. Judicial Administration Rules Division 2. Administration of the Judicial Branch Chapter 6. Court Technology, Information, and Automation	No response required. (This portion of the comment appears to copy the proposed rule verbatim.)

SP25-01
Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work (adopt Cal. Rules of Court, rule 10.430; adopt Cal. Standards of Judicial Administration, standard 10.80)
All comments are verbatim unless indicated in a footnote.

	Commenter	Position	Comment	Committee Response
			Rule 10.430. Generative artificial intelligence use policies (a) Definitions As used in this rule, the following definitions apply: 1. "Artificial intelligence" or "AI" means technology that enables computers and machines to reason, learn, and act in a way that would typically require human intelligence. 2. "Court staff" means all employees, contractors, volunteers, and any other persons working for or on behalf of the court. 3. "Generative AI" means artificial intelligence trained on an existing set of data (which can include text, images, audio, or video) with the intent to "generate" new data objects when prompted by a user. Generative AI creates new data objects contextually in response to user prompts based only on the data it has already been trained on. 4. "Judicial officer" means all judges, all justices of the Courts of Appeal and the Supreme Court, all temporary and assigned judges, and all subordinate judicial officers. 5. "Public AI system" means a system that is publicly available or that allows information submitted by users to be accessed by anyone other than judicial officers or court staff, including access for the purpose of training or improving the system.	
			1. Comment re "(a) Definitions" The definitions for "Artificial Intelligence," "Generative AI," and "Public AI System" in rule 10.430(a) merit closer examination.	Please see previous responses to the Orange County Bar Association's comments regarding these definitions.

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

	Commenter	Position	Comment	Committee Response
			a. Use of a Non-Standard Definition for Artificial Intelligence The proposal's definition—"technology that enables computers and machines to reason, learn, and act in a way that would typically require human intelligence"—is overly broad and risks classifying simpler technologies (e.g., basic automation or statistical software, or even calculators) as AI. Recent California legislation defines "artificial intelligence" more precisely as an engineered or machine-based system that, varying in its level of autonomy, can infer from inputs how to generate outputs that may influence physical or virtual environments. Adopting that statutory language would align court rules with broader state policy and reduce confusion for practitioners. b. Clarifying "Generative AI" The rule currently frames "Generative AI" as technology "trained on an existing set of data" to "generate" new objects in response to user prompts. However, the phrase "based only on the data it has already been trained on" could inadvertently exclude systems that incorporate supplemental, user-provided data during an interactive session or that fine-tune outputs after receiving new inputs. By contrast, California's statutory definition of "generative artificial intelligence system" or "GenAI system" references the "creation of derived synthetic content" (text, images, video, etc.) that emulates the structure and characteristics of the system's training data. This language better captures how large language models actually produce new text or media, even if they integrate user-provided material at runtime. c. Scope and Impact of "Public AI System"	

	Commenter	Position	Comment	Committee Response
			The proposal's definition, which hinges on a system being "publicly available" or allowing user submissions to be "accessed by anyone other than judicial officers or court staff," does not fully account for the reality that many AI tools—free or paid—may partially use user data to refine or retrain models. A more robust definition would explicitly address whether user-input data is retained, used, sold, or shared beyond the immediate generation of outputs requested by the user. This approach captures both openly accessible systems (e.g., consumer-facing chatbots) and those that, though credentialed or licensed, still aggregate user data for optimization, thereby posing similar confidentiality and privacy risks. d. Need for Alignment with Existing Statutory and Local Authority Courts operate within a complex legislative environment that includes federal, state, and local privacy or anti-discrimination mandates. To foster consistency, the definitions of AI-related terms in rule 10.430 should align with relevant California statutes where possible. Explicitly referencing these legislative definitions (e.g., Civil Code sections on AI training data transparency) would clarify that courts must uphold evolving legal standards and further ensure that no narrower or conflicting definitions undercut the rule's stated goals of confidentiality, safety, and due process. e. Practical Implications Overly broad or vague definitions can inadvertently chill beneficial innovation or open the door to unregulated AI deployments that compromise court users' data. Narrow, precise definitions, consistent with statutory language, help courts differentiate high-risk "Generative AI" from routine, rules-based automation tools,	

	Commenter	Position	Comment	Committee Response
			thus allowing more targeted safeguards and clearer directives for staff and judicial officers. In sum, the definitions in the current proposal would benefit from (1) adopting or closely mirroring established legislative language, (2) explicitly addressing any supplemental or user-provided training data, and (3) expanding "public AI system" to encompass all systems that retain or exploit user data for retraining or sharing with third parties. Such refinements provide clearer guardrails against confidential-information leaks, reduce ambiguity about which tools are regulated, and better align with the broader California legal framework.	
			2. Suggested Revised Language for "(a) Definitions" (a) Definitions As used in this rule, the following definitions apply: 1. "Artificial intelligence" or "AI" means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments. 2. "Court staff" means all employees, contractors, volunteers, and any other persons working for or on behalf of the court. 3. "Generative artificial intelligence" or "Generative AI" means an artificial intelligence that can generate derived synthetic content—including text, images, video, or audio—that emulates the structure and characteristics of the system's training data.	Please see the previous responses to the Orange County Bar Association's comments regarding these definitions.

	Commenter	Position	Comment	Committee Response
			4. "Judicial officer" means all judges, justices of the Courts of Appeal and the Supreme Court, all temporary and assigned judges, and all subordinate judicial officers. 5. "Public AI system" means any artificial intelligence platform, model, or service that: (A) Is accessible to the general public—with or without cost—and does not require specialized credentials or licenses beyond ordinary consumer terms of service; or (B) Retains, uses, sells, or shares user-input data for additional training, optimization, or any other purpose beyond the immediate creation of outputs requested by the user.	
			B. Section "(b) Generative AI use policies" - Original Text (b) Generative AI use policies If a superior court, Court of Appeal, or the Supreme Court permits the use of generative AI by court staff or judicial officers, that court must adopt a generative AI use policy. 1. Comment re "(b) Generative AI use policies" Even for tasks that are ostensibly administrative or non-adjudicative, serious constitutional due process concerns can arise if AI-generated outputs inadvertently shape, inform, or otherwise influence judicial decision-making. Court staff who rely on Generative AI for research, drafting, or data processing may unknowingly introduce biased or extrarecord material into the workflow, potentially undermining the impartiality required by both state and federal constitutions. As such, any policy permitting staff to use AI must include strict controls and oversight to prevent undue influence on a litigant's right to a fair hearing.	The task force agrees that rule 10.430, as originally proposed, inadvertently excluded courts that do not take a position on use of generative AI. The task force recommends that rule 10.430(b) read as follows: "Any court that does not prohibit the use of generative AI by court staff or judicial officers must adopt a generative AI use policy. This rule applies to the superior courts, the Courts of Appeal, and the Supreme Court."

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Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work (adopt Cal. Rules of Court, rule 10.430; adopt Cal. Standards of Judicial Administration, standard 10.80)
All comments are verbatim unless indicated in a footnote.

	Commenter	Position	Comment	Committee Response
			2. Suggested Revised Language for "(b) Generative AI use policies" (b) Generative AI Use Policies (1) A superior court, Court of Appeal, or the Supreme Court shall not permit the use of generative AI by court staff or judicial officers unless and until that court adopts a written Generative AI Use Policy. (2) All uses of generative AI are prohibited except as expressly authorized by the Generative AI Use Policy adopted under subdivision (b)(1).	
			C. Section "(d) Policy requirements" - Original Text (d) Policy requirements Each court's generative AI use policy must: 1. Prohibit the entry of confidential, personal identifying, or other nonpublic information into a public generative AI system. Personal identifying information includes driver license numbers; dates of birth; social security numbers; Criminal Identification and Information, and National Crime Information numbers; addresses and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and any other content sealed by court order or deemed confidential by court rule or statute. 2. Prohibit the use of generative AI to unlawfully discriminate against or disparately impact individuals or communities based on age, ancestry, color, ethnicity, gender, gender expression, gender identity, genetic information, marital status, medical condition, military or veteran status, national origin, physical or mental disability,	No response required. (This portion of the comment appears to copy the proposed rule verbatim.)

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

	Commenter	Position	Comment	Committee Response
			political affiliation, race, religion, sex, sexual orientation, socioeconomic status, and any other classification protected by federal or state law. 3. Require court staff and judicial officers who generate or use generative AI material to review the material for accuracy and completeness, and for potentially erroneous, incomplete, or hallucinated output. 4. Require court staff and judicial officers who generate or use generative AI material to review the material for biased, offensive, or harmful output. 5. Require disclosure of the use or reliance on generative AI if generative AI outputs constitute a substantial portion of the content used in the final version of a written or visual work provided to the public. 6. Require compliance with all applicable laws, court policies, and ethical and professional conduct rules, codes, and policies when using generative AI.	
			1. Comment re "(d) Policy requirements" The listed requirements represent an important foundation for safe, non-discriminatory AI usage, but each provision could be bolstered to reflect the higher stakes of introducing generative AI in court operations.	No response required.
			First, limiting disclosure to situations where "a substantial portion" of the final content originates from AI may be too narrow, as even minimal AI-generated or AI-informed material can significantly influence court documents or communications; a more effective standard would require disclosure of any material reliance on AI.	Please see previous response to the Orange County Bar Association's comments regarding the disclosure requirement.
			Second, provisions requiring review of "erroneous," "incomplete," or "biased" outputs should make explicit that court staff and judicial officers are personally responsible for verifying and correcting all AI-generated content, rather than treating AI as an authoritative source.	Please see previous response to the Orange County Bar Association's comments regarding the task force's recommended revisions to rule

	Commenter	Position	Comment	Committee Response
				10.430(d)(3) and (4) and standard 10.80(b)(3) and (4).
			Lastly, restricting the entry of confidential data and prohibiting disparate impacts are necessary safeguards, but the policy should clarify strict compliance with local as well as state and federal rules, ensuring that all relevant privacy, anti-discrimination, and ethical standards are upheld.	The task force is not recommending revisions in response to this suggestion. The rule requires compliance with "all applicable laws," which would include local laws.
			2. Suggested Revised Language for "(d) Policy requirements" (d) Policy requirements Each court's generative AI use policy must: 1. Prohibit the entry of confidential, personal identifying, or other nonpublic information into a public generative AI system. Personal identifying information includes driver license numbers; dates of birth; social security numbers; Criminal Identification and Information, and National Crime Information numbers; addresses and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and any other content sealed by court order or deemed confidential or personally identifiable information by court rule, statute, county or municipal ordinance, or other applicable law. 2. Prohibit the use of generative Al to unlawfully discriminate against or disparately impact individuals or communities based on age, ancestry, color, ethnicity, gender, gender expression, gender identity, genetic information, marital status, medical condition, military or veteran status, national origin, physical or mental disability, political affiliation, race, religion, sex, sexual orientation, socioeconomic status, and any other classification protected by federal, state, or local or other applicable law.	Please see previous responses to the Orange County Bar Association's suggested revisions to rule 10.430(d).

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	Commenter	Position	Comment	Committee Response
			3. Require court staff and judicial officers who generate or use generative Al material to review the material for accuracy and completeness, and for potentially erroneous. incomplete. or hallucinated output. 4. Require court staff and judicial officers who generate or use generative Al material to review the material for biased, offensive, or harmful output. 5. Require compliance with all applicable laws, court policies, and ethical and professional conduct rules, codes, and policies when using generative Al. 6. If any part of a written or visual work is derived from, informed by, or relies upon generative AI, or if generative AI was used to support research, logic, or reasoning incorporated into the final version of that work for public or official court use, the policy must require a clear, prominent statement (in the document itself or by separate accompanying note) that generative AI was utilized, including a brief description of how it was used; and Court staff or judicial officers who used generative AI must certify, in a verifiable manner, that they have reviewed, verified, and validated all AI-generated content or logic.	
			VI. RULE 10.80. USE OF GENERATIVE ARTIFICIAL INTELLIGENCE BY JUDICIAL OFFICERS A. Section "(a) Definitions" - Original Text Title 10. Standards for Judicial Administration Standard 10.80. Use of generative artificial intelligence by judicial officers (a) Definitions As used in this standard, the following definitions apply:	No response required. (This portion of the comment appears to copy the proposed standard verbatim.)

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	Commenter	Position	Comment	Committee Response
			1. "Artificial intelligence" or "AI" means technology that enables computers and machines to reason, learn, and act in a way that would typically require human intelligence. 2. "Court staff" means all employees, contractors, volunteers, and any other persons working for or on behalf of the court. 3. "Generative AI" means artificial intelligence trained on an existing set of data (which can include text, images, audio, or video) with the intent to "generate" new data objects when prompted by a user. Generative AI creates new data objects contextually in response to user prompts based only on the data it has already been trained on. 4. "Judicial officer" means all judges, all justices of the Courts of Appeal and the Supreme Court, all temporary and assigned judges, and all subordinate judicial officers. 5. "Public AI system" means a system that is publicly available or that allows information submitted by users to be accessed by anyone other than judicial officers or court staff, including access for the purpose of training or improving the system.	
			1. Comment re "(a) Definitions" The definitions set forth in Rule 10.430 regarding "Artificial Intelligence," "Generative AI," and "Public AI System" are incorporated here for consistency and clarity, avoiding discrepancies between the two provisions. These definitions carry heightened importance in Standard 10.80 because judicial officers' adjudicative responsibilities implicate core due process concerns. Precisely defining key terms ensures that any technology deemed "AI" or "Generative AI" does not inadvertently erode the impartiality, accuracy, and transparency required of judges, particularly when public AI systems might embed	Please see previous responses to the Orange County Bar Association's comments regarding these definitions.

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	Commenter	Position	Comment	Committee Response
			biases or introduce extrarecord data. By aligning these definitions, courts reinforce a unified approach to regulating AI within both administrative and adjudicative contexts, laying the groundwork for the stricter scrutiny that follows in the subsequent sections on judicial officers' use of AI. 2. Suggested Revised Language for "(a) Definitions" (a) Definitions As used in this rule, the following definitions apply: 1. "Artificial intelligence" or "AI" means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments. 2. "Court staff" means all employees, contractors, volunteers, and any other persons working for or on behalf of the court. 3. "Generative artificial intelligence" or "Generative AI" means an artificial intelligence that can generate derived synthetic content—including text, images, video, or audio—that emulates the structure and characteristics of the system's training data. 4. "Judicial officer" means all judges, justices of the Courts of Appeal and the Supreme Court, all temporary and assigned judges, and all subordinate judicial officers. 5. "Public AI system" means any artificial intelligence platform, model, or service that:	

	Commenter	Position	Comment	Committee Response
			(A) Is accessible to the general public—with or without cost—and does not require specialized credentials or licenses beyond ordinary consumer terms of service; or (B) Retains, uses, sells, or shares user-input data for additional training, optimization, or any other purpose beyond the immediate creation of outputs requested by the user.	
			B. Section "(b) Use of generative artificial intelligence" - Original Text (b) Use of generative artificial intelligence A judicial officer using generative AI for any task within their adjudicative role: 1. Should not enter confidential, personal identifying, or other nonpublic information into a public generative AI system. Personal identifying information includes driver license numbers; dates of birth; social security numbers; Criminal Identification and Information, and National Crime Information numbers; addresses and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and any other content sealed by court order or deemed confidential by court rule or statute. (2) Should not use generative AI to unlawfully discriminate against or disparately impact individuals or communities based on age, ancestry, color, ethnicity, gender, gender expression, gender identity, genetic information, marital status, medical condition, military or veteran status, national origin, physical or mental disability, political affiliation, race, religion, sex, sexual orientation, socioeconomic status, and any other classification protected by federal or state law.	No response required.

	Commenter	Position	Comment	Committee Response
			(3) Should review generative AI material, including any materials prepared on their behalf by others, for accuracy and completeness, and for potentially erroneous, incomplete, or hallucinated output. (4) Should review generative AI material, including any materials prepared on their behalf by others, for biased, offensive, or harmful output. (5) Should consider whether to disclose the use of generative AI if it is used to create content provided to the public.	
			1. Comment re "(b) Use of generative artificial intelligence" The revised text in subdivisions (b)(1) through (b)(6) incorporates essential safeguards that address fundamental due process concerns and enhance transparency in adjudicative procedures. Below is a section-by-section commentary: a. Balancing Innovation and Safeguards Although emergent AI platforms—like ChatGPT, Claude, or Google Gemini—offer efficiencies in research and drafting, these open, continuously trained systems can be highly susceptible to external manipulation. Introducing them into case determinations without robust oversight could, over time, distort legal interpretations and place judicial officers at risk of unknowingly relying on skewed or extrarecord content. Initially restricting AI usage to "purely administrative or ministerial" tasks, or for preliminary legal research with mandatory verification, prevents generative AI from displacing the judge's personal assessment of facts or law. This two-pronged limitation acknowledges that certain low-risk functions—like routine scheduling or preliminary research—may benefit from AI's efficiency, provided that the technology does not encroach on the judge's responsibility to fully and independently analyze the record.	Please see previous response regarding the scope of the rule and standard and the suggestion that the task force prohibit specific uses of generative AI.

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	Commenter	Position	Comment	Committee Response
			b. Why Strong Oversight Is Needed in the Context of Judicial Use Unlike traditional legal tools that remain static, Generative AI models learn from user inputs and evolving data sets. Malicious actors could exploit this by "training" AI engines to favor certain legal outcomes or embed subtle biases into the model's outputs. If a judicial officer consults such a model for case analysis or precedent, the tool may—intentionally or not—push misleading or incomplete interpretations. This raises significant due process concerns, as parties have a constitutional right to a judge's independent, impartial assessment based solely on the record and applicable law. By limiting judicial officers from using or relying on Generative AI for any task that may affect the merits of a case, this provision ensures that core judicial decision-making remains the product of independent, human deliberation, free from opaque or extrarecord influences. This strict prohibition reflects the constitutional imperative that litigants have their cases decided by a judge rather than delegated to an AI system, especially given the high risk of biased or inaccurate outputs. c. Current Use: Limited and Cautious For now, limiting AI to purely administrative or preliminary research tasks—while prohibiting its direct influence on adjudicative rulings—helps preserve the integrity of the judicial process. If and when courts develop specialized, secured AI systems or more comprehensive training protocols, the door remains open for controlled expansion of AI usage. By adopting a "go slow" philosophy, courts minimize risks of systemic distortion while still exploring the potential benefits of carefully managed AI tools. The proposed limitations address concerns that third-party AI platforms could retain, train on, or inadvertently expose sensitive data—potentially creating ex parte channels of information or violating court orders. By absolutely banning such	

	Commenter	Position	Comment	Committee Response
			disclosures, this provision reinforces the judiciary's duty to uphold confidentiality and preserve the integrity of court records. d. Alternative Venues for AI-Adjudication Parties who wish to incorporate AI more extensively into dispute resolution are free to do so in private forums such as mediation or arbitration, where participants can consensually structure how and when AI is used. This allows experimentation and cost-efficiency within a self-governed framework, without compromising the stricter due process protections that public courts must uphold. e. Due Process as the Paramount Concern Above all, due process demands that judges derive outcomes from evidence properly admitted and law thoroughly vetted—requirements that stand at the core of public trust in the judiciary. Any reliance on AI in adjudicative roles must respect these constitutional and statutory principles, ensuring no hidden biases or manipulated outputs can sidestep adversarial testing or informed judicial scrutiny. A duty to disclose whenever AI contributes to a publicly provided document strengthens transparency and mitigates concerns that litigants or the public might be misled into believing the text is wholly the result of judicial authorship. Requiring a brief explanation of how AI was used empowers parties to challenge or probe whether reliance on AI has potentially introduced extraneous or biased materials, thus upholding the adversarial process and promoting informed review of judicial actions.	
			2. Suggested Revised Language for "(b) Use of generative artificial intelligence" (b) Use of generative artificial intelligence	Please see previous responses to the Orange County Bar Association's comments.

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All comments are verbatim unless indicated in a footnote.

	Commenter	Position	Comment	Committee Response
			1. Except as expressly allowed below, a judicial officer must not use or rely on generative AI for any task that may affect the substance of an adjudicative decision, including but not limited to drafting orders, rulings, or opinions; analyzing evidence; or making factual or legal determinations. 2. A judicial officer may use generative AI only if: (A) The task is purely administrative or ministerial and does not implicate the merits of a case, the due process rights of any party, or the judge's independent decision-making; or (B) It is for preliminary legal research and the judicial officer independently verifies any output (including citations, quotations, or summaries) before relying on it in an official decision or document. 3. When using any form of generative AI, a judicial officer must not provide or upload: (A) Any confidential, personal identifying, or sealed information; (B) Any nonpublic details about a case or proceeding; or (C) Any other information whose disclosure is restricted by statute, court rule, or court order. 4. A judicial officer must not use, rely on, or distribute generative AI outputs that unlawfully discriminate against or disparately impact individuals or groups on the basis of any protected classification under federal or state law. 5. Before relying on any material produced by generative AI—even for administrative or research purposes—a judicial officer must:	

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

	Commenter	Position	Comment	Committee Response
			(A) Review the output for accuracy, completeness, and potential hallucinations or omissions; and (B) Assess the output for possible bias, offensive content, or other harmful language. 6. If generative AI is used for any part of a written or visual work provided to the public (including memoranda, reports, official notices, or other court-related documents), the judicial officer must disclose that generative AI was utilized and briefly explain how it was used.	
			CONCLUSION We appreciate the Artificial Intelligence Task Force's initiative and thoughtfulness in regulating the use of Generative AI. The proposal addresses many of the confidentiality, security, and bias concerns associated with this technology. We believe, however, that the language could be strengthened to more effectively protect due process, ensure consistent disclosures, and clarify strict limitations on adjudicative tasks. With these refinements, the proposal would better maintain the public's trust in the judicial process and uphold the courts' integrity in an era of expanding AI capabilities. At this time, the nascency of Generative AI and its application in legal practice underscored that no rule of court should currently grant broad discretion to judicial officers or staff to adopt Generative AI unless a robust policy is in place. Such a policy should initially prohibit all uses except those narrowly authorized—particularly for judges, who must always remain the ultimate arbiters of legal and factual questions. Additionally, "public AI systems" need a clearer definition emphasizing whether data inputs may be used for further training or be exposed to third parties. By	Please see previous responses to the Orange County Bar Association's comments.

	Commenter	Position	Comment	Committee Response
			refining these key areas, the Judicial Council will better ensure the proposed rule and standard fulfill their purpose without inadvertently undermining core legal protections. Thank you for considering these comments. We welcome further discussion and stand ready to support the Judicial Council's continued efforts on this critical matter.	
			Model Policy for Use of Generative Artificial Intelligence I. PURPOSE AND SCOPE [REVISED] The emergence of generative artificial intelligence (generative AI) technologies has prompted the court to develop this policy governing the responsible use of AI for court-related work. While generative AI can enhance efficiency, its open-ended and continuously trained nature raises significant concerns about confidentiality, data security, bias, and due process. a. These requirements apply to any use of generative AI systems by court staff for any purpose and by judicial officers for any task outside their adjudicative role. Generative AI systems referenced herein include well-known applications (e.g., ChatGPT, Claude, Dall-E2, Microsoft's Copilot, Google's Gemini, Westlaw Precision, Lexis+ AI, Grammarly) and any features in non-AI applications (e.g., Adobe Acrobat, Google search) that generate new content from user prompts. Where reference is made to "public" generative AI systems, it includes any system that is freely or widely accessible without specialized credentials, or that retains or uses user data for further training or dissemination. b. Under no circumstances does this policy authorize judicial officers to rely on generative AI in substantive adjudicative matters unless expressly permitted by separate rule or standard.	The task force will be updating the model policy to conform with changes made to the rule and standard in response to the public comments (such as changes to defined terms). The task force will consider other suggested revisions to the model policy as time and resources permit.

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	Commenter	Position	Comment	Committee Response
			II. DEFINITIONS [REVISED] For purposes of this policy only, the following definitions apply and should be interpreted consistently with other applicable court rules or standards: a. "Artificial intelligence" or "AI" means an engineered or machine-based system, varying in its level of autonomy, that can infer from inputs how to generate outputs capable of influencing physical or virtual environments. b. "Court staff" means all employees, contractors, volunteers, and any other persons working for or on behalf of the court. c. "Generative AI" or "Generative artificial intelligence" means an AI system capable of creating derived synthetic content (including text, images, audio, or video) based on the structure and characteristics of its training data, in response to user prompts. d. "Judicial officer" means all judges, justices of the Courts of Appeal and the Supreme Court, all temporary and assigned judges, and all subordinate judicial officers. e. "Public generative AI system" means any AI platform, model, or service that is accessible to the general public without specialized credentials or licenses, or that retains, sells, or shares user-input data for any purpose beyond the immediate generation of requested outputs (including further training or optimization). f. "User" means any person to whom this policy applies, including both court staff and judicial officers acting in a non-adjudicative capacity. III. CONFIDENTIALITY AND PRIVACY	

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

	Commenter	Position	Comment	Committee Response
			a. Users must not submit confidential, personal identifying, or other nonpublic information to a public generative AI system. Personal identifying information includes driver license numbers; dates of birth; social security numbers; Criminal Identification and Information, and National Crime Information numbers; addresses and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and any other content sealed by court order or deemed confidential by court rule or statute. [REVISED TO MAKE THESE PROVISIONS NON-OPTIONAL] b. If a document has been filed or submitted for filing in a case before the court, users must not submit it to a public generative AI system, even if the document is publicly available. c. Before submitting any information to a public generative AI system, the user must determine whether the submission is permissible under this policy. If it is unclear whether the submission is permissible, the user must obtain approval from [court leadership/their supervisor] before submitting the information to the system. [Courts adopting this provision should consider how to define "court leadership" if approval is to be given by the presiding judge, clerk/executive officer, court executive officer, or chief information officer, or other member of court leadership. Courts requiring approval by court leadership should also consider whether to include a provision allowing leadership to delegate approval authority to others.] d. [REVISED] When using a public generative AI system, users must disable or opt out of any data collection by the system. If it is not feasible to do so, or if the platform does not offer a version that forgoes collecting or training on user-submitted data, that system must not be used. Where the platform provides a licensed or paid version that refrains from retaining or using user-input data for training, users must use that version in lieu of a free, data-collecting service.	

	Commenter	Position	Comment	Committee Response
			IV. SUPERVISION AND ACCOUNTABILITY a. Generative AI systems sometimes "hallucinate," meaning they provide false or misleading information presented as fact. Generative AI outputs can also be faulty in other ways, such as outputs that are inaccurate, incomplete, or uncited. Users must review their generative AI material for accuracy and completeness, and for potentially erroneous, incomplete, or hallucinated output. Any use of generative AI outputs is ultimately the responsibility of the person who authorizes or uses it. [REVISED TO MAKE THESE PROVISIONS NON-OPTIONAL] b. Users must obtain approval from [specify which office, department, division, or individual will be responsible for approval] before using a public generative AI system. c. Public generative AI systems may be used only if they have been approved by the court [specify which office, department, division, or individual will be responsible for approval]. V. AVOIDANCE OF BIAS AND DISCRIMINATION a. Generative AI must not be used to unlawfully discriminate against or disparately impact individuals or communities based on age, ancestry, color, ethnicity, gender, gender expression, gender identity, genetic information, marital status, medical condition, military or veteran status, national origin, physical or mental disability, political affiliation, race, religion, sex, sexual orientation, socioeconomic status, and any other classification protected by federal or state law. b. Generative AI systems may be trained on material that reflects cultural, economic, racial, gender, and social biases, and content generated by these systems may contain biased or otherwise offensive or harmful material. Users must review their generative AI material for biased, offensive, or harmful output.	

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			VI. TRANSPARENCY a. If generative AI outputs constitute a substantial portion of the content used in the final version of a written work or visual work that is provided to the public, the work must contain a disclaimer or watermark. b. Labels or watermarks used to disclose the use of generative AI should be easily visible and understandable, accurately informing the audience that generative AI has been used in the creation of the content and identifying the system used to generate it. VII. COMPLIANCE WITH APPLICABLE LAWS AND POLICIES a. When using generative AI, users must comply with all applicable laws, court policies, and ethical and professional conduct rules, codes, and policies. [Optional paragraph: b. Users should be aware that content produced by generative AI systems might include copyrighted material. If it is unclear whether the content produced includes copyrighted material, the user must consult [specify which office, department, division, or individual will be responsible for advice].] VIII. SAFETY AND SECURITY [REVISED TO BE MANDATORY] a. Users must use strong passwords when using AI platforms. Users must comply with the court's password requirements when creating passwords for generative AI platforms. b. When using generative AI systems to perform court-related work, users must use their court email address if the system requires users to provide an email address or create an account. Accounts created using a court email address must not be used	

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	Commenter	Position	Comment	Committee Response
			for personal matters. [Courts should also consider whether to require staff to provide their supervisor or IT department with the username and password of any generative AI account created to do court-related work.] c. [REVISED] Public generative AI systems may only be used after the court's [specify which office, department, division, or individual is responsible for approval] has thoroughly reviewed and explicitly approved the system, confirming that it meets the confidentiality, security, data-collection opt-out, and other requirements outlined in this policy.	
13.	Public Counsel by Karla Chalif VP, COO, General Counsel Los Angeles	A	We support widespread adoption in accordance with the rules.	The task force appreciates the response.
14.	Peter Rundle Attorney - Arbitrator - Mediator Rundle Law Corporation Dana Point	N	Do not ever use generative AI to create juridical orders, judgments, opinions, etc. Judges and justices should take pride in the authorship of their writings -- start to finish. Happy to discuss all the reasons for this.	The task force appreciates the commenter's concerns but concluded that the question of whether and to what extent judicial officers may use generative AI to carry out their adjudicative duties is more appropriately addressed by the California Code of Judicial Ethics and related ethical guidance. The task force concluded that the canons likely prohibit judicial officers from having generative AI write their opinions for them, and that the Supreme Court's judicial ethics committees are the

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				appropriate bodies to ask for guidance on this subject.
15.	SEIU California and TechEquity by Sandra Barreiro, Governmental Relations, Advocate SEIU California and Vinhcent Le, Vice President of AI Policy, Tech Equity	NI	On behalf of SEIU California and Tech Equity, we appreciate the opportunity to provide comments on the Artificial Intelligence Task Force's model policy concerning the use of generative artificial intelligence (GenAI) in court-related work. Our organizations are deeply committed to ensuring the responsible development, deployment, and governance of AI systems, especially within the judicial system where the stakes for individuals' lives and well-being are exceptionally high. To that end, we find the proposed model policy to be alarmingly inadequate and potentially dangerous if adopted in its current form. The policy's superficial treatment of critical issues creates a false sense of security, suggesting that mere adoption of the model policy is enough to mitigate the significant risks of GenAI associated with specific uses of this tool in the courts. This approach could have severe consequences for the integrity of our justice system and the public it serves. Therefore, we submit the following comments, urging the task force to undertake a fundamental revision of the model policy to prevent the serious harms that could arise from the unaccountable and ill-considered use of GenAI in California courts.	Please see responses to SEIU California and Tech Equity's specific suggestions below.
			II. The Model Policy Is Insufficiently Comprehensive The model policy is not comprehensive enough to promote responsible innovation and public trust. As-is, the model policy could greenlight the irresponsible use of GenAI by trial courts due to the lack of specificity and guidance on how to effectively implement the propose policy. To ensure that GenAI serves to advance, rather than undermine, trust within the court and our justice system, the following elements should be addressed:	No response required.

	Commenter	Position	Comment	Committee Response
			A. Require Pre-Deployment Analysis In addition to the requirements set forth in Rule 10.430, each court's GenAI use policy should be informed by a pre-deployment risk/benefit analysis tailored to particular use cases. A pre-deployment analysis is necessary to meaningfully inform each court's individual policy on GenAI and should be mandatory before making the decision to deploy a GenAI system for an identified use-case. As the NIST AI Risk Management Framework (RMF) makes clear, effectively governing the use of AI requires courts to map the purpose, risks, and beneficial uses of GenAI and understand the potential impacts, benchmarks, and capabilities for each identified use.[1] Other resources, such as the State of California's GenAI guidelines and the Center for Democracy & Technology's (CDT) guide for public sector use of AI, echo the need for pre-deployment assessments and provide valuable frameworks and questions that courts should address before adopting GenAI.[2] [1] NIST's AI RMF provides specific guidance for organizations to govern the use of AI by mapping, measuring and managing the risks of AI. For example, Map 1.1 requires that the "intended purpose, potentially beneficial uses, context-specific laws, norms and expectations, and prospective settings in which the AI system will be deployed are understood and documented. The framework notes that "the information gathered while carrying out the MAP function enables negative risk prevention and informs decisions for processes such as model management, as well as an initial decision about appropriateness or the need for an AI solution." *See* National Institute of Standards and Technology. (January 2023). *NIST Artificial Risk Management Framework 1.0*, at pp. 24-26. https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf [2] California Department of Technology, Department of General Services, Office of Data and Innovation, & Department of Human Resources. (2024, March). *State of California GenAI Guidelines for Public Sector Procurement, Uses and Training.* https://www.govops.ca.gov/wp-content/uploads/sites/11/2024/03/3.a-GenAI-	Revising the rule and standard to implement this suggestion would require further public comment because it is beyond the scope of issues presented in this invitation to comment. The task force may consider it as time and resources permit. Additionally, the task force will consider whether to implement this suggestion, and others that are beyond the scope of this invitation to comment, via other means including the model policy or other guidance documents.

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			Guidelines.pdf; Srinivasan, S., & Laird, E. (2025, March). *To AI or Not to AI: A Practice Guide for Public Agencies to Decide Whether to Proceed with Artificial Intelligence*. Center for Democracy & Technology. https://cdt.org/insights/to-ai-or-not-to-ai-a-practice-guide-for-public-agencies-to-decide-whether-to-proceed-with-artificial-intelligence/. Before implementation, it is critical for trial courts to have a comprehensive understanding of the risks and benefits associated with each potential GenAI application. Predeployment evaluation would promote the goals of the model policy, namely responsible innovation and public trust, and is necessary to mitigate potential harms to privacy, safety, and security. **Recommendation: The model policy should require courts to engage in pre-deployment analysis of GenAI uses to guide the development of their GenAI policies and to determine the appropriateness of GenAI for each use.**	
			B. Require Pre and Post-Use Testing and Evaluation After the pre-deployment analysis, the model policy should require pre and post-use testing before GenAI is public-facing. The risks and benefits of each GenAI tool vary widely depending on the specific system and its intended use case. For example, if used for summarization, legal research, or translation, GenAI carries a high risk of "hallucinations," which can, at a minimum, require substantial time to correct and, at worst, lead to inaccurate outputs that deny someone justice or their liberty. These risks may differ significantly from those associated with GenAI use in internal communications, drafting emails, or docket management. The NIST AI Risk Management Playbook emphasizes the importance of pre-use testing for identifying metrics and methods to assess risks identified in pre-deployment analysis and during operation, as well as establishing mechanisms for tracking identified AI risks over time.[3] This can include benchmarking GenAI systems for hallucinations in legal research, tracking the number of errors in data	As discussed above, this suggestion is beyond the scope of the current proposal, but the task force may consider it as time and resources permit.

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			entry or docket management uses, evaluating prompts, or checking language accuracy. This type of pre-use testing can ground court staff in understanding the limitations of GenAI tools across different use cases. [3] NIST Measure 1.1 and 1.2 require that the: "approaches and metrics for measurement of AI risks enumerated during the Map function are selected for implementation starting with the most significant AI risks. The risks or trustworthiness characteristics that will not – or cannot – be measured are properly documented. [The] appropriateness of AI metrics and eff ectiveness of existing controls are regularly assessed and updated, including reports of errors and potential impacts on affected communities." National Institute of Standards and Technology. (n.d.). NIST AI RMF Playbook "Measure". https://airc.nist.gov/airmf-resources/playbook/measure/. **Recommendation: The model policy should require courts to develop and implement mechanisms and metrics tailored to their specific uses of GenAI.** As discussed below, if a court permits the use of GenAI, this evaluation should continue under the supervision of court staff, particularly for uses with higher risks as identified by pre-deployment analysis and testing.[4] [4] "AI systems should be tested before their deployment and regularly while in operation. AI risk measurements include documenting aspects of systems' functionality and trustworthiness." NIST, *supra* n.1, at 28.	
			C. Require Clear Assignment of Responsibility and Ongoing Management The model policy should include requirements for the clear assignment of responsibility and ongoing management of GenAI systems. This includes designating specific staff or establishing a working group responsible for continuous monitoring of the effectiveness of GenAI tools and ensuring compliance with established policies. • Responsibilities should include:	As discussed above, this suggestion is beyond the scope of the current proposal, but the task force may consider it as time and resources permit.

	Commenter	Position	Comment	Committee Response
			○ Ongoing evaluation and monitoring of prompts and outputs. ○ Development of best practices and refinement of court policies related to GenAI. ○ Ensuring the protection of privacy and data security. ○ Overseeing validation and review processes to ensure accuracy and reliability. ○ Establishing mechanisms for detecting and addressing the misuse of GenAI. ○ Receiving and responding to feedback from the public and court staff. As the NIST guidelines highlight,[5] effective AI risk management requires courts to assign personnel responsible for managing the use of GenAI who can regularly monitor its use to drive continual improvement, minimize harms and facilitate effective responses to errors and incidents. [5] National Institute of Standards and Technology. (n.d.). NIST AI RMF Playbook "Manage". https://airc.nist.gov/airmf-resources/playbook/manage/. **Recommendation: The model policy should require the assignment of staff oversight responsibilities to manage risk in the court's use of GenAI.**	
			D. Define Acceptable and Prohibited Uses The model policy should provide specific guidance on defining acceptable and prohibited uses of GenAI in the courts. Certain applications, such as external-facing chatbots or translation services, may present unacceptable risks where the costs of remediation, validation, and review outweigh the potential benefits. For instance, an external-facing GenAI chatbot used in New York for self-help routinely provided inaccurate or misleading legal information to its users.[6] Similarly, GenAI transcription and summarization tools have been shown to invent information as much as half of the time,[7] posing unacceptable risks to litigants if these outputs are relied upon in adjudication. Legal research tools powered by GenAI also present challenges related to the reliability and accuracy of their outputs with a Stanford	The task force is not recommending revisions in response to this suggestion. The task force concluded that courts and judicial officers are in the best position to identify acceptable uses of generative AI to meet their specific needs. It would be extremely difficult for the task force to create a list of acceptable tools and uses, and such a list would likely be both

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			study showing these systems would hallucinate answers 1 out of 6 times.[8] These examples show the potential harms that the unaccountable use of GenAI can pose to the court and public trust. [6] Lecher, C. (2024, March 29). *NYC's AI Chatbot Tells Businesses to Break the Law*. The Markup. https://themarkup.org/news/2024/03/29/nycs-ai-chatbot-tells-businesses-to-break-the-law. [7] Burke, G., & Schellmann, H. (2024, October 26). *Researchers say an AI-powered transcription tool used in hospitals invents things no one ever said*. AP News. https://apnews.com/article/ai-artificial-intelligence-health-business-90020cdf5fa16c79ca2e5b6c4c9bbb145. [8] Ho, F. S. E., Surani, F., & Ho, D. E. (2024, May 23). *AI on Trial: Legal Models Hallucinate in 1 out of 6 (or more) Benchmarking Queries*. Stanford HAI. https://hai.stanford.edu/news/ai-trial-legal-models-hallucinate-1-out-6-or-more-benchmarking-queries. **Recommendation: The model policy should provide use-case-specific guidance on GenAI, with more stringent prohibitions, requirements, and oversight for use cases with greater risk of harm.**	under- and overinclusive because the task force would have to speculate about how specific tools work or how courts might use them. Additionally, putting such a list in a rule of court would make it difficult to keep up with technological advancements. For these reasons, the task force recommends that the rule and standard address specific risks of generative AI rather than specific generative AI tools or uses.
			E. Define Minimum Elements of GenAI Training Programs: The model policy should mandate training for court staff and judicial officers on the responsible use of GenAI. Without detailed guidance and training, the policy risks being implemented inconsistently and ineffectively. At a minimum, these training programs should cover: ○ All elements of the court's GenAI policy, including acceptable and prohibited uses. ○ The limitations of GenAI systems, including the potential for hallucinations, biases, and errors. ○ Strategies for developing effective and unbiased prompts.	As discussed above, this suggestion is beyond the scope of the current proposal, but the task force may consider it as time and resources permit.

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			○ Techniques for validating and verifying the accuracy of GenAI outputs. ○ Relevant legal, policy, and ethical rules governing the use of GenAI in the courts. ○ Strategies for addressing the risk of de-skilling due to reliance on GenAI, particularly for junior staff. **Recommendation: The task force should ensure that the adoption of GenAI in California's courts is both responsible and accountable by requiring courts to address these additional elements in its model policy and training programs.**	
			III. The Model Policy Should Set Equivalent Standards for Judicial Officers. To maintain public trust in the integrity of the judicial process, we recommend that judicial officers, even in their adjudicative roles, be held to the same or substantially similar standards as court staff when using GenAI. The current discrepancy between rule 10.430 and standard 10.80 creates a double standard, which could erode public confidence in the courts. The use of GenAI to support adjudicative decision-making can pose a greater risk to the fairness of proceedings and the rights of parties within the court system. Therefore, the stronger, binding requirements of rule 10.430 should apply to judicial officers using GenAI in key adjudicative functions. **Recommendation: Apply the requirements of rule 10.430 to judicial officers, given the unique risks posed by GenAI in adjudicative functions, which necessitate a clearly defined floor for responsible use.**	The task force is not recommending revisions in response to this suggestion. The task force is recommending standard 10.80, which is discretionary, because it concluded that the question of whether and to what extent judicial officers may use generative AI to carry out their adjudicative duties is more appropriately addressed by the California Code of Judicial Ethics and related ethical guidance.
			IV. The Model Policy Should Provide Additional Guidance on Disclosure Requirements The model policy should require courts to create specific guidance and definitions around disclosure requirements for court documents produced with GenAI. Currently, rule 10.430(d)(5) and standard 10.80(b)(5) call for disclosure if GenAI outputs constitute a "substantial portion" of the content. This standard is too vague	In light of all the comments received on this issue, the task force has recommended a revised version of rule 10.430(d)(5).

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			and subjective and can lead to substantially different policies and therefore differential access to due process across court systems. Furthermore, the policy should provide examples of the type, placement, and level of disclosure required, with an understanding that these requirements may need to vary depending on the type of court document and the AI's role in its creation. Detailed and specific guidance can ensure that the use of GenAI in the creation of court documents is transparent, accountable, and consistent across all California courts, maintaining public trust in the integrity of the judicial process. **Recommendation: The policy should define clear thresholds and examples for when disclosure is required including for pre-use notice.**	
			V. The Model Policy Should Be Consistent with California Law **Recommendation: To ensure clarity and consistency, the model policy should align its definitions of "Generative artificial intelligence system" and "Artificial Intelligence" with those used in existing California law, such as in CA Civ Code § 3110 (2024).[9]** [9] (a) "Artificial intelligence" means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments. (c) "Generative artificial intelligence" means artificial intelligence that can generate derived synthetic content, such as text, images, video, and audio, that emulates the structure and characteristics of the artificial intelligence's training data. CA Civ Code § 3110 (2024).	In light of all the comments received on this issue, the task force is recommending revised definitions of "generative AI" and "public generative AI system" in the rule and standard. The task force recommends deleting the definition of "artificial intelligence" in the rule and standard because it is not needed due to the proposed revisions to the definition of "generative AI." However, although the task force agrees that consistency with statutory definitions can be beneficial in some circumstances, the existing statutory definitions, such as those in Civil Code section 3110, are not a good fit

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				for the rule and standard. Those definitions are part of statutory schemes for regulating AI providers and use terminology that laypeople might find confusing, such as the reference in section 3110(a) to "explicit and implicit objectives."
			Conclusion: We ask that the task force adopt the above recommendations to ensure that the use of GenAI in California's courts is consistent with the best practices on responsible AI deployment. We urge the task force to adopt these changes to safeguard public trust, promote a justice system that serves all Californians equitably, and ensure that the deployment of GenAI has proper guardrails and oversight, particularly when it comes to decisions that impact access to justice.	No response required.
16.	Superior Court of California, County of Los Angeles by Stephanie Kuo	AM	The following comments are representative of the Superior Court of California, County of Los Angeles, and do not represent or promote the viewpoint of any particular judicial officer or employee. In response to the Judicial Council of California's ITC SP25-01 Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work, the Superior Court of California, County of Los Angeles (Court), agrees with the proposed additions if the following modifications are incorporated.	Please see responses to the Superior Court of California, County of Los Angeles's specific suggestions below.
			The Court commends the thoughtful approach reflected in much of the rule, as it seeks to balance the benefits of Artificial Intelligence (AI) tools with the need for accountability, transparency, and integrity in judicial administration. Our organization is broadly supportive of the framework outlined; however, we wish to	No response required.

	Commenter	Position	Comment	Committee Response
			express specific concerns regarding subsection 10.430(d)(5) and offer recommendations for its refinement.	
			Subsection 10.430(d)(5) mandates that staff and judicial officers (exercised outside of their adjudicative role) disclose their use of or reliance on generative AI when a substantial portion of the content in the final version of a written or visual work—intended for public dissemination—is produced by such technology. While we recognize the intent to promote transparency, we respectfully submit that this disclosure requirement extends beyond what is necessary and introduces practical challenges. We propose that the language in Standard 10.80, which applies to judicial officers in their adjudicative functions, offers a more balanced approach. Standard 10.80 encourages judicial officers to exercise discretion in determining whether disclosure is appropriate on a case-by-case basis, rather than imposing a blanket obligation. We believe a similar standard would better serve the objectives of Rule 10.430. One of the Court's highest concerns is that—provided all other safeguards such as mandatory review, verification of accuracy, and elimination of bias—are adhered to, an additional disclosure requirement appears redundant. For example, consider a scenario in which AI is used to initiate a draft message for a Bar publication or to draft routine correspondence like an email response. Requiring disclosure in such instances could impose an undue administrative burden without meaningfully enhancing public trust or accountability and would likely discourage the use of generative AI in instances when it is appropriate. These uses of AI are analogous to the use of other commonly used tools, such as image generation, word processing software or legal research databases, none of which trigger similar disclosure obligations. Moreover, the term "substantial" in subsection 10.430(d)(5) lacks clear definition, rendering the provision susceptible to inconsistent application. Without explicit guidance on what constitutes a "substantial portion" of AI-generated content, staff and judicial officers may face uncertainty, potentially leading to over-reporting or	In light of all the comments received on this issue, the task force has recommended a revised version of rule 10.430(d)(5). The task force understands the concern that requiring disclosure might limit courts' flexibility but concluded that mandatory disclosure is necessary in some circumstances to maintain public trust in the judicial branch.

	Commenter	Position	Comment	Committee Response
			inadvertent non-compliance. To address this, we recommend either replacing the term with a more precise threshold or adopting the discretionary framework of Standard 10.80, which avoids such ambiguity altogether.	
			Regarding the implementation timeline, six months is more reasonable when considering the different stages at which courts may be with their AI usage. Also, it would give the courts more time to implement tools to enforce the policy, which would be needed. Two months is not enough time to implement the tools.	The task force recommends revising rule 10.430(b) to require courts to adopt use policies by December 15, 2025, in order to give courts more time to prepare their policies and any tools necessary for implementation.
			It is difficult to assess how this proposal would be developed and implemented in courts of different sizes. We believe it would be more difficult for larger courts to implement this proposal, simply because of the level of development and use of AI-related tools and applications and, as a result, the larger number of staff currently using AI in larger courts. Larger courts will need tools to enforce the policy whereas smaller courts may not have enough activity to warrant the purchase of these tools.	The task force appreciates the response.
			In conclusion, while the Court supports the majority of Proposed Rule 10.430 and its commitment to responsible AI use, we urge reconsideration of subsection 10.430(d)(5). Aligning this provision with the discretionary approach of Standard 10.80 would enhance the rule's clarity, practicality, and effectiveness.	No response required.
17.	Superior Court of California, County of Placer by Naslie Rezaei, Court Services Analyst	AM	Thank you for the opportunity to comment on the proposed rule and model policy concerning generative AI. With the rapid use and integration of generative AI, in both the courts and daily life, we appreciate the Committee's dedication in addressing this emerging policy area. The Placer Superior Court, Court Administration (Court Administration or we) largely agrees with the Proposal, but we would like to offer a few suggestions for the Committee's consideration and one request for amendment.	Please see responses to specific suggestions below.

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All comments are verbatim unless indicated in a footnote.

	Commenter	Position	Comment	Committee Response
			Model Use Policy, Section VI. Transparency: We understand the Committee's intention to promote transparency using watermarks or disclaimers on AI-generated photos, videos, and audio clips. While Court Administration agrees differentiating between deepfakes is important, we ask that the Committee consider the integration of generative AI tools in word processing applications. As generative AI tools increasingly integrate with word processing applications (such as the launch of CoPilot for the Government Cloud), these tools will likely be used to simplify the creation of templates, documents, or memoranda. For instance, a court might generate a memorandum template in response to a citizen complaint using generative AI. While the initial draft of this memorandum may be AI-generated, a subsequent review would be conducted by court staff to ensure accuracy and completeness (as required by proposed Rule 10.430). With this additional review, it may not be necessary to indicate, to the reader, that generative AI was used to refine or speed development of written material. This is differentiated, perhaps, from legal writing that is submitted to the court where the submitting party may not be subject to rules or policies that require human review of written material. Ultimately, we ask that the committee consider revising this section to require disclosure of AI-generated photos, videos, and audio clips but remove the requirement on written publications that must be reviewed by the author and can be directly modified.	In light of all the comments received on this issue, the task force has recommended a revised version of rule 10.430(d)(5). The task force understands the concern that requiring disclosure might limit courts' flexibility but concluded that mandatory disclosure is necessary in some circumstances to maintain public trust in the judicial branch.
			Generative AI FAQs (in response to the Committee's question about issues courts would like addressed in the upcoming Generative AI FAQs): We appreciate the Committee's willingness to create resources to aid courts in developing and deploying generative AI. In addition to FAQs that address generative AI, we believe it would be helpful for the Committee to define other traditional forms of AI—such as advanced automation, machine learning, and natural language process models that do not independently generate text. This clarification may reduce confusion as courts move to implement other forms of AI, beyond generative AI, that are not covered by these new rules.	The task force will consider these suggested revisions to the FAQs as time and resources permit.

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

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All comments are verbatim unless indicated in a footnote.

	Commenter	Position	Comment	Committee Response
			Implementation Deadline (in response to the Committee's question about a two-month implementation deadline): Placer Court Administration agrees that a two-month deadline to adopt a generative AI use policy is sufficient. However, it may be helpful to include a grace period for compliance with adopted policies to allow courts time to coordinate with their vendors. Some software or software-as-a-service providers have already integrated AI into their applications. A six-month grace period, for example, would allow courts time to review these applications and work with their vendors to conform their solutions to this new policy.	The task force recommends revising rule 10.430(b) to require courts to adopt use policies by December 15, 2025, in order to give courts more time to prepare their policies and any tools necessary for implementation.
18.	Superior Court of California, County of San Francisco by Michael Corriere, Chief Data Officer	AM	Rule 10.430 (b)(1) and Model Policy III. a. (also seen in Standard 10.80 (b)(1)) A. Replace "nonpublic" with "non-disclosable." Nonpublic information is not necessarily confidential. Some courts with data classification systems identify a level of data sensitivity that is neither public nor confidential and is disclosable (i.e., "internal" in San Francisco). Information that is nonpublic but not confidential should be a permissible input.	The task force appreciates the commenter's concerns but is not recommending revisions in response to this suggestion. The task force expects that inputting nonpublic information into public generative AI systems may be problematic even if the nonpublic information is not confidential. However, the task force is recommending a revised definition of "public generative AI system," which might resolve the commenter's concern.
			B. Allow exception to input of confidential information into a public generative A.I. system when the court has a service-level agreement that: a. prohibits the public generative A.I. system provider from 1) allowing court data to be accessed by anyone outside of the court, 2) using court data to train A.I. systems, or 3) allowing others outside the court to use court data to train A.I. systems, and b. contains language ensuring that this prohibition survives the termination of the agreement indefinitely.	In light of all the comments received on this issue, the task force is recommending revised definitions of "generative AI" and "public generative AI system" in the rule and standard.

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

	Commenter	Position	Comment	Committee Response
			Rule 10.430 (d)(5) and Model Policy VI. A. (also seen in Standard 10.80 (b)(5)) "Substantial" will require some clarification/interpretation, either within the rule/model policy or at the local level. Including a discussion of this in the FAQ would also be helpful.	In light of all the comments received on this issue, the task force has recommended a revised version of rule 10.430(d)(5).
			Disclosure of the use of Gen A.I. in creating materials presented to the public will not be possible without tracking the use of this technology from the materials' creation, as content gets cycled through various drafts and is repurposed over time. Disclosure by contractors to court staff will also be necessary to comply with this section of the rule, as the court would have no way of knowing what content it must identify as created with the help of A.I. if the contractor does not disclose. Recommend striking "provided to the public" as this will have to be done anyway to make this policy workable.	The task force understands the concern that requiring disclosure might limit courts' flexibility but concluded that mandatory disclosure is necessary in some circumstances to maintain public trust in the judicial branch.
			For the FAQ, we suggest that it include guidance on how to determine that a Gen A.I. output is not a hallucination.	The task force will consider this suggested revision to the FAQs as time and resources permit.
			Rule 10.430 Judicial leadership is a bit concerned with the notion of judges notifying parties of their use of AI for research or any other purpose. Standard 10.80 Judicial leadership has the same concern mentioned above for judges under the standard.	The task force's recommended revisions to rule 10.430(d)(5) should exclude typical legal research activity from the rule's mandatory disclosure requirement.
			As for judges, recommend that we adopt the policy rule and standard with the limitations mentioned above as a local rule. We should also determine whether we want to add anything further to these model rules as they do seem a bit general.	No response required.
19.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court	AM	The Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and Court Executive Advisory Committee submits the following comments in response to the invitation to comment (ITC) on SP25-01 Judicial Branch Administration: Rule and Standard for Use of Generative Artificial	Please see responses to TCPJAC/CEAC Joint Rules Subcommittee's specific suggestions below.

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

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Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work (adopt Cal. Rules of Court, rule 10.430; adopt Cal. Standards of Judicial Administration, standard 10.80)

All comments are verbatim unless indicated in a footnote.

	Commenter	Position	Comment	Committee Response
	Executives Advisory Committee (CEAC) (TCPJAC/CEAC Joint Rules Subcommittee)		Intelligence in Court-Related Work (Adopt Cal. Rules of Court, rule 10.430; adopt Cal. Standards of Judicial Administration, standard 10.80) JRS agrees generally with the proposed if modified. The subcommittee proposes the following changes:	
			[1] Change the disclosure requirement in CRC, rule 10.430 (d)(5) Instead of being required to disclose the use of generative AI if the work product constitutes a substantial portion of the content, the rule should only require judicial officers and court staff to consider whether disclosure should occur. With necessary edits due to differences in phrasing in the rule, the proposed language in rule 10.430 (d)(5) should be replaced with the proposed language in Standard 10.80 (b)(5). This change would allow for a more appropriately flexible approach, accommodating various contexts in which AI might be used. If mandatory disclosure is kept in this section of the rule, "substantial" needs to be defined as it is ambiguous and susceptible to various interpretations.	In light of all the comments received on this issue, the task force has recommended a revised version of rule 10.430(d)(5). The task force understands the concern that requiring disclosure might limit courts' flexibility but concluded that mandatory disclosure is necessary in some circumstances to maintain public trust in the judicial branch.
			[2] Remove the word "unlawfully" from CRC, rule 10.430 (d)(2) The word "unlawfully" should be removed from the rule language because it is redundant and unnecessary. This section of the rule already states that generative AI may not be used to discriminate based on any classification protected by federal or state law. Further, the word "unlawfully" does not add any additional value and including it might imply that forms of discrimination that are not explicitly unlawful are permissible.	The task force appreciates the commenter's concerns but is not recommending revisions in response to this suggestion. The task force acknowledges that it is not strictly necessary to prohibit the use of generative AI to unlawfully discriminate because such discrimination is already prohibited. The task force included this provision in the rule primarily to ensure courts are aware of the risk that generative

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All comments are verbatim unless indicated in a footnote.

	Commenter	Position	Comment	Committee Response
				AI systems can produce biased or discriminatory outputs.
			[3] Add a definition for "adjudicative role" in CRC, rule 10.430 and Standard 10.80 Some judicial officers may consider most tasks they perform as part of their adjudicative role, while others might only consider tasks directly related to making judicial decisions in cases as part of their adjudicative role. The proposal as drafted assumes a common understanding or definition exists, which is not the case. This ambiguity would inhibit the correct application of the rule and standard, as it leaves it unclear when the requirements in the rule for generative AI use would apply to judicial officers as opposed to the suggestions in the standard. The ambiguity would also inhibit the ability of presiding and supervising judges to enforce the rule with other judicial officers.	The task force acknowledges that the term "adjudicative role" may seem vague but is not recommending revisions in response to this suggestion. The task force concluded that it is appropriate to leave the term undefined to avoid potential conflicts with other rules or guidance that use similar terms. Additionally, judicial officers have discretion and are best situated to determine whether a task is within their adjudicative role.
			The Joint Rules Subcommittee thanks the Artificial Intelligence Task Force, and staff for the opportunity to review and provide commentary on this proposal.	No response required.

Item number: 02

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 6/3/25

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

Title of proposal: Jury Instructions: Civil Jury Instructions (release 47)

Proposed rules, forms, or standards (include amend/revise/adopt/approve)*:*
Revise CACI Nos. 1621, 1803, 1804A, 1804B, 1805, 3066, VF-3035, 3704, 3713, 4013, 4306, 4307, 4409, 4601, and 4602; approve CACI Nos. 1013, VF-1003, 1930, and VF-1930.

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

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

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): 10/22/24
Project description from annual agenda: 1. Maintenance—Case Law; 2. Maintenance—Legislation; 4. Maintenance—Comments from Users; 5. Maintenance—Sources and Authority; 6. Maintenance—Secondary Sources

Out of Cycle/Early Implementation: *If requesting July 1 effective date or out of cycle, explain why:*
Mid-year supplement to the Judicial Council of California Civil Jury Instructions (CACI)

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

- **Director Approval** (required for all invitations to comment and reports)
  This report or invitation to comment was:
  ☒ reviewed by EGG on *(date)* 4/17/25
  ☒ approved by Office Director (or Designee) (*name*) Michael Giden
  on (date) 5/7/25

If either of above not checked, explain why:

*Complete the following for all reports to be submitted to council (optional for ITCs)**:***

- **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 report 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.: 25-107
For business meeting on July 18, 2025

Title
Jury Instructions: Civil Jury Instructions (release 47)

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

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

Report Type
Action Required

Effective Date
July 18, 2025

Date of Report
May 7, 2025

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

Executive Summary

The Advisory Committee on Civil Jury Instructions recommends approval of new and revised civil jury instructions and verdict forms prepared by the committee. Among other things, these changes bring the instructions up to date with developments in the law over the previous six months. Upon Judicial Council approval, the instructions will be published in the midyear supplement to the official 2025 edition of the *Judicial Council of California Civil Jury Instructions* (*CACI*).

Recommendation

The Advisory Committee on Civil Jury Instructions recommends that the Judicial Council, effective July 18, 2025, approve for publication under rules 2.1050 and 10.58 of the California Rules of Court:

1. Revisions to 15 instructions and verdict forms: CACI Nos. 1621, 1803, 1804A, 1804B, 1805, 3066, VF-3035, 3704, 3713, 4013, 4306, 4307, 4409, 4601, and 4602; and

2. Addition of 2 instructions and 2 verdict forms: CACI Nos. 1013, VF-1003, 1930, and VF-1930.

A table of contents and the new and revised civil jury instructions and verdict forms are attached at pages 6–78.

Relevant Previous Council Action

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

This is release 47 of *CACI*. The council approved release 46 at its November 2024 meeting.

Analysis/Rationale

A total of 19 instructions and verdict forms are presented in this release. In addition, at its meeting on June 3, 2025, the Judicial Council's Rules Committee approved minor changes to 15 other instructions under a delegation of authority from the council to the Rules Committee.[2]

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

Revised instructions

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

The Supreme Court in *Downey v. City of Riverside*[3] held that a bystander could recover for negligent infliction of emotional distress even if the bystander was not physically present at the scene of the incident and was not aware of the defendant's role in causing the victim's injury at the time of the incident. The court resolved an uncertainty in the law addressed in the Directions

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

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

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

[3] (2024) 16 Cal.5th 539, 544 [323 Cal.Rptr.3d 109, 551 P.3d 1109].

for Use about the threshold requirements for a bystander's perception of the event for an emotional distress claim. The decision did not affect the essential factual elements of a claim as framed in CACI No. 1601. The committee recommends deleting two paragraphs from the Direction for Use, which are no longer needed as a result of the court's clarification. The committee does not believe it is necessary to add an explication of *Downey* in the Directions for Use, but it recommends adding three entries from the case to the Sources and Authority.

CACI Nos. 1803, 1804A, 1804B, and 1805

Over the last year, the committee reexamined these four instructions in the Right of Privacy series based on an attorney's submission on the First Amendment affirmative defense stated in CACI No. 1805, *Affirmative Defense to Use or Appropriation of Name or Likeness—First Amendment (Comedy III)*. The committee initially concluded that all four instructions would benefit from adding an option to reference the closely related right of publicity in the introductory paragraph and recommended other clarifying changes.

During the previous comment period, the California Lawyers Association (CLA) commented that including information about the underlying privacy or publicity right for these claims was not necessary. CLA suggested that jurors instead would benefit from introductory language focused on the conduct at issue. The committee saw merit in CLA's suggestion and recirculated the instructions for comment that added the alleged wrongful conduct (misappropriation) without reference to the right of privacy or publicity to the introductory sentence of these instructions. During this comment period, the Orange County Bar Association observed that these claims are often explained by attorneys using descriptions that rely on both the underlying right and the wrongful conduct, and that deleting the underlying right from the introduction could cause confusion. The committee ultimately concluded that jurors would benefit if both pieces of information were included in the introductory sentences and has recommended refinements to the Directions for Use on how to address the right of privacy, publicity, or both, and the misappropriation at issue.

With respect to the First Amendment defense, the committee rejected calls from two commenters to rephrase the instruction using verbatim language of the legal test commonly found in case law ("transformative elements"). The committee debated the merits of phrasing the test with the language familiar to attorneys but chose to continue presenting that test in plainer English for jurors.

CACI No. 3066*, Bane Act—Essential Factual Elements, *and VF-3035

Commenters suggested a new pattern jury instruction for Bane Act claims to cover civil rights claims not based on speech alone. The committee concluded that the existing instruction could be revised to address conduct-based civil rights claims as an alternative element 1. The committee also saw support for incorporating reckless disregard into optional element 2 for conduct-based claims under the act. Public comment strongly supported the committee's recommended additions.

A commenter noted that the bracketed language choices in optional element 2 would benefit from revision. The committee recommends refinements to the bracketed options to improve clarity. The committee also recommends corresponding edits to the verdict form for this instruction (CACI No. VF-3035).

The committee also looked at issues of damages available under the Bane Act, which are discussed in the Directions for Use of CACI No. 3066, based on a federal court's recent discussion in an unpublished case.[4] The committee determined that waiting for further development in binding law was advisable. The committee will continue to monitor this issue and recommend revisions if appropriate.

New instructions and verdict forms

CACI No. 1013*, Landlord's Liability for Dangerous Dog Kept on Property—Essential Factual Elements, *and VF-1003

Based principally on *Fraser v. Farvid*,[5] the committee recommends a new instruction and verdict form in the Premises Liability series for a claim against a landlord by a plaintiff attacked by a dog owned by a tenant, not the landlord. The committee determined that, even if these cases are less frequently filed, a new instruction would benefit courts and litigants because the essential factual elements are different in this context from similar premises liability claims.

CACI No. 1930*, Receiving Stolen Property—Civil Liability—Essential Factual Elements, *and VF-1930

Since 2022 when the California Supreme Court decided *Siry Investment, L.P. v. Farkhondehpour*,[6] the committee has been considering a new instruction on receiving stolen property under Penal Code section 496. Because the procedural posture of *Siry Investment, L.P.* involved an appeal from default judgment, the committee chose to wait for more authority. In late 2023, a Court of Appeal in *Garrabrants v. Erhart*[7] observed that the lack of a pattern jury instruction made the instructional error in the case understandable. To assist courts and litigants, the committee now recommends a new instruction and verdict form for use in cases involving civil claims under section 496(c).

Policy implications

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

[4] See *Loggervale v. Cnty. of Alameda* (9th Cir., Sep. 19, 2024, Nos. 23-15483, 23-15985, 23-16199) 2024 U.S. App. LEXIS 23824.

[5] (2024) 99 Cal.App.5th 760 [318 Cal.Rptr.3d 215].

[6] (2022) 13 Cal.5th 333 [296 Cal.Rptr.3d 1, 513 P.3d 166].

[7] (2023) 98 Cal.App.5th 486 [316 Cal.Rptr.3d 792], review den. Apr. 10, 2024, S283751.

Comments

The proposed additions and revisions in *CACI* circulated for comment from January 29 through March 6, 2025. Comments were received from 23 different commenters: 9 organizations or bar associations, 5 attorneys, 4 law firms, 3 individuals (not identified as attorneys), an operations manager of a superior court, and an external affairs officer of another superior court. Some commenters submitted comments on multiple instructions and verdict forms, and some commented on only a single instruction. No instruction garnered significant opposition; however, the changes to CACI No. 3066 received almost unanimous support from 15 commenters.

The committee appreciates the time taken to respond to the proposed changes. The committee evaluated all comments and, as a result, refined some of the instructions and verdict forms in this release. A chart of the comments and the committee's responses is attached at pages 79–132.

Alternatives considered

Rules 2.1050(e) and 10.58(a) of the California Rules of Court require the committee to update, revise, and add topics to *CACI* on a regular basis and to submit its recommendations to the council for approval. There are no alternative actions for the committee to consider. The committee did, however, consider suggestions from members of the legal community that did not result in recommendations for this release.

Fiscal and Operational Impacts

No implementation costs are associated with this proposal.

Attachments and Links

1. CACI Nos. 1013, VF-1003, 1621, 1803, 1804A, 1804B, 1805, 1930, VF-1930, 3066, VF-3035, 3704, 3713, 4013, 4306, 4307, 4409, 4601, and 4602, at pages 6–78
2. Chart of comments, at pages 79–132

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CIVIL JURY INSTRUCTIONS
Release 47; July 2025

1013. Landlord's Liability for Dangerous Dog Kept on Property—Essential Factual Elements

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[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] was harmed by [a] dog[s] kept on property owned by [***name of defendant landlord***]. To succeed, [***name of plaintiff***] must prove all of the following:**

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

2. **That before the [attack/***other incident***] by the dog[s], [***name of defendant landlord***] knew or must have known that [a] dog[s] being kept on the premises had a nature or tendency to be dangerous;**

3. **That [***name of plaintiff***] was harmed by the dog[s];**

4. **That before the [attack/***other incident***], [***name of defendant landlord***] could have taken reasonable measures to prevent the harm;**

5. **That [***name of defendant landlord***] failed to take those reasonable measures to prevent the harm; and**

6. **That [***name of defendant landlord***]'s failure to take those reasonable measures was a substantial factor in causing [***name of plaintiff***]'s harm.**

New July 2025

Directions for Use

This instruction is for use when a dog kept on a landlord's property has harmed a third person and that person claims the landlord is liable.

Sources and Authority

- "[W]e believe public policy requires that a landlord who has knowledge of a dangerous animal should be held to owe a duty of care only when he has the right to prevent the presence of the animal on the premises. Simply put, a landlord should not be held liable for injuries from conditions over which he has no control." (*Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 512 [118 Cal.Rptr. 741].)

- "[W]e hold that a landlord is under no duty to inspect the premises for the purpose of discovering the existence of a tenant's dangerous animal; only when the landlord has actual knowledge of the animal, coupled with the right to have it removed from the premises, does a duty of care arise." (*Uccello, supra,* 44 Cal.App.3d at p. 514.)

- "The general duty of care owed by a landowner in the management of his or her property is attenuated when the premises are let because the landlord is not in possession, and usually lacks

the right to control the tenant and the tenant's use of the property. Consequently, it is well established that a landlord does not owe a duty of care to protect a third party from his or her tenant's dog unless the landlord has actual knowledge of the dog's dangerous propensities, and the ability to control or prevent the harm." (*Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1369 [50 Cal.Rptr.3d 40].)

- "[T]he landlord's control of the property from which the dog originated its attack, not his or her control over the property on which the attack occurred, determines the landlord's liability." (*Donchin v. Guerrero* (1995) 34 Cal.App.4th 1832, 1847 [41 Cal.Rptr.2d 192].)

- "Under California law, a landlord who does not have actual knowledge of a tenant's dog's vicious nature cannot be held liable when the dog attacks a third person. In other words, where a third person is bitten or attacked by a tenant's dog, the landlord's duty of reasonable care to the injured third person depends on whether the dog's vicious behavior was reasonably foreseeable. Without knowledge of a dog's propensities a landlord will not be able to foresee the animal poses a danger and thus will not have a duty to take measures to prevent the attack. [¶] In this court's view, this inquiry into the landlord's duty involves a two-step approach. The first step is to determine the landlord's knowledge of the dog's vicious nature. … [¶] The second step involves a landlord's ability to prevent the foreseeable harm." (*Donchin, supra,* 34 Cal.App.4th at p. 1838.)

- " '[A] landlord who does not have actual knowledge of a tenant's dog's vicious nature cannot be held liable when the dog attacks a third person. … Without knowledge of a dog's propensities a landlord will not be able to foresee the animal poses a danger and thus will not have a duty to take measures to prevent the attack.' This 'actual knowledge rule' can be satisfied 'by circumstantial evidence the landlord *must* have known about the dog's dangerousness as well as direct evidence he *actually* knew.' " (*Fraser v. Farvid* (2024) 99 Cal.App.5th 760, 763 [318 Cal.Rptr.3d 215], internal citations omitted, original italics.)

- "[W]here a landlord has relinquished control of property to a tenant, a 'bright line' rule has developed to moderate the landlord's duty of care owed to a third party injured on the property as compared with the tenant who enjoys possession and control. ' "Because a landlord has relinquished possessory interest in the land, his or her duty of care to third parties injured on the land is attenuated as compared with the tenant who enjoys possession and control. Thus, before liability may be thrust on a landlord for a third party's injury due to a dangerous condition on the land, the plaintiff must show that the landlord had actual knowledge of the dangerous condition in question, plus the right and ability to cure the condition." ' " (*Salinas v. Martin* (2008) 166 Cal.App.4th 404, 412 [82 Cal.Rptr.3d 735].)

Secondary Sources

3 California Forms of Pleading and Practice, Ch. 23, *Animals – Civil Liability*, §§ 23.35, 23.36, 23.166 (Matthew Bender)

17 California Points & Authorities Ch. 178, *Premises Liability*, §§ 178.40, 178.41 (Matthew Bender)

VF-1003. Landlord's Liability for Dangerous Dog Kept on Property

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We answer the questions submitted to us as follows:

1. **Did [***name of defendant landlord***] own the property?**
____ Yes ____ No

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

2. **Did [***name of defendant landlord***] know, or must [***name of defendant landlord***] have known, before the [attack/***other incident***] that [a] dog[s] being kept on the premises had a nature or tendency to be dangerous?**
____ Yes ____ No

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

3. **Was [***name of plaintiff***] harmed by the dog[s]?**
____ Yes ____ No

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

4. **Could [***name of defendant landlord***] have taken reasonable measures before the [attack/***other incident***] to prevent the harm?**
____ Yes ____ No

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

5. **Did [***name of defendant landlord***] fail to take reasonable measures to prevent the harm?**
____ Yes ____ No

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

6. **Was [***name of defendant landlord***]'s failure to take reasonable measures a substantial factor in causing [***name of plaintiff***]'s harm?**

____ Yes ____ No

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

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

[a. Past economic loss

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

[b. Future economic loss

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

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

$ _____]

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

$ _____]

TOTAL $ _____

Signed: _____
Presiding Juror

Dated: _____

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

New July 2025

Directions for Use

This verdict form is based on CACI No. 1013, *Landlord's Liability for Dangerous Dog Kept on Property*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 7. The breakdown is optional depending on the circumstances.

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

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

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

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

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

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

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

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

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

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

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

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*New September 2003; Revised December 2013, June 2014, December 2014, December 2015, May 2022, July 2025**

Directions for Use

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

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

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

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

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

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

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

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

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

Sources and Authority

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

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

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

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

- "For purposes of clearing the awareness threshold for emotional distress recovery, it is awareness of an event that is injuring the victim—not awareness of the defendant's role in causing the injury—that matters. … [W]hen a bystander witnesses what any layperson would understand to be an injury-producing event—such as a car accident, explosion, or fire—the bystander may bring a claim for negligent infliction of emotional distress based on the emotional trauma of witnessing injuries inflicted on a close relative. This is true even if the bystander was not aware at the time of the role the defendant played in causing the victim's injury." (*Downey v. City of Riverside* (2024) 16 Cal.5th 539, 544 [323 Cal.Rptr.3d 109, 551 P.3d 1109].)

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

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

~~28 Cal.4th at p. 920~~ *v. Saenz* (2002) 28 Cal.4th 910, 920 [123 Cal.Rptr.2d 465, 51 P.3d 324].)

- "[W]e hold the following: Neither our precedent nor considerations of tort policy support requiring plaintiffs asserting bystander emotional distress claims to show contemporaneous perception of the causal link between the defendant's conduct and the victim's injuries. Here, [plaintiff] has alleged that when she was on the phone with her daughter she heard metal crashing against metal, glass shattering, and tires dragging on asphalt—from which she knew immediately that her daughter had been in a car accident. [Plaintiff] has also alleged that she understood that her daughter was seriously injured because she could no longer hear her after the crash and a stranger who rushed to the scene told her to quiet down so that he could find a pulse. *Thing* does not require [plaintiff] to allege that she was aware of how the defendants may have contributed to that injury." (*Downey, supra,* 16 Cal.5th at pp. 560–561.)

- "*Bird* does not categorically bar plaintiffs who witness acts of medical negligence from pursuing NIED claims. 'This is not to say that a layperson can never perceive medical negligence or that one who does perceive it cannot assert a valid claim for NIED.' Particularly, a NIED claim may arise when … caregivers fail 'to respond significantly to symptoms obviously requiring immediate medical attention.' " (*Keys*~~, *supra,* 235 Cal.App.4th at p. 489~~ *v. Alta Bates Summit Medical Center* (2015) 235 Cal.App.4th 484, 489 [185 Cal.Rptr.3d 313].)

- "The injury-producing event here was defendant's lack of acuity and response to [decedent]'s inability to breathe, a condition the plaintiffs observed and were aware was causing her injury." (*Keys, supra,* 235 Cal.App.4th at p. 490.)

- "As *Fortman* itself recognized, it is a different issue whether the bystander must also contemporaneously be aware that the injury-producing event was caused by the conduct of some third party. [¶] *Fortman* had no occasion to decide that issue. But in the course of analyzing the question before the court, *Fortman* did discuss—and distinguish—several cases that suggest the answer to that question is no." (*Downey, supra,* 16 Cal.5th at pp. 555–556; see *Fortman v. Förvaltningsbolaget Insulan AB* (2013) 212 Cal.App.4th 830 [151 Cal.Rptr.3d 320].)

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

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

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

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

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

- "[I]t is not necessary that a plaintiff bystander actually have witnessed the infliction of injury to her child, provided that the plaintiff was at the scene of the accident and was sensorially aware, in some important way, of the accident and the necessarily inflicted injury to her child." (*Wilks~~, supra, 2 Cal.App.4th at p. 1271~~ v. Hom* (1992) 2 Cal.App.4th 1264, 1271 [3 Cal.Rptr.2d 803].)

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

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

- "We have no reason to question the jury's conclusion that [plaintiffs] suffered serious emotional distress as a result of watching [decedent]'s struggle to breathe that led to her death. The jury was properly instructed, as explained in *Thing,* that '[s]erious emotional distress exists if an ordinary, reasonable person would be unable to cope with it.' The instructions clarify that 'Emotional distress includes suffering, anguish, fright, … nervousness, grief, anxiety, worry, shock … .' Viewed through this lens there is no question that [plaintiffs'] testimony provides sufficient proof of serious emotional distress." (*Keys, supra,* 235 Cal.App.4th at p. 491, internal citation omitted.)

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

Secondary Sources

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

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

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

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

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

1803. ~~Appropriation~~ Misappropriation of Name, ~~or~~ Likeness, or Identity—Essential Factual Elements

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[*Name of plaintiff*] claims that [*name of defendant*] violated [his/her/*nonbinary pronoun*] right to [privacy/publicity/privacy and publicity] by misappropriating [his/her/*nonbinary pronoun*] [name/likeness/identity]. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of defendant*] used [*name of plaintiff*]'s [name~~,~~ /likeness~~, or~~ /identity];**

2. **That [*name of plaintiff*] did not consent to this use;**

3. **That [*name of defendant*] gained a commercial benefit [or some other advantage] by using [*name of plaintiff*]'s [name~~,~~ /likeness~~, or~~ /identity];**

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

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

New September 2003; Revised December 2014, November 2017, May 2020, July 2025

Directions for Use

This instruction states the common law elements of a claim for misappropriation of a person's identity. For related statutory claims under Civil Code section 3344, see CACI No. 1804A, *Misappropriation of Name, Voice, Signature, Photograph, or Likeness*, and No. 1804B, *Misappropriation of Name, Voice, Signature, Photograph, or Likeness—Use in Connection With News, Public Affairs, or Sports Broadcast or Account, or Political Campaign*.

If the plaintiff is asserting more than one privacy right or a right of publicity, give an introductory instruction stating that a person's right to privacy or right of publicity can be violated in more than one way and listing the legal theories under which the plaintiff is suing. If the plaintiff is asserting misappropriation of more than one aspect of the plaintiff's identity, select the applicable bracketed terms.

Consider giving an instruction explaining consent. See generally CACI No. 1302, *Consent Explained*.

If the alleged "benefit" is not commercial, the ~~judge~~ court will need to determine whether the advantage gained by the defendant qualifies as "some other advantage."

If the plaintiff is suing under both the common law and Civil Code section 3344, the ~~judge~~ court may need to explain that a person's voice, for example, may qualify as "identity" if the voice is sufficient to cause listeners to identify the plaintiff. The two causes of action overlap, and the same conduct ~~should~~ may be covered by both.

Even if the elements are established, the First Amendment may require that the right to be protected from unauthorized publicity be balanced against the public interest in the dissemination of news and information. (~~See~~ *Gionfriddo v. Major League Baseball* (2001) 94 Cal.App.4th 400, 409 [114 Cal.Rptr.2d 307].) In a closely related right-of-publicity claim, the California Supreme Court has held that an artist who is faced with a challenge to the artist's work may raise as affirmative defense that the work is protected by the First Amendment because it contains significant transformative elements or that the value of the work does not derive primarily from the celebrity's fame. (*Comedy III Productions, Inc. v. Gary Saderup, Inc.* (2001) 25 Cal.4th 387, 407 [106 Cal.Rptr.2d 126, 21 P.3d 797]; see CACI No. 1805, *Affirmative Defense to ~~Use or Appropriation~~ Misappropriation of Name, Voice, Signature, Photograph, or Likeness—First Amendment (Comedy III)*.) Therefore, if there is an issue of fact regarding a First Amendment balancing test, it most probably should be considered to be an affirmative defense. (Cf. *Gionfriddo, supra,* 94 Cal.App.4th at p. 414 ["Given the significant public interest in this sport, plaintiffs can only prevail if they demonstrate a substantial competing interest"].)

Sources and Authority

- "A common law misappropriation claim is pleaded by 'alleging: "(1) the defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury. [Citations.]" [Citation.]' " (*Maxwell v. Dolezal* (2014) 231 Cal.App.4th 93, 97 [179 Cal.Rptr.3d 807].)

- " '[T]he right of publicity has come to be recognized as distinct from the right of privacy'. 'What may have originated as a concern for the right to be left alone has become a tool to control the commercial use and, thus, protect the economic value of one's name, voice, signature, photograph, or likeness.' 'What the right of publicity holder possesses is … a right to prevent others from misappropriating the economic value generated … through the merchandising of the 'name, voice, signature, photograph, or likeness' of the [holder].' " (*Timed Out, LLC v. Youabian, Inc.* (2014) 229 Cal.App.4th 1001, 1006 [177 Cal.Rptr.3d 773], internal citations omitted.)

- "California recognizes the right to profit from the commercial value of one's identity as an aspect of the right of publicity." (*Gionfriddo, supra,* 94 Cal.App.4th at p. 409.)

- "The common law cause of action may be stated by pleading the defendant's unauthorized use of the plaintiff's identity; the appropriation of the plaintiff's name, voice, likeness, signature, or photograph to the defendant's advantage, commercially or otherwise; and resulting injury." (*Ross v. Roberts* (2013) 222 Cal.App.4th 677, 684−685 [166 Cal.Rptr.3d 359].)

- "[B]oth the statutory and common law versions of a right of publicity claim require that the defendant actually use the plaintiff's likeness … ." (*Cross v. Facebook, Inc.* (2017) 14 Cal.App.5th 190, 210 [222 Cal.Rptr.3d 250].)

- "California common law has generally followed Prosser's classification of privacy interests as embodied in the Restatement." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 24 [26 Cal.Rptr.2d 834, 865 P.2d 633], internal citation omitted.)

- "Consent to the use of a name or likeness is determined by traditional principles of contract

interpretation." (*Local TV, LLC v. Superior Court* (2016) 3 Cal.App.5th 1, 8 [206 Cal.Rptr.3d 884].)

- "[T]he plaintiff in an invasion of privacy case must have conducted himself or herself in a manner consistent with an actual expectation of privacy, i.e., he or she must not have manifested by his or her conduct a voluntary consent to the invasive actions of defendant. If voluntary consent is present, a defendant's conduct will rarely be deemed 'highly offensive to a reasonable person' so as to justify tort liability." (*Hill, supra,* 7 Cal.4th at p. 26.)

- "[T]he appearance of an 'endorsement' is not the *sine qua non* of a claim for commercial appropriation." (*Eastwood v. Superior Court* (1983) 149 Cal.App.3d 409, 419 [198 Cal.Rptr. 342].)

- "[N]o cause of action will lie for the '[p]ublication of matters in the public interest, which rests on the right of the public to know and the freedom of the press to tell it.' " (*Montana v. San Jose Mercury News* (1995) 34 Cal.App.4th 790, 793 [40 Cal.Rptr.2d 639], internal citation omitted.)

- "The difficulty in defining the boundaries of the right, as applied in the publication field, is inherent in the necessity of balancing the public interest in the dissemination of news, information and education against the individuals' interest in peace of mind and freedom from emotional disturbances. When words relating to or actual pictures of a person or his name are published, the circumstances may indicate that public interest is predominant. Factors deserving consideration may include the medium of publication, the extent of the use, the public interest served by the publication, and the seriousness of the interference with the person's privacy." (*Gill v. Curtis Publishing Co.* (1952) 38 Cal.2d 273, 278–279 [239 P.2d 630].)

- "Even if each of these elements is established, however, the common law right does not provide relief for every publication of a person's name or likeness. The First Amendment requires that the right to be protected from unauthorized publicity 'be balanced against the public interest in the dissemination of news and information consistent with the democratic processes under the constitutional guaranties of freedom of speech and of the press.' " (*Gionfriddo, supra,* 94 Cal.App.4th at pp. 409–410, internal citations and footnote omitted.)

- "Public interest attaches to people who by their accomplishments or mode of living create a bona fide attention to their activities." (*Dora v. Frontline Video, Inc.* (1993) 15 Cal.App.4th 536, 542 [18 Cal.Rptr.2d 790], internal citation omitted.)

- "[T]he fourth category of invasion of privacy, namely, appropriation, 'has been *complemented* legislatively by Civil Code section 3344, adopted in 1971.' " (*Eastwood, supra,* 149 Cal.App.3d at pp. 416–417.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 784–786

4 Levy et al., California Torts, Ch. 46, *Invasion of Privacy*, § 46.05 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 429, *Privacy*, §§ 429.35, 429.36 (Matthew Bender)

18 California Points and Authorities, Ch. 184, *Privacy: Invasion of Privacy*, § 184.21 (Matthew Bender)

California Civil Practice: Torts § 20:16 (Thomson Reuters)

1804A. ~~Use~~ Misappropriation of Name, Voice, Signature, Photograph, or Likeness (Civ. Code, § 3344)

[*Name of plaintiff***] claims that [***name of defendant***] violated [his/her/***nonbinary pronoun***] right to [privacy/publicity/privacy and publicity] by misappropriating [his/her/***nonbinary pronoun***] [name/voice/signature/photograph/likeness]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] knowingly used [***name of plaintiff***]'s [name/voice/signature/photograph/likeness] [on merchandise/ [or] to advertise or sell [***describe what is being advertised or sold***]];**

2. **That the use did not occur in connection with a news, public affairs, or sports broadcast or account, or with a political campaign;**

3. **That [***name of defendant***] did not have [***name of plaintiff***]'s consent;**

4. **That [***name of defendant***]'s use of [***name of plaintiff***]'s [name/voice/signature/photograph/likeness] was directly connected to [***name of defendant***]'s commercial purpose;**

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

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

Derived from former CACI No. 1804 April 2008; Revised April 2009, July 2025

Directions for Use

If the plaintiff is asserting more than one privacy right or a right of publicity, give an introductory instruction stating that a person's right to privacy or right of publicity can be violated in more than one way and listing the legal theories under which the plaintiff is suing. This instruction states a statutory claim for misappropriation under Civil Code section 3344. Select the specific type of misappropriation from the applicable bracketed terms for the aspect of the plaintiff's identity at issue in the case.

One's name and likeness are protected under both the common law and under Civil Code section 3344. As the statutory remedy is cumulative (Civ. Code, § 3344(g)), both this instruction and CACI No. 1803, ~~*Appropriation*~~ *Misappropriation of Name, ~~or~~ Likeness, or Identity*, which sets forth the common ~~-~~law cause of action, ~~will normally~~ may be given.

Different standards apply if the use is in connection with a news, public affairs, or sports broadcast or account, or with a political campaign. (See Civ. Code, § 3344(d); *Eastwood v. Superior Court* (1983) 149 Cal.App.3d 409, 421–426 [198 Cal.Rptr. 342].) The plaintiff bears the burden of proving the

nonapplicability of these exceptions. (*Gionfriddo v. Major League Baseball* (2001) 94 Cal.App.4th 400, 416–417 [114 Cal.Rptr.2d 307].) Element 2 may be omitted if there is no question of fact with regard to this issue. See CACI No. 1804B, ~~*Use*~~ *Misappropriation of Name, Voice, Signature, Photograph, or Likeness—Use in Connection With News, Public Affairs, or Sports Broadcast or Account, or Political Campaign*, for an instruction to use if one of the exceptions of Civil Code section 3344(d) applies.

If plaintiff alleges that the use was not covered by Civil Code section 3344(d) (e.g., not a "news" account) but that even if it were covered it is not protected under the standards of *Eastwood*, then both this instruction and CACI No. 1804B should be given in the alternative. In that case, it should be made clear to the jury that if the plaintiff fails to prove the inapplicability of Civil Code section 3344(d) as set forth in element 2, the claim is still viable if the plaintiff proves all the elements of CACI No. 1804B.

Consider giving an instruction explaining consent. See generally CACI No. 1302, *Consent Explained*.

Note that a plaintiff is entitled to the sum of $750 under Civil Code section 3344(a) even if actual damages are not proven. (See *Miller v. Collectors Universe, Inc.* (2008) 159 Cal.App.4th 988, 1008 [72 Cal.Rptr.3d 194] [claim for 14,060 misappropriations of plaintiff's name under section 3344(a) constitutes single cause of action for which statutory damages are $750].)

Sources and Authority

- Liability for Use of Name, Voice, Signature, Photograph, or Likeness. Civil Code section 3344.
- "Photograph" Defined. Civil Code section 3344(b).
- "Civil Code section 3344 provides a statutory cause of action for commercial misappropriation that complements, rather than codifies, the common law misappropriation cause of action." (*Local TV, LLC v. Superior Court* (2016) 3 Cal.App.5th 1, 13 [206 Cal.Rptr.3d 884].)
- "[C]alifornia's appropriation statute is not limited to celebrity plaintiffs." (*KNB Enters v. Matthews* (2000)78 Cal.App.4th 362, 367 [92 Cal.Rptr.2d 713].)
- "There are two vehicles a plaintiff can use to protect this right: a common law cause of action for commercial misappropriation and a section 3344 claim. To prove the common law cause of action, the plaintiff must establish: ' "(1) the defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury." [Citation.]' To prove the statutory remedy, a plaintiff must present evidence of 'all the elements of the common law cause of action' and must also prove 'a knowing use by the defendant as well as a direct connection between the alleged use and the commercial purpose.' " (*Orthopedic Systems, Inc. v. Schlein* (2011) 202 Cal.App.4th 529, 544 [135 Cal.Rptr.3d 200], internal citations omitted.)
- "The differences between the common law and statutory actions are: (1) Section 3344, subdivision (a) requires a knowing use whereas under case law, mistake and inadvertence are not a defense against commercial appropriation; and (2) Section 3344, subdivision (g) expressly provides that its remedies are cumulative and in addition to any provided for by law." (*Eastwood, supra,* 149 Cal.App.3d at p.

417, fn. 6, internal citation omitted.)

- "[B]oth the statutory and common law versions of a right of publicity claim require that the defendant actually use the plaintiff's likeness … ." (*Cross v. Facebook, Inc.* (2017) 14 Cal.App.5th 190, 210 [222 Cal.Rptr.3d 250].)

- "Plaintiffs assert that Civil Code section 3344's 'commercial use' requirement does not need to 'involve some form of advertising or endorsement.' This is simply incorrect, as Civil Code section 3344, subdivision (a) explicitly provides for possible liability on '[a]ny person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner … for purposes of advertising … without such person's prior consent.' The statute requires some 'use' by the advertiser aimed at obtaining a commercial advantage for the advertiser." (*Cross, supra,* 14 Cal.App.5th at p. 210.)

- "[T]he single-publication rule as codified in [Civil Code] section 3425.3 applies, in general, to a cause of action for unauthorized commercial use of likeness." (*Christoff v. Nestle USA, Inc.* (2009) 47 Cal.4th 468, 476 [97 Cal.Rptr.3d 798, 213 P.3d 132].)

- "Any facts which tend to disprove one of the allegations raised in a complaint may be offered in the defendant's answer based upon a general denial and need not be raised by affirmative defense. ... Throughout this litigation plaintiffs have borne the burden of establishing that their names and likenesses were used in violation of section 3344, and this burden has always required proof that the disputed uses fell outside the exemptions granted by subdivision (d)." (*Gionfriddo, supra,* 94 Cal.App.4th at pp. 416–417, internal citation omitted.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 789–791

Chin et al., California Practice Guide: Employment Litigation, Ch. 5-L, *Invasion Of Privacy*, ¶¶ 5:1116–5:1118 (The Rutter Group)

4 Levy et al., California Torts, Ch. 46, *Invasion of Privacy*, § 46.05 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 429, *Privacy*, §§ 429.35–429.36 (Matthew Bender)

18 California Points and Authorities, Ch. 184, *Privacy: Invasion of Privacy*, §§ 184.22–184.24 (Matthew Bender)

California Civil Practice: Torts § 20:17 (Thomson Reuters)

1804B. ~~Use~~ Misappropriation of Name, Voice, Signature, Photograph, or Likeness—Use in Connection With News, Public Affairs, or Sports Broadcast or Account, or Political Campaign (Civ. Code, § 3344(d))

[*Name of plaintiff***] claims that [***name of defendant***] violated [his/her/***nonbinary pronoun***] right to [privacy/publicity/privacy and publicity] by misappropriating [his/her/***nonbinary pronoun***] [name/voice/signature/photograph/likeness] in connection with a [[news/public affairs/sports] broadcast or account/political campaign]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] knowingly used [***name of plaintiff***]'s [name/voice/signature/photograph/likeness] [on merchandise/ [or] to advertise or sell [***describe what is being advertised or sold***]];**

2. **That the use occurred in connection with a [[news/public affairs/sports] broadcast or account/political campaign];**

3. **That the use contained false information;**

4. **[***Use for public figure***: That [***name of defendant***] knew the [broadcast or account/campaign material] was false or that [he/she/***nonbinary pronoun***/it] acted with reckless disregard of its falsity;]**

   [*or***]**

   [*Use for private individual***: That [***name of defendant***] was negligent in determining the truth of the [broadcast or account/campaign material];]**

5. **That [***name of defendant***]'s use of [***name of plaintiff***]'s [name/voice/signature/photograph/likeness] was directly connected to [***name of defendant***]'s commercial purpose;**

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

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

Derived from former CACI No. 1804 April 2008; Revised April 2009, July 2025

Directions for Use

Give this instruction if the plaintiff's name, voice, signature, photograph, or likeness has been used in connection with a news, public affairs, or sports broadcast or account, or with a political campaign. In this situation, consent is not required. (Civ. Code, § 3344(d).) However, in *Eastwood v. Superior Court*,

the court held that the constitutional standards under defamation law apply under section 3344(d) and that the statute as it applies to news does not provide protection for a knowing or reckless falsehood. (*Eastwood v. Superior Court* (1983) 149 Cal.App.3d 409, 421–426 [198 Cal.Rptr. 342].) Under defamation law, this standard applies only to public figures, and private individuals may sue for negligent publication of defamatory falsehoods. ~~(*Id.* at p. 424.)~~ Presumably, the same distinction between public figures and private individuals would apply under Civil Code section 3344(d). Element 4 provides for the standards established and suggested by *Eastwood*.

Select the specific type of misappropriation from the applicable bracketed terms for the aspect of the plaintiff's identity at issue in the case.

Give CACI No. 1804A, ~~*Use*~~ *Misappropriation of Name, Voice, Signature, Photograph, or Likeness*, if there is no issue whether one of the exceptions of Civil Code section 3344(d) applies. If plaintiff alleges that the use was not covered by subdivision (d) (e.g., not a "news" account) but that even if it were covered it is not protected under the standards of *Eastwood*, then both this instruction and CACI No. 1804A should be given in the alternative. In that case, it should be made clear to the jury that if the plaintiff fails to prove the inapplicability of Civil Code section 3344(d) as set forth element 2 of CACI No. 1804A, the claim is still viable if the plaintiff proves all the elements of this instruction.

If the plaintiff is asserting more than one privacy right or a right of publicity, give an introductory instruction stating that a person's right to privacy or right of publicity can be violated in more than one way and listing the legal theories under which the plaintiff is suing. One's name and likeness are protected under both the common law and under Civil Code section 3344. As the statutory remedy is cumulative (Civ. Code, § 3344(g)), both this instruction and CACI No. 1803, ~~*Appropriation*~~ *Misappropriation of Name,* ~~*or*~~ *Likeness, or Identity*, which sets forth the common ~~-~~law cause of action, ~~will normally~~ may be given.

Note that a plaintiff is entitled to the sum of $750 under Civil Code section 3344(a) even if actual damages are not proven. (See *Miller v. Collectors Universe, Inc.* (2008) 159 Cal.App.4th 988, 1008 [72 Cal.Rptr.3d 194] [claim for 14,060 misappropriations of plaintiff's name under section 3344(a) constitutes single cause of action for which statutory damages are $750].)

Even though consent is not required, it may be an affirmative defense. CACI No. 1721, *Affirmative Defense—Consent* (to defamation), may be used in this situation.

Sources and Authority

- Liability for Use of Name, Voice, Signature, Photograph, or Likeness. Civil Code section 3344.
- ~~Civil Code section 3344 is~~ "In 1971, California enacted [Civil Code] section 3344, a commercial appropriation statute which complements the common law tort of appropriation." (*KNB Enters. v. Matthews* (2000) 78 Cal.App.4th 362, 366–367 [92 Cal.Rptr.2d 713].)
- "[C]alifornia's appropriation statute is not limited to celebrity plaintiffs." (*KNB Enters., supra,* 78 Cal.App.4th at p. 367.)

- "There are two vehicles a plaintiff can use to protect this right: a common law cause of action for commercial misappropriation and a section 3344 claim. To prove the common law cause of action, the plaintiff must establish: ' "(1) the defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury." [Citation.]' To prove the statutory remedy, a plaintiff must present evidence of 'all the elements of the common law cause of action' and must also prove 'a knowing use by the defendant as well as a direct connection between the alleged use and the commercial purpose.' " (*Orthopedic Systems, Inc. v. Schlein* (2011) 202 Cal.App.4th 529, 544 [135 Cal.Rptr.3d 200], internal citations omitted.)

- "The differences between the common law and statutory actions are: (1) Section 3344, subdivision (a) requires a knowing use whereas under case law, mistake and inadvertence are not a defense against commercial appropriation; and (2) Section 3344, subdivision (g) expressly provides that its remedies are cumulative and in addition to any provided for by law." (*Eastwood, supra,* 149 Cal.App.3d at p. 417, fn. 6, internal citation omitted.)

- "The spacious interest in an unfettered press is not without limitation. This privilege is subject to the qualification that it shall not be so exercised as to abuse the rights of individuals. Hence, in defamation cases, the concern is with defamatory lies masquerading as truth. Similarly, in privacy cases, the concern is with nondefamatory lies masquerading as truth. Accordingly, we do not believe that the Legislature intended to provide an exemption from liability for a knowing or reckless falsehood under the canopy of 'news.' We therefore hold that Civil Code section 3344, subdivision (d), as it pertains to news, does not provide an exemption for a knowing or reckless falsehood." (*Eastwood, supra,* 149 Cal.App.3d at p. 426, internal citations omitted.)

- The burden of proof as to knowing or reckless falsehood under Civil Code section 3344(d) is on the plaintiff. (See *Eastwood, supra,* 149 Cal.App.3d at p. 426.)

- "[T]he single-publication rule as codified in [Civil Code] section 3425.3 applies, in general, to a cause of action for unauthorized commercial use of likeness." (*Christoff v. Nestle USA, Inc.* (2009) 47 Cal.4th 468, 476 [97 Cal.Rptr.3d 798, 213 P.3d 132].)

- "Any facts which tend to disprove one of the allegations raised in a complaint may be offered in the defendant's answer based upon a general denial and need not be raised by affirmative defense. ... Throughout this litigation plaintiffs have borne the burden of establishing that their names and likenesses were used in violation of section 3344, and this burden has always required proof that the disputed uses fell outside the exemptions granted by subdivision (d)." (*Gionfriddo v. Major League Baseball* (2001) 94 Cal.App.4th 400, 416-417 [114 Cal.Rptr.2d 307], internal citation omitted.)

- "We presume that the Legislature intended that the category of public affairs would include things that would not necessarily be considered news. Otherwise, the appearance of one of those terms in the subsection would be superfluous, a reading we are not entitled to give to the statute. We also presume that the term 'public affairs' was intended to mean something less important than news. Public affairs must be related to real-life occurrences." (*Dora v. Frontline Video, Inc.* (1993) 15 Cal.App.4th 536, 546 [18 Cal.Rptr.2d 790], internal citations omitted.)

- "[N]o cause of action will lie for the 'publication of matters in the public interest, which rests on the right of the public to know and the freedom of the press to tell it.' " (*Montana v. San Jose Mercury News* (1995) 34 Cal.App.4th 790, 793 [40 Cal.Rptr.2d 639], internal citations omitted.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 789–791

Chin et al., California Practice Guide: Employment Litigation, Ch. 5-:L, *Invasion Of Privacy*, ¶¶ 5:1116–5:1118 (The Rutter Group)

4 Levy et al., California Torts, Ch. 46, *Invasion of Privacy*, § 46.05 (Matthew Bender)

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

18 California Points and Authorities, Ch. 184, *Privacy: Invasion of Privacy*, § 184.35 (Matthew Bender)

California Civil Practice: Torts § 20:17 (Thomson Reuters)

1805. Affirmative Defense to ~~Use or Appropriation~~ Misappropriation of Name, Voice, Signature, Photograph, or Likeness—First Amendment (*Comedy III*)

[*Name of defendant***] claims that ~~[he/she/*nonbinary pronoun*]~~ has not violated [his/her/*nonbinary pronoun*] use of [***name of plaintiff/other person, e.g., celebrity***]'s ~~right of privacy~~ [name/voice/signature/photograph/likeness/identity] ~~because~~ in the [***insert type of work, e.g., "picture"***] is protected by the First Amendment's guarantee of freedom of speech and expression. To succeed on this defense, [***name of defendant***] must prove either of the following:**

1. **That the [***insert type of work, e.g., "picture"***] adds ~~something new~~ significant creative elements to [***name of plaintiff/other person, e.g., celebrity***]'s ~~likeness~~[name/voice/signature/photograph/likeness/identity], giving it a new expression, meaning, or message; or**

2. **That the value of the [***insert type of work, e.g., "picture"***] does not result primarily from [***name of plaintiff/other person, e.g., celebrity***]'s fame.**

New September 2003; Revised October 2008, July 2025

Directions for Use

This instruction sets forth the affirmative defense under the First Amendment to the unauthorized use of a person's name or likeness. Select the corresponding bracketed terms for the aspect of the person's identity at issue in the case.

~~This instruction assumes that the plaintiff is the celebrity whose likeness is the subject of the trial. This instruction will need to be modified if the plaintiff is not the actual celebrity.~~Use the celebrity's or other person's name rather than the plaintiff's name if the plaintiff is not the person whose name or likeness is the subject of the trial (for example, the plaintiff is an heir to or assignee of the right at issue).

Sources and Authority

- "The right of publicity is often invoked in the context of commercial speech when the appropriation of a celebrity likeness creates a false and misleading impression that the celebrity is endorsing a product. Because the First Amendment does not protect false and misleading commercial speech, and because even nonmisleading commercial speech is generally subject to somewhat lesser First Amendment protection, the right of publicity may often trump the right of advertisers to make use of celebrity figures." (*Comedy III Productions, Inc. v. Gary Saderup, Inc.* (2001) 25 Cal.4th 387, 396 [106 Cal.Rptr.2d 126, 133, 21 P.3d 797, 802], internal citations omitted.)

- "[O]ur precedents have held that speech which either appropriates the economic value of a performance or persona or seeks to capitalize off a celebrity's image in commercial advertisements is unprotected by the First Amendment against a California right-of-publicity claim." (*Sarver v. Chartier* (9th Cir. 2016) 813 F.3d 891, 905.)

- "In sum, when an artist is faced with a right of publicity challenge to his or her work, he or she may raise as affirmative defense that the work is protected by the First Amendment inasmuch as it contains significant transformative elements or that the value of the work does not derive primarily from the celebrity's fame." (*Comedy III Productions, Inc.*, *supra,* ~~*v. Gary Saderup, Inc.* (2001)~~ 25 Cal.4th ~~387,~~ at p. 407 ~~[106 Cal.Rptr.2d 126, 21 P.3d 797]~~.)

- "We have explained that '[o]nly if [a defendant] is entitled to the [transformative] defense *as a matter of law* can it prevail on its motion to strike,' because the California Supreme Court 'envisioned the application of the defense as a question of fact.' As a result, [defendant] 'is only entitled to the defense as a matter of law if no trier of fact could reasonably conclude that the [game] [i]s not transformative.' " (*Keller v. Elec. Arts Inc. (In re NCAA Student-Athlete Name & Likeness Licensing Litig.)* (9th Cir. 2013) 724 F.3d 1268, 1274, original italics.)

- "[C]ourts can often resolve the question as a matter of law simply by viewing the work in question and, if necessary, comparing it to an actual likeness of the person or persons portrayed. Because of these circumstances, an action presenting this issue is often properly resolved on summary judgment or, if the complaint includes the work in question, even demurrer." (*Winter v. DC Comics* (2003) 30 Cal.4th 881, 891–892 [134 Cal.Rptr.2d 634, 69 P.3d 473], internal citation omitted.)

- "[T]he First Amendment … safeguards the storytellers and artists who take the raw materials of life—including the stories of real individuals, ordinary or extraordinary—and transform them into art, be it articles, books, movies, or plays." (*De Havilland v. FX Networks, LLC* (2018) 21 Cal.App.5th 845, 860 [230 Cal.Rptr.3d 625].)

- "Although surprisingly few courts have considered in any depth the means of reconciling the right of publicity and the First Amendment, we follow those that have in concluding that depictions of celebrities amounting to little more than the appropriation of the celebrity's economic value are not protected expression under the First Amendment." (*Comedy III Productions, Inc., supra,* 25 Cal.4th at p. 400.)

- "Furthermore, in determining whether a work is sufficiently transformative, courts may find useful a subsidiary inquiry, particularly in close cases: does the marketability and economic value of the challenged work derive primarily from the fame of the celebrity depicted? If this question is answered in the negative, then there would generally be no actionable right of publicity. When the value of the work comes principally from some source other than the fame of the celebrity—from the creativity, skill, and reputation of the artist—it may be presumed that sufficient transformative elements are present to warrant First Amendment protection. If the question is answered in the affirmative, however, it does not necessarily follow that the work is without First Amendment protection—it may still be a transformative work." (*Comedy III Productions, Inc., supra,* 25 Cal.4th at p. 407.)

- "As the Supreme Court has stated, the central purpose of the inquiry into this fair use factor 'is to see ... whether the new work merely "supersede[s] the objects" of the original creation, or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message; it asks, in other words, whether and to what extent the new work is "transformative." ' " (*Comedy III Productions, Inc., supra,* 25 Cal.4th at p. 404, internal citations

omitted.)

- "We emphasize that the transformative elements or creative contributions that require First Amendment protection are not confined to parody and can take many forms, from factual reporting to fictionalized portrayal, from heavy-handed lampooning to subtle social criticism." (*Comedy III Productions, Inc., supra,* 25 Cal.4th at p. 406.)

- "[Defendant] contends the plaintiffs' claims are barred by the transformative use defense formulated by the California Supreme Court in *Comedy III* … . 'The defense is "a balancing test between the First Amendment and the right of publicity based on whether the work in question adds significant creative elements so as to be transformed into something more than a mere celebrity likeness or imitation." ' " (*Davis v. Elec. Arts, Inc.* (9th Cir. 2015) 775 F.3d 1172, 1177, internal citation omitted.)

- "Simply stated, the transformative test looks at 'whether the celebrity likeness is one of the "raw materials" from which an original work is synthesized, or whether the depiction or imitation of the celebrity is the very sum and substance of the work in question. We ask, in other words, whether a product containing a celebrity's likeness is so transformed that it has become primarily the defendant's own expression rather than the celebrity's likeness.' This transformative test is the court's primary inquiry when resolving a conflict between the right of publicity and the First Amendment." (*Ross v. Roberts* (2013) 222 Cal.App.4th 677, 686 [166 Cal.Rptr.3d 359], internal citations omitted.)

- "*Comedy III's* 'transformative' test makes sense when applied to products and merchandise—'tangible personal property,' in the Supreme Court's words. Lower courts have struggled mightily, however, to figure out how to apply it to expressive works such as films, plays, and television programs." (*De Havilland, supra,* 21 Cal.App.5th at p. 863, internal citation omitted.)

- "The First Amendment defense does not apply only to visual expressions, however. 'The protections may extend to all forms of expression, including written and spoken words (fact or fiction), music, films, paintings, and entertainment, whether or not sold for a profit.' " (*Ross, supra,* 222 Cal.App.4th at p. 687.)

- "The distinction between parody and other forms of literary expression is irrelevant to the *Comedy III* transformative test. It does not matter what precise literary category the work falls into. What matters is whether the work is transformative, not whether it is parody or satire or caricature or serious social commentary or any other specific form of expression." (*Winter, supra,* 30 Cal.4th at p. 891.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, § 788

Gaab & Reese, California Practice Guide: Civil Procedure Before Trial—Claims & Defenses, Ch. 4(VII)-C, *Harm to Reputation and Privacy Interests*, ¶ 4:1385 et seq. (The Rutter Group)

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

18 California Points and Authorities, Ch. 184, *Privacy: Invasion of Privacy*, § 184.38 (Matthew Bender)

1930. Receiving Stolen Property—Civil Liability—Essential Factual Elements (Pen. Code, § 496(c))

[*Name of plaintiff***] claims damages based on [***name of defendant***]'s [***specify the violation of Penal Code section 496(a) alleged, e.g., receiving stolen property***]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] [bought/received/[***specify other conduct***]] property that was [stolen/obtained by extortion];**

2. **That [***name of defendant***] knew the property was [stolen/obtained by extortion] at the time [he/she/***nonbinary pronoun***] [bought/received/[***specify other conduct***]] the property;**

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

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

Property is stolen if it was obtained by theft. Property is obtained by theft if a person takes possession of property owned by someone else, without the owner's consent, and with the intent either to permanently deprive the owner of that property or to deprive the owner of a major portion of the value or enjoyment of the property for an extended period of time.

[*or*]

Property is obtained by extortion if: (1) the property was obtained from another person with that person's consent, and (2) that person's consent was obtained through the use of force or fear.

[To receive property means to take possession and control of it. Mere presence near or access to the property is not enough.] [Two or more people can possess the property at the same time.] [A person does not have to actually hold or touch something to possess it. It is enough if the person has [control over it] [or] [the right to control it], either personally or through another person.]

New July 2025

Directions for Use

This instruction is intended for use when the plaintiff seeks remedies under Penal Code section 496(c) for a violation of section 496(a). A different instruction will be required if the plaintiff's claim is based on a violation of section 496(b).

For elements 1 and 2, select the conduct that is appropriate for the case. Other conduct that may establish receiving stolen property includes, for example, withholding or concealing property from its owner or aiding another to do so. (Pen. Code, § 496(a).)

Either the paragraph defining "stolen" or the paragraph defining "obtained by extortion" must be given depending on the method of obtaining the property at issue. Other definitions of theft may also be given (for example, theft by larceny, theft by false pretenses, theft by trick, or theft by embezzlement). See Judicial Council of California Criminal Jury Instructions (CALCRIM) No. 1800, *Theft by Larceny*, No. 1804, *Theft by False Pretense*, No. 1805, *Theft by Trick*, and No. 1806, *Theft by Embezzlement*. See generally CALCRIM No. 1750, *Receipt of Stolen Property*.

The instruction will need to be modified if the defendant is an alleged principal in the alleged theft or extortion of the property or if the defendant was convicted under Penal Code section 496(a) in connection with the property at issue in the case.

Innocent intent or mistake of fact may be a defense. See CALCRIM No. 1751, *Defense to Receiving Stolen Property: Innocent Intent*; *People v. Speck* (2022) 74 Cal.App.5th 784, 787 [289 Cal.Rptr.3d 816] [holding the trial court prejudicially erred in denying defendant's request to instruct the jury on mistake of fact, citing CALCRIM No. 3406, *Mistake of Fact*]. A good faith belief that one is authorized to take the property in question may also be a defense to liability. See CALCRIM No. 1863, *Defense to Theft or Robbery: Claim of Right*.

Sources and Authority

- Civil Action for Receiving or Concealing Stolen Property, Treble Damages, and Attorney Fees. Penal Code section 496(c).

- Elements of Receiving or Concealing Stolen Property. Penal Code section 496(a).

- "Theft" Defined. Penal Code sections 484, 490a.

- "Extortion" Defined. Penal Code section 518.

- "Penal Code section 496 does not state a criminal conviction under section 496(a) is required for a private plaintiff to recover treble damages under section 496(c). Nor does section 496(c) limit recovery of treble damages to a crime victim. Instead, section 496(c) permits '[a]ny person' who 'has been injured by a violation of subdivision (a) or (b)' to 'bring an action' to recover treble damages." (*Bell v. Feibush* (2013) 212 Cal.App.4th 1041, 1045 [151 Cal.Rptr.3d 546].)

- "Although section 496 defines a criminal offense, it also provides an enhanced civil remedy in the event there has been a violation of the statute—that is, where a person has knowingly received, withheld or sold property that has been stolen or that has been obtained in any manner constituting theft. The enhanced civil remedy authorized by the statute is that any party injured by the violation of section 496 may file an action for 'three times the amount of actual damages' sustained, and for costs of suit and reasonable attorney fees." (*Switzer v. Wood* (2019) 35 Cal.App.5th 116, 119 [247 Cal.Rptr.3d 114].)

- "[T]he Penal Code provides that persons are guilty of theft if they (1) 'feloniously steal … [or] take … the personal property of another' or (2) 'fraudulently appropriate property which has been entrusted to [them].' The first of these definitions describes theft by larceny. … Importantly,

larceny requires an 'intent to steal'—in other words, 'the intent, without a good faith claim of right, to permanently deprive the owner of possession.' A jury instruction defining theft by larceny without the requisite specific intent is erroneous as a matter of law. … By leaving out any description of the defendant's mental state, the modification effectively turned theft into a strict liability offense.' " (*Garrabrants v. Erhart* (2023) 98 Cal.App.5th 486, 504 [316 Cal.Rptr.3d 792], internal citations omitted.)

- "For property to be 'stolen' or obtained by 'theft,' it must be taken with a specific intent. 'California courts have long held that theft by larceny requires the intent to *permanently* deprive the owner of possession of the property.' An intent to *temporarily* deprive the owner of possession may suffice when the defendant intends 'to take the property for so extended a period as to deprive the owner of a major portion of its value or enjoyment … .' " (*People v. MacArthur* (2006) 142 Cal.App.4th 275, 280 [47 Cal.Rptr.3d 736], internal citation omitted, original italics.)

- "Although we are not asked here to determine whether plaintiff would have been able to prove theft, we observe that not all commercial or consumer disputes alleging that a defendant obtained money or property through fraud, misrepresentation, or breach of a contractual promise will amount to a theft. To prove theft, a plaintiff must establish criminal intent on the part of the defendant beyond 'mere proof of nonperformance or actual falsity.' " (*Siry Investment, L.P. v. Farkhondehpour* (2022) 13 Cal.5th 333, 361–362 [296 Cal.Rptr.3d 1, 513 P.3d 166] internal citation omitted.)

- "[W]hen the Legislature enacted section 496(c), it presumably understood that the phrase 'a violation of subdivision (a)' would include theft by false pretense." (*Bell, supra,* 212 Cal.App.4th at p. 1048.)

- "We also find that section 496(c) applies concerning the conduct at issue in the present case. The unambiguous relevant language covers fraudulent diversion of partnership funds. Defendants' conduct falls within the ambit of section 496(a): They 'receive[d]' 'property' (the diverted partnership funds) belonging to plaintiff, having 'obtained' the diverted funds 'in [a] manner constituting theft.' Defendants also 'conceal[ed]' or 'withh[e]ld[]' those funds (and/or aided in concealing or withholding them) from plaintiff. They did all of this 'knowing' the diverted funds were 'so … obtained.' " (*Siry Investment, L.P., supra,* 13 Cal.5th at p. 361, internal citations omitted.)

- "[A] jury reasonably could have found on this record that [defendant] also did not obtain the information in *any other* relevant manner constituting theft. Embezzlement, 'a form of larceny,' similarly requires an intent to deprive an owner of his or her property. A good faith belief that one is authorized to take the property in question is a defense to liability. For the reasons provided above, a reasonable jury could have found [defendant] lacked the requisite intent and believed in good faith he was authorized to take and retain the information in question." (*Garrabrants, supra,* 98 Cal.App.5th at p. 506, original italics, internal citations omitted.)

VF-1930. Receiving Stolen Property—Civil Liability

We answer the questions submitted to us as follows:

1. **Did [***name of defendant***] [buy/receive/[***specify other conduct***]] property that was [stolen/obtained by extortion]?**
   ____ Yes ____ No

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

2. **Did [***name of defendant***] know the property was [stolen/obtained by extortion] at the time [he/she/***nonbinary pronoun***] [bought/received/[***specify other conduct***]] the property?**

   ____ Yes ____ No

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

3. **Was [***name of plaintiff***] harmed?**
   ____ Yes ____ No

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

4. **Was [***name of defendant***]'s conduct a substantial factor in causing [***name of plaintiff***]'s harm?**
   ____ Yes ____ No

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

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

   [a. Past economic loss

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

   Total Past Economic Damages: $ _____]

[b. Future economic loss

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

Total Future Economic Damages: $ _____]

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

$ _____]

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

$ _____]

TOTAL $ _____

Signed: _____
Presiding Juror

Dated: _____

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

New July 2025

Directions for Use

This verdict form is based on CACI No. 1930, *Receiving Stolen Property—Civil Liability*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5. The breakdown is optional depending on the circumstances. If the jury finds the defendant liable for actual damages, Penal Code section 496 authorizes an award of three times the amount of actual damages sustained by the plaintiff, costs of suit, and reasonable attorney's fees. (Pen. Code, § 496(c).)

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

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

3066. Bane Act—Essential Factual Elements (Civ. Code, § 52.1)

[*Name of plaintiff*] claims that [*name of defendant*] intentionally interfered with [or attempted to interfere with] [his/her/*nonbinary pronoun*] civil rights by threat~~s~~, intimidation, or coercion. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. [That by threat, intimidation, or coercion, [*name of defendant*] interfered [or attempted to interfere] with [*name of plaintiff*]'s exercise or enjoyment of [his/her/*nonbinary pronoun*] right [*e.g., to be free from arrest without probable cause*];]

[*or*]

1. [That by threat~~s~~, intimidation or coercion, [*name of defendant*] caused [*name of plaintiff*] to reasonably believe that if [he/she/*nonbinary pronoun*] exercised [his/her/*nonbinary pronoun*] right [*insert right, e.g., ~~"~~to vote~~"~~*], [*name of defendant*] would commit violence against [[him/her/*nonbinary pronoun*]/ [or] [his/her/*nonbinary pronoun*] property] and that [*name of defendant*] had the apparent ability to carry out the threats;]

[*or*]

1. [That [*name of defendant*] acted violently against [[*name of plaintiff*]/ [and] [*name of plaintiff*]'s property] [to prevent [him/her/*nonbinary pronoun*] from exercising [his/her/*nonbinary pronoun*] right [*e.g., to vote*]/to retaliate against [*name of plaintiff*] for having exercised [his/her/*nonbinary pronoun*] right [*e.g., to vote*]];]

[2. That [*name of defendant*] [intended to deprive [*name of plaintiff*] of ~~[his/her/*nonbinary pronoun*]~~/acted with reckless disregard for] [[his/her/*nonbinary pronoun*]/[*name of plaintiff*]'s] enjoyment of the interests protected by the right [*e.g., to vote*];]

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

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

New September 2003; Renumbered from CACI No. 3025 and Revised December 2012, November 2018, May 2024, July 2025*

Directions for Use

Select the ~~first~~ second option for element 1 if the defendant's conduct involved threats of violence based on speech alone. (See Civ. Code, § 52.1(k).) Select the ~~second~~ third option if the conduct involved actual violence. An introductory instruction defining the particular law or constitutional right at issue may be given.

The Bane Act provides that speech alone is not sufficient to constitute a violation unless it involves a credible threat of violence. (Civ. Code, § 52.1(k).) This limitation would appear to foreclose a claim based on threats, intimidation, or coercion involving a nonviolent consequence. (See *Cabesuela v. Browning-Ferris Industries* (1998) 68 Cal.App.4th 101, 111 [80 Cal.Rptr.2d 60] [to state a cause of action under Bane Act there must first be violence or intimidation by threat of violence].) ~~No case has been found, however, that applies the speech limitation to foreclose a claim based on coercion without violence or a threat of violence, and several courts have suggested that this point is not fully settled. (See *Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 959 [137 Cal.Rptr.3d 839] [we "need not decide that every plaintiff must allege violence or threats of violence in order to maintain an action under section 52.1"]; *City and County of San Francisco v. Ballard* (2006) 136 Cal.App.4th 381, 408 [39 Cal.Rptr.3d 1] [also noting issue but finding it unnecessary to address].) To assert such a claim, modify element 1, option 1 to allege coercion based on a nonviolent threat with severe consequences.~~

Civil Code section 52(a) provides for damages up to three times actual damages but a minimum of $4,000 for violations of Civil Code sections 51 (Unruh Act), 51.5, and 51.6. Civil Code section 52(b) provides for punitive damages for violations of Civil Code sections 51.7 (Ralph Act) and 51.9. Neither ~~subsection~~ subdivision of ~~S~~section 52 mentions the Bane Act or Civil Code section 52.1. Nevertheless, the reference to section 52 in ~~subsection~~ subdivision (b) of the Bane Act would seem to indicate that damages may be recovered under both ~~subsections~~ subdivisions (a) and (b) of section 52.

Under the Unruh Act, if only the statutory minimum damages of $4,000 is sought, it is not necessary to prove harm and causation. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195] [Section 52 provides for minimum statutory damages for every violation of section 51, regardless of the plaintiff's actual damages]; see also Civ. Code, § 52(h) ["actual damages" means special and general damages].) Presumably, the same rule applies under the Bane Act as the statutory minimum of section 52(a) should be recoverable. Therefore, omit elements 2 and 3 unless actual damages are sought. If actual damages are sought, combine CACI No. 3067, *Unruh Civil Rights Act—Damages,* and CACI No. 3068, *Ralph Act—Damages and Penalty*, to recover damages under both ~~subsections~~ subdivisions (a) and (b) of section 52.

It has been the rule that in a wrongful detention case, the coercion required to support a Bane Act claim must be coercion independent from that inherent in the wrongful detention itself. (See *Bender v. County of Los Angeles* (2013) 217 Cal.App.4th 968, 981 [159 Cal.Rptr.3d 204].) One court, however, did not apply this rule in a wrongful arrest case. The court instead held that the "threat, intimidation or coercion" element requires a defendant to act with specific intent to violate protected rights, i.e., to act in reckless disregard of constitutional or statutory prohibitions or guarantees. (*Cornell v. City & County of San Francisco* (2017) 17 Cal.App.5th 766, 790–804 [225 Cal.Rptr.3d 356].) Element 2 expresses this requirement.

Sources and Authority

- Bane Act. Civil Code section 52.1.
- Remedies Under Bane Act. Civil Code section 52.
- "The Bane Act permits an individual to pursue a civil action for damages where another person

'interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state.' 'The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e., "threat[], intimidation or coercion"), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law.' " (*King v. State of California* (2015) 242 Cal.App.4th 265, 294 [195 Cal.Rptr.3d 286], internal citation omitted.)

- "[S]ection 52.1, was enacted a decade [after the Ralph Act] as part of Assembly Bill No. 63 (1987–1988 Reg. Sess.) (Assembly Bill No. 63) and is known as the Tom Bane Civil Rights Act. It was intended to supplement the Ralph Civil Rights Act as an additional legislative effort to deter violence. The stated purpose of the bill was 'to fill in the gaps left by the Ralph Act' by allowing an individual to seek relief to prevent the violence from occurring before it was committed and providing for the filing of criminal charges." (*Stamps v. Superior Court* (2006) 136 Cal.App.4th 1441, 1447 [39 Cal.Rptr.3d 706], internal citation omitted.)

- "The Legislature enacted section 52.1 to stem a tide of hate crimes." (*Jones v. Kmart Corp.* (1998) 17 Cal.4th 329, 338 [70 Cal.Rptr.2d 844, 949 P.2d 941], internal citation omitted.)

- "[T]o state a cause of action under section 52.1 there must first be violence or intimidation by threat of violence. Second, the violence or threatened violence must be due to plaintiff's membership in one of the specified classifications set forth in Civil Code section 51.7 or a group similarly protected by constitution or statute from hate crimes." (*Gabrielle A. v. County of Orange* (2017) 10 Cal.App.5th 1268, 1290 [217 Cal.Rptr.3d 275].)

- "The plaintiff must show 'the defendant interfered with or attempted to interfere with the plaintiff's legal right by threatening or committing violent acts.' " (*Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, 395 [218 Cal.Rptr.3d 38].)

- "However, the statutory language does not limit its application to hate crimes. Notably, the statute does not require a plaintiff to allege the defendant acted with discriminatory animus or intent based upon the plaintiff's membership in a protected class of persons." (*Shoyoye~~, supra, 203 Cal.App.4th at p. 956~~ v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 956 [137 Cal.Rptr.3d 839].)

- "The phrase 'under color of law' indicates, without doubt, that the Legislature intended to include law enforcement officers within the scope of Section 52.1 if the requisites of the statute are otherwise met." (*Cornell, supra,* 17 Cal.App.5th at p. 800.)

- "Civil Code section 52.1, the Bane Act civil counterpart of [Penal Code] section 422.6, recognizes a private right of action for damages and injunctive relief for interference with civil rights." (*In re M.S.* (1995) 10 Cal.4th 698, 715 [42 Cal.Rptr.2d 355, 896 P.2d 1365].)

- "[T]he Bane Act requires that the challenged conduct be intentional." (*Simmons v. Superior Court* (2016) 7 Cal.App.5th 1113, 1125 [212 Cal.Rptr.3d 884].)

- "[S]ection 52.1 does require an attempted or completed act of interference with a legal right, accompanied by a form of coercion." (*Jones, supra,* 17 Cal.4th at p. 334.)

- "The statutory framework of section 52.1 indicates that the Legislature meant the statute to address interference with constitutional rights involving more egregious conduct than mere negligence." (*Shoyoye, supra,* 203 Cal.App.4th at p. 958.)

- " '[W]here coercion is inherent in the constitutional violation alleged, … the statutory requirement of "threats, intimidation, or coercion" is not met. The statute requires a showing of coercion independent from the coercion inherent in the wrongful detention itself.' " (*Simmons, supra,* 7 Cal.App.5th at p. 1126.)

- "The Legislature's purpose suggests to us that the coercive nature of a tax—however exorbitant or unfair that tax may be—was not what the Legislature had in mind when it forbade interference with legal rights by 'threat, intimidation, or coercion.' Plaintiffs have cited no case where economic or monetary pressures alone have been found to constitute coercion under the Bane Act." (*County Inmate Telephone Service Cases* (2020) 48 Cal.App.5th 354, 371 [262 Cal.Rptr.3d 1].)

- "It is the intent of the Legislature in enacting this act to clarify that an action brought pursuant to Section 52.1 of the Civil Code does not require the individual whose rights are secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of California, to be a member of a protected class identified by its race, color, religion, or sex, among other things." (Assembly Bill 2719 (Stats. 2000, ch. 98) [abrogating the holding of *Boccato v. City of Hermosa Beach* (1994) 29 Cal.App.4th 1797 [35 Cal.Rptr.2d 282]].)

- "Subdivision (j) of Civil Code section 52.1 provides that speech alone is insufficient to support such an action, except upon a showing that the speech itself threatens violence against a specific person or group of persons, the person or group of persons against whom the speech is directed 'reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence has the apparent ability to carry out the threat.' ... The presence of the express 'reasonable fear' element, in addition to the 'apparent ability' element, in Civil Code section 52.1, governing civil actions for damages, most likely reflects the Legislature's determination [that] a defendant's civil liability should depend on the harm actually suffered by the victim." (*In re M.S., supra,* 10 Cal.4th at p. 715, internal citation omitted.)

- "[Q]ualified immunity of the kind applied to actions brought under section 1983 does not apply to actions brought under Civil Code section 52.1." (*Venegas v. County of Los Angeles* (2007) 153 Cal.App.4th 1230, 1246 [63 Cal.Rptr.3d 741].)

- "[A] wrongful detention that is 'accompanied by the requisite threats, intimidation, or coercion'—'coercion independent from the coercion inherent in the wrongful detention itself' that is 'deliberate or spiteful'—is a violation of the Bane Act." (*Bender, supra,* 217 Cal.App.4th at p. 981, internal citations omitted.)

- "Here, there clearly *was* a showing of coercion separate and apart from the coercion inherent in an unlawful arrest. [Defendant officer] wrongfully detained and arrested plaintiff, because he had no

probable cause to believe plaintiff had committed any crime. But, in addition, [defendant officer] deliberately and unnecessarily beat and pepper sprayed the unresisting, already handcuffed plaintiff. That conduct was not the coercion that is inherent in a wrongful arrest." (*Bender, supra,* 217 Cal.App.4th at p. 979, original italics.)

- "We acknowledge that some courts have read *Shoyoye* as having announced 'independen[ce] from [inherent coercion]' as a requisite element of all Section 52.1 claims alleging search-and-seizure violations, but we think those courts misread the statute as well as the import of *Venegas*. By its plain terms, Section 52.1 proscribes any 'interfere[nce] with' or attempted 'interfere[nce] with' protected rights carried out 'by threat, intimidation or coercion.' Nothing in the text of the statute requires that the offending 'threat, intimidation or coercion' be 'independent' from the constitutional violation alleged." (*Cornell, supra,* 17 Cal.App.5th at pp. 799–800.)

- "The Bane Act does not require that 'the offending "threat, intimidation or coercion" be "independent" from the constitutional violation alleged.' Rather, where an unlawful arrest is properly pleaded and proved, 'the egregiousness required by [Civ. Code] [s]ection 52.1 is tested by whether the circumstances indicate the arresting officer had a specific intent to violate the arrestee's right to freedom from unreasonable seizure, not by whether the evidence shows something beyond the coercion "inherent" in the wrongful detention.' " (*Murchison v. County of Tehama* (2021) 69 Cal.App.5th 867, 896 [284 Cal.Rptr.3d 742], internal citation omitted.)

- "[W]here, as here, an unlawful arrest is properly pleaded and proved, the egregiousness required by Section 52.1 is tested by whether the circumstances indicate the arresting officer had a specific intent to violate the arrestee's right to freedom from unreasonable seizure, not by whether the evidence shows something beyond the coercion 'inherent' in the wrongful detention." (*Cornell, supra,* 17 Cal.App.5th at pp. 801–802.)

- "[T]his test ' "essentially sets forth two requirements for a finding of 'specific intent' … . The first is a purely legal determination. Is the … right at issue clearly delineated and plainly applicable under the circumstances of the case? If the trial judge concludes that it is, then the jury must make the second, factual, determination. Did the defendant commit the act in question with the particular purpose of depriving the citizen victim of his enjoyment of the interests protected by that … right? If both requirements are met, even if the defendant did not in fact recognize the [unlawfulness] of his act, he will be adjudged as a matter of law to have acted [with the requisite specific intent]—i.e., 'in reckless disregard of constitutional [or statutory] prohibitions or guarantees.' " ' " (*Cornell, supra,* 17 Cal.App.5th at p. 803.)

- "Civil Code section 52.1 does not address the immunity established by section 844.6 [public entity immunity for injury to prisoners]. Nothing in Civil Code section 52.1 indicates an intent to abrogate this specific immunity provision. The immunity that it creates therefore applies to [plaintiff]'s Bane Act claim." (*Towery v. State of California* (2017) 14 Cal.App.5th 226, 234 [221 Cal.Rptr.3d 692].)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, § 989 et seq.

Cheng et al., Cal. Fair Housing and Public Accommodations § 14:5 (The Rutter Group)

California Civil Practice: Civil Rights Litigation §§ 3:1–3:15 (Thomson Reuters)

2 Wilcox, California Employment Law, Ch. 40, *Overview of Equal Employment Opportunity Laws*, § 40.12[2] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 117A, *Civil Rights: Interference With Civil Rights by Threats, Intimidation, Coercion, or Violence*, § 117A.11 (Matthew Bender)

3 California Points and Authorities, Ch. 35, *Civil Rights: Unruh Civil Rights Act*, §§ 35.01, 35.20 et seq. (Matthew Bender)

VF-3035. Bane Act (Civ. Code, § 52.1)

We answer the questions submitted to us as follows:

1. Did [*name of defendant*] interfere [or attempt to interfere] with [*name of plaintiff*]'s exercise or enjoyment of [his/her/*nonbinary pronoun*] right [*e.g., to be free from arrest without probable cause*]?
Yes No

[*or*]

1. Did [*name of defendant*] make threats of violence against [[*name of plaintiff*]/ [or] [*name of plaintiff*]'s property]?
____ Yes ____ No

[*or*]

1. Did [*name of defendant*] act violently against [[*name of plaintiff*]/ [and] [*name of plaintiff*]'s property]?
____ Yes ____ No

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

2. Did [*name of defendant*] [intend to deprive [*name of plaintiff*] of/act with reckless disregard for] [[his/her/*nonbinary pronoun*]/[*name of plaintiff*]'s] enjoyment of the interests protected by the right [*e.g., to vote*]?
Yes No

[*or*]

2. Did [*name of defendant*]'s threats cause [*name of plaintiff*] to reasonably believe that if [he/she/*nonbinary pronoun*] exercised [his/her/*nonbinary pronoun*] right [*insert right, e.g., "to vote"*] [*name of defendant*] would commit violence against [[him/her/*nonbinary pronoun*]/ [or] [his/her/*nonbinary pronoun*] property] and that [*name of defendant*] had the apparent ability to carry out the threat?
____ Yes ____ No

[*or*]

2. Did [*name of defendant*] commit these acts of violence to [prevent [*name of plaintiff*] from exercising [his/her/*nonbinary pronoun*] right [*insert right, e.g., "to vote"*]/retaliate against [*name of plaintiff*] for having exercised [his/her/*nonbinary pronoun*] right [*insert right*]]?
____ Yes ____ No

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

3. Was [*name of defendant***]'s conduct a substantial factor in causing harm to [***name of plaintiff***]?**

____ Yes ____ No

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

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

[a. Past economic loss

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

[b. Future economic loss

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

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

$ _____]

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

$ _____]

TOTAL $ _____

[Answer question 5.

5. What amount do you award as punitive damages?

$ _____]

Signed: _____
Presiding Juror

Dated: _____

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

New September 2003; Revised April 2007, December 2010; Renumbered from CACI No. VF-3015 and Revised December 2012, December 2016, May 2024, July 2025

Directions for Use

This verdict form is based on CACI No. 3066, *Bane Act—Essential Factual Elements.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Give the ~~first~~ second option for ~~elements~~ questions 1 and 2 if the defendant has threatened violence. Give the ~~second~~ third option if the defendant actually committed violence.

Civil Code section 52(a) provides for damages up to three times actual damages but a minimum of $4,000 for violations of Civil Code sections 51 (Unruh Act), 51.5, and 51.6. Civil Code section 52(b) provides for punitive damages for violations of Civil Code sections 51.7 (Ralph Act) and 51.9. Neither ~~subsection~~ subdivision of ~~S~~section 52 mentions the Bane Act or Civil Code section 52.1. Nevertheless, the Bane Act refers to section 52. (See Civ. Code, § 52.1(c).) This reference would seem to indicate that damages may be recovered under both ~~subsections~~ subdivisions (a) and (b) of section 52. The court should compute the damages under section 52(a) by multiplying actual damages by three, and awarding $4,000 if the amount is less. Questions 5 addresses punitive damages under section 52(b).

If no actual damages are sought, the $4,000 statutory minimum damages may be awarded without proof of harm and causation. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195].) In this case, only questions 1 and 2 need be answered.

If specificity is not required, users do not have to itemize all the damages listed in question 4 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

3704. Existence of "Employee" Status Disputed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Directions for Use

This instruction is based on *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 354–355 [256 Cal.Rptr. 543, 769 P.2d 399] and the Restatement Second of Agency, section 220. It is sometimes referred to as the *Borello* test or the common law test. (See *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 934 [232 Cal.Rprt.3d 1, 416 P.3d 1].) It is intended to address the employer-employee relationship for purposes of assessing vicarious responsibility on the employer for the employee's acts. Most of the factors are less appropriate for analyzing other types of agency relationships, such as franchisor/franchisee. For an instruction more appropriate to these kinds of relationships, see CACI No. 3705, *Existence of "Agency" Relationship Disputed.*

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

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

~~A different test for the existence of "independent contractor" status applies to app-based rideshare and delivery drivers. (See Bus. & Prof. Code, § 7451.)~~

Sources and Authority

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

hirer's right to control how the end result is achieved." (*Ayala, supra,* 59 Cal.4th at p. 528.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- “Perhaps the strongest evidence of the right to control is whether the hirer can discharge the worker without cause, because ‘[t]he power of the principal to terminate the services of the agent gives him

the means of controlling the agent's activities.' " (*Ayala, supra,* 59 Cal.4th at p. 531.)

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

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

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

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

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

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

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

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

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

- Restatement Second of Agency, section 220, provides: "(1) A servant is a person employed to

> perform services in the affairs of another and who with respect to the physical conduct in the performance of the services is subject to the other's control or right to control. [¶] (2) In determining whether one acting for another is a servant or an independent contractor, the following matters of fact, among others, are considered: [¶] (a) the extent of control which, by the agreement, the master may exercise over the details of the work; [¶] (b) whether or not the one employed is engaged in a distinct occupation or business; [¶] (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; [¶] (d) the skill required in the particular occupation; [¶] (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; [¶] (f) the length of time for which the person is employed; [¶] (g) the method of payment, whether by the time or by the job; [¶] (h) whether or not the work is a part of the regular business of the employer; [¶] (i) whether or not the parties believe they are creating the relation of master and servant; and [¶] (j) whether the principal is or is not in business."

Secondary Sources

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

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

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

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

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

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

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

3713. Nondelegable Duty

[*Name of defendant***] has a duty that cannot be delegated to another person arising from [***insert name, popular name, or number of regulation, statute, or ordinance***/a contract between the parties/***other, e.g., the landlord-tenant relationship***]. Under this duty, [***insert requirements of regulation, statute, or ordinance or otherwise describe duty***].**

[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] was harmed by the conduct of [***name of third party***] and that [***name of defendant***] is responsible for this harm. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] hired [***name of third party***] to [***describe job involving nondelegable duty, e.g., assemble a product***];**

2. **That [***name of third party***] [***specify wrongful conduct in breach of duty, e.g., did not comply with this law***];**

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

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

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*New October 2004; Revised June 2010, November 2024, July 2025**

Directions for Use

Use this instruction with regard to the liability of the hirer for the torts of a third party if a nondelegable duty is imposed on the hirer by statute, regulation, ordinance, contract, or common law. (See *Barry v. Raskov* (1991) 232 Cal.App.3d 447, 455 [283 Cal.Rptr. 463].)

This instruction should generally not be given in a case brought against the hirer by an injured independent contractor or contractor's employee that is governed by the *Privette* doctrine, which establishes "the basic rule that a hirer is typically not liable for injuries sustained by an independent contractor or its workers while on the job" because "the hirer presumptively delegates to the independent contractor the authority to determine the manner in which the work is to be performed." (*Acosta v. MAS Realty, LLC* (2023) 96 Cal.App.5th 635, 650 [314 Cal.Rptr.3d 507, 519]; see *Gonzalez v. Mathis* (2021) 12 Cal.5th 29, 48 [282 Cal.Rptr.3d 658, 493 P.3d 212] ["even where an unsafe condition exists on the premises due to the landowner's failure to comply with specific statutory and regulatory duties, the landowner is not liable because it is the contractor who is responsible for its own workers' safety"].)

Sources and Authority

- "As a general rule, a hirer of an independent contractor is not liable for physical harm caused to others by the act or omission of the independent contractor. There are multiple exceptions to the rule,

however, one being the doctrine of nondelegable duties. … ' "A nondelegable duty is a definite affirmative duty the law imposes on one by reason of his or her relationship with others. One cannot escape this duty by entrusting it to an independent contractor." A nondelegable duty may arise when a statute or regulation requires specific safeguards or precautions to ensure others' safety. [Citation.] … ' " (*J.L. v. Children's Institute, Inc.* (2009) 177 Cal.App.4th 388, 400 [99 Cal.Rptr.3d 5], internal citations omitted.)

- "Nondelegable duties 'derive from statutes [,] contracts, and common law precedents.' They 'do not rest upon any personal negligence of the employer. They are rules of vicarious liability, making the employer liable for the negligence of the independent contractor, irrespective of whether the employer has himself been at fault. They arise in situations in which, for reasons of policy, the employer is not permitted to shift the responsibility for the proper conduct of the work to the contractor. The liability imposed is closely analogous to that of a master for the negligence of his servant. [¶] The statement commonly made in such cases is that the employer is under a duty which he is not free to delegate to the contractor. Such a "non-delegable duty" requires the person upon whom it is imposed to answer for it that care is exercised by anyone, even though he be an independent contractor, to whom the performance of the duty is entrusted.' " (*Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 316 [111 Cal.Rptr.3d 787], internal citations omitted.)

- " 'When the manufacturer delegates some aspect of manufacture, such as final assembly or inspection, to a subsequent seller, the manufacturer may be subject to liability under rules of vicarious liability for a defect that was introduced into the product after it left the hands of the manufacturer.' This rule has the laudable effect of encouraging a manufacturer or distributor like [defendant] to act to safeguard proper assembly by its various dealers, including attempting to ensure that negligent conduct in one location does not repeat elsewhere. It further ensures that a plaintiff does not have the burden of discovering and proving *which* entity in the production chain is responsible for negligent assembly: [defendant] for insufficient instructions or safeguards that would ensure proper assembly, or a dealer for failing to execute [defendant's] commands properly." (*Defries v. Yamaha Motor Corp.* (2022) 84 Cal.App.5th 846, 861 [300 Cal.Rptr.3d 670], internal citation omitted.)

- "The rationale of the nondelegable duty rule is 'to assure that when a negligently caused harm occurs, the injured party will be compensated by the person whose activity caused the harm[.]' The 'recognition of nondelegable duties tends to insure that there will be a financially responsible defendant available to compensate for the negligent harms caused by that defendant's activity[.]' Thus, the nondelegable duty rule advances the same purposes as other forms of vicarious liability." (*Srithong v. Total Investment Co.* (1994) 23 Cal.App.4th 721, 727 [28 Cal.Rptr.2d 672], internal citations and footnote omitted.)

- "Simply stated, ' "[t]he duty which a possessor of land owes to others to put and maintain it in reasonably safe condition is nondelegable. If an independent contractor, no matter how carefully selected, is employed to perform it, the possessor is answerable for harm caused by the negligent failure of his contractor to put or maintain the buildings and structures in reasonably safe condition[.]" ' " (*Srithong, supra,* 23 Cal.App.4th at p. 726.)

- "Nondelegable duties may arise when a statute provides specific safeguards or precautions to insure the safety of others." (*Felmlee v. Falcon Cable Co.* (1995) 36 Cal.App.4th 1032, 1039 [43

Cal.Rptr.2d 158].)

- "Unlike strict liability, a nondelegable duty operates, not as a substitute for liability based on negligence, but to assure that when a negligently caused harm occurs, the injured party will be compensated by the person whose activity caused the harm and who may therefore properly be held liable for the negligence of his agent, whether his agent was an employee or an independent contractor." (*Maloney v. Rath* (1968) 69 Cal. 2d 442, 446 [71 Cal.Rptr. 897, 445 P.2d 513].)

- " '[A] nondelegable duty operates, not as a substitute for liability based on negligence, but to assure that when a negligently caused harm occurs, the injured party will be compensated by the person whose activity caused the harm and who may therefore properly be held liable for the negligence of his agent, whether his agent was an employee or independent contractor.' A California public agency is subject to the imposition of the duty in the same manner as any private individual." (*Jordy v. County of Humboldt* (1992) 11 Cal.App.4th 735, 742 [14 Cal.Rptr.2d 553], citing Gov. Code, § 815.4, internal citations omitted.)

- "It is undisputable that '[t]he question of duty is ... a legal question to be determined by the court.' " (*Summers v. A.L. Gilbert Co*. (1999) 69 Cal.App.4th 1155, 1184 [82 Cal.Rptr.2d 162] internal citation omitted.)

- "When a court finds that a defendant has a nondelegable duty as a matter of law, the instruction given by the court should specifically inform the jurors of that fact and not leave them to speculate on the subject." (*Summers, supra,* 69 Cal.App.4th at p. 1187, fn. 5.)

- " 'Where the law imposes a definite, affirmative duty upon one by reason of his relationship with others, whether as an owner or proprietor of land or chattels or in some other capacity, such persons can not escape liability for a failure to perform the duty thus imposed by entrusting it to an independent contractor. ... It is immaterial whether the duty thus regarded as "nondelegable" be imposed by statute, charter or by common law.' " (*Snyder v. Southern California Edison Co*. (1955) 44 Cal.2d 793, 800 [285 P.2d 912], internal citation omitted.)

- "[T]o establish a defense to liability for damages caused by a brake failure, the owner and operator must establish not only that " 'he did what might reasonably be expected of a person of ordinary prudence, acting under similar circumstances, who desired to comply with the law' " but also that the failure was not owing to the negligence of any agent, whether employee or independent contractor, employed by him to inspect or repair the brakes." (*Clark v. Dziabas* (1968) 69 Cal.2d 449, 451 [71 Cal.Rptr. 901, 445 P.2d 517], internal citation omitted.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1401 et seq.

1 Levy et al., California Torts, Ch. 8, *Vicarious Liability*, § 8.05[3][d] (Matthew Bender)

2 Wilcox, California Employment Law, Ch. 30, *Employers' Tort Liability to Third Parties for Conduct of Employees*, § 30.10[2][d] (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 248, *Employer's Liability for Employee's Torts*, § 248.22[2][c] (Matthew Bender)

10 California Points and Authorities, Ch. 100A, *Employer and Employee: Respondeat Superior*, § 100A.42 (Matthew Bender)

4013. Disqualification From Voting

If you find that [*name of respondent***]~~, as a result of [a mental disorder/impairment by chronic alcoholism],~~ is gravely disabled, then you must also decide whether [he/she/***nonbinary pronoun***] should also be disqualified from voting. To disqualify [***name of respondent***] from voting, all 12 jurors must find, by clear and convincing evidence, that [he/she/***nonbinary pronoun***] cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.**

New June 2005; Revised June 2016, July 2025

Directions for Use

~~T~~Give this instruction with CACI No. 4000, *Conservatorship—Essential Factual Elements*, in proceedings subject to Elections Code section 2208(b) ~~should be given~~ if the petition prays for this relief.

~~In addition to the required jury finding, one of the following must apply (See Elec. Code, § 2208(a)):~~

~~(1) A conservator for the person or the person and estate is appointed under Division 4 (commencing with Section 1400) of the Probate Code.~~

~~(2) A conservator for the person or the person and estate is appointed under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.~~

~~(3) A conservator is appointed for the person under proceedings initiated under Section 5352.5 of the Welfare and Institutions Code, the person has been found not competent to stand trial, and the person's trial or judgment has been suspended pursuant to Section 1370 of the Penal Code.~~

~~(4) A person has pleaded not guilty by reason of insanity, has been found to be not guilty under Section 1026 of the Penal Code, and is deemed to be gravely disabled at the time of judgment as defined in paragraph (2) of subdivision (h) of Section 5008 of the Welfare and Institutions Code.~~

~~The court should determine if one of the above requirements has been met.~~

Sources and Authority

- Disqualification from Voting. Elections Code section 2208.
- Affidavit of Voter Registration. Elections Code section 2150.

Secondary Sources

2 California Conservatorship Practice (Cont.Ed.Bar) § 11.34

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.42 (Matthew Bender)

4306. Termination of Month-to-Month Tenancy—Essential Factual Elements

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[*Name of plaintiff***] claims that [***name of defendant***] [and [***name of subtenant***], a subtenant of [***name of defendant***],] no longer [has/have] the right to occupy the property because the tenancy has ended. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] [owns/leases] the property;**

2. **That [***name of plaintiff***] [rented/subleased] the property to [***name of defendant***] under a month-to-month [lease/rental agreement/sublease];**

3. **That [***name of plaintiff***] gave [***name of defendant***] proper [30/60] days' written notice that the tenancy was ending; and**

4. **That [***name of defendant***] [or subtenant [***name of subtenant***]] is still occupying the property.**

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*New August 2007; Revised June 2011, December 2011, May 2020, July 2025**

Directions for Use

Include the bracketed references to a subtenancy in the opening paragraph and in element 4 if persons other than the tenant-defendant are in occupancy of the premises.

If the plaintiff is the landlord or owner, select "owns" in element 1 and "rented" and either "lease" or "rental agreement" in element 2. Commercial documents are usually called "leases" while residential documents are often called "rental agreements." Select the term that is used on the written document.

If the plaintiff is a tenant seeking to recover possession from a subtenant, select "leases" in element 1 and "subleased" and "sublease" in element 2. (Code Civ. Proc., § 1161(3).)

In element 3, select the applicable number of days' notice required by statute. Thirty days is sufficient for commercial tenancies, residential tenancies of less than a year~~'s duration~~, commercial tenancies by qualified commercial tenants of less than a year, and certain transfers of the ownership interest to a bona fide purchaser. For residential tenancies of a year or more or commercial tenancies by qualified commercial tenants of a year or more~~'s duration~~, 60 days' notice is generally required. (Civ. Code, §§ 1946, 1946.1(b)–(d).) The Tenant Protection Act of 2019 may impose additional requirements for the termination of a residential tenancy. (Civ. Code, § 1946.2(a) ["just cause" requirement for termination of certain residential tenancies], (b) ["just cause" defined].) This instruction should be modified accordingly if applicable.

Defective service may be waived if defendant admits timely receipt of notice. (See *Valov v. Tank* (1985) 168 Cal.App.3d 867, 876 [214 Cal.Rptr. 546].) However, if the fact of service is contested, compliance with the statutory requirements must be shown. (*Palm Property*

Investments, LLC v. Yadegar (2011) 194 Cal.App.4th 1419, 1425 [123 Cal.Rptr.3d 816].) Therefore, this instruction does not provide an option for the jury to determine whether or not defective service was waived if there was actual receipt.

If a commercial lease requires service by a particular method, actual receipt by the tenant will not cure the landlord's failure to comply with the service requirements of the lease. (*Culver Center Partners East #1, L.P. v. Baja Fresh Westlake Village, Inc.* (2010) 185 Cal.App.4th 744, 752 [110 Cal.Rptr.3d 833].) Whether the same rule applies to a residential lease that specifies a method of service has not yet been decided.

Do not give this instruction to terminate a tenancy if the tenant is receiving federal financial assistance through the Section 8 program. (See *Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1115 [29 Cal.Rptr.3d 262, 112 P.3d 647]; Civ. Code, § 1954.535 (90 days' notice required).) Specific grounds for terminating a federally subsidized low-income housing tenancy are required and must be set forth in the notice. (See, e.g., 24 C.F.R. § 982.310.)

See CACI No. 4307, *Sufficiency and Service of Notice of Termination of Month-to-Month Tenancy*, for an instruction on proper advanced written notice.

Sources and Authority

- Unlawful Detainer Based on Holdover After Expiration of Term. Code of Civil Procedure section 1161(1).
- Automatic Renewal Absent Notice of Termination on Expiration of Term. Civil Code section 1946.
- Time and Manner of Giving Notice of Termination. Civil Code section 1946.1.
- Presumption That Term Is Based on Period for Which Rent Is Paid. Civil Code section 1944.
- Tenant Protection Act of 2019. Civil Code section 1946.2.
- Conversion of Unlawful Detainer to Ordinary Civil Action if Possession Not at Issue. Civil Code section 1952.3(a).
- "Commercial Real Property" and "Qualified Commercial Tenant" Defined. Civil Code section 1946.1(k).
- " 'In order that such an action may be maintained the conventional relation of landlord and tenant must be shown to exist. In other words, the action is limited to those cases in which the tenant is estopped to deny the landlord's title.' " (*Fredericksen v. McCosker* (1956) 143 Cal.App.2d 114, 116 [299 P.2d 908], internal citations omitted.)

- "If the tenant gives up possession of the property after the commencement of an unlawful detainer proceeding, the action becomes an ordinary one for damages." (*Fish Construction Co. v. Moselle Coach Works, Inc.* (1983) 148 Cal.App.3d 654, 658 [196 Cal.Rptr. 174].)

- "The Act provides that as a prerequisite to filing an unlawful detainer action based on a terminated month-to-month tenancy, the landlord must serve the tenant with a 30-day written notice of termination." (*Losornio v. Motta* (1998) 67 Cal.App.4th 110, 113 [78 Cal.Rptr.2d 799], internal citations omitted.)

- "Proper service on the lessee of a valid … notice … is an essential prerequisite to a judgment declaring a lessor's right to possession under section 1161, subdivision 2. A lessor must allege and prove proper service of the requisite notice. Absent evidence the requisite notice was properly served pursuant to section 1162, no judgment for possession can be obtained." (*Liebovich v. Shahrokhkhany* (1997) 56 Cal.App.4th 511, 513 [65 Cal.Rptr.2d 457], internal citations omitted.)

- "Section 1162 does not authorize service of a … notice … by mail delivery alone, certified or otherwise. It provides for service by: personal delivery; leaving a copy with a person of suitable age and discretion at the renter's residence or usual place of business *and* sending a copy through the mail to the tenant's *residence*; or posting *and* delivery of a copy to a person there residing, if one can be found, *and* sending a copy through the mail. Strict compliance with the statute is required." (*Liebovich, supra,* 56 Cal.App.4th at p. 516, original italics, internal citations omitted.)

- "In the cases discussed … , a finding of proper service turned on a party's acknowledgment or admission the notice in question was in fact received. In the present case, defendant denied, in his answer and at trial, that he had ever received the … notice. Because there was no admission of receipt in this case, service by certified mail did not establish or amount to personal delivery. Further, there was no evidence of compliance with any of the three methods of service of a … notice … provided in [Code of Civil Procedure] section 1162. Therefore, the judgment must be reversed." (*Liebovich, supra,* 56 Cal.App.4th at p. 518.)

- "[Code of Civil Procedure section 1162 specifies] three ways in which service of the … notice may be effected on a residential tenant: … . As explained in *Liebovich, supra,* … , '[w]hen the fact of service is contested, compliance with one of these methods must be shown or the judgment must be reversed.' " (*Palm Property Investments, LLC, supra,* 194 Cal.App.4th at p. 1425.)

Secondary Sources

12 Witkin, Summary of California Law (11th ed. 2017) Real Property, § 707 et seq.

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 8-B, *Unlawful Detainer Complaint*, ¶ 8:85 (The Rutter Group)

1 California Landlord-Tenant Practice (Cont.Ed.Bar 2d ed.) §§ 8.69–8.80

1 California Eviction Defense Manual (Cont.Ed.Bar 2d ed.) §§ 5.3, 7.5, 7.11

7 California Real Estate Law and Practice, Ch. 200, *Termination: Causes and Procedures*, § 200.21 (Matthew Bender)

7 California Real Estate Law and Practice, Ch. 210, *Unlawful Detainer*, §§ 210.21, 210.27 (Matthew Bender)

Matthew Bender Practice Guide: California Landlord-Tenant Litigation, Ch. 5, *Unlawful Detainer*, 5.07

29 California Forms of Pleading and Practice, Ch. 332, *Landlord and Tenant: The Tenancy*, § 332.28 (Matthew Bender)

29 California Forms of Pleading and Practice, Ch. 333, *Landlord and Tenant: Eviction Actions*, § 333.10 (Matthew Bender)

23 California Points and Authorities, Ch. 236, *Unlawful Detainer*, §§ 236.11, 236.40 (Matthew Bender)

Miller & Starr California Real Estate 4th, § 34:147 (Thomson Reuters)

4307. Sufficiency and Service of Notice of Termination of Month-to-Month Tenancy

[*Name of plaintiff***] contends that [he/she/***nonbinary pronoun***/it] properly gave [***name of defendant***] written notice that the tenancy was ending. To prove that the notice contained the required information and was properly given, [***name of plaintiff***] must prove all of the following:**

1. **That the notice informed [***name of defendant***] in writing that the tenancy would end on a date at least [30/60] days after notice was given to [him/her/***nonbinary pronoun***/it];**

2. **That the notice was given to [***name of defendant***] at least [30/60] days before the date that the tenancy was to end; and**

3. **That the notice was given to [***name of defendant***] at least [30/60] days before [***insert date on which action was filed***];**

Notice was properly given if [*select one or more of the following manners of service:***]**

[the notice was delivered to [*name of defendant***] personally[./; or]]**

[the notice was sent by certified or registered mail in an envelope addressed to [*name of defendant***], in which case notice is considered given on the date the notice was placed in the mail[./; or]]**

[[*name of defendant***] was not at [home or work/the commercial rental property], and the notice was left with a responsible person at [[***name of defendant***]'s home or place of work/the commercial property], and a copy was also mailed in an envelope addressed to [***name of defendant***] at [[his/her/***nonbinary pronoun***] residence/the commercial property]. In this case, notice is considered given on the date the second notice was placed in the mail[./; or]]**

[*for a residential tenancy:*

[*name of defendant***]'s place of residence and work could not be discovered, or a responsible person could not be found at either place, and (1) the notice was posted on the property in a place where it would easily be noticed, (2) a copy was given to a person living there if someone could be found, and (3) a copy was also mailed to the property in an envelope addressed to [***name of defendant***]. In this case, notice is considered given on the date the second notice was placed in the mail.]**

[*or for a commercial tenancy:*

at the time of attempted service, a responsible person could not be found at the commercial rental property through the exercise of reasonable diligence, and (1) the

notice was posted on the property in a place where it would easily be noticed, and (2) a copy was also mailed to the address of the commercial property in an envelope addressed to [*name of defendant*]. In this case, notice is considered given on the date the second notice was placed in the mail.]

[The [30/60]-day notice period begins on the day after the notice was given to [*name of defendant*]. If the last day of the notice period falls on a Saturday, Sunday, or holiday, [*name of defendant*]'s time to vacate the property is extended to include the first day after the Saturday, Sunday, or holiday that is not also a Saturday, Sunday, or holiday.]

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*New August 2007; Revised December 2010, June 2011, December 2011, May 2020, July 2025**

Directions for Use

Select the applicable number of days' notice required by statute. Thirty days is sufficient for commercial tenancies, residential tenancies of less than a year~~'s duration~~, commercial tenancies by qualified commercial tenants of less than a year, and certain transfers of the ownership interest to a bona fide purchaser. For residential tenancies of a year or more or commercial tenancies by qualified commercial tenants of a year or more~~'s duration~~, 60 days is generally required. (Civ. Code, §§ 1946, 1946.1(b)–(d).)

If 30 days' notice is sufficient and the lease provided for a notice period other than the statutory 30-day period (but not less than 7), insert that number instead of "30" or "60" throughout the instruction. (Civ. Code, § 1946.)

Select all manners of service used, including personal service, certified or registered mail, substituted service by leaving the notice at the defendant's home or place of work or at the rental property, and substituted service by posting on the property. (See Civ. Code, §§ 1946, 1946.1(f); Code Civ. Proc., § 1162.)

Read the next-to-last paragraph if the last day of the notice period fell on a Saturday, Sunday, or holiday.

Defective service may be waived if defendant admits timely receipt of notice. (See *Valov v. Tank* (1985) 168 Cal.App.3d 867, 876 [214 Cal.Rptr. 546].) However, if the fact of service is contested, compliance with the statutory requirements must be shown. (*Palm Property Investments, LLC v. Yadegar* (2011) 194 Cal.App.4th 1419, 1425 [123 Cal.Rptr.3d 816].) Therefore, this instruction does not provide an option for the jury to determine whether or not defective service was waived if there was actual receipt.

If a commercial lease requires service by a particular method, actual receipt by the tenant will not cure the landlord's failure to comply with the service requirements of the lease. (*Culver Center Partners East #1, L.P. v. Baja Fresh Westlake Village, Inc.* (2010) 185 Cal.App.4th 744, 752 [110 Cal.Rptr.3d 833].) Whether the same rule applies to a residential lease that specifies a method of service has not yet been decided.

The Tenant Protection Act of 2019 and/or local ordinances may impose additional requirements for the termination of a rental agreement. (See, e.g., Civ. Code, § 1946.2(a) ["just cause" requirement for termination of certain residential tenancies], (b) ["just cause" defined].) This instruction should be modified accordingly if applicable.

Sources and Authority

- Automatic Renewal of Tenancy at End of Term. Civil Code section 1946.
- Time and Manner of Giving Notice of Termination. Civil Code section 1946.1.
- Tenant Protection Act of 2019. Civil Code section 1946.2.
- Manner of Service of Notice. Code of Civil Procedure section 1162.
- "Commercial Real Property" and "Qualified Commercial Tenant" Defined. Civil Code section 1946.1(k).
- "[T]he service and notice provisions in the unlawful detainer statutes and [Code of Civil Procedure] section 1013 are mutually exclusive, and thus, section 1013 does not extend the notice periods that are a prerequisite to filing an unlawful detainer action." (*Losornio v. Motta* (1998) 67 Cal.App.4th 110, 112 [78 Cal.Rptr.2d 799].)
- "Section 1162 does not authorize service of a … notice … by mail delivery alone, certified or otherwise. It provides for service by: personal delivery; leaving a copy with a person of suitable age and discretion at the renter's residence or usual place of business and sending a copy through the mail to the tenant's *residence*; or posting *and* delivery of a copy to a person there residing, if one can be found, *and* sending a copy through the mail. Strict compliance with the statute is required." (*Liebovich v. Shahrokhkhany* (1997) 56 Cal.App.4th 511, 516 [65 Cal.Rptr.2d 457], original italics, internal citation omitted.)
- "[D]efendant admitted in his answer that he 'ultimately received [the relevant] notice' but 'affirmatively allege[d] that he was not properly and legally served' with a valid notice. We find that, under the circumstances of this case, the defendant waived any defect in the challenged service of the notice under section 1162, subdivision 1." (*Valov, supra,* 168 Cal.App.3d at p. 876.)
- "In the cases discussed … , a finding of proper service turned on a party's acknowledgment or admission the notice in question was in fact received. In the present case, defendant denied, in his answer and at trial, that he had ever received the … notice. Because there was no admission of receipt in this case, service by certified mail did not establish or amount to personal delivery. Further, there was no evidence of compliance with any of the three methods of service of a … notice … provided in section 1162. Therefore, the judgment must be reversed." (*Liebovich, supra,* 56 Cal.App.4th at p. 518.)

- "[Code of Civil Procedure section 1162 specifies] three ways in which service of the … notice may be effected on a residential tenant: … . As explained in *Liebovich, supra,* … , '[w]hen the fact of service is contested, compliance with one of these methods must be shown or the judgment must be reversed.' " (*Palm Property Investments, LLC, supra,* 194 Cal.App.4th at p. 1425.)

- "In commercial leases the landlord and commercial tenant may lawfully agree to notice procedures that differ from those provided in the statutory provisions governing unlawful detainer." (*Culver Center Partners East #1, L.P., supra,* 185 Cal.App.4th at p.750.)

- "[E]ven if some policy rationale might support such a waiver/forfeiture [by actual receipt] rule in the residential lease context, there is no basis to apply it in the commercial context where matters of service and waiver are prescribed in the lease itself. Nothing in the parties' lease suggests actual receipt of a notice to quit results in the waiver or forfeiture of [tenant]'s right to service accomplished in the manner prescribed. To the contrary, the lease specifically provides, 'No covenant, term or condition, or breach' of the lease 'shall be deemed waived except if expressly waived in a written instrument executed by the waiving party.' Although [tenant's agent] acted on the notice to quit by attempting to deliver the rent check, neither her fortuitous receipt of the notice nor her actions in response to it constitutes an express waiver of the notice provisions in the lease." (*Culver Center Partners East #1, L.P., supra,* 185 Cal.App.4th at p. 752, internal citation omitted.)

Secondary Sources

12 Witkin, Summary of California Law (11th ed. 2017) Real Property, §§ 707 et seq., 760

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 8-B, *Unlawful Detainer Complaint*, ¶¶ 8:68, 8:69 (The Rutter Group)

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 7-C, *Bases For Terminating Tenancy*, ¶¶ 7:119, 7:190 et seq. (The Rutter Group)

1 California Landlord-Tenant Practice (Cont.Ed.Bar 2d ed.) §§ 8.69–8.80

1 California Eviction Defense Manual (Cont.Ed.Bar 2d ed.) § 5.3, Ch. 7

7 California Real Estate Law and Practice, Ch. 200, *Termination: Causes and Procedures*, § 200.21 (Matthew Bender)

7 California Real Estate Law and Practice, Ch. 210, *Unlawful Detainer*, §§ 210.21, 210.27 (Matthew Bender)

Matthew Bender Practice Guide: California Landlord-Tenant Litigation, Ch. 5, *Unlawful Detainer*, 5.11, 5.12

29 California Forms of Pleading and Practice, Ch. 332, *Landlord and Tenant: The Tenancy*, § 332.28 (Matthew Bender)

29 California Forms of Pleading and Practice, Ch. 333, *Landlord and Tenant: Eviction Actions*, § 333.11 (Matthew Bender)

23 California Points and Authorities, Ch. 236, *Unlawful Detainer*, §§ 236.10–236.12 (Matthew Bender)

Miller & Starr California Real Estate 4th, §§ 34:175, 34:181, 34:182 (Thomson Reuters)

4409. Remedies for Misappropriation of Trade Secret

If [*name of plaintiff*] proves that [*name of defendant*] misappropriated [his/her/*nonbinary pronoun*/its] trade secret[s], then [*name of plaintiff*] is entitled to recover damages if the misappropriation caused [[*name of plaintiff*] to suffer an actual loss/ [or] [*name of defendant*] to be unjustly enriched].

[If [*name of defendant*]'s misappropriation did not cause [[*name of plaintiff*] to suffer an actual loss/ [or] [*name of defendant*] to be unjustly enriched], [*name of plaintiff*] may still be entitled to a reasonable royalty for no longer than the period of time the use could have been prohibited. However, I will calculate the amount of any royalty.]

*New December 2007; Revised July 2025**

Directions for Use

Give this instruction with CACI No. 4401, *Misappropriation of Trade Secrets—Essential Factual Elements*, ~~in all cases~~ if the plaintiff is seeking damages. For simplicity, this instruction uses the term "damages" to refer to both actual loss and unjust enrichment, even though, strictly speaking, unjust enrichment may be considered a form of restitution rather than damages.

Select the nature of the recovery sought; either for the plaintiff's actual loss or for the defendant's unjust enrichment, or both. If the plaintiff's claim of actual injury or loss is based on lost profits, give CACI No. 3903N, *Lost Profits (Economic Damage)*. If unjust enrichment is alleged, give CACI No. 4410, *Unjust Enrichment*.

If neither actual loss nor unjust enrichment is provable, Civil Code section 3426.3(b) provides for a third, alternate remedy: a reasonable royalty for no longer than the period of time the use could have been prohibited. Both the statute and case law indicate that the question of a reasonable royalty should not be presented to the jury. (See Civ. Code, § 3426.3(b) [*the court* may order the payment of a reasonable royalty]; ~~*Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 628 [12 Cal.Rptr.2d 741];~~ *Applied Medical Distribution Corp. v. Jarrells* (2024) 100 Cal.App.5th 556, 571–572 [319 Cal.Rptr.3d 205] [only the court had statutory authority to impose an injunction or assess a reasonable royalty]; see also Civ. Code, § 3426.2(b) [court may issue an injunction that conditions future use of a trade secret on payment of a reasonable royalty].) ~~However, no reported California state court case has directly held that "reasonable royalty" issues should not be presented to the jury. (But see *Unilogic, Inc., supra,* 10 Cal.App.4th at p. 627.)~~ Include the optional second paragraph if the court wants to advise the jury that even if it finds that the plaintiff suffered no actual loss and that the defendant was not unjustly enriched, the plaintiff may still be entitled to some recovery.

~~For simplicity, this instruction uses the term "damages" to refer to both actual loss and unjust enrichment, even though, strictly speaking, unjust enrichment may be considered a form of restitution rather than damages.~~

Sources and Authority

- Remedies for Misappropriation of Trade Secret. Civil Code section 3426.3.

- "Under subdivision (a), a complainant may recover damages for the actual loss caused by misappropriation, as well as for any unjust enrichment not taken into account in computing actual loss damages. Subdivision (b) provides for an alternative remedy of the payment of royalties from future profits where 'neither damages nor unjust enrichment caused by misappropriation [is] provable.' " (*Ajaxo Inc. v. E*Trade Group, Inc.* (2005) 135 Cal.App.4th 21, 61 [37 Cal.Rptr.3d 221].)

- ~~"[B]ased on the plain language of the statute, the Court -- not the jury -- determines if and in what amount a royalty should be awarded. See Cal. Civ. Code section 3416.3(b) ('the Court may order payment of a reasonable royalty')." (*FAS Techs. v. Dainippon Screen Mfg.* (N.D. Cal. 2001) 2001 U.S. Dist. LEXIS 15444, **9–10.)~~

- "In sum, the jury found [defendant] misappropriated [plaintiff's] trade secrets by acquiring, using, or disclosing them by improper means. That constituted a finding by the trier of fact that misappropriation occurred, which in turn permitted the trial court to consider whether to impose an injunction or assess a reasonable royalty. The court had statutory authority to impose those remedies even though the jury found that the legal remedies submitted to it—damages or unjust enrichment—were not proven." (*Applied Medical Distribution Corp., supra,* 100 Cal.App.5th at p. 572, fn. omitted.)

- "To adopt a reasonable royalty as the measure of damages is to adopt and interpret, as well as may be, the fiction that a license was to be granted at the time of beginning the infringement, and then to determine what the license price should have been. In effect, the court assumes the existence *ab initio* of, and declares the *equitable* terms of, a supposititious license, and does this *nunc pro tunc*; it creates and applies retrospectively a compulsory license." (*Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 68 [171 Cal.Rptr.3d 714], original italics.)

- "Nor was it necessary to submit the liability issue to the jury in order to allow the trial court thereafter to determine a reasonable royalty or to impose an injunction. Just as [cross complainant] presented no evidence of the degree of [cross defendant]'s enrichment, [cross complainant] likewise presented no evidence that would allow the court to determine what royalty, if any, would be reasonable under the circumstances." (*Unilogic, Inc.* ~~*supra,* 10 Cal.App.4th at p.~~ *v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 628 [12 Cal.Rptr.2d 741].)

- "It is settled that, in fashioning a pecuniary remedy under the CUTSA for past use of a misappropriated trade secret, the trial court may order a reasonable royalty only where 'neither actual damages to the holder of the trade secret nor unjust enrichment to the user is provable.' 'California law differs on this point from both the [Uniform Act] and Federal patent law, neither of which require[s] actual damages and unjust enrichment to be unprovable before a reasonable royalty may be imposed.' " (*Ajaxo Inc. v. E*Trade Financial Corp.* (2010) 187 Cal.App.4th 1295, 1308 [115 Cal.Rptr.3d 168], internal citations omitted.)

- "[W]here a defendant has not realized a profit or other calculable benefit as a result of his or her misappropriation of a trade secret, unjust enrichment is not provable within the meaning of section 3426.3, subdivision (b), whether the lack of benefit is determined as a matter of law or as a matter of fact. To hold otherwise would place the risk of loss on the wronged plaintiff, thereby discouraging innovation and potentially encouraging corporate thievery where anticipated profits might be minimal but other valuable but nonmeasureable benefits could accrue." (*Ajaxo Inc., supra,* 187 Cal.App.4th at p. 1313 [jury's finding that defendant did not profit from its misappropriation of trade secrets means that unjust enrichment is not "provable" within the meaning of section 3426.3(b)].)

Secondary Sources

13 Witkin, Summary of California Law (11th ed. 2017) Equity, §§ 92–93

Gaab & Reese, California Practice Guide: Civil Procedure Before Trial—Claims & Defenses, Ch. 10(II)-E ¶ 10:370-10:372 (The Rutter Group)

1 Milgrim on Trade Secrets, Ch. 15, *Trial Considerations*, § 15.02 (Matthew Bender)

3 Levy et al., California Torts, Ch. 40, *Fraud and Deceit and Other Business Torts*, § 40.54 (Matthew Bender)

49 California Forms of Pleading and Practice, Ch. 565, *Unfair Competition*, § 565.103[6], [7] (Matthew Bender)

Edelson & Kay, eds., Trade Secret Litigation and Protection in California (State Bar of California 2009) Ch. 11

4601. Protected Disclosure by State Employee—California Whistleblower Protection Act—Essential Factual Elements (Gov. Code, § 8547.8(c))

[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] made a protected disclosure in good faith and that [***name of defendant***] [discharged/***specify other adverse action***] [him/her/***nonbinary pronoun***] as a result. In order to establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] [***specify protected disclosure, e.g., reported waste, fraud, abuse ~~of authority~~, violation of law, threats to public health, bribery, misuse of government property***];**

2. **That [***name of plaintiff***]'s communication [disclosed/ [or] demonstrated an intention to disclose] evidence of [an improper governmental activity/ [or] a condition that could significantly threaten the health or safety of employees or the public];**

3. **That [***name of plaintiff***] made this communication in good faith [for the purpose of ~~remediating~~ remedying the health or safety condition];**

4. **That [***name of defendant***] [discharged/***specify other adverse action***] [***name of plaintiff***];**

5. **That [***name of plaintiff***]'s communication was a contributing factor in [***name of defendant***]'s decision to [discharge/***other adverse action***] [***name of plaintiff***];**

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

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

New December 2014; Renumbered from CACI No. 2442 and Revised June 2015; Revised July 2025

Directions for Use

Under the California Whistleblower Protection Act and the California Whistleblower Protection Enhancement Act (Gov. Code, § 8547 et seq.) (the Act), a state employee, former employee, or applicant for state employment has a right of action against any person who retaliates against ~~him or her~~ them for having made a "protected disclosure." The statute prohibits a "person" from intentionally engaging in acts of reprisal, retaliation, threats, coercion, or similar acts against the employee or applicant. (Gov. Code, § 8547.8(c).) A "person" includes the state and its agencies. (Gov. Code, § 8547.2(d).)

The statute prohibits acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee, former employee, or applicant for state employment. (~~See~~ Gov. Code, § 8547.8(b).) If the case involves an adverse employment action other than termination, specify the action in elements 4 and 5. These elements may also be modified if constructive discharge is alleged. See CACI No. 2509, *"Adverse Employment Action" Explained,* and CACI No. 2510, *"Constructive Discharge" Explained*, for instructions under the Fair Employment and Housing Act that may be adapted for use with this

instruction.

Element 2 alleges a protected disclosure. (See Gov. Code, § 8547.2(e) ["protected disclosure" defined].)

If an "improper governmental activity" is alleged in element 2, it may be necessary to expand the instruction with language from Government Code section 8547.2(c) to define the term. If the court has found that an improper governmental activity is involved as a matter of law, the jury should be instructed that the issue has been resolved.

If a health or safety violation is alleged in element 2, include the bracketed language at the end of element 3.

The statute addresses the possibility of a mixed-motive adverse action. If the plaintiff can establish that a protected disclosure was a "contributing factor" to the adverse action (see element 5), the employer may offer evidence to attempt to prove by clear and convincing evidence that it would have taken the same action for other permitted reasons. (Gov. Code, § 8547.8(e); see CACI No. 4602, *Affirmative Defense—Same Decision*.)

The affirmative defense includes refusing an illegal order as a second protected matter (along with engaging in protected disclosures). (See Gov. Code, § 8547.8(e); see also Gov. Code, § 8547.2(b) [defining "illegal order"].) However, Government Code section 8547.8(c), which creates the plaintiff's cause of action under the Act, mentions only making a protected disclosure; it does not expressly reference refusing an illegal order. But arguably, there would be no need for an affirmative defense to refusing an illegal order if the refusal itself is not protected. Therefore, whether a plaintiff may state a claim based on refusing an illegal order may be unclear; thus the committee has not included refusing an illegal order as within the elements of this instruction.

Sources and Authority

- California Whistleblower Protection Act. Government Code section 8547 et seq.
- California Whistleblower Protection Enhancement Act. Government Code section 8547.2.
- Civil Action Under California Whistleblower Protection Act. Government Code section 8547.8(c).
- "Employee" Defined. Government Code section 8547.2(a).
- "Improper Governmental Activity" Defined. Government Code section 8547.2(c).
- "Person" Defined. Government Code section 8547.2(d).
- "Protected Disclosure" Defined. Government Code section 8547.2(e).
- Governmental Claims Act Not Applicable. Government Code section 905.2(h).

- "The [Whistleblower Protection Act] prohibits improper governmental activities, which include interference with or retaliation for reporting such activities." (*Cornejo v. Lightbourne* (2013) 220 Cal.App.4th 932, 939 [163 Cal.Rptr.3d 530].)

- "The CWPA 'prohibits retaliation against state employees who "report waste, fraud, abuse of authority, violation of law, or threat to public health" [citation].' A protected disclosure under the CWPA is 'a good faith communication, including a communication based on, or when carrying out, job duties, that discloses or demonstrates an intention to disclose information that may evidence (1) an improper governmental activity, or (2) a condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.' " (*Levi v. Regents of University of California* (2017) 15 Cal.App.5th 892, 902 [223 Cal.Rptr.3d 577], internal citation omitted.)

- "[Government Code] Section 8547.8 requires a state employee who is a victim of conduct prohibited by the [Whistleblower Protection] Act to file a written complaint with the Personnel Board within 12 months of the events at issue and instructs, 'any action for damages shall not be available to the injured party …' unless he or she has filed such a complaint. The Legislature could hardly have used stronger language to indicate its intent that compliance with the administrative procedure of sections 8547.8 and 19683 is to be regarded as a mandatory prerequisite to a suit for damages under the Act than to say a civil action is 'not … available' to persons who have not complied with the procedure." (*Bjorndal v. Superior Court* (2012) 211 Cal.App.4th 1100, 1112−1113 [150 Cal.Rptr.3d 405], internal citations omitted.)

- "Exposing conflicts of interest, misuse of funds, and improper favoritism of a near relative at a public agency are matters of significant public concern that go well beyond the scope of a similar problem at a purely private institution. State employees should be free to report violations of those policies without fear of retribution." (*Levi, supra,* 15 Cal.App.5th at p. 905.)

- "Complaints made 'in the context of internal administrative or personnel actions, rather than in the context of legal violations' do not constitute protected whistleblowing." (*Levi, supra,* 15 Cal.App.5th at p. 904.)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 284 et seq., 303–304

Chin et al., California Practice Guide: Employment Litigation, Ch. 5(II)-B, *Retaliation Under Other Whistleblower Statutes*, ¶ 5:1740 et seq. (The Rutter Group)

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.03[2][c], [3] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 118, *Civil Service*, § 118.56 (Matthew Bender)

3 California Points and Authorities, Ch. 36, *Civil Service*, § 36.40 (Matthew Bender)

4602. Affirmative Defense—Same Decision (Gov. Code, § 8547.8(e))

If [*name of plaintiff*] proves that [his/her/*nonbinary pronoun*] [making a protected disclosure/refusing an illegal order] was a contributing factor to [his/her/*nonbinary pronoun*] [discharge/*specify other adverse action*], [*name of defendant*] is not liable if [he/she/*nonbinary pronoun*/it] proves by clear and convincing evidence that [he/she/*nonbinary pronoun*/it] would have discharged [*name of plaintiff*] anyway at that time, for legitimate, independent reasons.

*New December 2014; Renumbered from CACI No. 2443 and Revised June 2015; Revised July 2025**

Directions for Use

Give this instruction in a so-called same-decision or mixed-motive case under the California Whistleblower Protection Act and the California Whistleblower Protection Enhancement Act. (See Gov. Code, § 8547 et seq.; CACI No. 4601, *Protected Disclosure by State Employee—California Whistleblower Protection Act—Essential Factual Elements*.) A mixed-motive case is one in which there is evidence of both a retaliatory and a legitimate reason for the adverse action. Even if the jury finds that the retaliatory reason was a contributing factor, the employer may avoid liability if it can prove by clear and convincing evidence that it would have made the same decision anyway for a legitimate reason. (Gov. Code, § 8547.8(e).)

Select "refusing an illegal order" if the court has allowed the case to proceed based on that basis. The affirmative defense statute includes refusing an illegal order as protected activity along with making a protected disclosure. The statute that creates the plaintiff's cause of action does not expressly mention refusing an illegal order. (Compare Gov. Code, § 8547.8~~(e)~~(c) with Gov. Code, § 8547.2(c); see Gov. Code, § 8547.2(b) [defining "illegal order"], (e) [defining "protected disclosure"].) See the Directions for Use to CACI No. 4601.

Sources and Authority

- California Whistleblower Protection Act. Government Code section 8547 et seq.
- California Whistleblower Protection Enhancement Act. Government Code section 8547.2.
- Same-Decision Affirmative Defense. Government Code section 8547.8(e).
- "Illegal Order" Defined. Government Code section 8547.2(b).
- "Protected Disclosure" Defined. Government Code section 8547.2(e).
- "Guided by *Lawson* [*v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703 [289 Cal.Rptr.3d 572, 503 P.3d 659]] and applying its reasoning, we conclude that Government Code section 8547.10, subdivision (e), rather than *McDonnell Douglas*, provides the relevant framework for analyzing claims under Government Code section 8547.10." (*Scheer v. Regents of University of California* (2022) 76 Cal.App.5th 904, 916 [291 Cal.Rptr.3d 822].)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 302–307A

Chin et al., California Practice Guide: Employment Litigation, Ch. 5(II)-B, *Retaliation Under Other Whistleblower Statutes*, ¶ 5:1790 et seq. (The Rutter Group)

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

11 California Forms of Pleading and Practice, Ch. 118, *Civil Service*, § 118.56 (Matthew Bender)

3 California Points and Authorities, Ch. 36, *Civil Service*, § 36.40 (Matthew Bender)

ITC CACI 25-01

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

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

Instruction(s)	Commenter	Comment	Committee Response
1013. Landlord's Liability for Dangerous Dog Kept on Property—Essential Factual Elements (*New*)	California Association of Realtors by Robert Bloom Senior Counsel Sacramento	The new Civil Jury Instructions for the "Landlord's Liability for Dangerous Dog Kept on Property," is an inaccurate statement of the law. It leaves out the phrase, "vicious nature" and introduces the word "tendency." The result is that this jury instruction creates a lower threshold of landlord liability than the actual law currently admits.	The committee disagrees. The committee chose to express these requirements as "a nature or tendency to be dangerous." The committee believes the phrasing is accurate and uses language that is understandable to an average juror.
		The inaccuracy appears in question #2. "Did [name of defendant landlord] know, or must [name of defendant landlord] have known, before the [attack/other incident] that [a] dog[s] being kept on the premises had a nature or tendency to be dangerous?"	No further response required.
		The cases which the Judicial Counsel cite as the basis for this instruction do not use the phrase "tendency to be dangerous." A word search of all five case that the Judicial Counsel cites reveals that the word "tendency" appears only one time. On the other hand, the word "propensity" or "propensities," which the word tendency is replacing, appears approximately 76 times in the five cited cases. These words are not synonymous. Propensity is more intense and more inherent to the nature of the animal then tendency suggests. Merriam-webster.com/dictionary defines propensity as an "often intense natural inclination or preference." It goes on to say that propensity implies "a deeply ingrained and usually irresistible inclination." In reviewing the definitions of these two words online, sometimes the definitions of propensity will use the word tendency, but in doing so it is made clear that the words have	Similar to the reasoning supplied above, the committee believes that propensity and propensities are not easily understood.

Instruction(s)	Commenter	Comment	Committee Response
		different meanings. For example, Britannica.com/dictionary defines propensity as "a strong natural tendency to do something." This definition highlights that the word tendency alone loses the key elements that distinguish it from propensity, namely, that propensity is both stronger and more in the nature animal. The upshot is that the word tendency sets a lower standard as to the degree of dangerousness that the landlord must be aware of.	
		Another critical defect in the Judicial Counsel Instruction is that it leaves out of the instruction the idea of "vicious nature." The word "vicious," "viciousness" or "vicious nature" appears approximately 75 times in the five cases. For example, in Donchin v Guerrero the opinion begins, "In this dog attack case we conclude the injured plaintiff raised a triable issue whether defendant landlord knew about the vicious propensities of his tenant's two Rottweilers." Here is a sampling of the standards used in various cases as cited in Salinas: "Consistent with this rule, "a landlord owes a duty of care to his tenant's invitees to prevent injury from the tenant's vicious dog when the landlord has 'actual knowledge' of the dog's vicious nature in time to protect against the dangerous condition on his property." (Yuzon v. Collins (2004) 116 Cal.App.4th 149, 152, 10 Cal.Rptr.3d 18.) Conversely, "it is well established **741 that a landlord does not owe a duty of care to protect a third party from his or her tenant's dog unless the landlord has actual knowledge of the dog's dangerous propensities, and the ability to control or prevent	The committee concluded that the same authorities cited also support "dangerous," which is a term more easily understood than vicious, viciousness, or vicious nature."

Instruction(s)	Commenter	Comment	Committee Response
		the harm." (Chee v. Amanda Goldt Property Management, supra, 143 Cal.App.4th 1360, 1369, 50 Cal.Rptr.3d 40; see also Yuzon, supra, at p. 163, 10 Cal.Rptr.3d 18; Donchin v. Guerrero (1995) 34 Cal.App.4th 1832, 1838, 41 Cal.Rptr.2d 192; Uccello v. Laudenslayer (1975) 44 Cal.App.3d 504, 507, 118 Cal.Rptr. 741 (Uccello).) " ' "[A] landlord is under no duty to inspect the premises for the purpose of discovering the existence of a tenant's dangerous animal; only when the landlord has actual knowledge of the animal, coupled with the right to have it removed from the premises, does a duty of care arise." ' (Yuzon, supra, at p. 163, 10 Cal.Rptr.3d 18, quoting Uccello, supra, at p. 514, 118 Cal.Rptr. 741; see also Donchin, supra, at p. 1838, 41 Cal.Rptr.2d 192 ['a landlord who does not have actual knowledge of a tenant's dog's vicious nature cannot be held liable when the dog attacks a third person'].)" (Chee, supra, at pp. 1369–1370, 50 Cal.Rptr.3d 40; see also Martinez v. Bank of America (2000) 82 Cal.App.4th 883, 892, 98 Cal.Rptr.2d 576.)" As is evident, the phrases "dangerous propensity" and "vicious nature" are the typically employed to describe the animal's propensity to attack.	
		Therefore, I propose that the jury instruction #2 be written as follows: "Did [name of defendant landlord] know, or must [name of defendant landlord] have known, before the [attack/other incident] that [a] dog[s] being kept on the premises had a vicious nature or dangerous propensity? ____ Yes ____ No"	The committee does not see improved accuracy or clarity in the proposed alternative phrasing.
	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions	Element 2 requires actual knowledge. We believe "knew" is appropriate and "or must have known" should be deleted. The phrase "or must have known" is both unclear and unnecessary. CACI 202, *Direct and Indirect Evidence*	The committee disagrees. The Court of Appeal in *Fraser v. Farvid* observed that actual knowledge "can be satisfied 'by

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Instruction(s)	Commenter	Comment	Committee Response
	Committee Sacramento	explains circumstantial evidence more clearly and can be given if desired.	circumstantial evidence the landlord must have known about the dog's dangerousness as well as direct evidence he actually knew.' " (*Fraser v. Farvid* (2024) 99 Cal.App.5th 760, 763 [318 Cal.Rptr.3d 215], citing *Donchin v. Guerrero* (1995) 34 Cal.App.4th 1832, 1838 [41 Cal. Rptr. 2d 192].) The committee concluded that a *must have known* standard was important to include, as it differs from the more familiar "should have known" standard.
	Bruce Greenlee Attorney Richmond	1. Element 1 (and throughout): I think that under general premises liability principles, all that is required is that the defendant own the dog and have control over the property. The instruction (and verdict form) should not be limited to landlord owners. If the tenant owns the dog, the tenant is on the hook. (See *Chee*, cited in the [Sources and Authority]).	Based on decisional authority cited in the Sources and Authority, the committee has recommended a premises liability instruction that addresses a *landlord's* liability for a dog the landlord does not own. The instruction is not for use in a more general premises liability case involving a tenant's liability.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.

ITC CACI 25-01
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Instruction(s)	Commenter	Comment	Committee Response
VF-1003. Landlord's Liability for Dangerous Dog Kept on Property (*New*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We would delete ", or must *name of defendant landlord*] have known," in Question 2 for the reasons stated above.	See the committee's response to CLA's comment for CACI No. 1031 above.
		b. We would add optional questions on the comparative negligence of plaintiff and others, as in VF-401 and VF-402.	The committee does not recommend additional questions on comparative negligence, which may not be appropriate in all cases. The committee also does not recommend additional Directions for Use content or cross-references regarding the comparative negligence of the plaintiff and others. Like other verdict forms for negligence causes of action (see for example CACI No. VF-500 (Medical Negligence) and CACI No. VF-1100 (Dangerous Condition of Public Property)), the verdict form is a model. Comparative fault can be addressed if needed.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
1621. Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Bystander—Essential	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.

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Instruction(s)	Commenter	Comment	Committee Response
Factual Elements (*Revise*)	Bruce Greenlee Attorney Richmond	1. *Downey* is a good case, which clarifies the previous unclear confusion in the law. I would add its holding to the [Directions for Use], in place of the proposed to-be-deleted ponderings, something like this: "It is sufficient if the plaintiff perceives the injury producing event. It is not also required that the plaintiff perceive the defendant's role in creating that event. (*Downey*)	The committee considered the option of including *Downey* in the Directions for Use but chose to cite it in the Sources and Authority only. The committee does not recommend repeating its holding in the Directions for Use.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
1803. Misappropriation of Name, Likeness, or Identity—Essential Factual Elements (*Revise and Retitle*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We agree with the proposed revisions to the title and instruction.	No response required.
		b. We would revise the third paragraph in the Directions for Use by adding a preface and would refer to both CACI No. 1302, *Consent Explained* and CACI No. 1303, *Invalid Consent*: "If the parties dispute whether plaintiff gave consent, ~~C~~consider giving an instruction explaining consent and/or invalid consent. See generally CACI No. 1302, *Consent Explained*; CACI No. 1303, *Invalid Consent*."	The committee does not recommend the alternative phrasing or additional content on invalid consent. Use of instructions on consent in the Assault and Battery series will require modifications; the committee believes one reference to that series is adequate.
		c. We find the sentence, "Consider giving an introductory instruction listing the legal theories under which the plaintiff is suing if more than one type of misappropriation has been alleged," unclear and unnecessary. It is unclear whether the "type of misappropriation" refers to a common law versus a statutory claim or different aspects of plaintiff's identity. We would delete this sentence.	The committee agrees and does not recommend the new sentence. The committee, however, does recommend retaining the first sentence in the second paragraph on privacy rights for the reasons explained

Instruction(s)	Commenter	Comment	Committee Response
			below in the response to the Orange County Bar Associations.
		d. We would revise the second sentence in the fifth paragraph of the Directions for Use because the two causes of action do not necessarily cover all the same conduct. "The two causes of action overlap, and the same conduct ~~should~~ may be covered by both."	The committee agrees and recommends the suggested change.
		e. We agree with the other proposed revisions to the Directions for Use.	No further response required.
		f. We agree with the proposed revisions to the Sources and Authorities.	No further response required.
		g. We suggest considering the addition of a reference to Labor Code section 927, effective January 1, 2025, relating to digital replicas.	The comment is beyond the scope of the invitation to comment. The committee will consider the suggestion in a future release.
	Orange County Bar Association by Mei Tsang, President Newport Beach	The proposed revision to the instruction removes any reference to the right to privacy or its violation. When last up for review in August/September of 2024, the California Judicial Council circulated Invitations for Public Comment in which it was proposed that the right to publicity and its violation be added to the instruction. The inclusion of the publicity right has not been pursued; the proposed instruction, rather than addressing the violation of either of these two distinct rights, speaks only to the misappropriation of a plaintiff's name, likeness, or identity.	Following the previous circulation for comment, the committee initially saw merit in a user comment that jurors did not need to understand or be informed of the right of privacy and/or the right of publicity to understand this claim. The committee circulated proposed revisions that did not refer to the rights but instead focused on conduct. The committee also

Instruction(s)	Commenter	Comment	Committee Response
		While this may be seen as simplifying, for a juror, the concept of a privacy or publicity right violation, it is believed that reference to such rights provides a context, readily understood and long recognized by juries, for the alleged actions of a defendant. Without reference to the specific rights at issue, counsel would be forced to repeatedly state that a plaintiff's "likeness was misappropriated," as opposed to stating simply that the plaintiff's "privacy was violated," which better illustrates the real gist, gravamen, or material aspect of the conduct of which a plaintiff complains. In argument, counsel may tie the right and its violation to the evidence of alleged misappropriation; this oral effort, however, may be forgotten or disputed in the jury room. To avoid this, the right *together* with the conduct which violates it should be set forth in the instruction so the jury is able to make the connection, based on a familiar frame of reference.	sees merit in OCBA's suggestion that the right or rights at issue may be helpful information for jurors when considering these claims. In addition, as observed by OCBA below, supplying information about the right or rights at issue is consistent with other instructions in the Right of Privacy series (CACI series 1800). The committee therefore recommends including both pieces of information as suggested by OCBA.
		Accordingly, it is suggested that the first sentence of the introductory paragraph of the instruction read: [*Name of plaintiff*] claims that [*name of defendant*] violated [his/her/*nonbinary possessive pronoun*] right to [privacy/publicity/privacy and publicity] by misappropriating [his/her/*nonbinary possessive pronoun*] [name/likeness/identity].	The committee recommends the suggested revision to the proposed change for the reasons stated above. The committee also recommends retaining the related content in the Directions for Use.
		a. No change in law (case, statute or otherwise) is offered as reason for the proposed changes to the longstanding procedure of introducing these by reference to the Plaintiff's claim as a violation of the "right to privacy."	No further response required.
		b. Prosser, long ago, identified four categories constituting common law violations of the Right to Privacy. The first sentence for each of the Right to Privacy Instructions (1800,	No further response required.

Instruction(s)	Commenter	Comment	Committee Response
		1801, 1802, 1803, 1804A, and 1804B) starts by explaining how the Plaintiff asserts a violation of a "right to privacy". The proposal is to remove that reference in *some* of the instructions, while leaving others (e.g., 1800, 1801 ,1802) intact. Not only would accepting the proposal lead to inconsistency across the instructions, but there does not appear to be any legal precedent supporting this change of a longstanding approach.	
		c. If the proposal is accepted, the "Directions for Use" will be inconsistent across the instructions (i.e., 1800, 1801, and 1802 are and will remain clear in stating one is to "give an introductory instruction stating that a person's right to privacy can be violated in more than one way and listing the legal theories under which the plaintiff is suing", while the instruction at issue currently includes that language but, via the instant proposal, would have that clear directive removed (with nothing in place of it). [The new proposals would include a different, narrow type of directive to have one "[c]onsider giving an introductory instruction listing the legal theories under which the plaintiff is suing if more than one type of misappropriation has been alleged (while having references to the "right to privacy" removed entirely from the instruction itself and from the Directions for Use as something otherwise mandated to be given)].	The committee recommends retaining the instruction in the Directions for Use on the right to privacy and adding the right of publicity. This will make the Directions for Use more consistent across the series.
1804A. Misappropriation of Name, Voice, Signature, Photograph, or Likeness (Civ. Code, § 3344) (*Revise and Retitle*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We agree with the proposed revisions to the title and instruction.	No response required.
		b. We would revise the second sentence in the Directions for Use to refer to "plaintiff" rather than "person," consistent with the instruction.	The committee recommends the suggested change in what is now the third sentence of the Directions for Use.

Instruction(s)	Commenter	Comment	Committee Response
		c. We would delete the last sentence in the second paragraph of the Directions for Use beginning, "Consider giving," for the reasons stated above relating to CACI No. 1803.	The committee agrees and recommends deleting the sentence.
		d. We suggest the following revisions to the second paragraph in the Directions for Use for greater clarity: "One's name, voice, signature, photograph, and likeness are protected under both the common law and ~~under~~ Civil Code section 3344. While the term 'identity' is sometimes used to refer to the statutorily protected categories, a plaintiff's 'identity' is protected only under the common law and not under the statute. As the statutory remedy is cumulative (Civ. Code, § 3344(g)), both this instruction and CACI No. 1803, *Misappropriation of Name, Likeness, or Identity*, which sets forth the common-law cause of action, may be given. ~~Consider giving an introductory instruction listing the legal theories under which the plaintiff is suing if more than one type of misappropriation has been alleged.~~"	The committee recommends deleting the final sentence as suggested by CLA here and immediately above. The committee does not recommend the additional information suggested because it is more in the nature of legal treatise content than a Direction for Use about choices to be made with respect to CACI.
		e. We would revise the fifth paragraph in the Directions for Use in the same manner that we propose revising the same language in the Directions for Use for CACI No. 1803.	The committee does not recommend the additional content on invalid consent. Use of instructions on consent in the Assault and Battery series will require modifications; the committee believes one reference to that series is adequate.
		f. We agree with the other proposed revisions to the Directions for Use.	No further response required.

Instruction(s)	Commenter	Comment	Committee Response
		g. We agree with the proposed revisions to the Sources and Authorities.	No further response required.
	Orange County Bar Association by Mei Tsang, President Newport Beach	The proposed revision to the instruction removes any reference to the right to privacy or its violation. When last up for review in August/September of 2024, the California Judicial Council circulated Invitations for Public Comment in which it was proposed that the right to publicity and its violation be added to the instruction. The inclusion of the publicity right has not been pursued as the proposed instruction, rather than addressing the violation of either of these two distinct rights, speaks only to the misappropriation of a plaintiff's name, voice, signature, photograph, or likeness. While this may be seen as simplifying, for a juror, the concept of a privacy or publicity right violation, it is believed that reference to such rights provides a context, readily understood and long recognized by juries, for the alleged actions of a defendant. Without reference to the specific rights at issue, counsel would be forced to repeatedly state that a plaintiff's "likeliness was misappropriated," as opposed to stating simply that the plaintiff's "privacy was violated," which better illustrates the real gist, gravamen, or material aspect of the conduct of which a plaintiff complains. In argument, counsel may tie the right and its violation to the evidence of alleged misappropriation; this oral effort, however, may be forgotten or disputed in the jury room. To avoid this, the right together with the conduct which violates it should be set forth in the instruction so the jury is able to make the connection, based on a familiar frame of reference.	Following the previous circulation for comment, the committee initially saw merit in a user comment that jurors did not need to understand or be informed of the right of privacy and/or the right of publicity to understand this claim. The committee circulated proposed revisions that did not refer to the rights but instead focused on the conduct. The committee also sees merit in OCBA's suggestion that the right or rights at issue may be helpful information for jurors when considering these claims. In addition, as observed by OCBA below, supplying information about the right or rights at issue is consistent with other instructions in the Right of Privacy series (CACI series 1800). The committee therefore recommends including both pieces of information as suggested by OCBA.
		Accordingly, it is suggested that the first sentence of the introductory paragraph of the instruction read:	The committee recommends the suggested revision to the

Instruction(s)	Commenter	Comment	Committee Response
		[*Name of plaintiff*] claims that [*name of defendant*] violated [his/her/*nonbinary possessive pronoun*] right to [privacy/publicity/privacy and publicity] by misappropriating [his/her/*nonbinary possessive pronoun*] [name/voice/signature/ photograph/likeness].	proposed change for the reasons stated above. The committee also recommends retaining the related content in the Directions for Use.
		a. No change in law (case, statute or otherwise) is offered as reason for the proposed changes to the longstanding procedure of introducing these by reference to the Plaintiff's claim as a violation of the "right to privacy."	No further response required.
		b. Prosser, long ago, identified four categories constituting common law violations of the Right to Privacy. The first sentence for each of the Right to Privacy Instructions (1800, 1801, 1802, 1803, 1804A, and 1804B) starts by explaining how the Plaintiff asserts a violation of a "right to privacy". The proposal is to remove that reference in some of the instructions, while leaving others (e.g., 1800, 1801, 1802) intact. Not only would accepting the proposal lead to inconsistency across the instructions, but there does not appear to be any legal precedent supporting this change of a longstanding approach.	The committee recommends the suggested revision to the proposed change for the reasons stated above. The committee also recommends retaining the related content in the Directions for Use.
		c, If the proposal is accepted, the "Directions for Use" will be inconsistent across the instructions (i.e., 1800, 1801, and 1802 are and will remain clear in stating one is to "give an introductory instruction stating that a person's right to privacy can be violated in more than one way and listing the legal theories under which the plaintiff is suing", while the instruction at issue currently includes that language but, via the instant proposal, would have that clear directive removed (with nothing in place of it). [The new proposals would include a different, narrow type of directive to have one "[c]onsider giving an introductory instruction listing the legal theories under which the plaintiff is suing if more than one type of misappropriation has bene alleged (while having	The committee recommends retaining the instruction in the Directions for Use on the right to privacy and adding the right of publicity. This will make the Directions for Use more consistent across the series.

Instruction(s)	Commenter	Comment	Committee Response
		references to the "right to privacy" removed entirely from the instruction itself and from the Directions for Use as something otherwise mandated to be given)].	
1804B. Misappropriation of Name, Voice, Signature, or Likeness—Use in Connection With News, Public Affairs, or Sports Broadcast or Account, or Political Campaign (Civ. Code, § 3344(d)) (*Revise and Retitle*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We agree with the proposed revisions to the title and instruction.	No response required.
		b. We would revise the second paragraph to match the second sentence in the Directions for Use for CACI No. 1804A, for consistency and would change "person's" to "plaintiff's," as stated above: "Select the specific type of misappropriation from the applicable bracketed terms for the aspect of the ~~person~~plaintiff's identity at issue in the case."	The committee agrees and recommends both suggested changes.
		c. We would revise the fourth paragraph in the Directions for Use in the same manner that we propose revising the identical paragraph in the Directions for Use for CACI No. 1804A.	The committee does not recommend the additional content on invalid consent. Use of instructions on consent in the Assault and Battery series will require modifications; the committee believes one reference to that series is adequate.
		d. We agree with the other proposed revisions to the Directions for Use.	No further response required.
		e. We agree with the proposed revisions to the Sources and Authorities.	No further response required.
	Orange County Bar Association	The proposed revision to the instruction removes any reference to the right to privacy or its violation. When last up	Following the previous circulation for comment, the

Instruction(s)	Commenter	Comment	Committee Response
	by Mei Tsang, President	for review in August/September of 2024, the California Judicial Council circulated Invitations for Public Comment in which it was proposed that the right to publicity and its violation be added to the instruction. The inclusion of the publicity right has not been pursued as the proposed instruction, rather than addressing the violation of either of these two distinct rights, speaks only to the misappropriation of a plaintiff's name, voice, signature, photograph, or likeness in connection with a news, public affairs, or sports broadcast or account, or in connection with a political campaign. While this may be seen as simplifying, for a juror, the concept of a privacy or publicity right violation, it is believed that reference to such rights provides a context, readily understood and long recognized by juries, for the alleged actions of a defendant. Without reference to the specific rights at issue, counsel would be forced to repeatedly state that a plaintiff's "likeliness was misappropriated," as opposed to stating simply that the plaintiff's "privacy was violated," which better illustrates the real gist, gravamen, or material aspect of the conduct of which a plaintiff complains. . In argument, counsel may tie the right and its violation to the evidence of alleged misappropriation; this oral effort, however, may be forgotten or disputed in the jury room. To avoid this, the right together with the conduct which violates it should be set forth in the instruction so the jury is able to make the connection, based on a familiar frame of reference.	committee initially saw merit in a user comment that jurors did not need to understand or be informed of the right of privacy and/or the right of publicity to understand this claim. The committee circulated proposed revisions that did not refer to the rights but instead focused on the conduct. The committee also sees merit in OCBA's suggestion that the right or rights at issue may be helpful information for jurors when considering these claims. In addition, as observed by OCBA below, supplying information about the right or rights at issue is consistent with other instructions in the Right of Privacy series (CACI series 1800). The committee therefore recommends including both pieces of information as suggested by OCBA.
		Accordingly, it is suggested that the first sentence of the introductory paragraph of the instruction read: [*Name of plaintiff*] claims that [*name of defendant*] violated [his/her/*nonbinary possessive pronoun*] right to [privacy/publicity/privacy and publicity] by misappropriating	The committee recommends the suggested revision to the proposed change for the reasons stated above. The committee also recommends retaining the

Instruction(s)	Commenter	Comment	Committee Response
		[his/her/*nonbinary possessive pronoun*] [name/voice/signature/ photograph/likeness] in connection with a [[news/public affairs/sports] broadcast or account/political campaign].	related content in the Directions for Use.
		a. No change in law (case, statute or otherwise) is offered as reason for the proposed changes to the longstanding procedure of introducing these by reference to the Plaintiff's claim as a violation of the "right to privacy."	No further response required.
		b. Prosser, long ago, identified four categories constituting common law violations of the Right to Privacy. The first sentence for each of the Right to Privacy Instructions (1800, 1801, 1802, 1803, 1804A, and 1804B) starts by explaining how the Plaintiff asserts a violation of a "right to privacy". The proposal is to remove that reference in some of the instructions, while leaving others (e.g., 1800, 1801, 1802) intact. Not only would accepting the proposal lead to inconsistency across the instructions, but there does not appear to be any legal precedent supporting this change of a longstanding approach.	No further response required.
		c. If the proposal is accepted, the "Directions for Use" will be inconsistent across the instructions (i.e., 1800, 1801, and 1802 are and will remain clear in stating one is to "give an introductory instruction stating that a person's right to privacy can be violated in more than one way and listing the legal theories under which the plaintiff is suing", while the instruction at issue currently includes that language but, via the instant proposal, would have that clear directive removed (with nothing in place of it). [The new proposals would include a different, narrow type of directive to have one "[c]onsider giving an introductory instruction listing the legal theories under which the plaintiff is suing if more than one	The committee recommends retaining the instruction in the Directions for Use on the right to privacy and adding the right of publicity. This will make the Directions for Use more consistent across the series.

Instruction(s)	Commenter	Comment	Committee Response
		type of misappropriation has bene alleged (while having references to the "right to privacy" removed entirely from the instruction itself and from the Directions for Use as something otherwise mandated to be given)].	
1805. Affirmative Defense to Misappropriation of Name, Voice, Signature, Photograph, or Likeness—First Amendment (*Comedy III*) (*Revise and Retitle*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We agree with the proposed revisions to the title.	No response required.
		b. We would delete "*e.g., celebrity*" within brackets in the first sentence of the instruction and in elements 1 and 2. The words "other person" include "celebrity." The common law and statutory claims do not apply only to celebrities, and we believe highlighting celebrity is potentially misleading.	As reflected in the case law, a celebrity's likeness is one of the most common scenarios for this affirmative defense. The bracketed content merely supplies one example, which is common practice across CACI. The example does not preclude use for non-celebrities. The committee declines to make the suggested change.
		c. We would delete "*e.g., picture*" within brackets in the introductory paragraph and elements 1 and 2 to avoid any unintended suggestion as to the type of work for which the instruction is or is not appropriate.	The bracketed content merely supplies one example of a type of work, which is common practice across CACI. The example does not preclude use for other types of work. The committee declines to make the suggested change.
		d. Element 2 is based on *Comedy III*, which involved the use of celebrities' likeness. The "subsidiary inquiry" from *Comedy III* expressed in element 2 reflects the fact that a celebrity likeness has a value derived from the celebrity's fame. The likeness of a noncelebrity, however, generally has	Without new case law, the committee is not prepared to add a note in the Directions for Use on the applicability or inapplicability of element 2 for

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		no value derived from fame. We believe element 2 is not appropriate in cases involving noncelebrities where the likeness has no value derived from the person's fame. We suggest adding language to the Directions for Use to remedy this.	cases that do not involve celebrities.
	Suzanne V. Chamberlain Attorney-Mediator Newport Beach	At Item 1 of the Instruction, the revision would strike "something new" and substitute "significant creative elements." It is believed "transformative elements" better describes the degree or nature of required creative activity which must operate on an original work so to alter it and give it new expression, meaning, or message. Accordingly, it is suggested "transformative elements" be incorporated into the Instruction rather than "significant creative elements." Item 1 of the Instruction sets forth what is recognized and known as the transformative use defense aka the transformative defense aka the transformative test. In discussing this defense or associated test, cases generally use the phrase "transformative elements" to describe the creative contribution of a defendant to, for example, the likeness of a celebrity such that the likeness is markedly changed to become primarily the defendant's own expression. The California Supreme Court noted, "[t]his inquiry into whether a work is 'transformative' appears to us to be necessarily *at the heart* of any judicial attempt to square the right of publicity with the First Amendment (emphasis added)." Comedy III Productions, Inc. v. Gary Saderup, Inc. (2001) 25 Cal.4th 387, 404.	The committee disagrees. Although "transformative elements" is routinely used in case law, the committee believes the recommended phrasing of item 1 better explains the concept to jurors. The provision includes "adds significant creative elements" and "giving it a new expression, meaning, or message." Taken together, the phrasing communicates to jurors that a work must be sufficiently transformative, without using that language, for the defense to apply.
		The drafters of this Instruction, however, do not use the adjective "transformative" or the phrase "transformative elements," but have used "something new" and now propose "significant creative elements" to describe the challenged	The committee disagrees for the reasons provided above.

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		product of the defendant's efforts. Neither the current phrase not that proposed connote the change-factor inherent in "transformative," even when coupled with the phrase "giving it a new expression, meaning, or message," found in the last two lines of this Item which are not part of the current revision.	
		Quoted by the Court in *Comedy III* from a U.S. Supreme Court case discussing copyright and fair use doctrine, the phrase reads, "adds something new … *altering* the first [work] with new expression, meaning, or message … (emphasis added)." Comedy III Productions, Inc. v. Gary Saderup, Inc. (2001) 25 Cal.4th 387, 404. "Altering" indicates the change-factor operating on the first work such that the questioned work reflects the defendant's own distinct expression, meaning, or message. As written, any word or phrase sufficient to indicate this change-factor—required for the defense to obtain—is absent from Item 1 and from the Instruction. For these reasons, rather than the proposed phrase "significant creative elements," it is suggested that "transformative elements" be used in the Instruction addressing the *transformative* defense.	The committee disagrees for the reasons provided above.
	Orange County Bar Association by Mei Tsang, President Newport Beach	The proposed revision removes the phrase "something new" and substitutes the phrase "significant creative elements" at Item 1 of the instruction which sets forth the transformative use defense aka the transformative defense aka the transformative test. Cases discussing this defense/test generally use the phrase "transformative elements" to describe the creative contribution of a defendant to the likeness of a celebrity, for	The committee appreciates the concern but disagrees. Although "transformative elements" is supported by case law, the committee believes the phrasing of item 1 better explains the concept to jurors. The committee believes that the recommended content, "giving

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		example, such that the likeness is markedly changed to become primarily the defendant's own expression. The California Supreme Court noted, "[t]his inquiry into whether a work is 'transformative' appears to us to be necessarily at the heart of any judicial attempt to square the right of publicity with the First Amendment." Comedy III Productions, Inc. v. Gary Saderup, Inc. (2001) 25 Cal.4th 387, 404. Neither "something new" nor the proposed "significant creative elements" seems sufficient to connote the change-factor inherent in "transformative," even when coupled with the phrase "giving it a new expression, meaning, or message," found in the last two lines of this Item and not part of the current revision. In light of this, it is believed the instruction should make reference to the transformative or transforming nature of a defendant's efforts. Accordingly, it is suggested that Item 1 of the instruction read: That the [*insert type of work, e.g., "picture"*] adds significant creative elements to [*name of plaintiff/other person, e.g. celebrity*]'s [name/voice/signature/photograph/likeness/ identity], transforming and giving it a new expression, meaning, or message; or	it a new expression, meaning, or message" is a clearer expression than "transforming" or "transformative elements."
1930. Receiving Stolen Property—Civil Liability—Essential Factual Elements (Pen. Code, § 496(c)) (*New*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We agree with the elements of the instruction.	No response required.
		b. We would change "Property is stolen" and "Property is obtained by extortion" in the two alternative paragraphs after the elements to "Property was …," consistent with element 1.	The committee prefers the present tense for defined terms, and thus does not recommend this change. Element 1, on the other hand, is tied to a past

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			event and appropriately uses the past tense.
		c. Rather than explain "stolen" by reference to "theft" and then define "theft," we would explain "stolen" without reference to theft for simplicity and greater clarity: " "Property ~~is~~ was stolen if ~~it was obtained by theft. Property is obtained by theft if a person takes~~ someone took possession of the property, owned by someone else, without the owner's consent~~,~~ and with the intent either to permanently deprive the owner of that property or to deprive the owner of a major portion of the value or enjoyment of the property for an extended period of time."	The committee considered the related instructions adopted by CALCRIM, its sister advisory committee on criminal jury instructions, when it developed these definitions. The committee does not recommend removing the references to theft, which are common to CALCRIM definitions used in instructions explaining the crime of receiving stolen property. See, e.g., CALCRIM No. 1750.
		d. We would revise the second sentence in the third paragraph of the Directions for Use, referring to "Other definitions of theft," accordingly.	For the reasons stated above, the committee does not recommend the proposed change.
	Bruce Greenlee Attorney Richmond	1. [Sources & Authority], first entry: At one time, my recollection is that the preferred form was "attorney fees," solving the problem of where the apostrophe goes. [Deliberative process omitted.] (See the excerpt from *Switzer v. Wood*.)	For consistency across CACI, the committee recommends "attorney fees" but notes that CACI No. 1930 is based on Penal Code section 496, which uses the possessive phrasing, "attorney's fees."
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.

ITC CACI 25-01
Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)
All comments are verbatim unless indicated by an asterisk (*)

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VF-1930. Receiving Stolen Property—Civil Liability (*New*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
3066. Bane Act—Essential Factual Elements (Civ. Code, § 52.1) (*Revise*)	Bracamontes & Vlasak PC by Michael Bracamontes Attorney Oakland	Our law firm represents people that have suffered civil rights violations. On behalf of Bracamontes & Vlasak, P.C., I write to respectfully submit the following comment to the proposed revision to the Bane Act civil jury instruction, CACI 3066 and VF 3055. We strongly support the proposed revision and urge that the committee adopt these long overdue clarifications. We have dedicated our practice to representing victims of civil rights violations. In many cases, our clients' livelihoods depend on the jury instruction and underlying legal framework for Bane Act violations set forth in CACI 3066.	The committee acknowledges Bracamontes & Vlasak's support for the proposed changes.
		The current jury instruction on the Bane Act contains errors and confusing language. The specific intent has been replaced with a recklessness standard according to the most recent case law. "But whether the appellant officers understood they were acting unlawfully was not a requirement. Reckless disregard of the 'right at issue' is all that was necessary." Cornell v. City & County of San Francisco, 17 Cal. App. 5th 766, 804 (2017). "We acknowledge that some courts have read Shoyoye as having announced 'independen[ce] from [inherent coercion]' as a requisite element of all Section 52.1	No further response required.

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		claims alleging search-and-seizure violations, but we think those courts misread the statute as well as the import of Venegas. By its plain terms, Section 52.1 proscribes any 'interfere[nce] with' or attempted 'interfere[nce] with' protected rights carried out 'by threat, intimidation or coercion.' Nothing in the text of the statute requires that the offending 'threat, intimidation or coercion' be 'independent' from the constitutional violation alleged." Id. at 799-800 (internal citations omitted). The California Supreme Court decided that "in pursuing relief for those constitutional violations under section 52.1, plaintiffs need not allege that defendants acted with discriminatory animus or intent, so long as those acts were accompanied by the requisite threats, intimidations, or coercion." Venegas v. County of Los Angeles, 32 Cal. 4th 820, 843 (2004). The court in Cornell, agreed that "the use of excessive force can be enough to satisfy the 'threat, intimidation or coercion' element of section 52.1." 17 Cal. App. 5th at 799. As such, the "reckless disregard" language is not only appropriate but remedies the current incorrect "intentional" language that is contained in the current CACI instruction.	
	California Employment Lawyers Association by V. James DeSimone	On behalf of California Employment Lawyers Association (CELA), California's statewide, nonpartisan and non-profit association of plaintiff's employment law attorneys, we write to respectfully submit the following comment to the proposed revisions to CACI 3066 relating to the Bane Civil Rights Act ("Bane Act") and Civil Code section 52.1, and corresponding Verdict Form 3035.	The committee acknowledges the support of CELA and its CACI subcommittee for the proposed changes.

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		We are attorneys at V. James DeSimone Law and Bohm Law Group who have dedicated our practice to civil rights law. We have litigated several Bane Act cases to verdict and some of these have been in the employment law context. Our experience is that trial judges often agree to a modified version of CACI Instruction 3066 because the current instruction does not accurately reflect the clear meaning of the statute as well as binding case law. In recognition of this fact, a team of Attorneys at the Consumer Attorneys of California (CAOC) and the National Police Accountability Project (NPAP) have crafted proposed revisions to CACI 3066, which accurately reflect the law in a neutral fashion. We therefore write on behalf of CELA, and its CACI Subcommittee, to submit public comment to support the proposed revisions to CACI 3066. The proposed revised instruction correctly states California law in that it: 1) provides an alternative to trial courts to instruct the jury in cases which do not involve threats of violence based on speech alone, and 2) adds the language that a defendant who acts with reckless disregard to the rights in questions violates the statute, as the Court unambiguously held in *Cornell v. City & County of San Francisco* (2017) 17 Cal. App. 5th 766, 804: "[W]hether the [defendant] officers understood they were acting unlawfully was not a requirement. Reckless disregard of the 'right at issue' is all that was necessary." The proposed revision provides use notes that clearly explain which alternative should be used, and adds case law supporting the proposed revisions.	
		First, the proposed revised CACI 3066 provides the necessary alternative instruction where the conduct is more than "speech alone" when the "speech alone" exception described in Civil Code	No further response required.

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		52.1(k) is not applicable. The proposed revised instruction tracks the plain text of Civil Code section 52.1 (a) and (b), which provides for a cause of action for damages when "a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state...." The California Supreme Court has held that Section 52.1 simply "require[s] an attempted or completed act of interference with a legal right, accompanied by a form of coercion." *Jones v. Kmart Corp*. (1998) 17 Cal. 4th 329, 334. Only these express elements are necessary to sustain a claim under Section 52.1. *See Winarto v. Toshiba Am. Elecs. Components* (9th Cir. 2001) 274 F.3d 1276, 1289; *see also*, *Venegas v. County of Los Angeles* (2004) 32 Cal. 4th 820, 841-44 (interpreting Section 52.1 according to its "unambiguous" plain language, and rejecting additional requirements not in the text of the statute); *see also Moreno v. Town of Los Gatos* (9th Cir. 2008) 267 Fed. Appx. 665, 666 ("Reading section 52.1 on its own terms, as *Venegas* directs, the statutory language clearly requires only 'threats, intimidation, or coercion.'"). The current instruction is an incorrect statement of the law and a change is required to prevent mistrials and to protect the people of California from civil rights abuses in accordance with current California law.	
		Similarly, the current instruction incorrectly instructs jurors that the plaintiff is required to prove either—they reasonably believed that if they exercised their rights defendants "would commit violence against" them, or that defendants "acted	No further response required.

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		violently against" them to prevent the exercise of their rights or because they exercised such rights. However, this should only be a requirement when there is "speech alone"; Section 52.1(k) states as follows: Speech alone is not sufficient to support an action brought pursuant to subdivision (b) or (c), except upon a showing that the speech itself threatens violence against a specific person or group of persons; and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat. However, many civil rights cases, including employment law cases, involve threats, intimidation or coercion in the form of conduct such as the use of force, an arrest, or a job termination. In such cases, there is more than speech alone; the defendant uses their position of power to attempt to interfere, or interfere, to violate rights protected by the United States or California Constitutions, or their respective statutes, *and* the threats, intimidation or coercion involve some type of conduct or action, not just speech alone. The proposed revision tracks the language of the statute to establish the violation by providing the following element of proof: **That by threat, intimidation, or coercion, [***name of defendant***] interfered [or attempted to interfere] with [***name of plaintiff***]'s exercise or enjoyment of [his/her/***nonbinary pronoun***] right [***e.g., to be free from arrest without probable cause***];**	

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		Additionally, Courts have ruled that violence is not an element of Bane Act claims. The Ninth Circuit, and several district courts, have held that Section 52.1 has no requirement to show "violence or threat of violence" (as Civil Code section 51.7 requires). *Moreno*, 267 Fed. Appx. at 666 (the "district court erred in holding that a valid section 52.1 claim requires a plaintiff to allege violence or threats of violence"); *Cole v. Doe* (N.D. Cal. 2005) 387 F. Supp. 2d 1084, 1103 ("§ [sic] 52.1 does not by its terms require violence or threat of violence"); *Kincaid v. City of Fresno* (E.D. Cal. May 12, 2008) 2008 U.S. Dist. LEXIS 38532, at *42 (same). To the extent that the CACI instruction requires violence or threat of violence, it is incorrect. *Bates v. Arata* (N.D. Cal. March 26, 2008) 2008 U.S. Dist. LEXIS 23910, at *79.[1] [FN1] The only place where the word "violence" appears in the Bane Act is in subsection (k), which provides: Speech alone is not sufficient to support an action brought pursuant to subdivision (b) or (c), except upon a showing that the speech itself threatens violence against a specific person or group of persons; and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat.	No further response required.
		The recent case of *Murchison v. County of Tehama,* describes the elements of a Section 52.1 claim; nowhere in this discussion is violence mentioned: The Bane Act makes it unlawful for any person to interfere by threat, intimidation, or coercion, or attempt to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual secured by the Constitution or laws of California. *See Austin B. v. Escondido Union School Dist*. (2007) 149 Cal.App.4th 860,	No further response required.

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		881-883, 57 Cal.Rptr.3d 454.) " ' "The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e.,'threats, intimidation or coercion'), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law." ' " *Cornell v. City & County of San Francisco* 17 Cal.App.5th 766, 791-792, 225 Cal.Rptr.3d 356 (2017). An Officer cannot claim qualified immunity under the Bane Act. S*ee Venegas v. County of Los Angeles* 153 Cal.App.4th 1230, 1246-47, (2007). *Murchison, 69 Cal. App. 5th at 896.* As it stands now, the current CACI instruction, as well as the corresponding special verdict form, simply get the law wrong by focusing on violence. CACI VF 3035 requires jurors to answer specific questions regarding threats or acts of violence against the plaintiff and should be changed as well.	
		Further, CACI 3066 should instruct juries that a defendant can act with "reckless disregard" of the rights in question as the proposed revision includes, and not just an "intent to deprive," as that is the law. The Bane Act protects individuals who have been subjected to interference or attempts to interfere with the exercise of constitutional or state rights, whether or not under color of law, "by threat, intimidation, or coercion." While under current case law the plaintiff is required to show that there was a "specific intent" to violate his or her rights to prevail on a Bane Act claim, such intent can be established by showing that the defendant acted with "reckless disregard of	No further response required.

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		the right at issue." The language of the statute requires threats, intimidation or coercion that violate or attempt to violate an individual's rights under federal or state law. *Cornell v. City & County of San Francisco* (2017) 17 Cal. App. 5th 766, 804. "Whether defendants "understood they were acting unlawfully [is] not a requirement. **Reckless disregard of the 'right at issue' is all that [is] necessary**." *Id.* (emphasis added). However, the current CACI 3066 instruction completely ignores the reckless disregard of rights element and standard established by *Cornell,* which has been consistently followed and not abrogated or criticized in any other decision. Instead, the current instruction mistakenly requires the plaintiff to prove that the "defendant intended to deprive the plaintiff of the enjoyment of the interests protected by the right." Several courts have held that a specific intent to deprive a right is met if there is reckless disregard of the right in question. *Murchison v. County of Tehama* followed *Cornell* stating, the element of intent is met "even if the defendant did not in fact recognize the [unlawfulness] of his act, he will be adjudged as a matter of law to have acted [with the requisite specific intent]—i.e., 'in reckless disregard of constitutional [or statutory] prohibitions or guarantees. [brackets in original].'" *Murchison v. County of Tehama* (2021) 69 Cal. App. 5th 867, 896-97. The Ninth Circuit is in accord as reflected in *Reese v. County of Sacramento* (9th Cir. 2018) 888 F.3d 1030, 1045: "But it is not necessary for the defendants to have been thinking in constitutional or legal terms at the time of the incidents, because a reckless disregard for a person's constitutional rights is evidence of a specific intent to deprive that person of those rights." Similarly, the Court in *Sandoval v. Cty. of Sonoma* (2018)	

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		912 F.3d 509, 520 held: "[S]pecific intent can be shown even if the defendant did not in fact recognize the unlawfulness of his act but instead acted in reckless disregard of the constitutional right." (internal citation and quotation omitted). In *Scalia v. County of Kern* (2018 E.D. Cal) 308 F. Supp. 3d. 1064, 1084 the court emphasized: "Reckless disregard of the 'right at issue is all that is necessary" (internal citation and quotation omitted). The proposed revisions to both the CACI and special verdict form 3035 will ensure that California juries are properly instructed in civil rights cases, the statutes of which should be broadly interpreted to protect the rights of people in California.	
	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. Proposed new alternative element 1 does not require a credible threat of violence, as is required for speech alone to support liability under the Bane Act. (Civ. Code, § 52.1(k)). We propose either adding language to the Directions for Use stating that this alternative element 1 should not be given if the threat, intimidation, or coercion involved speech alone.	The committee considered additional language in the Directions for Use on alternative element 1 but does not recommend it. The first paragraph of the Directions for Use explains when element 1's second and third options may be used.
		b. We agree with the other proposed revisions to the instruction.	No further response required.
		c. We agree with the proposed revisions to the Directions for Use.	No further response required.
		d. We agree with the proposed revisions to the Sources and Authorities.	No further response required.

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	Carrillo Law Firm, LLP by Michael S. Carrillo Attorney South Pasadena	On behalf of Carrillo Law Firm, LLP, we write to respectfully submit the following comment to the proposed revision to the Bane Act civil jury instruction, CACI 3066 and VF 3055. We strongly support the proposed revision and urge that the committee adopt these long overdue clarifications. We are attorneys at Carrillo Law Firm, LLP who have dedicated our practice to representing victims of civil rights violations. In many cases, our clients' livelihoods depend on the jury instruction and underlying legal framework for Bane Act violations set forth in CACI 3066. Many of our clients have suffered heinous tragedies at the hands of law enforcement that can only be rectified by a jury trial. We therefore write on behalf of Carrillo Law Firm, LLP to submit public comment in support of your proposed revisions to CACI 3066. The current jury instruction on the Bane Act contains errors and confusing language. Courts have used BAJI instructions or crafted their own instructions. This is time consuming for the Courts and the parties. It has also led to inconsistent and error filled instructions from court to court, case to case. The Bane Act has never required the element of force or threat of force. This proposed amendment accurately reflects the law and will greatly reduce the waste of judicial resources. Thank you for your attention in this matter.	The committee acknowledges Carrillo Law Firm's support for the proposed changes.
	Communities United for Restorative Youth Justice by John Vasquez, Policy & Legal Services Manager Oakland	On behalf of Communities United for Restorative Youth Justice (CURYJ), which supports families negatively impacted by police misconduct, I strongly support the proposed revisions to the instructions and verdict form for Bane Act claims. These changes are necessary to follow case law and the plain letter of the Act, and to ensure California's	The committee acknowledge CURYJ's support for the proposed changes.

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		civil rights law works for those who seek justice when their rights are violated. Thank you for taking these comments into consideration.	
	Consumer Attorneys of California by Jacqueline Serna, Deputy Legislative Director Sacramento	On behalf of the Consumer Attorneys of California (CAOC), a statewide, nonpartisan, and nonprofit association of plaintiff's attorneys, we respectfully submit this comment in strong support of the proposed revision to the Bane Act civil jury instruction, CACI 3066 and VF 3055. We urge the committee to adopt these long-overdue clarifications. Many CAOC attorneys dedicate their practice to representing individuals whose civil rights have been violated. For these individuals, the legal standards set forth in CACI 3066 are critical to securing justice. However, the current jury instruction contains errors and ambiguous language, leading to inconsistent applications across courts. As a result, judges have resorted to using BAJI instructions or drafting their own, an inefficient process that consumes judicial resources and increases the likelihood of legal misinterpretation. The Bane Act has never required a showing of force or threat of force, yet the existing instruction has led to confusion on this point. The proposed amendment correctly aligns with established law and will provide much-needed clarity, ensuring consistency and reducing unnecessary litigation over jury instructions. For these reasons, we strongly support the proposed revision to CACI 3066 and urge its adoption.	The committee acknowledges CAOC's support for the proposed changes.
	Bruce Greenlee Attorney Richmond	1. What is now optional element 2 (and first optional question 2 in VF) doesn't work. Should be: "That [name of defendant] [intended to deprive [name of plaintiff]/acted with reckless disregard~~]~~ of [~~his/her/nonbinary pronoun/[~~*name of*	The committee thanks the commenter for identifying the incomplete phrasing caused by the bracketed options. The

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		plaintiff~~]~~'s] enjoyment of the interests protected by the right [e.g., to vote];]	committee recommends refining optional element 2 and the optional question 2 in the verdict form to make it clearer. Optional element 2 will read: That [*defendant*] [intended to deprive [*plaintiff*] of/acted with reckless disregard for] [[his/her/*nonbinary pronoun*]/[*plaintiff*]'s] enjoyment of the interests protected by the right [*e.g., to vote*].The verdict form's question 2 will be similarly reformatted.
		2. Directions for Use, second paragraph: What is the reason for the deletion of the discussion on whether violence or a threat of violence is required? The only new law that I see is the *Murchison* case, and I don't read it as changing the uncertainty raised by *Shoyoye*.	The committee concluded that the existing content was not particularly helpful as Directions for Use. *Shoyoye* remains an entry in the Sources & Authority as a resource for users.
	Legal Services for Prisoners with Children by Kellie Walters, Staff Attorney Oakland	I am writing to express my strong support for the proposed amendments to the California Civil Jury Instructions (CACI) concerning the Bane Act (Civil Code § 52.1). These changes are essential to ensuring that jury instructions accurately reflect the law as amended by the Legislature and interpreted by the courts. The current CACI No. 3066 instruction does not fully align with the clear legislative intent and judicial precedent affirming that a violation of the Bane Act does not require	The committee acknowledges Legal Services for Prisoners with Children's support for the proposed changes.

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		proof of violence or threat of violence, but rather any interference with constitutional or statutory rights through "threat, intimidation, or coercion." As established in *Jones v. Kmart Corp.* (1998) and reaffirmed in *Venegas v. County of Los Angeles* (2004), the California Supreme Court has consistently applied the Bane Act according to its plain language. However, inconsistencies in jury instructions have contributed to judicial misinterpretation, requiring unnecessary elements of proof that undermine the Act's protective purpose. The proposed amendments appropriately clarify that proof of violence or threat of violence is only required when speech alone is at issue, as provided in Civil Code § 52.1(k). The proposed new instruction will significantly enhance the fairness and effectiveness of Bane Act claims by ensuring that juries are correctly instructed on the law. This will promote uniformity in court decisions, prevent unnecessary legal barriers for victims seeking justice, and uphold the legislative intent behind the Act. By adopting the proposed amendments, the Judicial Council will help ensure that civil rights cases are adjudicated based on accurate legal standards, protecting individuals from unlawful coercion, intimidation, and interference with their fundamental rights. I strongly urge the Advisory Committee to approve these necessary and long-overdue modifications to the jury instructions.	
	National Police Accountability Project by Julia Yoo, Attorney Iredale and Yoo, APC San Diego	I am a partner at Iredale and Yoo and the immediate past president of the National Police Accountability Project (NPAP). I was one of the principal authors of the proposed jury instructions on the Bane Act which was submitted to you in October of 2024.	The committee acknowledges the support of NPAP and those it represents for the proposed changes.

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		On behalf of NPAP and the victims we represent, we write to respectfully submit the following comment to the proposed revision to the Bane Act civil jury instruction, CACI 3066 and VF 3055. We strongly support the proposed revision and urge that the committee adopt these long overdue clarifications. I started my career by opening a non-profit to provide pro bono legal services to women and girls who had been denied medical care or had been raped in custody. My 27- year practice has centered around assisting our clients reintegrate back into society and assisting families of people who are left to die in our jails and prisons. This is one example of our cases: https://www.washingtonpost.com/nation/2025/03/04/jail-death-lawsuit-san-diego/ The jury instruction and underlying legal framework for Bane Act violations set forth in CACI 3066 are critical to these types of cases. In many cases involving denial of medical care, retaliatory arrest and sexual assault, there have been confusion and inconsistency in the instructions given to the jury. Rapes of vulnerable people in the jails and prisons frequently do not involve physical violence or threat of violence. Instead, the officers threaten to cut off phone privileges with the victim's children or to place them in administrative segregation. With my teenage clients, there is typically grooming by the officers. Because of the current CACI instructions as written, the Courts have had to grapple with these types of cases that do not involve violence, wasting valuable resources and resulting in confusing jury instructions that jurors do not understand.	

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		In my two decades service as a board member, then the president of NPAP, I have spoken with our membership on similar experiences and a number of appeals resulting from errors when the parties or judges have constructed their own instructions. Courts have used the BAJI instructions or crafted their own instructions, causing inconsistencies from case to case and from judge to judge. The Bane Act has never required the element of force or threat of force. This proposed amendment accurately reflects the law and will greatly reduce the waste of judicial resources. On behalf of all the impacted victims and their families, I thank you for your time and attention to this issue.	
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
	Stephanie Padilla [No additional information provided]	I support the proposed revisions to the instructions and verdict form for Bane Act claims (3066. Bane Act—Essential Factual Elements (Civ. Code, § 52.1)). These changes are necessary to follow case law and the plain letter of the Act, and to ensure California's civil rights law works for those who seek justice when their rights are violated.	The committee acknowledges Stephanie Padilla's support for the proposed changes.
	PHG Law Group by Danielle R. Pena, Esq. Attorney San Diego	On behalf of PHG Law Group we write to respectfully submit the following comment to the proposed revision to the Bane Act civil jury instruction, CACI 3066 and VF 3055. We strongly support the proposed revision and urge that the committee adopt these long overdue clarifications. As a thirteen-year practicing civil rights attorney, I specialize in and have devoted my practice to civil rights litigation involving police and jail misconduct cases. The majority of the cases I have handled throughout my legal career are in-	The committee acknowledges PHG Law Group's support for the proposed changes.

Instruction(s)	Commenter	Comment	Committee Response
		custody death cases. In doing so, I routinely allege Bane Act violations. In every trial for the past few years, I have had major issues with the current Bane Act jury instruction, specifically with regard to the lack of clarity and uniformity, and inaccurate language. We therefore write on behalf of PHG Law Group to submit public comment in support of your proposed revisions to CACI 3066. The current jury instruction on the Bane Act contains errors and confusing language. Courts have used the BAJI instructions or crafted their own instructions. This is time consuming for the Courts and the parties. It has also led to inconsistent and error filled instructions from court to court, case to case. The Bane Act has never required the element of force or threat of force. This proposed amendment accurately reflects the law and will greatly reduce the waste of judicial resources.	
	Kath Rogers Attorney ACLU SoCal San Diego	I support the proposed revisions to the instructions and verdict form for Bane Act claims. These changes are necessary to follow case law and the plain letter of the Act, and to ensure California's civil rights law works for those who seek justice when their rights are violated.	The committee acknowledges Kath Rogers's support for the proposed changes.
	Sanjay S. Schmidt Principal Law Office of Sanjay S. Schmidt San Francisco	I agree with the proposed changes to CACI 3066. However, there are some additional clarifications that are needed to reflect the decisional law regarding the first element. As modified, it reads as follows: **[That by threat, intimidation, or coercion, [***name of defendant***] interfered [or attempted to interfere] with [***name of plaintiff***]'s exercise or enjoyment of**	The committee declines to add the alternative or explanatory language suggested. Consistent with CACI's drafting framework, element 1 of CACI No. 3066 was drafted for the most common types of case. When unique or complex circumstances prevail, users will

Instruction(s)	Commenter	Comment	Committee Response
		[his/her/*nonbinary pronoun***] right [***e.g., to be free from arrest without probable cause***];]** It should have alternative or explanatory language, however, that reads as follows: **the threat, intimidation, or coercion can be inherent in the conduct of the Defendant, including the use of excessive force, falsely arresting / detaining / or imprisoning the plaintiff, or acting deliberately indifferent to the plaintiff's medical needs**. **A transactionally separate act of threat, intimidation, or coercion is <u>not</u> required.**	have to adapt the instructions to the particular case.
		The Bane Act has been the subject of much litigation in federal district courts, and the "Bane Act's requirement that interference with rights must be accomplished by threats[,] intimidation or coercion 'has been the source of much debate and confusion.'" *Cornell v. City & Cty. of S.F.*, 17 Cal. App. 5th 766, 801 (2017) (quoting *McKibben v. McMahon* (C.D.Cal., Apr. 17, 2015, No. EDCV 14-02171 JGB (SPx)) 2015 U.S.Dist. Lexis 176696, p. *7 (*McKibben*)). However, *Cornell*, *supra*, brought clarity by rejecting the proposition that a transactionally separate act of threat, intimidation, or coercion is required to establish a claim. *Cornell*, 17 Cal. App. 5th at 800. The *Cornell* opinion notably recognized that coercive conduct can occur in a custodial jail setting in a variety of ways, including without any physical force being used and without any express threats. 17 Cal. App. 5th at 802 n.31 (citing *McKibben, supra*, 2015 U.S.Dist. Lexis 176696 at p. *8 ["coercive choice" forced upon gay, bisexual or transgender inmates to accept segregated housing with fewer privileges than other inmates]; *M.H. v. County of Alameda*, 90 F. Supp. 3d 889, 898 (N.D. Cal. 2013) [deliberate indifference to inmate's medical needs].)	The committee does not rely on nonbinding federal authority for state law claims.

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		The most thoroughly researched and persuasively reasoned opinions issued by U.S. District Courts in California that have considered the issue have concluded that a valid claim for deliberate indifference to an inmate's right to medical care in a jail forms the basis for a Bane Act claim. *Scalia v. Cty. of Kern, et al.*, 308 F. Supp. 3d 1064, 1084 (E.D. Cal. 2018); *Lapachet v. Cal. Forensic Med. Grp., Inc.*, 313 F. Supp. 3d 1183, 1195-96 (E.D. Cal. 2018) (noting *Cornell* cited *M.H.*, 90 F.Supp.3d at 898–99, approvingly, "where the district court held that a prisoner who alleges deliberate indifference to serious medical need not allege threats, coercion, and intimidation independent of that deliberate indifference to state a Bane Act claim.") (citing *Cornell*, 17 Cal. App. 5th at 802 n.31). "[A] prisoner who successfully proves that prison officials acted or failed to act with deliberate indifference to his medical needs . . . adequately states a claim for relief under the Bane Act." *M.H. v. Cty. of Alameda*, 90 F. Supp. 3d 889, 899 (N.D. Cal. 2013).[1] Indeed, in 2016, Judge Drozd of the Eastern District canvassed the law on the issue of what is required to plead a Bane Act claim for deliberate indifference to medical needs, including whether it requires that threats and coercion independent of the constitutional violation be independently pleaded, and adopted the reasoning of *M.H.* and other cases, holding that "**threats**, **coercion**, **and intimidation are inherent in a deliberate indifference claim**." *Atayde v. Napa State Hosp.*, No. 116CV00398DADSAB, 2016 WL 4943959, at *8 (E.D. Cal. Sept. 16, 2016) (emphasis added) (citing *Martinez v. County of Sonoma*, Case No. 15-cv-01953-JST, 2015 WL 5354071, at * 9 (N.D. Cal. Sept. 14, 2015); *D.V. v. City of Sunnyvale*, 65 F. Supp. 3d 782, 789 (N.D. Cal. 2014) ("This court therefore follows the substantial and growing authority that restricts *Shoyoye* to	

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		cases where the defendant's actions were negligent [and holds that] Section 52.1 does not require threats, coercion, or intimidation independent from the threats, coercion, or intimidation inherent in the alleged constitutional or statutory violation."). In denying a motion to dismiss a Bane Act claim in a subsequent jail suicide case, Judge Drozd persuasively reasoned as follows: "Plaintiffs bringing Bane Act claims for deliberate indifference to serious medical needs must only allege prison officials 'knowingly deprived [them] of a constitutional right or protection through acts that are inherently coercive and threatening,' **such as housing a prisoner in an inappropriate cell**, **failing to provide treatment plans or adequate mental health care**, **and failing to provide sufficient observations**." *Page v. Cnty. of Madera*, No. 1:17-cv-00849-DAD-EPG, 2017 WL 5998227, at *4 (E.D. Cal. Dec. 4, 2017) (emphasis added) (citing *Atayde*, 2016 WL at *8, n.1). Judge O'Neill of the Eastern District also followed *M.H.* and reasoned, in an order that has been widely cited and adopted, denying a defendant's motion to dismiss the plaintiff's Bane Act claim in a case involving the in-custody death of a pretrial detainee, that "a prisoner who successfully proves that prison officials acted or failed to act with deliberate indifference to his medical needs in violation of his constitutional rights . . . adequately states a claim for relief under the Bane Act." *Scalia*, 308 F. Supp. 3d at 1084 (quoting *M.H.*, 90 F. Supp. 3d at 898-99). Indeed, Judge Bernal of the Central District recently observed that, "the court within this circuit that has analyzed the issue mostly thoroughly—i.e., Scalia v. Cty. of Kern, 308 F. Supp. 3d 1064 (E.D. Cal. 2018)—concluded that an adequately pled claim for deliberate indifference suffices to state a Bane Act claim." *Barry v.*	

Instruction(s)	Commenter	Comment	Committee Response
		Cnty. of Riverside, No. EDCV2101770JGBKKX, 2022 WL 2063247, at *7 (C.D. Cal. May 11, 2022) (citing *Id*. at 1084). The court in *Barry* followed *Scalia*, noting, "[t]he Court agrees with the reasoning in Scalia and finds that a successfully pled deliberate-indifference claim suffices to state a Bane Act claim because of the coercion, or specific intent, inherent in the deliberate-indifference standard." *Barry*, 2022 WL at *7. Judge Curiel of the Southern District, also following the reasoning of *Scalia* in upholding a Bane Act claim on this basis, observed that, "[s]everal district courts have concluded that an allegation of a defendant's deliberate indifference to a plaintiff's serious medical needs suffices to state a claim under the Bane Act because of the coercion, or specific intent, inherent in the deliberate indifference standard." *Greer v. Cnty. of San Diego*, No. 3:19-CV-0378-GPC-AGS, 2021 WL 615046, at *9 (S.D. Cal. Feb. 17, 2021) (citing *Lapachet*, 313 F. Supp. 3d at 1195, *Scalia*, 308 F. Supp. 3d at 1084, and *M.H.*, 90 F. Supp. 3d at 898, *supra*, approvingly). A number of other courts have also cited *Scalia* approvingly for the proposition that an adequately pleaded deliberate indifference claim sufficiently alleges a Bane Act claim. *Luttrell v. Hart*, No. 5:19-CV-07300-EJD, 2020 WL 5642613, at *5 (N.D. Cal. Sept. 22, 2020); *Graves v. California Dep't of Corr. & Rehab.*, No. EDCV171086JGBSPX, 2019 WL 8168060, at *6 (C.D. Cal. Nov. 14, 2019); *Est. of Miller v. Cnty. of Sutter*, No. 220CV00577KJMDMC, 2020 WL 6392565, at *18 (E.D. Cal. Oct. 30, 2020). [1] As noted above, the *Cornell* Court cited *M.H.* approvingly in footnote 31 as taking the correct view. That is an important indicator of the weight given to *M.H.* and its progeny by California appellate courts. Other notable decisions include:	

Instruction(s)	Commenter	Comment	Committee Response
		Polanco v. California., No. 21-cv-06516-CRB, 2022 WL 1539784, at *4 (N.D. Cal. May 16, 2022) ("[A] defendant who acts with deliberate indifference toward an inmate may satisfy the 'threat, intimidation, or coercion' element, as the custody context makes that violation especially coercive.") (citing *M.H. v. Cnty of Alameda*, 90 F. Supp. 3d 889, 898–99 (N.D. Cal. 2013) (coercion element satisfied where plaintiffs alleged deliberate indifference to an inmate's medical needs); *Atayde v. Napa State Hosp.*, No. 1:16-cv-00398-DAD-SAB, 2016 WL 4943959, at *8 (E.D. Cal. Sept. 16, 2016) (holding "that threats, coercion, and intimidation are inherent in a deliberate indifference claim."); *Luttrell v. Hart*, No. 5:19-cv-07300-JD, 2020 WL 5642613, at *5 (N.D. Cal., Sept. 22, 2020) (coercion element satisfied where plaintiffs alleged deliberate indifference to an inmate's safety); *Barry v. Cnty. of Riverside*, No. EDCV21-01770 JGB (KKx), 2022 WL 2063247, at *7 (C.D. Cal. May 11, 2022) (explaining that the court within this circuit that has analyzed the issue mostly thoroughly—i.e., *Scalia v. Cty. of Kern*, 308 F. Supp. 3d 1064 (E.D. Cal. 2018)—concluded that an adequately pled claim for deliberate indifference suffices to state a Bane Act claim.").	
	Max Schoening Attorney Qureshi Law Los Angeles	I support the proposed revisions to the instructions and verdict form for Bane Act claims. These changes are necessary to follow case law and the plain letter of the Act, and to ensure California's civil rights law works for those who seek justice when their rights are violated.	The committee acknowledges Max Schoening's support for the proposed changes.
	Taylor & Ring and Consumer Attorneys of California by John C. Taylor and Neil K. Gehlawat	On behalf of the Consumer Attorneys of California, we write to respectfully submit the following comment to the proposed revision to the Bane Act civil jury instruction, CACI 3066 and VF 3055. We strongly support the proposed revision and	The committee acknowledges the support of Taylor & Ring and the Consumer Attorneys of California for the proposed changes. The committee also

Instruction(s)	Commenter	Comment	Committee Response
	Civil Rights Attorneys Manhattan Beach	urge that the committee adopt these long overdue clarifications. We are civil rights lawyers who have tried police misconduct cases in numerous venues across the state of California. We have dedicated our practice to representing victims of civil rights violations. In many cases, our clients' livelihoods depend on the jury instruction and underlying legal framework for Bane Act violations set forth in CACI 3066. We therefore write on behalf of our law firm, Taylor & Ring, and Consumer Attorneys of California to submit public comment in support of your proposed revisions to CACI 3066. The current jury instruction on the Bane Act contains errors and confusing language. Courts have used the BAJI instructions or crafted their own instructions. This is time consuming for the Courts and the parties. It has also led to inconsistent and error filled instructions from court to court, case to case. The Bane Act has never required the element of force or threat of force. This proposed amendment accurately reflects the law and will greatly reduce the waste of judicial resources.	notes that CAOC's support for the proposal was expressed in a separate comment above.
VF-3035. Bane Act (Civ. Code, § 52.1) (*Revise*)	Commenters for CACI No. 3066 above	See comments on CACI No. 3066 above.	No further responses required.
	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. We agree with the other proposed revisions to the verdict form.	The committee acknowledges California Lawyer Association's support for the proposed changes.
		b. We would add language to the Directions for Use on when to give the first alternative question 1.	As with CACI No. 3066, the committee considered additional

Instruction(s)	Commenter	Comment	Committee Response
			language in the Directions for Use on alternative question 1 but does not recommend it.
		c. We agree with the other proposed revisions to the Directions for Use.	No further response required.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
3704. Existence of "Employee" Status Disputed (*Revise*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Bruce Greenlee Attorney Richmond	1. Directions for Use: the deletion of the sentence from B&P 7451: This requires some explanation. Why was it deleted? The statute has not been repealed or amended. Was there a case that addressed the statute? If so, you need to cite that case and explain how it affected the statute.	Based on a user suggestion, the committee recommended deleting the sentence in the Directions for Use because it does not directly relate to vicarious liability for tort claims, which is the subject of CACI No. 3704. The committee agrees that the statute remains in effect.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Disagree. There is a different test for app drivers articulated in Bus. & Prof. Code, § 7451, which was recently upheld by the California Supreme Court in *Castellanos v. State of California*, 16 Cal. 5th 588 (2024). *See also* EDD website at: https://edd.ca.gov/en/payroll_taxes/employment-status/	The committee agrees that a different test exists for determining whether app drivers are independent contractors as set forth in Business and Professions Code section 7451.

Instruction(s)	Commenter	Comment	Committee Response
			However, the committee recommends deleting the content because it does not directly relate to vicarious liability for tort claims, which is the subject of CACI No. 3704.
3713. Nondelegable Duty (*Revise*)	Association of Southern California Defense Counsel by Stephen E. Norris Horvitz & Levy LLP Sacramento	We write on behalf of the Association of Southern California Defense Counsel (ASCDC) to comment on the Advisory Committee's proposed addition to the "Directions for Use" to CACI No. 3713 regarding nondelegable duties of care. We fully support the addition, as it accurately reflects the impact of the *Privette* doctrine on claims by injured contractors and their employees that a hirer owes a nondelegable duty of care. (See *Privette v. Superior Court* (1993) 5 Cal.4th 689.) ASCDC submits this comment as the nation's largest and preeminent regional organization of lawyers who specialize in defending civil actions. Its members include over 1,100 attorneys in Central and Southern California, among whom are some of the leading trial and appellate lawyers of California's Civil defense bar. ASCDC appears often as amicus curiae in appellate matters of interest to its members, and has similarly weighed in on proposed legislation, rules changes, and jury instructions affecting matters of civil procedure and other aspects of ASCDC members' practices. CACI No. 3713 instructs that a plaintiff who is hired to perform a particular task may recover from the hirer for breach of a nondelegable duty of care "imposed on the hirer by statute, regulation, ordinance, contract, or common law." (See *Barry v. Raskov* (1991) 232 Cal.App.3d 447, 455.) The Committee's proposed revision would add a use note following the instruction stating that the instruction "should	The committee acknowledges ASCDC's support for the proposed change.

Instruction(s)	Commenter	Comment	Committee Response
		generally not be given in a case brought against a hirer by an injured independent contractor or contractor's employee that is governed by the *Privette* doctrine." The Committee's proposed use note on the nondelegable duty issue aligns with and is supported by California Supreme Court and Court of Appeal decisions addressing the *Privette* doctrine, which gives rise to "a strong presumption under California law that a hirer of an independent contractor *delegates* to the contractor all responsibility for workplace safety." (*Gonzalez v. Mathis* (2021) 12 Cal.5th 29, 37 (*Gonzalez*), emphasis added; see *id.* at p. 41 ["delegation as the key principle" supporting *Privette*]; accord, *Sandoval v. Qualcomm Incorporated* (2021) 12 Cal.5th 256, 264.) Through this delegation, an independent contractor "receives authority to determine how the work is to be performed and assumes a corresponding responsibility to see that the work is performed safely." (*Tverberg v. Fillner Construction, Inc.* (2010) 49 Cal.4th 518, 528; accord, *SeaBright Ins. Co. v. US Airways, Inc.* (2011) 52 Cal.4th 590, 602.) Consistent with California Supreme Court holdings, "[w]hatever reasonable care would otherwise have demanded of the hirer, that demand lies now only with the contractor" and should a contract worker become injured after the delegation, "we presume that the contractor alone—and not the hirer—was responsible for any failure to take reasonable precautions." (*Sandoval*, at p. 271; see *Gonzalez*, at p. 41; *SeaBright*, at p. 602 [hirer delegates to contractor duty to comply with OSHA regulations that apply to work performed by contractor].) In *Acosta v. MAS Realty, LLC* (2023) 96 Cal.App.5th 635, 665, footnote 7, the Court of Appeal recognized that instructions imposing a nondelegable duty on hirers of contractors and their employees could in some cases conflict	

Instruction(s)	Commenter	Comment	Committee Response
		with the "strong presumption" under the *Privette* doctrine that the hirer *delegates* to the contractor "all responsibility for workplace safety." (*Gonzalez*, *supra*, 12 Cal.5th at p. 37.) As the court recognized in *Acosta*, it makes no sense to instruct the jury that the hirer has a "nondelegable" duty in cases where the hirer has delegated to the contractor all responsibility for workplace safety. (*Acosta*, at p. 665, fn. 7.) As reflected by the foregoing authorities, the proposed addition to the "Directions for Use" of CACI No. 3713 that the instruction should generally not be given in an action governed by the *Privette* doctrine properly reflects California law. The further clarification given by the proposed revision—that " 'the basic rule that a hirer is typically not liable for injuries sustained by an independent contractor or its workers while on the job' " because " 'the hirer presumptively delegates to the independent contractor the authority to determine the manner in which the work is to be performed' "—is likewise fully consistent with the *Privette* doctrine. For these reasons, we fully support the proposed addition to CACI No. 3713. We believe this revision will provide much-needed guidance to courts in determining appropriate instructions for nondelegable duty claims between hirers and contractors within the framework of the *Privette* doctrine. ASCDC therefore respectfully urges the Committee adopt the proposed addition to CACI No. 3713.	
	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee	Agree.	No response required.

ITC CACI 25-01
Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)
All comments are verbatim unless indicated by an asterisk (*)

Instruction(s)	Commenter	Comment	Committee Response
	Sacramento		
	Bruce Greenlee Attorney Richmond	1. Directions for Use: new material, parenthetical on *Gonzalez*: Pet peeve Change "even where" to "even if" as no location is involved.	The quoted material in the parenthetical is a direct quote from *Gonzalez*. The committee does not recommend the suggested change.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
4013. Disqualification From Voting (*Revise*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	a. The proposed revision to the instruction repeats the grounds for a finding of gravely disabled that are stated in CACI No. 4000, *Conservatorship—Essential Factual Elements*. We find it unnecessary and unhelpful to repeat those grounds in this instruction. We suggest the following revisions: "If you find that [*name of respondent*]~~, as a result of [a mental health disorder/a severe substance use disorder/a co-occurring mental health disorder and a severe substance use disorder/impairment by chronic alcoholism]~~, is gravely disabled, then you must also decide whether [he/she/*nonbinary pronoun*] should also be disqualified from voting. To disqualify [*name of respondent*] from voting, all 12 jurors must find, by clear and convincing evidence, that [he/she/*nonbinary pronoun*] cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process."	The committee recommends deleting entirely the basis for finding a respondent gravely disabled, which is already addressed in other instructions in the Lanterman-Petris-Short Act series (CACI series 4000), from the first sentence. The proposed additions to the "as a result of" clause are therefore no longer recommended.
		b. We would revise the first sentence of the Directions for Use for greater clarity:	The committee agrees that a cross-reference to CACI No. 4000 in the Directions for Use

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Instruction(s)	Commenter	Comment	Committee Response
		"Give ~~T~~this instruction ~~is to be used in proceedings subject to Elections Code section 2208(b) and should be given~~ with CACI No. 4000, *Conservatorship—Essential Factual Elements*, if the petition prays for this relief."	would be helpful to users, and, therefore, recommends including it as suggested. The committee, however, declines to remove the citation to Election Code section 2208.
	Bruce Greenlee Attorney Richmond	1. DforU: Why are the four requirements from the statute being deleted? They are still in the statute. Seems that the jury would want to know about them even though the judge will find if one of them applies.	The committee's proposed change is in the Directions for Use. The proposed deletion is not part of CACI No. 4013's instructional content and is not given to a jury. The committee decided that the Directions for Use did not need to restate in full the four requirements set out in the statute when a citation to the Elections Code will suffice.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
4306. Termination of Month-to-Month Tenancy—Essential Factual Elements (*Revise*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	We agree with the proposed revisions, except the citation to Civil Code section 1946.1(j) in the Sources and Authorities should be to section 1946.1(k).	The committee recommends correcting the typographical error.
	Bruce Greenlee Attorney Richmond	1. S&A new statute added: The definitions of "commercial real property" and "qualified commercial tenant" are in subdivision (k) of the statute (1) and (4), not (j).	The committee recommends correcting the typographical error.

Instruction(s)	Commenter	Comment	Committee Response
	Orange County Bar Association by Mei Tsang, President Newport Beach	At "Directions for Use," fourth item, third sentence, the proposal inserts the phrase "or commercial tenancies by qualified commercial tenants," into the sentence previously only referencing residential tenancies. As to residential tenancies then, this drafting made the phrase "of a year or more" appear to apply only to commercial tenancies by qualified commercial tenants. To make clear both such tenancies require a 60 day notice, it is suggested that following "residential tenancies," the phrase "of a year or more" be inserted so that the sentence reads as follows: For residential tenancies of a year or more or commercial tenancies by qualified commercial tenants of a year or more, 60 days' notice is generally required.	The committee recommends the clarifying language by adding "of a year or more" after the phrase residential tenancies.
		At "Sources and Authority," seventh item (as proposed), the proposal adds the definition for "Commercial Real Property" and for "Qualified Commercial Tenant," as each is set forth in the Civil Code. For these definitions, the proposal incorrectly cites section 1946.1(j). More accurately, "Commercial real property" is defined at section 1946.1(k)(1), and "Qualified commercial tenant" at section 1946.1(k)(4).	The committee recommends correcting the typographical error. The committee does not recommend adding the specific paragraph citations.
4307. Sufficiency and Service of Notice of Termination of Month-to-Month Tenancy (*Revise*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	We agree with the proposed revisions, except the citation to Civil Code section 1946.1(j) in the Sources and Authorities should be to section 1946.1(k).	The committee recommends correcting the typographical error.
	Bruce Greenlee Attorney Richmond	Same comment as CACI No. 4306.	The committee recommends correcting the typographical error.

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Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)
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Instruction(s)	Commenter	Comment	Committee Response
	Orange County Bar Association by Mei Tsang, President Newport Beach	At "Directions for Use," first item, third sentence, the proposal inserts the phrase "or commercial tenancies by qualified commercial tenants," into the sentence previously only referencing residential tenancies. As to residential tenancies then, this drafting made the phrase "of a year or more" appear to apply only to commercial tenancies by qualified commercial tenants. To make clear both such tenancies require a 60 day notice, it is suggested that following "residential tenancies," the phrase "of a year or more" be inserted so that the sentence reads as follows: For residential tenancies of a year or more or commercial tenancies by qualified commercial tenants of a year or more, 60 days' notice is generally required.	The committee recommends the clarifying language by adding "of a year or more" after the phrase residential tenancies.
		At "Sources and Authority," fifth item (as proposed), the proposal adds the definition for "Commercial Real Property" and for "Qualified Commercial Tenant," as each is set forth in the Civil Code. For these definitions, the proposal incorrectly cites section 1946.1(j). More accurately, "Commercial real property" is defined at section 1946.1(k)(1), and "Qualified commercial tenant" at section 1946.1(k)(4).	The committee recommends correcting the typographical error.
4409. Remedies for Misappropriation of Trade Secret (*Revise*)	California Employment Lawyers Association by Barbara Figari Cowan, Chair	We write to propose further clarifications to CACI 4409 "Remedies for Misappropriation of Trade Secret," and CACI No. 4401 "Misappropriation of Trade Secrets—Essential Factual Elements," which Courts are instructed to provide to jurors concurrently. *See* CACI 4409 "Directions for Use" (stating "Give this instruction with CACI No. 4401, *Misappropriation of Trade Secrets –Essential Factual Elements* . . . . ").	This comment is beyond the scope of the invitation to comment. The committee will consider the comment in a future release.

Instruction(s)	Commenter	Comment	Committee Response
		CACI 4409 should include a clarifying sentence making clear the current state of that law, that a misappropriation of trade secrets cannot be found if the disclosure was made solely to the party's counsel. For example, in employment cases, the California Supreme Court and Courts of Appeal specifically have held that an party's disclosure of information which may constitute trade secrets – *e.g.*, attorney-client privileged information obtained from their former employer in the course of their employment – may be disclosed to the employee's own attorney for the purpose of evaluating the employee's claims and/or determining whether such information constitutes admissible evidence. *Chubb & Son v. Superior Court* (2014) 228 Cal.App.4th 1094, 1106; *Fox Searchlight Pictures, Inc. v.Paladino* (2001) 89 Cal.App.4th 294, 314-15. Presently, however, neither CACI No. 4401 nor 4409 include this exception in the instructions or in the use notes. Even the new proposed CACI 4409 does not accurately reflect California law.	
		Accordingly, CACI No. 4409 should be amended to include a clarifying sentence at the end of the first paragraph such that it remains in accordance with current California law: **If [***name of plaintiff***] proves that [***name of defendant***] misappropriated [his/her/nonbinary pronoun/its] trade secret[s], then [***name of plaintiff***] is entitled to recover damages if the misappropriation caused [[***name of plaintiff***] to suffer an actual loss [or] [***name of defendant***] to be unjustly enriched], unless the disclosure was made solely to the party's counsel.**	This comment is beyond the scope of the invitation to comment. The committee will consider the comment in a future release.

Instruction(s)	Commenter	Comment	Committee Response
		[If [*name of defendant's***] disclosure was made solely to [his/her/nonbinary pronoun's] counsel, [**name of plaintiff**] is not entitled to recover any damages].** **[If [***name of defendant***]'s misappropriation did not cause [***name of plaintiff***] to suffer an actual loss [or] [***name of defendant***] to be unjustly enriched, [***name of plaintiff***] may still be entitled to a reasonable royalty for no longer than the period of time the use could have been prohibited. However, I will calculate the amount of any royalty.]**	
		CACI No. 4401 should likewise be amended to include this important distinction, consistent with current California law, in the third essential factual elements. Specifically, the plaintiff in an action for misappropriation for trade secrets must show that: **3. That [***name of defendant***] improperly [acquired/used/ [or] disclosed] the trade secret[s] [to a person other than the party's counsel].**	This comment is beyond the scope of the invitation to comment. The committee will consider the comment in a future release.
		These amendments are necessary to ensure that the CACI instructions are consistent with the statutory text and current case law governing the misappropriation of trade secrets in all matters in which the claim may arise, and further, to make clear that a plaintiff is not entitled to damages in situations where disclosure of potentially protected information was made solely to counsel for the defendant. Any such disclosures emphatically do *not* constitute a misappropriation of trade secrets, and the jury instructions must be clear to ensure that laypersons are properly instructed regarding this important legal distinction. Should these amendments not be enacted, a jury could be improperly instructed that a plaintiff is entitled to a legal finding and/or damages for a disclosure solely to a	This comment is beyond the scope of the invitation to comment. The committee will consider the comment in a future release.

ITC CACI 25-01
Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)
All comments are verbatim unless indicated by an asterisk (*)

Instruction(s)	Commenter	Comment	Committee Response
		defendant's attorney. That would constitute an instructional error and endanger the finality of any such verdict rendered pursuant to such an error. Moreover, the lack of such clarity unnecessarily encumbers judicial resources by leaving open for appeal matters that could have easily and been adequately addressed at the trial stage with proper instruction found within the CACI, versus relying upon a special instruction being properly crafted and/or issued by the trial court. We appreciate the Council's commitment to maintaining the integrity of California's legal system and urge careful reconsideration and rejection of these proposed changes.	
	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
4601. Protected Disclosure by State Employee—California Whistleblower Protection Act—Essential Factual Elements (Gov. Code, § 8547.8(c)) (*Revise*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.

ITC CACI 25-01

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

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

Instruction(s)	Commenter	Comment	Committee Response
4602. Affirmative Defense—Same Decision (Gov. Code, § 8547.8(e)) (*Revise*)	California Lawyers Association by Reuben A. Ginsburg, Chair Jury Instructions Committee Sacramento	Agree.	No response required.
	Orange County Bar Association by Mei Tsang, President Newport Beach	Agree.	No response required.
All instructions in CACI 25-01	Joel Cornejo San Jose	Agree with proposed changes.	No response required.
	Gladys Maria Dempsey Whitney Swan Quarter, North Carolina	Agree with proposed changes. When will preparation tell the people SB 1331. [*Verbatim comment; appears to be incomplete.]	No response required. To the extent the comment is about Sen. Bill 1331 (2023-2024 legislative session), which was not enacted, the committee has no plans to address the proposed legislation.
	Superior Court of Los Angeles County by Robert Oftring, Chief Communications and External Affairs Officer	Agree with proposed changes.	No response required.
	Superior Court of San Bernardino County by Nicole J. Owens, Court Operations Manager	Agree with proposed changes.	No response required.

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 6/3/25

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

Title of proposal: Jury Instructions: Civil Jury Instructions With Minor or Nonsubstantive Revisions (Release 47)

Proposed rules, forms, or standards (include amend/revise/adopt/approve)*:*
Judicial Council of California Civil Jury Instructions: Revise CACI Nos. 1009B, 1402, VF-1803, VF-1804, 1901, 2511, 3063, 3064, 3071, 3201, 3244, 4002, 4329, 4401, and 4410.

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

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

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (*date*): 10/22/24
Project description from annual agenda: 5. Maintenance—Sources and Authority; 6. Maintenance—Secondary Sources; and 7. Technical Corrections

Out of Cycle/Early Implementation: *If requesting July 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

- **Director Approval** (required for all invitations to comment and reports)
  This report or invitation to comment was:
  ☒ reviewed by EGG on *(date)* 4/2/25
  ☒ approved by Office Director (or Designee) (*name*) Michael Giden
  on (date) 4/28/25

If either of above not checked, explain why:

Complete the following for all reports to be submitted to council (optional for ITCs):

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

M E M O R A N D U M

Date
May 5, 2025

To
Members of the Rules Committee

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

Subject
Jury Instructions: Civil Jury Instructions With Minor or Nonsubstantive Revisions (Release 47)

Action Requested
Review and Approve Publication of Instructions

Deadline
June 3, 2025

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

Executive Summary

The Advisory Committee on Civil Jury Instructions recommends that the Rules Committee approve revisions to the *Judicial Council of California Civil Jury Instructions (CACI)* to maintain and update those instructions. The 15 instructions and verdict forms in this release, which were prepared by the advisory committee, contain the types of revisions that the Judicial Council has given the Rules Committee final authority to approve—primarily changes to the Sources and Authority and other changes that are unlikely to cause controversy or are nonsubstantive.

Recommendation

The Advisory Committee on Civil Jury Instructions recommends that the Rules Committee approve for publication, effective July 18, 2025, revisions to 15 civil jury instructions and verdict forms, prepared by the advisory committee, that contain changes that do not require posting for public comment or full Judicial Council approval: CACI Nos. 1009B, 1402, VF-1803, VF-1804, 1901, 2511, 3063, 3064, 3071, 3201, 3244, 4002, 4329, 4401, and 4410.

These instructions will be published in the 2025 edition of *CACI* and posted online on the California Courts website.

The revised instructions are attached at pages 5–53.

Relevant Previous Council Action

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

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

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

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

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

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

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

[4] The committee presents only nonsubstantive changes to the Directions for Use for the Rules Committee's final approval. Substantive changes are posted for public comment and presented to the Judicial Council for approval.

(e) Changes to instruction text required by subsequent developments (such as new cases or legislative amendments), provided that the change, though substantive, is both necessary and unlikely to create controversy; and

(f) Revocation of instructions for which any fundamental legal basis of the instruction is no longer valid because of statutory amendment or case law.

Analysis/Rationale

Overview of revisions

Most instructions in this release (11 of 15) have proposed revisions under category (a) above (additions, substitutions, and deletions in the Sources and Authority). Two instructions (CACI Nos. 3244 and 4002) have changes under categories (c) and (d) above to add subsequent history to a citation in the Directions for Use and to implement a minor change in statutory language, respectively. Two verdict forms (CACI No. VF-1803 and VF-1804) have changes to the titles and bracketed verdict form text that correspond to changes recommended by the advisory committee after public comment and are anticipated to be approved by the Judicial Council in July 2025.[5] These changes fall under categories (d) and (e) above and conform the verdict forms' titles and content to the corresponding jury instructions that are expected to be approved by the council as release 47.[6]

Standards for adding case excerpts to Sources and Authority

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

- *CACI* Sources and Authority are in the nature of a digest. Entries should be direct quotes from cases. However, all cases that may be relevant to the subject area of an instruction need not be included, particularly if they do not involve a jury matter.
- Each legal component of the instruction should be supported by authority—either statutory or case law.
- Authority addressing the burden of proof should be included.
- Authority addressing the respective roles of judge and jury (questions of law and questions of fact) should be included.
- Only one case excerpt should be included for each legal point.

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[5] The committee's recommendations for CACI Nos. 1803 and 1804A will be available on the agenda for the July 18, 2025, Judicial Council meeting at *https://jcc.legistar.com/Calendar.aspx*.

[6] The minor substantive changes recommended for CACI Nos. 1803 and 1804A circulated for public comment. The changes did not generate controversy and the minor corresponding changes in the verdict forms will keep them current with the jury instructions as recommended by the committee after comment. If the council does not approve these instructions in release 47, the committee will withdraw the recommended changes to CACI No. VF-1803 and VF-1804.

- California Supreme Court authority should always be included, if available.
- If no Supreme Court authority is available, the most recent California appellate court authority for a point should be included.
- A U.S. Supreme Court case should be included on any point for which it is the controlling authority.
- A Ninth Circuit Court of Appeals case may be included if the case construes California law or federal law that is the subject of the *CACI* instruction.
- Other cases may be included if deemed particularly useful to the users.
- The fact that the committee chooses to include a case excerpt in the Sources and Authority does not mean that the committee necessarily believes that the language is binding precedent. The standard is simply whether the language would be useful or of interest to users.

Policy implications

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

Comments

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

Alternatives considered

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

Fiscal and Operational Impacts

There are no implementation costs.

Attachments and Links

1. Proposed revised *CACI* instructions, at pages 5–53

CIVIL JURY INSTRUCTIONS
(Release 47; For Rules Committee Approval)
TABLE OF CONTENTS

TRADE SECRETS

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

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

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

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

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

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

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

Directions for Use

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

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

Sources and Authority

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

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

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

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

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

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

- "If a hirer entrusts work to an independent contractor, but retains control over safety conditions at a jobsite and then negligently exercises that control in a manner that affirmatively contributes to

an employee's injuries, the hirer is liable for those injuries, based on its own negligent exercise of that retained control." (*Tverberg v. Fillner Constr., Inc.* (2012) 202 Cal.App.4th 1439, 1446 [136 Cal.Rptr.3d 521].)

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

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

- "[A] hirer may be liable for failing to undertake a promised safety measure." *(Degala (Abraham) v. John Stewart Company* (2023) 88 Cal.App.5th 158, 168 [304 Cal.Rptr.3d 576].)

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

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

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

not constitute an 'affirmative contribution' to an injury within the meaning of *McKown*." (*Delgadillo v. Television Center, Inc.* (2018) 20 Cal.App.5th 1078, 1093 [229 Cal.Rptr.3d 594], original italics.)

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

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

Secondary Sources

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

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

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

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

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

1402. False Arrest Without Warrant—Affirmative Defense—Peace Officer—Probable Cause to Arrest

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[*Name of defendant***] claims the arrest was not wrongful because [he/she/***nonbinary pronoun***] had the authority to arrest [***name of plaintiff***] without a warrant.**

[If [*name of defendant***] proves that [***insert facts that, if proved, would constitute reasonable cause to believe that plaintiff had committed a crime in defendant's presence***], then [***name of defendant***] had the authority to arrest [***name of plaintiff***] without a warrant.]**

[*or***]**

[If [*name of defendant***] proves that [***insert facts that, if proved, would establish that defendant had reasonable cause to believe that plaintiff had committed a felony, whether or not a felony had actually been committed***], then [***name of defendant***] had the authority to arrest [***name of plaintiff***] without a warrant.]**

New September 2003

Directions for Use

In the brackets, the judge must insert the fact or facts that are actually controverted and that may be necessary to arrive at the probable cause determination. There may be one or more facts or combinations of facts that are necessary to make this determination, in which case they can be phrased in the alternative.

If a criminal act is alleged as justification, it may be necessary to instruct whether the crime is a felony, misdemeanor, or public offense.

Penal Code section 836 provides, in part, that a warrantless arrest may be made if a person has committed a felony, although not in the officer's presence. While the requirement of probable cause is not explicitly stated, it would seem that the officer must always have probable cause at the time of the arrest and that subsequent conviction of a felony does not sanitize an improper arrest.

If the first bracketed paragraph is used, the judge should include "in the officer's presence" as part of the facts that the jury needs to find if there is a factual dispute on this point.

Sources and Authority

- Arrest Without a Warrant. Penal Code section 836(a), (f).
- Felonies and Misdemeanors. Penal Code section 17(a).
- "Peace Officers" Defined. Penal Code section 830 et seq.

- "An officer is not liable for false imprisonment for the arrest without a warrant of a person whom he has reasonable grounds to believe is guilty of a crime." (*Allen v. McCoy* (1933) 135 Cal.App. 500, 507–508 [27 P.2d 423].)

- "[P]robable cause for arrest in a criminal proceeding is the same as probable cause in a civil case for damages alleging false arrest." (*Carcamo v. Los Angeles County Sheriff's Dept.* (2021) 68 Cal.App.5th 608, 620–621 [283 Cal.Rptr.3d 647].)

- "It has long been the law that a cause of action for false imprisonment is stated where it is alleged that there was an arrest without process, followed by imprisonment and damages. Upon proof of those facts the burden is on the defendant to prove justification for the arrest. Considerations of both a practical and policy nature underlie this rule. The existence of justification is a matter which ordinarily lies peculiarly within the knowledge of the defendant. The plaintiff would encounter almost insurmountable practical problems in attempting to prove the negative proposition of the nonexistence of any justification. This rule also serves to assure that official intermeddling is justified, for it is a serious matter to accuse someone of committing a crime and to arrest him without the protection of the warrant process." (*Cervantez v. J. C. Penney Co.* (1979) 24 Cal.3d 579, 592 [156 Cal.Rptr. 198, 595 P.2d 975], footnote and internal citations omitted.)

- "We look to whether facts known to the arresting officer 'at the moment the arrest was made' ' "would persuade someone of 'reasonable caution' that the person to be arrested has committed a crime." ' " (*Cornell v. City & County of San Francisco* (2017) 17 Cal.App.5th 766, 779 [225 Cal.Rptr.3d 356], internal citations omitted.)

- "If the facts that gave rise to the arrest are undisputed, the issue of probable cause is a question of law for the trial court. When, however, the facts that gave rise to the arrest are controverted, the trial court must instruct the jury as to what facts, if established, would constitute probable cause. 'The trier of fact's function in false arrest cases is to resolve conflicts in the evidence. Accordingly, where the evidence is conflicting with respect to probable cause, " 'it [is] the duty of the court to instruct the jury as to what facts, if established, would constitute probable cause.' " … The jury then decides whether the evidence supports the necessary factual findings.' " (*Levin v. United Air Lines, Inc.* (2008) 158 Cal.App.4th 1002, 1018–1019 [70 Cal.Rptr.3d 535], internal citations omitted.)

- "The legal standard we apply to assess probable cause is an objective one in which the subjective motivations of the arresting officers have no role. But it is an overstatement to say that what is in the mind of an arresting officer is wholly irrelevant, for the objective test of reasonableness is simply a measure by which we assess whether the circumstances as subjectively perceived by the officer provide a reasonable basis for the seizure." (*Cornell, supra,* 17 Cal.App.5th at p. 779, internal citations omitted.)

- "The arrests of plaintiffs were justified only if defendants can meet their burden to show the arresting officer had probable cause, which is objectively reasonable cause to believe plaintiffs committed a crime. 'California courts speak of "reasonable cause" and "probable cause" interchangeably.' Can a law enforcement agency have objectively reasonable cause to believe plaintiffs committed a crime if deputies arrest them for violating a statute our Supreme Court declared void more than half a century ago? The answer is no." (*Carcamo, supra,* 68 Cal.App.5th at 618.)

- " 'Presence' is not mere physical proximity but is determined by whether the offense is apparent to the officer's senses." (*People v. Sjosten* (1968) 262 Cal.App.2d 539, 543–544 [68 Cal.Rptr. 832], internal citations omitted.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 509, 511

3 Levy et al., California Torts, Ch. 42, *False Imprisonment and False Arrest*, § 42.23 (Matthew Bender)

22 California Forms of Pleading and Practice, Ch. 257, *False Imprisonment*, § 257.20 (Matthew Bender)

10 California Points and Authorities, Ch. 103, *False Imprisonment*, § 103.65 et seq. (Matthew Bender)

California Civil Practice: Torts §§ 13:22–13:24 (Thomson Reuters)

VF-1803. Privacy—~~Appropriation~~ Misappropriation of Name ~~or ,~~ Likeness, or Identity

We answer the questions submitted to us as follows:

1. **Did [*name of defendant*] use [*name of plaintiff*]'s [name~~,~~ /likeness~~, or~~ /identity]?**
   ____ Yes ____ No

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

2. **Did [*name of plaintiff*] consent to the use of [his/her/*nonbinary pronoun*] [name~~,~~ /likeness~~, or~~ /identity]?**
   ____ Yes ____ No

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

3. **Did [*name of defendant*] gain a commercial benefit [or some other advantage] by using [*name of plaintiff*]'s [name~~,~~ /likeness~~, or~~ /identity]?**
   ____ Yes ____ No

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

4. **Was [*name of defendant*]'s conduct a substantial factor in causing harm to [*name of plaintiff*]?**
   ____ Yes ____ No

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

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

   [a. Past economic loss

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

   Total Past Economic Damages: $ _____]

   [b. Future economic loss

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

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

$ _____]

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

$ _____]

TOTAL $ _____

Signed: _____
Presiding Juror

Dated: _____

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

New September 2003; Revised April 2007, December 2010, December 2016, November 2017, May 2024, July 2025

Directions for Use

This verdict form is based on CACI No. 1803, ~~*Appropriation*~~ *Misappropriation of Name, ~~or~~ Likeness, or Identity*.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If

different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

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

VF-1804. Privacy—~~Use~~ Misappropriation of Name, Voice, Signature, Photograph, or Likeness (Civ. Code, § 3344)

We answer the questions submitted to us as follows:

1. **Did [*name of defendant*] knowingly use [*name of plaintiff*]'s [name/voice/signature/photograph/likeness] on merchandise or to advertise or sell products or services?**
____ Yes ____ No

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

2. **Did [*name of defendant*] have [*name of plaintiff*]'s consent?**
____ Yes ____ No

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

3. **Was [*name of defendant*]'s use of [*name of plaintiff*]'s [name/voice/signature/photograph/likeness] directly connected to [*name of defendant*]'s commercial purpose?**
____ Yes ____ No

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

4. **Was [*name of defendant*]'s conduct a substantial factor in causing harm to [*name of plaintiff*]?**
____ Yes ____ No

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

[5. **Did [*name of plaintiff*] suffer any actual damages or is [*name of plaintiff*] reasonably likely to suffer any actual damages in the future?**
____ Yes ____ No

If your answer to question 5 is yes, then answer questions 6 and 7. If you answered no, answer question 7.]

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

[a. Past economic loss

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

Total Past Economic Damages: $ _____]

[b. Future economic loss

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

Total Future Economic Damages: $ _____]

[c. Past noneconomic loss, including [humiliation/embarrassment/mental distress including any physical symptoms:]

$ _____]

[d. Future noneconomic loss, including [humiliation/embarrassment/mental distress including any physical symptoms:]

$ _____]

TOTAL ACTUAL DAMAGES $ _____

[7. Did [*name of defendant***] receive any profits from the use of [***name of plaintiff***]'s [name/voice/signature/photograph/likeness] that you did not include under [***name of plaintiff***]'s actual damages for lost profits in Question 6 above?**
____ Yes ____ No

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

8. What amount of those profits did [*name of defendant***] receive from the use of [***name of plaintiff***]'s [name/voice/signature/photograph/likeness]?**

TOTAL PROFITS RECEIVED BY DEFENDANT $ _____]

Signed: _____

Presiding Juror

Dated: _____

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

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*New September 2003; Revised April 2007, April 2008, December 2010, June 2012, December 2012, December 2016, May 2024, July 2025**

Directions for Use

This verdict form is based on CACI No. 1804A, ~~*Use*~~ *Misappropriation of Name, Voice, Signature, Photograph, or Likeness,* and CACI No. 1821, *Damages for Use of Name or Likeness.*

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case.

Under Civil Code section 3344(a), the plaintiff may recover actual damages or $750, whichever is greater. The plaintiff may also recover any profits that the defendant received from the unauthorized use that were not taken into account in calculating actual damages. (*Orthopedic Systems Inc. v. Schlein* (2011) 202 Cal.App.4th 529, 547 [135 Cal.Rptr.3d 200].) The advisory committee recommends calculating the defendant's profits to be disgorged separately from actual damages. Questions 5 through 8 take the jury through the recommended course. If no actual damages are sought, question 5 may be omitted and the jury instructed to enter $750 as the total actual damages in question 6. If the jury awards actual damages of less than $750, the court should raise the amount to $750. If there is no claim to disgorge the defendant's wrongful profits, questions 7 and 8 may be omitted.

Additional questions may be necessary if the facts implicate Civil Code section 3344(d) (see Directions for Use under CACI No. 1804B, ~~*Use*~~ *Misappropriation of Name, Voice, Signature, Photograph, or Likeness—Use in Connection With News, Public Affairs, or Sports Broadcast or Account, or Political Campaign*).

If specificity is not required, users do not have to itemize all the actual damages listed in question 6 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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

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

1901. Concealment

[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] was harmed because [***name of defendant***] concealed certain information. To establish this claim, [***name of plaintiff***] must prove all of the following:**

[1. **(a) That [***name of defendant***] and [***name of plaintiff***] were [***insert type of fiduciary relationship, e.g., "business partners"***]; and**

(b) That [*name of defendant***] intentionally failed to disclose certain facts to [***name of plaintiff***];]**

[or]

[1. **That [***name of defendant***] disclosed some facts to [***name of plaintiff***] but intentionally failed to disclose [other/another] fact[s], making the disclosure deceptive;]**

[or]

[1. **That [***name of defendant***] intentionally failed to disclose certain facts that were known only to [him/her/***nonbinary pronoun***/it] and that [***name of plaintiff***] could not have discovered;]**

[or]

[1. **That [***name of defendant***] prevented [***name of plaintiff***] from discovering certain facts;]**

2. **That [***name of plaintiff***] did not know of the concealed fact[s];**

3. **That [***name of defendant***] intended to deceive [***name of plaintiff***] by concealing the fact[s];**

4. **That had the omitted information been disclosed, [***name of plaintiff***] reasonably would have behaved differently;**

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

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

New September 2003; Revised October 2004, December 2012, June 2014, June 2015

Directions for Use

Give this instruction if it is alleged that the defendant concealed certain information to the detriment of the plaintiff. (See Civ. Code, § 1710(3).) Element 2 may be deleted if the third option for element 1 is selected.

Regarding element 1, before there can be liability for concealment, there must usually be a duty to disclose arising from a fiduciary or confidential relationship between the parties. However, in transactions that do not involve fiduciary or confidential relations, a duty to disclose material facts may arise in at least three instances: (1) the defendant makes representations but does not disclose facts that materially qualify the facts disclosed, or that render his disclosure likely to mislead (option 2); (2) the facts are known or accessible only to defendant, and defendant knows they are not known to or reasonably discoverable by the plaintiff (option 3); (3) the defendant actively conceals discovery from the plaintiff (option 4). (See *Warner Constr. Corp. v. L.A.* (1970) 2 Cal.3d 285, 294 [85 Cal. Rptr. 444, 466 P.2d 996].) For the second, third, and fourth options, if the defendant asserts that there was no relationship based on a transaction giving rise to a duty to disclose, the jury should also be instructed to determine whether the requisite relationship existed. (See *Hoffman v. 162 North Wolfe LLC* (2014) 228 Cal.App.4th 1178, 1187 [175 Cal.Rptr.3d 820].)

If element 4 is contested, give CACI No. 1907, *Reliance*, and CACI No. 1908, *Reasonable Reliance*. To avoid any possible confusion created by using "rely on the concealment" (see *Mirkin v. Wasserman* (1993) 5 Cal.4th 1082, 1093 [23 Cal.Rptr.2d 101, 858 P.2d 568].), CACI Nos. 1907 and 1908 may be modified to replace the words "rely," "relied," and "reliance" with language based on "behave differently" from element 4. It must have been reasonable for the plaintiff to have behaved differently had the omitted information been disclosed. (See *Hoffman, supra,* 228 Cal.App.4th at p. 1194 [concealment case].)

Sources and Authority

- Concealment. Civil Code section 1710(3).

- "[T]he elements of an action for fraud and deceit based on a concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage." (*Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 248 [129 Cal.Rptr.3d 874].)

- "The required elements for fraudulent concealment are (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would have acted differently if the concealed or suppressed fact was known; and (5) the plaintiff sustained damage as a result of the concealment or suppression of the material fact." (*Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 40 [324 Cal.Rptr.3d 433, 553 P.3d 1213].)

- "A duty to speak may arise in four ways: it may be directly imposed by statute or other prescriptive law; it may be voluntarily assumed by contractual undertaking; it may arise as an incident of a

relationship between the defendant and the plaintiff; and it may arise as a result of other conduct by the defendant that makes it wrongful for him to remain silent." (*SCC Acquisitions, Inc. v. Central Pacific Bank* (2012) 207 Cal.App.4th 859, 860 [143 Cal.Rptr.3d 711].)

- "In transactions which do not involve fiduciary or confidential relations, a cause of action for non-disclosure of material facts may arise in at least three instances: (1) the defendant makes representations but does not disclose facts which materially qualify the facts disclosed, or which render his disclosure likely to mislead; (2) the facts are known or accessible only to defendant, and defendant knows they are not known to or reasonably discoverable by the plaintiff; (3) the defendant actively conceals discovery from the plaintiff." (*Warner Construction Corp., supra,* 2 Cal.3d at p. 294, footnotes omitted.)

- "[O]ther than the first instance, in which there must be a fiduciary relationship between the parties, 'the other three circumstances in which nondisclosure may be actionable: presuppose[] the existence of some other relationship between the plaintiff and defendant in which a duty to disclose can arise. … "[W]here material facts are known to one party and not to the other, failure to disclose them is not actionable fraud unless there is *some relationship* between the parties which gives rise to a duty to disclose such known facts." [Citation.]' A relationship between the parties is present if there is 'some sort of *transaction* between the parties. [Citations.] Thus, a duty to disclose may arise from the relationship between seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual agreement.' " (*Hoffman, supra,* 228 Cal.App.4th at p. 1187, original italics, internal citations omitted.)

- "[A] plaintiff may assert a cause of action for fraudulent concealment based on conduct occurring in the course of a contractual relationship, if the elements of the claim can be established independently of the parties' contractual rights and obligations and the tortious conduct exposes the plaintiff to a risk of harm beyond the reasonable contemplation of the parties when they entered into the contract." (*Rattagan, supra,* 17 Cal.5th at p. 45.)

- "Even if a fiduciary relationship is not involved, a non-disclosure claim arises when the defendant makes representations but fails to disclose additional facts which materially qualify the facts disclosed, or which render the disclosure likely to mislead." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 666 [51 Cal.Rptr.2d 907], internal citations omitted.)

- " '[T]he rule has long been settled in this state that although one may be under no duty to speak as to a matter, "if he undertakes to do so, either voluntarily or in response to inquiries, he is bound not only to state truly what he tells but also not to suppress or conceal any facts within his knowledge which materially qualify those stated. If he speaks at all he must make a full and fair disclosure." ' " (*Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 613 [7 Cal.Rptr.2d 859].)

- "While a reasonable jury could, and in this case did, find these warnings inadequate for product liability purposes given [defendant]'s knowledge of the risk of NFCI's, these statements are not 'misleading "half-truths" ' that give rise to a duty to disclose in the absence of an otherwise sufficient relationship or transaction. To hold otherwise would unduly conflate two distinct areas of law, products liability and fraud, and transform every instance of inadequate product warning into a

potential claim for fraud." (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 313-314 [213 Cal.Rptr.3d 82].)

- "[F]raudulent intent is an issue for the trier of fact to decide." (*Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1061 [141 Cal.Rptr.3d 142].)

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

- "[P]laintiffs argue that actual reliance cannot logically be an element of a cause of action for deceit based on an omission because it is impossible to demonstrate reliance on something that one was not told. In support of the argument, plaintiffs cite *Affiliated Ute Citizens v. United States, supra,* 406 U.S. 128 (*Ute*) … , Interpreting Rule 10b-5, the high court held that 'positive proof of reliance is not a prerequisite to recovery' in a case 'involving primarily a failure to disclose … .' [¶] Contrary to plaintiffs' assertion, it is not logically impossible to prove reliance on an omission. One need only prove that, had the omitted information been disclosed, one would have been aware of it and behaved differently." (*Mirkin, supra,* 5 Cal.4th at p. 1093.)

- "The fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced. There is no duty resting upon a citizen to suspect the honesty of those with whom he [or she] transacts business. Laws are made to protect the trusting as well as the suspicious. [T]he rule of *caveat emptor* should not be relied upon to reward fraud and deception." (*Boschma, supra,* 198 Cal.App.4th at p. 249, original italics.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 912–919

Greenwald et al., California Practice Guide: Real Property Transactions, Ch. 11-E, *Damages For Fraud,* ¶ 11:354 (The Rutter Group)

3 Levy et al., California Torts, Ch. 40, *Fraud and Deceit and Other Business Torts*, § 40.03[2][b] (Matthew Bender)

23 California Forms of Pleading and Practice, Ch. 269, *Fraud and Deceit*, § 269.26 (Matthew Bender)

10 California Points and Authorities, Ch. 105, *Fraud and Deceit*, § 105.70 et seq. (Matthew Bender)

California Civil Practice: Torts § 22:16 (Thomson Reuters)

2511. Adverse Action Made by Decision Maker Without Animus (Cat's Paw)

In this case, the decision to [discharge/[*other adverse employment action***]] [***name of plaintiff***] was made by [***name of decision maker***]. Even if [***name of decision maker***] did not hold any [discriminatory/retaliatory] intent [or was unaware of [***name of plaintiff***]'s conduct on which the claim of retaliation is based], [***name of defendant***] may still be liable for [discrimination/retaliation] if [***name of decision maker***] followed a recommendation from or relied on facts provided by another person who had [discriminatory/retaliatory] intent.**

To succeed, [*name of plaintiff***] must prove both of the following:**

1. **That [***name of plaintiff***]'s [***specify protected activity or attribute***] was a substantial motivating reason for [***name of other person***]'s [***specify acts on which decision maker relied***]; and**

2. **That [***name of other person***]'s [***specify acts on which decision maker relied***] was a substantial motivating reason for [***name of decision maker***]'s decision to [discharge/[***other adverse employment action***]] [***name of plaintiff***].**

New December 2012; Revised June 2013, May 2020, November 2020

Directions for Use

Give this instruction if the "cat's paw" rule is a factor in the case. Under the cat's paw rule, the person who actually took the adverse employment action against the employee was not acting out of any improper animus. The decision maker, however, acted on information provided by another person who was acting out of discriminatory or retaliatory animus with the objective of causing the adverse employment action. The decision maker is referred to as the "cat's paw" of the person with the animus. (See *Reeves v. Safeway Stores, Inc.* (2004) 121 Cal.App.4th 95, 100 [16 Cal.Rptr.3d 717]; *McGrory v. Applied Signal Technology, Inc.* (2013) 212 Cal.App.4th 1510, 1536 [152 Cal.Rptr.3d 154] [accepting the legal premise that an employer may be held liable on the basis of a non-supervisor's discriminatory motivation].) The cases have not yet defined the scope of the cat's paw rule when the decision maker relies on the acts of a nonsupervisory coworker or other person involved in the employment decision,

The purpose of this instruction is to make it clear to the jury that they are not to evaluate the motives or knowledge of the decision maker, but rather to decide whether the acts of another person with animus actually caused the adverse action. Give the optional language in the second sentence of the first paragraph in a retaliation case in which the decision maker was not aware of the plaintiff's conduct that allegedly led to the retaliation (defense of ignorance). (See *Reeves, supra,* 121 Cal.App.4th at pp. 106–108.)

Element 1 requires that the protected activity or attribute be a substantial motivating reason for the retaliatory acts. Element 2 requires that the other person's improper motive be a substantial motivating reason for the decision maker's action. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; see also CACI No. 2507, *"Substantial Motivating Reason" Explained*.)

In both elements 1 and 2, all of the other person's specific acts need not be listed in all cases. Depending on the facts, doing so may be too cumbersome and impractical. If the specific acts are listed, the list should include all acts on which plaintiff claims the decision maker relied, not just the acts admitted to have been relied on by the decision maker.

Sources and Authority

- "This case presents the question whether an employer may be liable for retaliatory discharge when the supervisor who initiates disciplinary proceedings acts with retaliatory animus, but the cause for discipline is separately investigated and the ultimate decision to discharge the plaintiff is made by a manager with no knowledge that the worker has engaged in protected activities. We hold that so long as the supervisor's retaliatory motive was an actuating … cause of the dismissal, the employer may be liable for retaliatory discharge. Here the evidence raised triable issues as to the existence and effect of retaliatory motive on the part of the supervisor, and as to whether the manager and the intermediate investigator acted as tools or 'cat's paws' for the supervisor, that is, instrumentalities by which his retaliatory animus was carried into effect to plaintiff's injury." (*Reeves, supra,* 121 Cal.App.4th at p. 100.)

- "In the employment context, ' "cat's paw" refers to a situation in which a biased subordinate, who lacks decisionmaking power, uses the formal decisionmaker as a dupe in a deliberate scheme to trigger a discriminatory employment action. [Citation.]' Under the 'cat's paw' theory, a showing that any 'significant participant' in the adverse employment decision exhibited discriminatory animus is 'enough to raise an inference that the employment decision itself was discriminatory.' " (*Hoglund v. Sierra Nevada Memorial-Miners Hospital* (2024) 102 Cal.App.5th 56, 76 [321 Cal.Rptr.3d 448], internal citations omitted.)

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

- "Requiring the plaintiff to show that discrimination was a *substantial* motivating factor, rather than simply *a* motivating factor, more effectively ensures that liability will not be imposed based on evidence of mere thoughts or passing statements unrelated to the disputed employment decision. At the same time, … proof that discrimination was a *substantial* factor in an employment decision triggers the deterrent purpose of the FEHA and thus exposes the employer to liability, even if other factors would have led the employer to make the same decision at the time." (*Harris, supra,* 56 Cal.4th at p. 232, original italics.)

- "This concept—which for convenience we will call the 'defense of ignorance'—poses few analytical challenges so long as the 'employer' is conceived as a single entity receiving and responding to stimuli as a unitary, indivisible organism. But this is often an inaccurate picture in a world where a majority of workers are employed by large economic enterprises with layered and compartmentalized management structures. In such enterprises, decisions significantly affecting

personnel are rarely if ever the responsibility of a single actor. As a result, unexamined assertions about the knowledge, ignorance, or motives of 'the employer' may be fraught with ambiguities, untested assumptions, and begged questions." (*Reeves, supra,* 121 Cal.App.4th at p. 108.)

- "[S]howing that a significant participant in an employment decision exhibited discriminatory animus is enough to raise an inference that the employment decision itself was discriminatory, even absent evidence that others in the process harbored such animus." (*DeJung v. Superior Court* (2008) 169 Cal.App.4th 533, 551 [87 Cal.Rptr.3d 99]).

- "[W]e accept Employee's implicit legal premise that Employer could be liable for [the outside investigator's] discriminatory motivation if the male executives who actually terminated Employee were merely the cat's paws of a biased female investigator." (*McGrory v. Applied Signal Technology, Inc.* (2013) 212 Cal.App.4th 1510, 1536 [152 Cal.Rptr.3d 154].)

- "Certainly a defendant does not conclusively negate the element of causation by showing only that some responsible actors, but not all, were ignorant of the occasion for retaliation." (*Reeves, supra,* 121 Cal.App.4th at p. 108.)

- "Here a rational fact finder could conclude that an incident of minor and excusable disregard for a supervisor's stated preferences was amplified into a 'solid case' of 'workplace violence,' and that this metamorphosis was brought about in necessary part by a supervisor's desire to rid himself of a worker who created trouble by complaining of matters the supervisor preferred to ignore. Since those complaints were protected activities under FEHA, a finder of fact must be permitted to decide whether these inferences should in fact be drawn." (*Reeves, supra,* 121 Cal.App.4th at p. 121.)

- "Our emphasis on the conduct of *supervisors* is not inadvertent. An employer can generally be held liable for the discriminatory or retaliatory actions of supervisors. The outcome is less clear where the only actor possessing the requisite animus is a nonsupervisory coworker." (*Reeves, supra,* 121 Cal.App.4th at p. 109 fn. 9, original italics, internal citation omitted.)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1025, 1026, 1052, 1053

Chin et al., California Practice Guide: Employment Litigation, Ch. 7-A, *Title VII And The California Fair Employment And Housing Act*, ¶ 7:806.5 (The Rutter Group)

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.131 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.37[3][a] (Matthew Bender)

3063. Acts of Violence—Ralph Act—Essential Factual Elements (Civ. Code, § 51.7)

[*Name of plaintiff***] claims that [***name of defendant***] committed an act of violence against [him/her/***nonbinary pronoun***] because of [his/her/***nonbinary pronoun***] [race/color/religion/ancestry/national origin/political affiliation/sex/sexual orientation/age/disability/citizenship/primary language/immigration status/position in a labor dispute/[***insert other actionable characteristic***]]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] committed a violent act against [***name of plaintiff***] [or [his/her/***nonbinary pronoun***] property];**

2. **That a substantial motivating reason for [***name of defendant***]'s conduct was [[his/her/***nonbinary pronoun***] perception of] [***name of plaintiff***]'s [race/color/religion/ancestry/national origin/political affiliation/sex/sexual orientation/age/disability/citizenship/primary language/immigration status/position in a labor dispute/[***insert other actionable characteristic***]];**

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

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

Derived from former CACI No. 3023 December 2009; Renumbered from CACI No. 3023A December 2012; Revised June 2013, December 2016

Directions for Use

Use this instruction for a cause of action under the Ralph Act involving actual acts of violence alleged to have been committed by the defendant against the plaintiff. For an instruction involving only threats of violence, see CACI No. 3064, *Threats of Violence—Ralph Act—Essential Factual Elements*.

Note that element 2 uses the term "substantial motivating reason" to express both intent and causation between the protected classification and the defendant's acts. "Substantial motivating reason" has been held to be the appropriate standard under the Fair Employment and Housing Act to address the possibility of both discriminatory and nondiscriminatory motives. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; CACI No. 2507, *"Substantial Motivating Reason" Explained*.) Whether the FEHA standard applies under the Ralph Act has not been addressed by the courts.

Liability may also be found if a defendant "aids, incites, or conspires" in the denial of a right protected under Civil Code section 51.7. (Civ. Code, § 52(b).) This instruction should be modified if aiding, inciting, or conspiring is asserted as theories of liability. See also instructions in the Conspiracy series (CACI No. 3600 et seq.).

Sources and Authority

- Ralph Act. Civil Code section 51.7.
- Protected Characteristics. Civil Code section 51(b).
- Combination of Characteristics, Perception and Perceived Association. Civil Code section 51(e)(7).
- Remedies Under Ralph Act. Civil Code section 52(b).
- "The unambiguous language of this section gives rise to a cause of action in favor of a person against whom violence or intimidation has been committed or threatened." (*Coon v. Joseph* (1987) 192 Cal.App.3d 1269, 1277 [237 Cal.Rptr. 873].)
- "Under the Ralph Act, a plaintiff must establish the defendant threatened or committed violent acts against the plaintiff or their property, and a motivating reason for doing so was a prohibited discriminatory motive, or that [defendant] aided, incited, or conspired in the denial of a protected right." (*Gabrielle A. v. County of Orange* (2017) 10 Cal.App.5th 1268, 1291 [217 Cal.Rptr.3d 275].)
- "Nor do we agree with defendants that 'because of' logically means 'hatred.' Section 51.7 provides that all persons 'have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of …' specified characteristics, including sex, and provides for a civil remedy for violation of that right. Nothing in the statute requires that a plaintiff prove that the offending act was motivated by hate." (*Ventura v. ABM Industries Inc.* (2012) 212 Cal.App.4th 258, 269 [150 Cal.Rptr.3d 861].)
- "Section 51 by its express language applies only within California. It cannot (with its companion penalty provisions in § 52) be extended into the Hawaiian jurisdiction. A state cannot regulate or proscribe activities conducted in another state or supervise the internal affairs of another state in any way, even though the welfare or health of its citizens may be affected when they travel to that state." (*Archibald v. Cinerama Hawaiian Hotels, Inc.* (1977) 73 Cal.App.3d 152, 159 [140 Cal.Rptr. 599], internal citations omitted, disapproved on other grounds in *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24 [219 Cal.Rptr. 133, 707 P.2d 195].)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, § 989 et seq.

Gaab & Reese, California Practice Guide: Civil Procedure Before Trial Claims and Defenses, Ch. 14(IV)-B, *Ralph Civil Rights Act of 1976—Elements*, ¶ 14:940 (The Rutter Group)

Cheng et al., Cal. Fair Housing and Public Accommodations § 914:2, 14:39 (The Rutter Group)

11 California Forms of Pleading and Practice, Ch. 116, *Civil Rights: Discrimination in Business Establishments*, § 116.80 (Matthew Bender)

California Civil Practice: Civil Rights Litigation §§ 3:1–3:15 (Thomson Reuters)

3064. Threats of Violence—Ralph Act—Essential Factual Elements (Civ. Code, § 51.7)

[*Name of plaintiff***] claims that [***name of defendant***] intimidated [him/her/***nonbinary pronoun***] by threat of violence because of [his/her/***nonbinary pronoun***] [race/color/religion/ancestry/national origin/political affiliation/sex/sexual orientation/age/disability/citizenship/primary language/immigration status/position in a labor dispute/[***insert other actionable characteristic***]]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] intentionally threatened violence against [***name of plaintiff***] [or [his/her/***nonbinary pronoun***] property], [whether or not [***name of defendant***] actually intended to carry out the threat];**

2. **That a substantial motivating reason for [***name of defendant***]'s conduct was [[his/her/***nonbinary pronoun***] perception of] [***name of plaintiff***]'s [race/color/religion/ancestry/national origin/political affiliation/sex/sexual orientation/age/disability/citizenship/primary language/immigration status/position in a labor dispute/[***insert other actionable characteristic***]];**

3. **That a reasonable person in [***name of plaintiff***]'s position would have believed that [***name of defendant***] would carry out [his/her/***nonbinary pronoun***] threat;**

4. **That a reasonable person in [***name of plaintiff***]'s position would have been intimidated by [***name of defendant***]'s conduct;**

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

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

Derived from former CACI No. 3023 December 2009; Renumbered from CACI No. 3023B December 2012; Revised June 2013, December 2016

Directions for Use

Use this instruction for a cause of action under the Ralph Act involving threats of violence alleged to have been directed by the defendant toward the plaintiff. For an instruction involving actual acts of violence, see CACI No. 3063, *Acts of Violence—Ralph Act—Essential Factual Elements*.

Note that element 2 uses the term "substantial motivating reason" to express both intent and causation between the protected classification and the defendant's threats. "Substantial motivating reason" has been held to be the appropriate standard under the Fair Employment and Housing Act to address the possibility of both discriminatory and nondiscriminatory motives. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; CACI No. 2507, *"Substantial Motivating Reason" Explained*.) Whether the FEHA standard applies under the Ralph Act has not been addressed by the courts.

No published California appellate opinion establishes elements 3 and 4. However, the Ninth Circuit Court of Appeals and the California Fair Employment and Housing Commission have held that a reasonable person in the plaintiff's position must have been intimidated by the actions of the defendant and have perceived a threat of violence. (See *Winarto v. Toshiba America Electronics Components, Inc.* (9th Cir. 2001) 274 F.3d 1276, 1289–1290; *Dept. Fair Empl. & Hous. v. Lake Co. Dept. of Health Serv.* (July 22, 1998) 1998 CAFEHC LEXIS 16, **55–56.)

Liability may also be found if a defendant "aids, incites, or conspires" in the denial of a right protected under Civil Code section 51.7. (Civ. Code, § 52(b).) This instruction should be modified if aiding, inciting, or conspiring is asserted as theories of liability. See also instructions in the Conspiracy series (CACI No. 3600 et seq.).

Sources and Authority

- Ralph Act. Civil Code section 51.7.
- Protected Characteristics. Civil Code section 51(b).
- Combination of Characteristics, Perception and Perceived Association. Civil Code section 51(e)(7).
- Remedies Under Ralph Act. Civil Code section 52(b).
- "The unambiguous language of this section gives rise to a cause of action in favor of a person against whom violence or intimidation has been committed or threatened." (*Coon v. Joseph* (1987) 192 Cal.App.3d 1269, 1277 [237 Cal.Rptr. 873].)
- "Under the Ralph Act, a plaintiff must establish the defendant threatened or committed violent acts against the plaintiff or their property, and a motivating reason for doing so was a prohibited discriminatory motive, or that [defendant] aided, incited, or conspired in the denial of a protected right." (*Gabrielle A. v. County of Orange* (2017) 10 Cal.App.5th 1268, 1291 [217 Cal.Rptr.3d 275].)
- "Nor do we agree with defendants that 'because of' logically means 'hatred.' Section 51.7 provides that all persons 'have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of …' specified characteristics, including sex, and provides for a civil remedy for violation of that right. Nothing in the statute requires that a plaintiff prove that the offending act was motivated by hate." (*Ventura v. ABM Industries Inc.* (2012) 212 Cal.App.4th 258, 269 [150 Cal.Rptr.3d 861].)
- "The test is: 'would a reasonable person, standing in the shoes of the plaintiff, have been intimidated by the actions of the defendant and have perceived a threat of violence?' " (*Winarto, supra,* 274 F.3d at pp. 1289–1290, internal citation omitted.)
- "When a threat of violence would lead a reasonable person to believe that the threat will be carried out, in light of the 'entire factual context,' including the surrounding circumstances and the listeners' reactions, then the threat does not receive First Amendment protection, and may be actionable under

the Ralph Act. The only intent requirement is that respondent 'intentionally or knowingly communicates his [or her] threat, not that he intended or was able to carry out his threat.' A threat exists if the 'target of the speaker reasonably believes that the speaker has the ability to act him or herself or to influence others. . . . It is the perception of a reasonable person that is dispositive, not the actual intent of the speaker.' " (*Dept. Fair Empl. & Hous., supra,* 1998 CAFEHC LEXIS at pp. 55–56, internal citations omitted.)

- "Section 51 by its express language applies only within California. It cannot (with its companion penalty provisions in § 52) be extended into the Hawaiian jurisdiction. A state cannot regulate or proscribe activities conducted in another state or supervise the internal affairs of another state in any way, even though the welfare or health of its citizens may be affected when they travel to that state." (*Archibald v. Cinerama Hawaiian Hotels, Inc.* (1977) 73 Cal.App.3d 152, 159 [140 Cal.Rptr. 599], internal citations omitted, disapproved on other grounds in *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24 [219 Cal.Rptr. 133, 707 P.2d 195].)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, § 989 et seq.

Chin et al., California Practice Guide: Employment Litigation, Ch. 7-A, *Employment Discrimination—Unruh Civil Rights Act*, ¶¶ 7:1528–7:1529 (The Rutter Group)

Gaab & Reese, California Practice Guide: Civil Procedure Before Trial—Claims and Defenses, Ch. 14(IV)-B, *Ralph Civil Rights Act of 1976—Elements*, ¶ 14:940 (The Rutter Group)

Cheng et al., Cal. Fair Housing and Public Accommodations §§ 14:2, 14:3 (The Rutter Group)

11 California Forms of Pleading and Practice, Ch. 116, *Civil Rights: Discrimination in Business Establishments*, § 116.80 (Matthew Bender)

California Civil Practice: Civil Rights Litigation §§ 3:1–3:15 (Thomson Reuters)

3071. Retaliation for Refusing to Authorize Disclosure of Medical Information—Essential Factual Elements (Civ. Code, § 56.20(b))

[*Name of plaintiff***] claims that [***name of defendant***] discriminated against [him/her/***nonbinary pronoun***] because [he/she/***nonbinary pronoun***] refused to authorize disclosure of [his/her/***nonbinary pronoun***] medical information to [***name of defendant***]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] asked [***name of plaintiff***] to sign an authorization so that [***name of defendant***] could obtain medical information about [***name of plaintiff***] from [his/her/***nonbinary pronoun***] health care providers;**

2. **That [***name of plaintiff***] refused to sign the authorization;**

3. **That [***name of defendant***] [***specify retaliatory acts, e.g., terminated plaintiff's employment***];**

4. **That [***name of plaintiff***]'s refusal to sign the authorization was a substantial motivating reason for [***name of defendant***]'s decision to [***e.g., terminate plaintiff's employment***];**

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

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

Even if [*name of plaintiff***] proves all of the above, [***name of defendant***]'s conduct was not unlawful if [***name of defendant***] proves that the lack of the medical information made it necessary to [***e.g., terminate plaintiff's employment***].**

New June 2015; Revised May 2020

Directions for Use

An employer may not discriminate against an employee in terms or conditions of employment due to the employee's refusal to sign an authorization to release the employee's medical information to the employer. (Civ. Code, § 56.20(b).) However, an employer may take any action that is necessary in the absence of the medical information due to the employee's refusal to sign an authorization. (*Ibid*.)

Give this instruction if an employee claims that the employer retaliated against the employee for refusing to authorize release of medical information. The employee has the burden of proving a causal link between the refusal to authorize and the employer's retaliatory actions. The employer then has the burden of proving necessity. (See *Kao v. University of San Francisco* (2014) 229 Cal.App.4th 437, 453 [177 Cal.Rptr.3d 145].) If necessary, the instruction may be expanded to define "medical information." (See Civ. Code, § 56.05(j) ["medical information" defined].)

The statute requires that the employer's retaliatory act be "due to" the employee's refusal to release the

medical information. (Civ. Code, § 56.20(b).) One court has instructed the jury that the refusal to release must be a "motivating reason" for the retaliation. (See *Kao, supra,* 229 Cal.App.4th at p. 453.) With regard to the causation standard under the Fair Employment and Housing Act, the California Supreme Court has held that the protected activity must have been a *substantial* motivating reason. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; see also CACI No. 2507, *"Substantial Motivating Reason" Explained*.)

Sources and Authority

- Confidentiality of Medical Information Act. Civil Code section 56 et seq.

- Employee's Refusal to Authorize Release of Medical Records to Employer. Civil Code section 56.20(b).

- "The first two elements of a prima facie section 56.20(b) claim are 'that defendants asked [plaintiff] to sign an "authorization" and [plaintiff] refused to do so.' An 'authorization' is defined in the CMIA as a written document that allows a health care provider or employer to disclose an individual's medical information to others. Sections 56.11 and 56.21 detail what must be included in an 'authorization' under the CMIA, including typeface size, language clearly separated from any other print on the page, the signature of the patient and date of signature, the name of the employer authorized to disclose the medical information, limitations on the use of the medical information by the person authorized to receive the medical information, the date the document ceases to authorize an employer to release information, and the right of the patient to receive a copy of the authorization." (*Frayo v. Martin* (2024) 102 Cal.App.5th 1025, 1035 [322 Cal.Rptr.3d 188], internal citations omitted.)

- "An employer 'discriminates' against an employee in violation of section 56.20, subdivision (b), if it improperly retaliates against or penalizes an employee for refusing to authorize the employee's *health care provider* to disclose confidential medical information *to the employer or others* (see Civ. Code, § 56.11), or for refusing to authorize *the employer* to disclose confidential medical information relating to the employee *to a third party* (see Civ. Code, § 56.21)." (*Loder v. City of Glendale* (1997) 14 Cal.4th 846, 861 [59 Cal.Rptr.2d 696, 927 P.2d 1200], original italics.)

- "[T]he jury was instructed that if [plaintiff] proved his refusal to authorize release of confidential medical information for the FFD [fitness for duty examination] was 'the motivating reason for [his] discharge,' [defendant] 'nevertheless avoids liability by showing that … its decision to discharge [plaintiff] was necessary because [plaintiff] refused to take the FFD examination.' " (*Kao, supra,* 229 Cal.App.4th at p. 453.)

Secondary Sources

3 Wilcox, California Employment Law, Ch. 51, *Confidentiality of Medical Information*, § 51.13

37 California Forms of Pleading and Practice, Ch. 429, *Privacy*, § 429.202[4] (Matthew Bender)

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

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

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

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

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

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

   [*or***]**

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

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

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

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

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

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

Directions for Use

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

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

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

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

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

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

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

Sources and Authority

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

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

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

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

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

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

- "Although the Act treats motor vehicles differently from other types of consumer goods in several ways, we find no indication that the Legislature intended to treat motor vehicles differently with respect to the limitation on the Act's coverage to goods sold in California." (*Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 491 [30 Cal.Rptr.3d 823, 115 P.3d 98].)

- "[W]e hold that the phrase 'other motor vehicle sold with a manufacturer's new car warranty'—considered in the context of the surrounding text of section 1793.22, subdivision (e)(2) and in the broader context of the Song-Beverly Act's provisions distinguishing between new and used goods—means a vehicle for which a manufacturer's new car warranty is issued with the sale." (*Rodriguez v. FCA US LLC* (2024) 17 Cal.5th 189, 206 [326 Cal.Rptr.3d 440, 557 P.3d 735].)

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

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

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

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

- ~~"[W]e conclude the phrase 'other motor vehicles sold with a manufacturer's new car warranty' refers to cars sold with a full warranty, not to previously sold cars accompanied by some balance of the original warranty. We therefore conclude the trial judge was correct to conclude plaintiffs' truck does not meet the definition of 'new motor vehicle.' " (*Rodriguez v. FCA US, LLC* (2022) 77 Cal.App.5th 209, 225 [292 Cal.Rptr.3d 382], review granted July 13, 2022, S273143.)~~

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

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

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

- "[Defendant] argues allowing evidence of postwarranty repairs extends the term of its warranty to

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

- "[W]e hold that registration renewal and nonoperation fees are not recoverable as collateral charges under section 1793.2, subdivision (d)(2)(B), part of the Act because they are not collateral to the price paid for the vehicle, but they are recoverable as incidental damages under section 1794, part of the Act if they were incurred and paid as a result of a manufacturer's failure to promptly provide a replacement vehicle or restitution under section 1793.2, subdivision (d)(2)." (*Kirzhner v. Mercedes-Benz USA, LLC* (2020) 9 Cal.5th 966, 987 [266 Cal.Rptr.3d 346, 470 P.3d 56].)

Secondary Sources

4 Witkin, Summary of California Law (11th ed. 2017) Sales, §§ 52, 57, 325

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

8 California Forms of Pleading and Practice, Ch. 91, *Automobiles: Actions Involving Defects and Repairs*, §§ 91.15, 91.18 (Matthew Bender)

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

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

3244. Civil Penalty—Willful Violation (Civ. Code, § 1794(c))

[*Name of plaintiff***] claims that [***name of defendant***]'s failure to [***describe obligation under Song-Beverly Consumer Warranty Act, e.g., repurchase or replace the vehicle after a reasonable number of repair opportunities***] was willful and therefore asks that you impose a civil penalty against [***name of defendant***]. A civil penalty is an award of money in addition to a plaintiff's damages. The purpose of this civil penalty is to punish a defendant or discourage [him/her/***nonbinary pronoun***/it] from committing violations in the future.**

If [*name of plaintiff***] has proved that [***name of defendant***]'s failure was willful, you may impose a civil penalty against [him/her/***nonbinary pronoun***/it]. The penalty may be in any amount you find appropriate, up to a maximum of two times the amount of [***name of plaintiff***]'s actual damages.**

"Willful" means that [*name of defendant***] knew of [his/her/***nonbinary pronoun***/its] legal obligations and intentionally declined to follow them. However, a violation is not willful if you find that [***name of defendant***] reasonably and in good faith believed that the facts did not require [***describe statutory obligation, e.g., repurchasing or replacing the vehicle***].**

New September 2003; Revised February 2005, December 2005, December 2011, May 2018, November 2018

Directions for Use

This instruction is intended for use when the plaintiff requests a civil penalty under Civil Code section 1794(c). In the opening paragraph, set forth all claims for which a civil penalty is sought.

An automobile buyer may also obtain a penalty of two times actual damages without a showing of willfulness under some circumstances. (See Civ. Code, § 1794(e).) However, a buyer who recovers a civil penalty for a willful violation may not also recover a second civil penalty for the same violation. (Civ. Code, § 1794(e)(5).) If the buyer seeks a penalty for either a willful or a nonwillful violation in the alternative, the jury must be instructed on both remedies. (See *Suman v. BMW of North America, Inc.* (1994) 23 Cal.App.4th 1, 11 [28 Cal.Rptr.2d 133].) A special instruction will be needed for the nonwillful violation. (See *Suman v. Superior Court* (1995) 39 Cal.App.4th 1309, 1322 [46 Cal.Rptr.2d 507] (*Suman II*) [setting forth instructions to be given on retrial].)

Depending on the nature of the claim at issue, factors that the jury may consider in determining willfulness may be added. (See, e.g., *Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112, 136 [41 Cal.Rptr.2d 295] [among factors to be considered by the jury are whether (1) the manufacturer knew the vehicle had not been repaired within a reasonable period or after a reasonable number of attempts, and (2) whether the manufacturer had a written policy on the requirement to repair or replace], disapproved on other grounds in *Rodriguez v. FCA US LLC* (2024) 17 Cal.5th 189, 205 [326 Cal.Rptr.3d 440, 557 P.3d 735].)

Sources and Authority

- Civil Penalty for Willful Violation. Civil Code section 1794(c).

- "[I]f the trier of fact finds the defendant willfully violated its legal obligations to plaintiff, it has discretion under [Civil Code section 1794,] subdivision (c) to award a penalty against the defendant. Subdivision (c) applies to suits concerning any type of 'consumer goods,' as that term is defined in section 1791 of the Act." (*Suman v. Superior Court* (1995) 39 Cal.App.4th 1309, 1315 [46 Cal.Rptr.2d 507].)

- "Whether a manufacturer willfully violated its obligation to repair the car or refund the purchase price is a factual question for the jury that will not be disturbed on appeal if supported by substantial evidence." (*Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1104 [109 Cal.Rptr.2d 583].)

- " 'In civil cases, the word "willful," as ordinarily used in courts of law, does not necessarily imply anything blamable, or any malice or wrong toward the other party, or perverseness or moral delinquency, but merely that the thing done or omitted to be done was done or omitted intentionally. It amounts to nothing more than this: That the person knows what he is doing, intends to do what he is doing, and is a free agent.' " (*Ibrahim v. Ford Motor Co.* (1989) 214 Cal.App.3d 878, 894 [263 Cal.Rptr. 64], internal citations omitted.)

- "In regard to the *willful* requirement of Civil Code section 1794, subdivision (c), a civil penalty may be awarded if the jury determines that the manufacturer 'knew of its obligations but intentionally declined to fulfill them. There is no requirement of blame, malice or moral delinquency. However, '. . . a violation is not willful if the defendant's failure to replace or refund was the result of a good faith and reasonable belief the facts imposing the statutory obligation were not present.' " (*Schreidel v. American Honda Motor Co.* (1995) 34 Cal.App.4th 1242, 1249–1250 [40 Cal.Rptr.2d 576], original italics, internal citations omitted; see also *Bishop v. Hyundai Motor Am.* (1996) 44 Cal.App.4th 750, 759 [52 Cal.Rptr.2d 134] [defendant agreed that jury was properly instructed that it "acted 'willfully' if you determine that it knew of its obligations under the Song-Beverly Act but intentionally declined to fulfill them."].)

- "[A] violation … is not willful if the defendant's failure to replace or refund was the result of a good faith and reasonable belief the facts imposing the statutory obligation were not present. This might be the case, for example, if the manufacturer reasonably believed the product *did* conform to the warranty, or a reasonable number of repair attempts had not been made, or the buyer desired further repair rather than replacement or refund. [¶] Our interpretation of section 1794(c) is consistent with the general policy against imposing forfeitures or penalties against parties for their good faith, reasonable actions. Unlike a standard requiring the plaintiff to prove the defendant *actually knew* of its obligation to refund or replace, which would allow manufacturers to escape the penalty by deliberately remaining ignorant of the facts, the interpretation we espouse will not vitiate the intended deterrent effect of the penalty. And unlike a simple equation of willfulness with volition, which would render 'willful' virtually all cases of refusal to replace or refund, our interpretation preserves the Act's distinction between willful and nonwillful violations. Accordingly, '[a] decision made without the use of reasonably available information germane to that decision is not a reasonable, good faith

decision.' " (*Lukather v. General Motors, LLC* (2010) 181 Cal.App.4th 1041, 1051 [104 Cal.Rptr.3d 853], original italics, internal citation omitted.)

- "[Defendant] was entitled to an instruction informing the jury its failure to refund or replace was not willful if it reasonably and in good faith believed the facts did not call for refund or replacement. Such an instruction would have given the jury legal guidance on the principal issue before it in determining whether a civil penalty could be awarded." (*Kwan v. Mercedes Benz of N. Am.* (1994) 23 Cal.App.4th 174, 186–187 [28 Cal.Rptr.2d 371], fn. omitted.)

- "There is evidence [defendant] was aware that numerous efforts to find and fix the oil leak had been unsuccessful, which is evidence a jury may consider on the question of willfulness. Additionally, the jury could conclude that [defendant]'s policy, which requires a part be replaced or adjusted before [defendant] deems it a repair attempt but excludes from repair attempts any visit during which a mechanic searches for but is unable to locate the source of the problem, is unreasonable and not a good faith effort to honor its statutory obligations to repurchase defective cars. Finally, there was evidence that [defendant] adopted internal policies that erected hidden obstacles to the ability of an unwary consumer to obtain redress under the Act. This latter evidence would permit a jury to infer that [defendant] impedes and resists efforts by a consumer to force [defendant] to repurchase a defective car, regardless of the presence of an unrepairable defect, and that [defendant]'s decision to reject [plaintiff]'s demand was made pursuant to [defendant]'s policies rather than to its good faith and reasonable belief the car did not have an unrepairable defect covered by the warranty or that a reasonable number of attempts to effect a repair had not yet occurred." (*Oregel, supra,* 90 Cal.App.4th at pp. 1104–1105, internal citations omitted.)

- "[T]he penalty under section 1794(c), like other civil penalties, is imposed as punishment or deterrence of the defendant, rather than to compensate the plaintiff. In this, it is akin to punitive damages. Neither punishment nor deterrence is ordinarily called for if the defendant's actions proceeded from an honest mistake or a sincere and reasonable difference of factual evaluation. As our Supreme Court recently observed, '. . . courts refuse to impose civil penalties against a party who acted with a good faith and reasonable belief in the legality of his or her actions.' " (*Kwan, supra,* 23 Cal.App.4th at pp. 184–185, internal citation omitted.)

- "Thus, when the trial court concluded that subdivision (c)'s requirement of willfulness applies also to subdivision (e), and when it, in effect, instructed the jury that subdivision (c)-type willfulness is the sole basis for awarding civil penalties, the court ignored a special distinction made by the Legislature with respect to the seller of new automobiles. In so doing, the court erred. The error was prejudicial because it prevented the jurors from considering the specific penalty provisions in subdivision (e) and awarding such penalties, in their discretion, if they determined the evidence warranted such an award." (*Suman, supra,* 23 Cal.App.4th at p. 11.)

Secondary Sources

4 Witkin, Summary of California Law (11th ed. 2017) Sales, §§ 321–324

1 California UCC Sales & Leases (Cont.Ed.Bar) Warranties, § 3.90

California Products Liability Actions, Ch. 2, *Liability for Defective Products*, § 2.30 (Matthew Bender)

44 California Forms of Pleading and Practice, Ch. 502, *Sales: Warranties*, § 502.53[1][b] (Matthew Bender)

20 California Points and Authorities, Ch. 206*, Sales*, § 206.129 (Matthew Bender)

California Civil Practice: Business Litigation § 53:32 (Thomson Reuters)

4002. "Gravely Disabled" Explained

The term "gravely disabled" means that a person is presently unable to provide for the person's basic needs for food, clothing, shelter, personal safety, or necessary medical care because of [a mental health disorder/a severe substance use disorder/a co-occurring mental health disorder and a severe substance use disorder/impairment by chronic alcoholism]. [The term "gravely disabled" does not include persons with intellectual disabilities by reason of the disability alone.]

[[*Insert one or more of the following*:**] [psychosis/bizarre or eccentric behavior/delusions/hallucinations/[***insert other***]] [is/are] not enough, by [itself/themselves], to find that [***name of respondent***] is gravely disabled. [He/She/***Nonbinary pronoun***] must be unable to provide for the basic needs of food, clothing, shelter, personal safety, or necessary medical care because of [a mental health disorder/a severe substance use disorder/a co-occurring mental health disorder and a severe substance use disorder/impairment by chronic alcoholism].]**

["Personal safety" means the ability of a person to survive safely in the community without involuntary detention or treatment.]

["Necessary medical care" means care that a licensed health care practitioner, while operating within the scope of their practice, determines to be necessary to prevent serious deterioration of an existing physical medical condition~~, which~~ that, if left untreated, is likely to result in serious bodily injury. "Serious bodily injury" means an injury involving extreme physical pain, substantial risk of death, or protracted loss or impairment of function of a bodily member, organ, or of mental faculty, or requiring medical intervention, including but not limited to hospitalization, surgery, or physical rehabilitation.]

[If you find [*name of respondent***] will not take [his/her/***nonbinary pronoun***] prescribed medication without supervision and that a mental health disorder makes [him/her/***nonbinary pronoun***] unable to provide for [his/her/***nonbinary pronoun***] basic needs for food, clothing, shelter, personal safety, or necessary medical care without such medication, then you may conclude [***name of respondent***] is gravely disabled.**

In determining whether [*name of respondent***] is gravely disabled, you may consider evidence that [he/she/***nonbinary pronoun***] did not take prescribed medication in the past. You may also consider evidence of [his/her/***nonbinary pronoun***] lack of insight into [his/her/***nonbinary pronoun***] mental health condition.]**

In considering whether [*name of respondent***] is gravely disabled, you may not consider the likelihood of future deterioration or relapse of a condition.**

In determining whether [*name of respondent***] is gravely disabled, you may consider whether [he/she/***nonbinary pronoun***] is unable or unwilling to voluntarily accept meaningful treatment.**

New June 2005; Revised January 2018, May 2019, May 2020, May 2022, May 2024, July 2025

Directions for Use

This instruction provides the definition of "gravely disabled" from Welfare and Institutions Code section 5008(h)(1)(A) and (h)(2), which will be the applicable standard in most cases. The instruction applies to both adults and minors. (*Conservatorship of M.B.* (2018) 27 Cal.App.5th 98, 107 [237 Cal.Rptr.3d 775].)

If a county's relevant governing body has adopted a resolution postponing the changes made to Welfare and Institutions Code section 5008, omit from the definition of "gravely disabled" the terms "personal safety" and "necessary medical care," as well as "severe substance use disorder" and "a co-occurring mental health disorder and a severe substance use disorder." (Welf. & Inst. Code, § 5008(h)(4) [authorizing a county's deferral of changes made in Senate Bill 43 (Stats. 2023, ch. 637)].) These four terms should not be given in those counties until January 1, 2026, or an earlier date specified in the county's resolution.

Read the bracketed sentence at the end of the first paragraph if appropriate to the facts of the case. There is another standard in Welfare and Institutions Code section 5008(h)(1)(B) involving a finding of mental incompetence under Penal Code section 1370. A different instruction will be required if this standard is alleged.

The Welfare and Institutions Code defines "severe substance use disorder." (Welf. & Inst. Code, § 5008(o).) Give additional information about this term if appropriate. For example, severe substance use disorder requires a diagnosis, so it may be preferable to identify the individual's diagnosed severe substance use disorder.

The next to last paragraph regarding the likelihood of future deterioration may not apply if the respondent has no insight into the respondent's mental health condition. (*Conservatorship of Walker* (1989) 206 Cal.App.3d 1572, 1576–1577 [254 Cal.Rptr. 552].)

If there is evidence concerning the availability of third parties that are willing to provide assistance to the proposed conservatee, see CACI No. 4007, *Third Party Assistance*.

Sources and Authority

- "Gravely Disabled" Defined. Welfare and Institutions Code section 5008(h).
- "Severe Substance Use Disorder" Defined. Welfare and Institutions Code section 5008(o).
- "Personal Safety" Defined. Welfare and Institutions Code section 5008(p).
- "Necessary Medical Care" Defined. Welfare and Institutions Code section 5008(q).
- "Serious Bodily Injury" Defined. Welfare and Institutions Code section 15610.67.
- "The enactment of the LPS and with it the substitution of 'gravely disabled' for 'in need of treatment' as the basis for commitment of individuals not dangerous to themselves or others reflects a legislative

determination to meet the constitutional requirements of precision. The term 'gravely disabled' is sufficiently precise to exclude unusual or nonconformist lifestyles. It connotes an inability or refusal on the part of the proposed conservatee to care for basic personal needs of food, clothing and shelter." (*Conservatorship of Chambers* (1977) 71 Cal.App.3d 277, 284 [139 Cal.Rptr. 357], footnotes omitted.)

- "[T]he public guardian must prove beyond a reasonable doubt that the proposed conservatee is gravely disabled." (*Conservatorship of Jesse G.* (2016) 248 Cal.App.4th 453, 461 [203 Cal.Rptr.3d 667].)

- "The stricter criminal standard is used because the threat to the conservatee's individual liberty and personal reputation is no different than the burdens associated with criminal prosecutions." (*Conservatorship of Smith* (1986) 187 Cal.App.3d 903, 909 [232 Cal.Rptr. 277] internal citations omitted.)

- "Bizarre or eccentric behavior, even if it interferes with a person's normal intercourse with society, does not rise to a level warranting conservatorship except where such behavior renders the individual helpless to fend for herself or destroys her ability to meet those basic needs for survival." (*Conservatorship of Smith, supra,* 187 Cal.App.3d at p. 909.)

- "Under [Welfare and Institutions Code] section 5350, subdivision (e)(1), 'a person is not "gravely disabled" if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter.' " (*Conservatorship of Jesse G., supra,* 248 Cal.App.4th at p. 460.)

- "While [third person] may not have shown that he could manage appellant's mental health symptoms as adeptly as would a person professionally trained to care for someone with a mental disorder, that is not the standard. As appellant states, '[t]he question in a LPS conservatorship case where the proposed conservatee asserts a third party assistance claim is not whether the third party will be able to manage the person's mental health symptoms completely. Rather, the dispositive question is whether the person is able to provide the proposed conservatee with food, clothing, and shelter on a regular basis." (*Conservatorship of Jesse G., supra,* 248 Cal.App.4th at p. 463, fn. 4.)

- "We ... hold that a person sought to be made an LPS conservatee subject to involuntary confinement in a mental institution, is entitled to have a unanimous jury determination of all of the questions involved in the imposition of such a conservatorship, and not just on the issue of grave disability in the narrow sense of whether he or she can safely survive in freedom and provide food, clothing or shelter unaided by willing, responsible relatives, friends or appropriate third persons." (*Conservatorship of Davis* (1981) 124 Cal.App.3d 313, 328 [177 Cal.Rptr. 369].)

- "[A]n individual who will not voluntarily accept mental health treatment is not for that reason alone gravely disabled." (*Conservatorship of Symington* (1989) 209 Cal.App.3d 1464, 1468 [257 Cal.Rptr. 860].)

- "[T]he pivotal issue is whether [respondent] was 'presently' gravely disabled and the evidence

demonstrates that he was not. Accordingly, the order granting the petition must be overturned." (*Conservatorship of Benvenuto* (1986) 180 Cal.App.3d. 1030, 1034 [226 Cal.Rptr. 33], fn. omitted, citing to *Conservatorship of Murphy* (1982) 134 Cal.App.3d 15, 18 [184 Cal.Rptr. 363].)

- "[A] conservatorship cannot be established because of a perceived likelihood of future relapse. To do so could deprive the liberty of persons who will not suffer such a relapse solely because of the pessimistic statistical odds. Because of the promptness with which a conservatorship proceeding can be invoked the cost in economic and liberty terms is unwarranted." (*Conservatorship of Neal* (1987) 190 Cal.App.3d 685, 689 [235 Cal.Rptr. 577].)

- "A perceived likelihood of future relapse, without more, is not enough to justify establishing a conservatorship. Neither can such a likelihood justify keeping a conservatorship in place if its subject is not presently gravely disabled, in light of the statutory provisions allowing rehearings to evaluate a conservatee's current status." (*Conservatorship of Jones* (1989) 208 Cal.App.3d 292, 302 [256 Cal.Rptr. 415], internal citation omitted.)

- "[T]he definition of ' "[g]ravely disabled minor" ' from section 5585.25 is not part of the LPS Act, but is found in the Children's Civil Commitment and Mental Health Treatment Act of 1988. (§ 5585.) This definition applies 'only to the initial 72 hours of mental health evaluation and treatment provided to a minor. … Evaluation and treatment of a minor beyond the initial 72 hours shall be pursuant to the … [LPS Act].' (§ 5585.20.) Accordingly, we must apply the definition found in the LPS Act, and determine whether there was substantial evidence Minor suffered from a mental disorder as a result of which she 'would be unable to provide for [her] basic personal needs' if she had to so provide." (*Conservatorship of M.B., supra,* 27 Cal.App.5th at p. 107.)

- "Theoretically, someone who is willing and able to accept voluntary treatment may not be gravely disabled if that treatment will allow the person to meet the needs for food, clothing, and shelter. Under the statutory scheme, however, this is an evidentiary conclusion to be drawn by the trier of fact. If credible evidence shows that a proposed conservatee is willing and able to accept treatment that would allow them to meet basic survival needs, the fact finder may conclude a reasonable doubt has been raised on the issue of grave disability, and the effort to impose a conservatorship may fail. It may be necessary in some cases for the fact finder to determine whether the treatment a proposed conservatee is prepared to accept will sufficiently empower them to meet basic survival needs. In some cases of severe dementia or mental illness, there may simply be no treatment that would enable the person to 'survive safely in freedom.' " (*Conservatorship of K.P.* (2021) 11 Cal.5th 695, 711 [280 Cal.Rptr.3d 298, 489 P.3d 296].)

Secondary Sources

3 Witkin, California Procedure (6th ed. 2021) Actions, § 103 et seq.

2 California Conservatorship Practice (Cont.Ed.Bar) §§ 23.3, 23.5

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, §§ 361A.33, 361A.42 (Matthew Bender)

4329. Affirmative Defense—Failure to Provide Reasonable Accommodation

[*Name of defendant***] claims that [***name of plaintiff***] is not entitled to evict [him/her/***nonbinary pronoun***] because [***name of plaintiff***] violated fair housing laws by refusing to provide [[***name of defendant***]/a member of [***name of defendant***]'s household] [a] reasonable accommodation[s] for [his/her/***nonbinary pronoun***] disability as necessary to afford [him/her/***nonbinary pronoun***] an equal opportunity to use and enjoy [a/an] [***specify nature of dwelling or public and common use area at issue, e.g., the apartment building's mail room***].**

To establish this defense, [*name of defendant***] must prove all of the following:**

1. **That [[***name of defendant***]/a member of [***name of defendant***]'s household] has a disability;**

2. **That [***name of plaintiff***] knew of, or should have known of, [[***name of defendant***]/the member of [***name of defendant***]'s household]'s disability;**

3. **That [[***name of defendant***]/a member of [***name of defendant***]'s household/an authorized representative of [***name of defendant***]] requested [an] accommodation[s] on behalf of [himself/herself/***nonbinary pronoun/name of defendant***] [or] [another household member with a disability];**

4. **That [an] accommodation[s] [was/were] necessary to afford [[***name of defendant***]/a member of [***name of defendant***]'s household] an equal opportunity to use and enjoy the [***specify nature of dwelling or public and common use area at issue, e.g., the apartment building's mail room***]; and**

5. **[That [***name of plaintiff***] failed to provide the reasonable accommodation[s]]**

   [or]

   [That [*name of plaintiff***] failed to engage in the interactive process to try to accommodate the disability].**

New May 2021

Directions for Use

An individual with a disability may raise failure to provide a reasonable accommodation as an affirmative defense to an unlawful detainer action. (Cal. Code Regs., tit. 2, § 12176(c)(8)(A).) The individual with a disability seeking a reasonable accommodation must make a request for an accommodation. (Cal. Code Regs., tit. 2, § 12176(c)(1).) Such a request may be made by the individual with a disability, a family member, or someone authorized by the individual with a disability to act on the individual's behalf. (Cal. Code Regs., tit. 2, § 12176(c)(2).)

A reasonable accommodation request that is made during a pending unlawful detainer action is subject to

the same regulations that govern reasonable accommodation requests made at any other time. (Cal. Code Regs., tit. 2, § 12176(c)(8).)

Sources and Authority

- Disability Discrimination Prohibited Under Fair Employment and Housing Act. Government Code section 12940(a).
- "Medical Condition" Defined. Government Code section 12926(i).
- "Mental Disability" Defined. Government Code section 12926(j).
- "Physical Disability" Defined. Government Code section 12926(m).
- ~~Association With Person With a Disability or Perceived to Have a Disability Protected~~ Combination of Characteristics, Perception, and Perceived Association. Government Code section 12926(o).
- Reasonable Accommodations. California Code of Regulations, title 2, section 12176(a), (c).
- Reasonable Accommodation Requests in Unlawful Detainer Actions. Cal. Code Regs., tit. 2, § 12176(c)(8).

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 977, 1062–1064

3 California Real Estate Law and Practice, Ch. 63, *Duties and Liabilities of Brokers*, § 63.121 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, §§ 115.22, 115.35, 115.92 (Matthew Bender)

4401. Misappropriation of Trade Secrets—Essential Factual Elements

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[*Name of plaintiff***] claims that [***name of defendant***] has misappropriated a trade secret. To succeed on this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] [owned/was a licensee of] [the following:][***describe each item claimed to be a trade secret that is subject to the misappropriation claim***];**

2. **That [this/these] [select short term to describe, e.g., information] [was/were] [a] trade secret[s] at the time of the misappropriation;**

3. **That [***name of defendant***] improperly [acquired/used/ [or] disclosed] the trade secret[s];**

4. **That [[***name of plaintiff***] was harmed/ [or] [***name of defendant***] was unjustly enriched]; and**

5. **That [***name of defendant***]'s [acquisition/use/ [or] disclosure] was a substantial factor in causing [[***name of plaintiff***]'s harm/ [or] [***name of defendant***] to be unjustly enriched].**

New December 2007; Revised December 2010, December 2014

Directions for Use

In element 1, specifically describe all items that are alleged to be the trade secrets that were misappropriated. (See *Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 43 [171 Cal.Rptr.3d 714].) If more than one item is alleged, include "the following" and present the items as a list. Then in element 2, select a short term to identify the items, such as "information," "customer lists," or "computer code."

In element 1, select the appropriate term, "owned" or "was a licensee of," to indicate the plaintiff's interest in the alleged trade secrets. No reported California state court decision has addressed whether a licensee has a sufficient interest to assert a claim of trade secret misappropriation. These instructions take no position on this issue. The court should make a determination whether the plaintiff has the right as a matter of substantive law to maintain a cause of action for misappropriation of trade secrets if that issue is disputed.

Read also CACI No. 4402, *"Trade Secret" Defined*, to give the jury guidance on element 2.

Civil Code section 3426.1(b)(1) defines "misappropriation" as improper "[a]cquisition" of a trade secret, and subsection (b)(2) defines it as improper "[d]isclosure or use" of a trade secret. In some cases, the mere acquisition of a trade secret, as distinguished from a related disclosure or use, will not result in damages and will only be relevant to injunctive relief. Because generally the jury should be instructed only on matters relevant to damage claims, do not select "acquired" in element 3 or "acquisition" in element 5 unless there is evidence that the acquisition resulted in damages, other than damages from related disclosure or use.

To avoid confusion, instruct the jury only on the particular theory of misappropriation applicable under the facts of the case. For example, the jury should not be instructed on misappropriation through "use" if the plaintiff does not assert that the defendant improperly used the trade secrets. Nor should the jury be instructed on a particular type of "use" if that type of "use" is not asserted and supported by the evidence.

Give also CACI No. 4409, *Remedies for Misappropriation of Trade Secret*.

Sources and Authority

- Uniform Trade Secrets Act: Definitions. Civil Code section 3426.1.
- Trade Secrets Must Be Identified With Reasonable Particularity. Code of Civil Procedure section 2019.210.
- "A trade secret is misappropriated if a person (1) acquires a trade secret knowing or having reason to know that the trade secret has been acquired by 'improper means,' (2) discloses or uses a trade secret the person has acquired by 'improper means' or in violation of a nondisclosure obligation, (3) discloses or uses a trade secret the person knew or should have known was derived from another who had acquired it by improper means or who had a nondisclosure obligation or (4) discloses or uses a trade secret after learning that it is a trade secret but before a material change of position." (*Ajaxo Inc. v. E*Trade Group Inc.* (2005) 135 Cal.App.4th 21, 66 [37 Cal.Rptr.3d 221].)
- "A cause of action for monetary relief under CUTSA may be said to consist of the following elements: (1) possession by the plaintiff of a trade secret; (2) the defendant's misappropriation of the trade secret, meaning its wrongful acquisition, disclosure, or use; and (3) resulting or threatened injury to the plaintiff. The first of these elements is typically the most important, in the sense that until the content and nature of the claimed secret is ascertained, it will likely be impossible to intelligibly analyze the remaining issues." (*Silvaco Data Systems v. Intel Corp*. (2010) 184 Cal.App.4th 210, 220 [109 Cal.Rptr.3d 27], internal citations omitted, disapproved on other grounds in *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 337 [120 Cal.Rptr.3d 741, 246 P.3d 877].)
- "A cause of action for misappropriation of trade secrets requires a plaintiff to show the plaintiff owned the trade secret; at the time of misappropriation, the information was a trade secret; the defendant improperly acquired, used, or disclosed the trade secret; the plaintiff was harmed; and the defendant's acquisition, use, or disclosure of the trade secret was a substantial factor in causing the plaintiff harm." (*AMN Healthcare, Inc. v. Aya Healthcare Services, Inc.* (2018) 28 Cal.App.5th 923, 942 [239 Cal.Rptr.3d 577] [citing CACI].)
- "[F]airly read, CACI No. 4401 does not instruct the jury that it cannot find misappropriation has occurred unless it finds the misappropriation resulted in damages or unjust enrichment. The instruction addresses the issues of damages and unjust enrichment because, by definition, those are the only remedies a jury could consider or award for an adjudicated misappropriation. The other remedies available to a plaintiff whose trade secrets have been misappropriated—reasonable royalty and injunction—may be awarded only by the trial court. (*Applied Medical Distribution Corp. v. Jarrells* (2024) 100 Cal.App.5th 556, 571 [319 Cal.Rptr.3d 205].)
- "It is critical to any [UTSA] cause of action—and any defense—that the information claimed to have been misappropriated be clearly identified. Accordingly, a California trade secrets plaintiff must, prior to commencing discovery, 'identify the trade secret with reasonable particularity.' " (*Altavion, Inc., supra,* 226 Cal.App.4th at p. 43.)
- "We find the trade secret situation more analogous to employment discrimination cases. In those

cases, as we have seen, information of the employer's intent is in the hands of the employer, but discovery affords the employee the means to present sufficient evidence to raise an inference of discriminatory intent. The burden of proof remains with the plaintiff, but the defendant must then bear the burden of producing evidence once a prima facie case for the plaintiff is made. [¶] We conclude that the trial court correctly refused the proposed instruction that would have shifted the burden of proof." (*Sargent Fletcher, Inc. v. Able Corp.* (2003) 110 Cal.App.4th 1658, 1674 [3 Cal.Rptr.3d 279], internal citation omitted.)

- "[W]e find no support for [a current-ownership] rule in the text of the CUTSA, cases applying it, or legislative history. Nor do we find any evidence of such a rule in patent or copyright law, which defendants have cited by analogy. Defendants have offered no persuasive argument from policy for our adoption of such a rule." (*Jasmine Networks, Inc. v. Superior Court* (2009) 180 Cal.App.4th 980, 986 [103 Cal.Rptr.3d 426].)

- "[T]he only California authority [defendant] cited for the asserted requirement [that a trade-secrets plaintiff must own the trade secret when the action is filed] was the official California pattern jury instructions—whose 'first element,' [defendant] asserted, 'requires the plaintiff to be either the owner or the licensee of the trade secret. See CACI Nos. 4400, 4401.' [Defendant] did not quote the cited instructions—for good reason. The most that can be said in favor of its reading is that the broader and less specific of the two instructions uses the present tense to refer to the requirement of ownership. That instruction, whose avowed purpose is 'to introduce the jury to the issues involved' in a trade secrets case (Directions for Use for CACI No. 4400), describes the plaintiff as claiming that he 'is' the owner/licensee of the trade secrets underlying the suit. (CACI No. 4400.) The second instruction, which enumerates the actual *elements* of the plaintiff's cause of action, dispels whatever weak whiff of relevance this use of the present tense might have. It requires the plaintiff to prove that he 'own*ed*' or '*was* a licensee of' the trade secrets at issue. (CACI No. 4401, italics added.) Given only these instructions to go on, one would suppose that *past* ownership—i.e., ownership at the time of the alleged misappropriation—is sufficient to establish this element." (*Jasmine Networks, Inc., supra,* 180 Cal.App.4th at p. 997, original italics.)

Secondary Sources

Gaab and Reese, California Practice Guide: Civil Procedure Before Trial—Claims & Defenses, Ch. 10(II)-A ¶ 10:250 (The Rutter Group)

1 Milgrim on Trade Secrets, Ch. 1, *Definitional Aspects*, § 1.01 (Matthew Bender)

Zamore, Business Torts, Ch. 17, *Trade Secrets*, § 17.05 et seq. (Matthew Bender)

3 Levy et al., California Torts, Ch. 40, *Fraud and Deceit and Other Business Torts*, § 40.51 (Matthew Bender)

49 California Forms of Pleading and Practice, Ch. 565, *Unfair Competition*, § 565.103[4] (Matthew Bender)

Edelson & Kay, eds., Trade Secret Litigation and Protection in California (State Bar of California 2009) Chs. 1, 2, 6, 10, 11, 12

4410. Unjust Enrichment

[*Name of defendant***] was unjustly enriched if [his/her/***nonbinary pronoun***/its] misappropriation of [***name of plaintiff***]'s trade secret[s] caused [***name of defendant***] to receive a benefit that [he/she/***nonbinary pronoun***/it] otherwise would not have achieved.**

To decide the amount of any unjust enrichment, first determine the value of [*name of defendant***]'s benefit that would not have been achieved except for [his/her/***nonbinary pronoun***/its] misappropriation. Then subtract from that amount [***name of defendant***]'s reasonable expenses[, including the value of the [***specify categories of expenses in evidence, such as labor, materials, rents, interest on invested capital***]]. [In calculating the amount of any unjust enrichment, do not take into account any amount that you included in determining any amount of damages for [***name of plaintiff***]'s actual loss.]**

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Directions for Use

Give this instruction with CACI No. 4409, *Remedies for Misappropriation of Trade Secrets*, if unjust enrichment is alleged and supported by the evidence. If it would be helpful to the jury, specify the categories of expenses to be allowed to the defendant. Include the last sentence if both actual loss and unjust enrichment are alleged.

Sources and Authority

- Remedies for Misappropriation of Trade Secret. Civil Code section 3426.3.
- "In general, '[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other.' (Rest., Restitution, § 1.) 'Ordinarily the benefit to the one and the loss to the other are co-extensive, and the result ... is to compel the one to surrender the benefit which he has received and thereby to make restitution to the other for the loss which he has suffered.' [¶] 'In other situations, a benefit has been received by the defendant but the plaintiff has not suffered a corresponding loss or, in some cases, any loss, but nevertheless the enrichment of the defendant would be unjust. In such cases, the defendant may be under a duty to give to the plaintiff the amount by which he has been enriched.' " (*Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 627–628 [12 Cal.Rptr.2d 741].)
- "A defendant's unjust enrichment is typically measured by the defendant's profits flowing from the misappropriation. A defendant's profits often represent profits the plaintiff would otherwise have earned. Where the plaintiff's loss does not correlate directly with the misappropriator's benefit, … the problem becomes more complex. There is no standard formula to measure it. A defendant's unjust enrichment might be calculated based upon cost savings or increased productivity resulting from use of the secret. Increased market share is another way to measure the benefit to the defendant. Recovery is not prohibited just because the benefit cannot be precisely measured. But like any other pecuniary remedy, there must be some reasonable basis for the computation." (*Ajaxo Inc. v. E*Trade Financial Corp.* (2010) 187 Cal.App.4th 1295, 1305 [115 Cal.Rptr.3d 168], footnote and internal citations omitted.)
- "[W]here a defendant has not realized a profit or other calculable benefit as a result of his or her

misappropriation of a trade secret, unjust enrichment is not provable within the meaning of section 3426.3, subdivision (b), whether the lack of benefit is determined as a matter of law or as a matter of fact." (*Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 66 [171 Cal.Rptr.3d 714].)

- "Another crucial point is that unjust enrichment, as the phrase is used here, is, in effect, synonymous with restitution. ' " 'The phrase "unjust enrichment" is used in law to characterize the result or effect of a failure to make restitution of or for property or benefits received under such circumstances as to give rise to a legal or equitable obligation to account therefor.' " ' " (*Ajaxo Inc., supra,* 187 Cal.App.4th at p. 1305, internal citations omitted.)

- ~~Restatement of Restitution, section 1, comment a, states: "A person is enriched if he has received a benefit (see Comment b). A person is unjustly enriched if the retention of the benefit would be unjust (see Comment c)."~~

- ~~Restatement of Restitution, section 1, comment b, states: "*What constitutes a benefit*. A person confers a benefit upon another if he gives to the other possession of or some other interest in money, land, chattels, or choses in action, performs services beneficial to or at the request of the other, satisfies a debt or a duty of the other, or in any way adds to the other's security or advantage. He confers a benefit not only where he adds to the property of another, but also where he saves the other from expense or loss. The word 'benefit,' therefore, denotes any form of advantage. The advantage for which a person ordinarily must pay is pecuniary advantage; it is not, however, necessarily so limited, as where a physician attends an insensible person who is saved subsequent pain or who receives thereby a greater chance of living."~~

- ~~Restatement of Restitution, section 1, comment c, states: "*Unjust retention of benefit*. Even where a person has received a benefit from another, he is liable to pay therefor only if the circumstances of its receipt or retention are such that, as between the two persons, it is unjust for him to retain it. The mere fact that a person benefits another is not of itself sufficient to require the other to make restitution therefor. Thus, one who improves his own land ordinarily benefits his neighbors to some extent, and one who makes a gift or voluntarily pays money which he knows he does not owe confers a benefit; in neither case is he entitled to restitution. The Restatement of this Subject states the rules by which it is determined whether or not it is considered to be just to require restitution."~~

Secondary Sources

13 Witkin, Summary of California Law (11th ed. 2017) Equity, § 93

Restatements of the Law 3d, Restitution and Unjust Enrichment, § 1, comments a, b, and c

1 Milgrim on Trade Secrets, Ch. 13, *Issues Prior to Commencement of Action*, § 13.03[2][a] (Matthew Bender)

3 Levy et al., California Torts, Ch. 40, *Fraud and Deceit and Other Business Torts*, § 40.54[4] (Matthew Bender)

49 California Forms of Pleading and Practice, Ch. 565, *Unfair Competition*, § 565.103[7][b] (Matthew Bender)

Edelson & Kay, eds., Trade Secret Litigation and Protection in California (State Bar of California 2009) § 11.03