Agenda Item 01

**Judicial Council of California · Administrative Office of the Courts**

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

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

**Title**
Family Law: Petition and Response for Dissolution, Legal Separation, and Nullity of Marriage and Domestic Partnership

**Rules, Forms, Standards, or Statutes Affected**
Amend Cal. Rules of Court, rule 5.76; revise forms FL-100, FL-107-INFO, FL-110, FL-115, FL-117, and FL-120; revoke forms FL-103, and FL-123

**Recommended by**
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Kimberly J. Nystrom-Geist, Cochair

**Agenda Item Type**
Action Required

**Effective Date**
January 1, 2015

**Date of Report**
October 28, 2014

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## Executive Summary

In light of the changes to federal and state laws legalizing marriages between persons of the same sex, the Family and Juvenile Law Advisory Committee recommends that the Judicial Council approve the use of one petition (*Petition—Marriage/Domestic Partnership (Family Law)* (form FL-100)) and one response (*Response—Marriage/Domestic Partnership (Family Law)* (form FL-120)) in actions for dissolution, legal separation, or nullity of a marriage or domestic partnership. The committee also recommends that the council revoke forms *Petition—Domestic Partnership/Marriage* (form FL-103) and *Response—Domestic Partnership/Marriage* (form FL-123), which were previously adopted for use by persons in a same-sex marriage or domestic partnership (or both), amend rule 5.76. (Domestic Partnership), and revise other forms so they conform to these changes.

## Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2015:

1. Amend rule 5.76 of the California Rules of Court to delete references to *Petition—Domestic Partnership/Marriage* (form FL-103) and *Response—Domestic Partnership/Marriage* (form FL-123) and include information about ending a domestic partnership through the superior court or the California Secretary of State;

2. Revise *Petition—Marriage (Family Law)* (form FL-100) to retitle it *Petition—Marriage/Domestic Partnership (Family Law)* (form FL-100) and expand it to three pages to provide the statutory provisions of the Family Code that are specific to domestic partnerships and same-sex marriages;

3. Revise *Response—Marriage (Family Law)* (form FL-120) to retitle it *Petition—Marriage/Domestic Partnership (Family Law)* (form FL-100) and *Response—Marriage/Domestic Partnership (Family Law)* (form FL-120) and include the statutory provisions of the Family Code that are specific to domestic partnerships and same-sex marriages;

4. Revise *Steps for Divorce or Legal Separation* (form FL-107-INFO) to delete references to revoked forms FL-103 and FL-123 and update information provided on page 2 regarding domestic partnerships;

5. Revise *Summons (Family Law)* (form FL-110) and *Proof of Service of Summons* (form FL-115) to delete references to FL-103 and FL-123;

6. Revise *Notice and Acknowledgment of Receipt* (form FL-117) to delete references to FL-103 and FL-123 and make formatting changes that help clarify how to complete the form;

7. Revoke *Petition—Domestic Partnership/Marriage* (form FL-103) and *Response—Domestic Partnership/Marriage* (form FL-123) since provisions integral to actions involving same-sex marriages and domestic will be consolidated into forms FL-100 and FL-123.

The proposed text of the amended rule is attached at page 13. The proposed revised and revoked forms are attached at pages 14−30.

## Previous Council Action

To implement procedures for ending domestic partnerships under Family Code section 299 (Assembly Bill 205 (Stats. 2003, ch. 421), effective January 1, 2005, the Judicial Council

adopted rule 5.28 (Domestic Partnerships) and forms *Petition—Domestic Partnership/Marriage* (form FL-103) and *Response—Domestic Partnership/Marriage* (form FL-123). The rule was amended effective January 1, 2007, and was amended and renumbered to rule 5.76, effective January 1, 2013, when the Judicial Council approved the restructuring of the family law rules of court. Forms FL-103 and FL-123 were revised, effective January 2012, as mandated by Assembly Bill 2700 (Stats 2010, ch 397) and Senate Bill 651 (Stats 2011, ch 721). The forms were then revised, effective January 1, 2013, to correct substantive and technical omissions.

*Petition—Marriage (Family Law)* (form FL-100) and *Response—Marriage (Family Law)* (form FL-120) were last revised, effective January 1, 2005, as required by urgency legislation enacted on June 7, 2004, Assembly Bill 782 (Stats. 2004, ch. 45) that required the Judicial Council to add notices to family law forms that parties may redact their social security numbers from all written materials in their case other than forms to enforce child or spousal support.

*Steps for Divorce or Legal Separation* (form FL-107-INFO) was adopted effective July 1, 2012, to help courts comply with rule 5.83 (Family-centered case resolution) and then revised, effective July 1, 2013, to reflect changes in the law regarding declarations of disclosure and to provide information about legal separation cases and information pertinent to same-sex marriages and domestic partnerships

*Summons (Family Law)* (form FL-110), was revised effective January 1, 2014, to address the requirements of Assembly Bill 792 and Senate Bill 1206 to provide a notice to the parties in dissolution and adoption cases about eligibility for reduced or no-cost insurance coverage through the California Benefit Exchange (Exchange) or no-cost coverage through Medi-Cal, and include other restraining order provisions relating to minor children of the parties.

*Proof of Service of Summons* (form FL-115) was revised effective July 1, 2012, to replace references to *Order to Show Cause* (form FL-300) and *Notice of Motion* (form FL-301) with *Request for Order* (form FL-300).

*Notice and Acknowledgment of Receipt* (form FL-117) was revised, effective July 1, 2013, to replace references to *Order to Show Cause* (form FL-300) and *Notice of Motion* (form FL-301) with *Request for Order* (form FL-300).

## Rationale for Recommendation

On June 26, 2013, the United States Supreme Court issued decisions in *United States v. Windsor*[1] striking down the federal Defense of Marriage Act and *Hollingsworth v. Perry,*[2] dismissing an appeal of an order which held that the ballot initiative known as Proposition 8 defining marriage as a union between a man and a women was unconstitutional. Further, on July

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[1] 570 U.S. 12 (2013).

[2] 570 U.S. ___ (2013) (Docket No.12-144).

7, 2014, Governor Edmund G. Brown, Jr. approved Senate Bill 1306 (Stats 2014, ch 82), which among other things repealed the statutory provisions indicating that only a marriage between a man and a woman is valid or recognized in this state. Thus, marriages between persons of the same sex are legal in California.

As previously noted, the Judicial Council adopted a separate petition (form FL-103) and response (form FL-123) for use by married persons of the same sex and by domestic partners to file an action in family court. The separate forms alerted the court that there might be special issues to consider regarding the tax consequences of an order of spousal support, or different treatment of pensions under the Defense of Marriage Act, or special concerns regarding custody orders if same sex parents leave the state of California. However, given the recent changes in the law relating to same-sex marriages, these differences have limited relevance.[3] Thus, there does not appear to be a need for married persons of the same sex to use form FL-103 instead of form FL-100. Further, there does not appear to be a need to maintain forms FL-103 and FL-123 exclusively for use by domestic partners to file an action in family court.

**Consolidate *Petitions* and *Responses*; revoke forms**

In light of the changes to federal and state law relating to same-sex marriages, and to streamline procedures in family court, the Family and Juvenile Law Committee proposes, effective January, 1, 2015, the use of one form for all petitions and one form for all responses filed in family court requesting dissolution, separation, or nullity of a marriage, domestic partnership, or both in one proceeding.

The committee also recommends revising forms FL-100 and FL-120 to incorporate additional substantive and technical changes suggested by courts and court users over the years outside of any particular comment period. The changes include reorganizing the forms under specific subject headings to make the petition and response easier for the parties to complete and easier for court clerks to read and process.

To this end, *Petition—Marriage* (form FL-100) would be revised to include the necessary provisions of *Petition—Domestic Partnership/Marriage* (form FL-103) and *Response—Marriage* (form FL-120) would be revised to incorporate items from *Response—Domestic Partnership/Marriage* (form FL-123). Forms FL-103 and FL-123 would then be revoked.

Since the above changes would require expanding forms FL-100 and FL-120 beyond the current two pages to three pages, the committee initially proposed incorporating into the petition and response the information that courts are required to convey to parties about the divorce process

[3] Domestic partnerships are still not recognized by the federal government. Therefore, in actions to dissolve a domestic partnership, there might be special issues to consider regarding the tax consequences of an order of domestic partner support, the different treatment of pensions under the Defense of Marriage Act, or special concerns regarding custody orders if same sex parents leave the state of California.

under rule 5.83 (Family Centered Case Resolution) subdivision (g)(1)(A)–(D).[4] Specifically, the committee proposed that *Legal Steps for Divorce or Legal Separation* (form FL-107-INFO), be included as pages 3 and 4 of forms FL-100 and FL-103. The committee believed that including the information from FL-107-INFO on these forms would streamline the process for courts in complying with rule 5.83 by eliminating the need to produce a separate form. In addition, the committee believed that the change could also improve litigant education by placing on the forms information about the legal process as well as references to court-provided and other resources that could help resolve their case.

Although the committee originally proposed expanding the petition and response to four pages and integrate *Steps for Divorce or Legal Separation* (form FL-107-INFO) on pages 3 and 4 (and revoking form FL-107-INFO), the committee withdraws this recommendation in response to the public comments opposing this action, as below described.

### Revise rule and forms to reflect consolidated forms

*Rule 5.76. Domestic Partnerships*

Revising rule 5.76 implements the committee's recommendations by deleting references to forms FL-103 and FL-123 and updating the content with information about dissolving the domestic partnership either through the superior court or through the California Secretary of State.

*Steps for Divorce or Legal Separation* (form FL-107-INFO)

Although the committee originally proposed expanding the petition and response to four pages and integrating *Steps for Divorce or Legal Separation* (form FL-107-INFO) on pages 3 and 4

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[4] **(g) Family centered case resolution information**

(1) Upon the filing of first papers in dissolution, legal separation, nullity, or parentage actions the court must provide the filing party with the following:

(A) Written information summarizing the process of a case through disposition;

(B) A list of local resources that offer procedural assistance, legal advice or information, settlement opportunities, and domestic violence services;

(C) Instructions for keeping the court informed of the person's current address and phone number, and e-mail address;

(D) Information for self-represented parties about the opportunity to meet with court self-help center staff or a family law facilitator; and

(E) Information for litigants on how to request a status conference, or a family centered case resolution conference earlier than or in addition to, any status conference or family centered case resolution conferences scheduled by the court.

(thus, revoking form FL-107-INFO), as outlined further in this report, the committee changed this recommendation in response to comments received. Instead of revoking form FL-107-INFO, the committee recommends revising its content to delete references to revoked forms and include other notices and procedures specific to domestic partnerships.

Revising *Summons (Family Law)* (form FL-110), *Proof of Service of Summons* (form FL-115), and *Notice and Acknowledgment of Receipt* (form FL-117) implements the committee's recommendations by deleting references to forms FL-103 and FL-123.

## Comments, Alternatives Considered, and Policy Implications

### Comments

This proposal circulated for comment as part of the spring 2014 invitation to comment cycle, from April 18 to June 18, 2014, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self help staff, social workers, probation officers, and other juvenile law professionals, and the National Center for Lesbian Rights. The proposal was also reviewed by the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee (TCPJAC/CEAC) Joint Rules Working Group.

Sixteen individuals or organizations submitted comments on the proposal. Of these, 3 supported the proposal as circulated, 9 supported it with modifications, 3 did not indicate a position, but suggested additional changes to the forms, and 1 disagreed with the proposal.
A chart with the full text of the comments received and the committee's responses is attached at pages 31-67.

The committee sought comment on whether forms FL-100 and FL-120 should be streamlined for use as multipurpose forms that incorporate actions for dissolution, legal separation, or nullity of a marriage or domestic partnerships, or both in one proceeding. The committee also asked if there would be any advantage to maintaining separate procedures for those who want to dissolve both a marriage and domestic partnership using forms FL-103 and FL-123, if there are there any other changes that are important to make in response to the Supreme Court decisions striking down the Defense of Marriage Act, and if the changes would impact the courts.

Fifteen commentators agreed with the recommendation to combine form FL-100 with FL-103 and combining form FL-120 with FL-123 so that one *Petition* (form FL-100) and one *Response* (form FL-120) can be used by a petitioner or respondent in an action for dissolution, legal separation, or nullity of a same-sex marriage, a different-sex marriage, a domestic partnership, or both a marriage and domestic partnership. None of the commentators expressed the opinion that there is an advantage to maintaining separate procedures. One commentator specifically stated that maintaining two separate sets of forms would only create confusion about the rights and responsibilities of same-sex spouses and unnecessarily stigmatize same-sex spouses.

***Petition* (form FL-100) and *Response* (form FL-120)**

*Expanding the forms*

While some commentators agreed with the proposal to integrate *Steps for Divorce or Legal Separation* (form FL-107-INFO) as pages 3 and 4 of the petition and response, several commentators urged the committee to keep the instruction sheet on a separate form to avoid a number of problems for courts. For example, some courts cited the potential for increased costs to copy, process, and store the expanded mandatory forms, as well as increased costs to scan them into the case management system, and print them should a judicial officer in an electronic environment request a copy for reference.

In addition, some commentators expressed that the 4-page petition and response would have a negative impact on litigants. Some commentators stated that the proposed page 4 was too busy or too dense and would be confusing for self-represented litigants to understand. Other commentators stated that the four-page form would also increase the costs for persons requesting a copy from the court file.

Further, some courts objected to including basic information on a mandatory form because all other Judicial Council information forms are separate from the mandatory form that is filed with the court. Other courts also indicated that they distribute a similar handout, which they prefer to use to comply with rule 5.83 of the California Rules of Court instead of form FL-107-INFO because their version contains county-specific information about self-help resources.

In response to these comments, the committee agreed that neither the petition nor the response should be expanded to four pages to integrate the information sheet FL-107-INFO. However, consolidating forms FL-100 and FL-120 with forms FL-103 and FL-123 necessarily requires expanding the petition and response beyond the current two pages to three to cover categories particular to actions involving same-sex marriages and domestic partnerships (i.e., legal relationship, residence requirements, and statistical facts). The issue for the committee, then, became how to use the extra space on page three of the *Petition* and *Response*. As noted below, commentators provided a few ideas for the committee to consider about the content of the revised *Petition* and *Response*.

*Content changes to the Petition and Response*

Commentators suggested additional content for the petition and response.

- *Caption*. One commentator requested that the caption of forms FL-100 and FL-120 be revised to include a specific checkbox or more space for a party to note he or she is pleading in the alternative for a nullity of domestic partnership or a dissolution of domestic partnership (so that the dissolution could be granted if the nullity is denied).

  Although rule 5.60(b) does require that the request for alternative relief be noted in the petition; it does not require that the alternative relief be stated in the caption of the petition. The committee was concerned that the term “alternate relief” might be confusing

for many litigants and suggested that such a request can be noted more completely in the "Other requests" section of the petition.

- *Child custody.* Two comments related to the child custody section of the petition and response. One court requested that the section regarding minor children not be removed from page one of these forms. The court stated that having this information on the face page creates ease and efficiency for court staff and judicial officers referencing the petition. For example, they rely on the first page to capture the names and date of birth of minor children in their case management systems. In response, the committee agreed to recommend that statistical information about minor children in the case remain on page one, while the specific request for child custody and visitation (parenting time) be moved to page two, along with all other requests being made in the forms.

  Another commentator stated that it would be helpful if there were a checkbox for a party to specify if a party to the marriage or domestic partnership is pregnant with the other party's child at the time the petition or response is filed. The committee agreed with this suggestion and recommends revising form FL-100 and FL-120 to include a new item for a party to list a child who is not yet born at the time the action is filed. This addition would make form FL-100 and FL-120 consistent with other Judicial Council forms like *Petition to Establish a Parental Relationship* (form FL-200), which provide a check box to capture this information.

- *Child support.* One commentator suggested adding a check box option to allow a party to indicate that he or she is attaching an *Income and Expense Declaration* (form FL-150) and proposed guideline child support calculation to maximize notice to Respondent of proposed child support order and minimize post-default court filings. Instead of a specific checkbox, the committee recommends adding a check box under the child support item titled "*Other (specify):*" and providing fillable space for a party to use as he or she needs.

- *Notice of intent to amend petition.* A commentator suggested revising the petition (on page 1 under "Residence Requirements") to include a new check box for a petitioner to provide notice to the respondent of his or her intent to amend the petition for legal separation and seek a divorce once a party in the case meets the residency requirements for such an action. Given the space limitations of this form due to its expanded use, the committee prefers not to recommend a specific item on form FL-100 for such a notice. Instead, the committee recommends expanding the amount of fillable space under "Other Requests" for this purpose.

- *Property.* Three commentators requested more space for a party to list items of community and quasi-community property on the petition and response. One noted that the forms that circulated for comment had no blank space to list minimal community property items (cars, credit cards, bank account) typical of a self represented litigant, but left ample space to list separate property. The other commentator noted that the lack of

space can pose a notice problem if the attachment is not completed and there are issues involving real estate, pensions, or other retirement accounts in a default situation. A third commentator requested that the "separate property" section of the forms include a check box similar to the one for community property that states that there is no separate property for the court to confirm.

In response to the above comments, the committee recommends that the petition and response include two separate headings relating to property; one for community and quasi-community property, and the other for separate property. Further, the committee recommends expanding the amount of fillable space under each category of property to assist parties to list such property. Providing additional fillable space in these two areas could assist parties and the courts by reducing the number of attachments required to be filed with the petition and response. In addition, to be consistent with the community and quasi-community property heading on the forms, the committee recommends that a check box be included under the "Separate Property" item so that a party can indicate if there are no items of separate property to be confirmed or divided by the court.

- *Notices about domestic partnerships.* Two commentators, FLEXCOM and the National Center for Lesbian Rights (NCLR), requested that the petition and response be revised to include new notices relating to the domestic partnerships. They noted that using the same form for dissolution of marriages and dissolution of domestic partnerships may send a message that the legal issues are the same when they are not.

Because marriages are federally recognized and domestic partnerships are not, the tax consequences of interspousal transfers and inter-domestic partnership transfers are completely different. Among other issues, support calculations need to be done differently because support payments to a domestic partner are not deductible to the payor, and domestic partnership cases generally cannot use qualified domestic relations orders."

FLEXCOM stated that they "…support the combination of the two forms into one, as long as there is an admonishment on the form (preferably in bold font) that says something to the effect of: YOU ARE ADVISED THAT CALIFORNIA DOMESTIC PARTNERSHIPS ARE NOT RECOGNIZED AS MARRIAGES UNDER FEDERAL LAW. THEREFORE THE FINANCIAL ISSUES THAT COME UP IN DISSOLUTIONS (FOR EXAMPLE TAXABILITY OF INTERSPOUSAL TRANSFERS, DEDUCTIBILITY OF SPOUSAL SUPPORT) MUST BE TREATED DIFFERENTLY."

Similarly, NCLR recommended that a notice be included to state that "…couples who are only dissolving a domestic partnership (entered in California or another state) may face federal tax consequences because these relationships are not recognized by the IRS, and are encouraged to seek advice from an attorney." In addition, "[s]pace permitting, [NCLR] also recommend[ed] inclusion of a note that same-sex and different-sex spouses are treated exactly the same under both California and federal law for all purposes.

The committee agrees with FLEXCOM and NCLR that parties should be provided with information about the differential tax treatment of domestic partnerships under federal law. Similar information currently appears in form FL-107-INFO and on the California Courts Web Site. After considering the notices and other requested changes to the petition and response, committee decided to refrain from including the specific notices on the forms and limit the notices on petition and response to those required by statute to appear on these forms. The committee proposes revising form FL-107-INFO to incorporate many of these suggestions.

***Steps for Divorce or Legal Separation* (form FL-107-INFO)**
As previously noted, many commentators preferred that form FL-107-INFO not be consolidated into the petition and response. The committee, agreeing with the rationale for maintaining information sheets separate from standard forms, no longer recommends that form FL-107-INFO be revoked. Instead, the committee recommends making several substantive and technical changes to the information sheet. The changes include deleting references to forms FL-103 and FL-123, and revising the section about same-sex marriage and domestic partnerships to highlight special issues for domestic partnerships.

In addition, the committee recommends revising the information on page two of this form to better describe the resources available to help parties resolve their family law case. For example, the committee recommends revising the section about Family Court Services to clarify that the court refers family court litigants to Family Court services only when the parties have filed a *Request for Order* (form FL-300) seeking orders about child custody and visitation (parenting time). This change will help parties understand the prerequisites for a referral to this court resource.

The committee also recommends replacing the numbered web address links embedded throughout form FL-107-INFO with short, readable names which relate to the subject matter covered in the text. For example, instead of "Annulments: See http://courts.ca.gov/1224.htm#tab8687 for information about annulments," the web address would be changed to http://courts.ca.gov/annulment. This change will make the forms easier for users who cannot access active links in the form but who have to retype the URL to access the information. This change will also make the form internally consistent since it already includes short, readable web address names.

***Summons (Family Law)* (form FL-110)**
A commentator noted that if forms FL-103 and FL-123 are revoked, then *Summons - Family Law* (form FL-110) would need to be revised to delete these references. The committee agreed to recommend revising form FL-100 accordingly.

***Proof of Service of Summons* (form FL-115)**
The committee recommends revising this form to delete references to forms FL-103 and FL-123. In addition, to conform to the revisions approved by the Judicial Council to *Summons – Family Law* (form FL-110), effective January 1, 2014, the committee recommends deleting item 4 on page 2 of form FL-115 and renumbering the subsequent items. In its report to the council dated October 1, 2013, the committee indicated that the notice on form FL-110, which is repeated in form FL-115, does not apply to family law actions.[5]

***Notice and Acknowledgment of Receipt* (form FL-117)**
The committee recommends revising this form to delete references to forms FL-103 and FL-123. In addition, the committee recommends substantive and technical changes to the form to respond to public comment. A commentator, a legal document assistant, noted that "at least 50 percent of the time, the date is left off, or put in the wrong place." To avoid this problem, the commentator suggested "revers[ing] the place for signature and the date, as we read left to right, the signer would see the place to date the form after signing it on the left hand side of the page." The committee added item numbers to the places required to be completed and added text clearly specifying which of those items are required to be completed by either the sender or the recipient.

### Alternatives Considered

Before making a recommendation, the committee considered several versions of the petition and response developed by staff in response to public comments, as well as the potential impact each would have on the courts. The committee considered:

1. A four-page petition and response that integrated the information from form FL-107-INFO and included other suggestions for content changes from commentators;

2. A three-page petition and response that included only partial information from form FL-107-INFO about resources to help parties resolve their case; and

3. A three-page form that excluded any information from FL-107-INFO, and included notices regarding same-sex marriages and domestic partnerships suggested by FLEXCOM and the National Center for Lesbian Rights.

4. A three-page petition and response that includes only those notices required by statute and expands the fillable space for parties to provide more complete answers under each item listed on the forms.

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[5] The report titled Family Law: Revisions to Family Law Summons can be found at http://www.courts.ca.gov/documents/jc-20131025-itemA19.pdf

By recommending option 4, the committee refrained from adding a fourth page to the petition and response and allowed for flexibility for courts to use either the FL-107 or a locally developed form to comply with the requirements of rule 5.83.

The committee also considered the request of some courts to delay implementation of the forms until July 1, 2015, instead of January 1, 2014. A few courts indicated in their comments that two months may not be sufficient time to implement the changes to the four-page version of the petition and response that circulated for comment. They stated that the proposed changes would impact court operations and would require more than two months to update and discontinue affected forms. By recommending a three-page form that does not integrate an information sheet, the committee believes that this will reduce the amount of work needed for courts to implement the changes by January 1, 2015.

## Implementation Requirements, Costs, and Operational Impacts

The Family and Juvenile Law Advisory Committee recognizes that making changes to the two main forms required to file and respond to an action for dissolution, legal separation, or nullity of a marriage or domestic partnership (or both) will result in some costs to the courts. Courts will be required to update their case management and electronic (SmartForms) forms systems, update the form packets provided to parties by their Self-Help Centers, provide training to court staff, and perhaps revise local rules that reference revoked forms FL-103 and FL-123. However, the changes will save court resources by consolidating forms and simplifying procedures involving marriages and domestic partnerships.

## Relevant Strategic Plan Goals and Operational Plan Objectives

The committee's recommendations support the policies underlying Goal I, Access, Fairness, and Diversity, by creating one petition and one response for use by same-sex and different-sex marriages and domestic partnerships in actions for dissolution, legal separation, or nullity of a marriage or domestic partnership. Further, revising *Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO) will give self-represented litigants better access to the courts by updating information about court resources and special issues in domestic partnership cases. The recommendations also support the policies of Goal III B: Modernization of Management and Administration by adopting a streamlined practice for filings in family law cases involving marriages and domestic partnerships.

## Attachments

1. Cal. Rules of Court, rule 5.76, at page 13.
2. Revised forms FL-100, FL-107-INFO, FL-110, FL-115, FL-117, FL-120, at pages 14−26
3. Revoked forms FL-103 and FL-123, at pages 27−30
4. Chart of comments, at pages 31−67

Rule 5.76 of the California Rules of Court is amended, effective January 1, 2015, to read:

**Rule 5.76. Domestic partnerships**

To obtain a dissolution, a legal separation, or an annulment of a domestic partnership:

(1) ~~*Petition—Domestic Partnership/Marriage (Family Law)* (form FL-103) must be filed to commence an action for dissolution, legal separation, or annulment of a domestic partnership. *Response—Domestic Partnership/Marriage (Family Law)* (form FL-123) must be filed in response to this petition.~~ <u>Persons who qualify for a summary dissolution as described in the booklet *Summary Dissolution Information* (form FL-810) may act to dissolve their partnership through the California Secretary of State using forms found at *www.sos.ca.gov* or in the superior court following the procedures described in form FL-810.</u>

(2) <u>For persons who do not qualify for a summary dissolution proceeding, a</u>ll ~~other~~ forms and procedures used for the dissolution, legal separation, or annulment of a domestic partnership are the same as those used for the dissolution, legal separation, or annulment of a marriage.

| ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* | FOR COURT USE ONLY |
|---|---|
| TELEPHONE NO.: FAX NO. :<br>E-MAIL ADDRESS:<br>ATTORNEY FOR (*Name*): | **NOT APPROVED BY THE JUDICIAL COUNCIL**<br>**(3 pages)** |
| **SUPERIOR COURT OF CALIFORNIA, COUNTY OF**<br>STREET ADDRESS:<br>MAILING ADDRESS:<br>CITY AND ZIP CODE:<br>BRANCH NAME: | |
| PETITIONER:<br>RESPONDENT: | |
| **PETITION FOR** ☐ **AMENDED**<br>☐ **Dissolution (Divorce) of:** ☐ Marriage ☐ Domestic Partnership<br>☐ **Legal Separation of:** ☐ Marriage ☐ Domestic Partnership<br>☐ **Nullity of:** ☐ Marriage ☐ Domestic Partnership | CASE NUMBER: |

1. **LEGAL RELATIONSHIP** *(check all that apply)*
   a. ☐ We are married.
   b. ☐ We are domestic partners and our domestic partnership was established in California.
   c. ☐ We are domestic partners and our domestic partnership was NOT established in California.

2. **RESIDENCE REQUIREMENTS**
   a. ☐ *Divorce.* ☐ Petitioner ☐ Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this *Petition. (For a divorce, at least one person in the legal relationship described in 1a and 1c must comply with this requirement.)*
   b. ☐ *Divorce.* We are the same sex and were married in California but are not residents of California. Neither of us lives in a state or nation that will dissolve the marriage. This case is filed in the county in which we married.
   Petitioner's residence *(state or nation):* Respondent's residence *(state or nation):*

3. **STATISTICAL FACTS**
   a. ☐ (1) Date of marriage *(specify):*
   (2) Date of separation *(specify):*
   (3) Time from date of marriage to date of separation *(specify):* Years Months
   b. ☐ (1) Registration date of domestic partnership with the California Secretary of State or other state equivalent:
   (2) Date of separation *(specify):*
   (3) Time from date of registration of domestic partnership to date of separation *(specify):* Years Months

4. **MINOR CHILDREN** *(children born before (or born or adopted during) the marriage or domestic partnership):*
   a. ☐ There are no minor children.
   b. ☐ The minor children are:

   | Child's name | Birthdate | Age | Sex |
   |---|---|---|---|

   (1) ☐ Continued on Attachment 4b.
   (2) ☐ A child who is not yet born.
   c. If there are minor children of Petitioner and Respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.
   d. ☐ Petitioner and Respondent signed a voluntary declaration of paternity. A copy ☐ is ☐ is not attached.

| PETITIONER:<br>RESPONDENT: | CASE NUMBER: |
|---|---|

**Petitioner requests that the court make the following orders:**

5. **LEGAL GROUNDS** (Family Code sections 2200–2210; 2310–2312)
   a. ☐ Divorce or ☐ Legal separation of the marriage or domestic partnership based on *(check one):*
      (1) ☐ irreconcilable differences. (2) ☐ incurable insanity.
   b. ☐ Nullity of void marriage or domestic partnership based on:
      (1) ☐ incest. (2) ☐ bigamy.
   c. ☐ Nullity of voidable marriage or domestic partnership based on:
      (1) ☐ petitioner's age at time of registration of domestic partnership or marriage.
      (2) ☐ prior existing marriage or domestic partnership.
      (3) ☐ unsound mind.
      (4) ☐ fraud.
      (5) ☐ force.
      (6) ☐ physical incapacity.

6. **CHILD CUSTODY AND VISITATION (PARENTING TIME)**

| | Petitioner | Respondent | Joint | Other |
|---|---|---|---|---|
| a. Legal custody of children to........................................................ | ☐ | ☐ | ☐ | ☐ |
| b. Physical custody of children to.................................................... | ☐ | ☐ | ☐ | ☐ |
| c. Child visitation (parenting time) be granted to ............................ | ☐ | ☐ | ☐ | ☐ |

   As requested in: ☐ form FL-311 ☐ form FL-312 ☐ form FL-341(C)
   ☐ form FL-341(D) ☐ form FL-341(E) ☐ Attachment 6e(1)

   d. ☐ Determine the parentage of children born to Petitioner and Respondent before the marriage or domestic partnership.

7. **CHILD SUPPORT**
   a. If there are minor children born to or adopted by Petitioner and Respondent before or during this marriage or domestic partnership, the court will make orders for the support of the children upon request and submission of financial forms by the requesting party.
   b. An earnings assignment may be issued without further notice.
   c. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.
   d. ☐ *Other (specify):*

8. **SPOUSAL OR DOMESTIC PARTNER SUPPORT**
   a. ☐ Spousal or domestic partner support payable to ☐ Petitioner ☐ Respondent
   b. ☐ Terminate (end) the court's ability to award support to ☐ Petitioner ☐ Respondent
   c. ☐ Reserve for future determination the issue of support payable to ☐ Petitioner ☐ Respondent
   d. ☐ Other *(specify)*:

9. **SEPARATE PROPERTY**
   a. ☐ There are no such assets or debts that I know of to be confirmed or divided by the court.
   b. ☐ Confirm as separate property the assets and debts in ☐ *Property Declaration* (form FL-160) ☐ Attachment 9b ☐ the following list.

   <u>Item</u> <u>Confirm to</u>

| PETITIONER: | CASE NUMBER: |
|---|---|
| RESPONDENT: | |

10. **COMMUNITY AND QUASI-COMMUNITY PROPERTY**

a. ☐ There are no such assets or debts that I know of to be divided by the court.

b. ☐ Determine rights to community and quasi-community assets and debts. All such assets and debts are listed

☐ in *Property Declaration* (form FL-160) ☐ in Attachment 10b.

☐ as follows *(specify)*:

11. **OTHER REQUESTS**

a. ☐ Attorney's fees and costs payable by ☐ Petitioner ☐ Respondent

b ☐ Petitioner's former name be restored to *(specify):*

c. ☐ Other *(specify):*

☐ Continued on Attachment 11c.

12. **I HAVE READ THE RESTRAINING ORDERS ON THE BACK OF THE SUMMONS, AND I UNDERSTAND THAT THEY APPLY TO ME WHEN THIS PETITION IS FILED.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PETITIONER)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ATTORNEY FOR PETITIONER)

**NOTICE:** You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child, spousal or partner support.

**NOTICE—CANCELLATION OF RIGHTS:** Dissolution or legal separation may automatically cancel the rights of a domestic partner or spouse under the other domestic partner's or spouse's will, trust, retirement plan, power of attorney, pay-on-death bank account, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the right of a domestic partner or spouse as beneficiary of the other partner's or spouse's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance polices, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions. Some changes may require the agreement of your partner or spouse or a court order.

# FL-107-INFO Legal Steps for a Divorce or Legal Separation

## STEP 1. Start Your Case

- The **petitioner** (the person who files the first divorce or legal separation forms with the court) fills out and files with the court clerk at least a *Petition—Marriage/Domestic Partnership* (form FL-100) and a *Summons* (form FL-110) and, if there are children of the marriage, a *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act* (form FL-105).
- The forms needed to start your case and information about filing fees and fee waivers are available at "Filing Your Case," at *courts.ca.gov/filing*.
- The court clerk will stamp and return copies of the filed forms to the **petitioner**.

↓

## STEP 2. Serve the Forms

- **Someone 18 or older**–not the **petitioner**–serves the spouse or domestic partner (called the **respondent**) with all the forms from Step 1 plus a blank *Response—Marriage/Domestic Partnership* (form FL-120) and files with the court a proof-of-service form, such as *Proof of Service of Summons* (form FL-115), telling when and how the respondent was served. (To *serve* means "to give in the proper legal way.") For more information, see "Serving Your First Set of Court Forms" at *courts.ca.gov/filing*.
- The **respondent** has 30 days to file and serve a *Response*. So, the **petitioner** must wait 30 days before starting Step 4.

↓

## STEP 3. Disclose Financial Information

- At the same time as Step 1 or within 60 days of filing the *Petition*, the **petitioner** must fill out and have these documents served on the **respondent**: *Declaration of Disclosure* (form FL-140), *Income and Expense Declaration* (form FL-150), *Schedule of Assets and Debts* (form FL-142) or *Property Declaration* (form FL-160), and all tax returns filed by the party in the two years before serving the disclosure documents. These disclosure documents are not filed with the court.
- If the **respondent** files a *Response*, he or she must also complete and serve the same disclosure documents on the **petitioner** within 60 days of filing the *Response*.
- The 60-day time frame for serving the disclosures may be changed by written agreement between the parties or by court order.
- The **petitioner** and **respondent** each file a *Declaration Regarding Service* (form FL-141) with the court saying disclosures were served. If the **respondent** does not serve disclosures, the **petitioner** can still finish the case without them. For more information, see "Fill Out Your Financial Declaration of Disclosure Forms" at *courts.ca.gov/filing* (click on Step 4).

↓

## STEP 4. Finish the Divorce or Legal Separation Case in One of Four Ways

### Respondent does not file a *Response* (called "default")

**No *Response* and NO written agreement:** Petitioner waits 30 days after Step 2 is complete and prepares a proposed *Judgment* (form FL-180), together with all other needed forms. See "True Default Case" at *courts.ca.gov/truedefault*.

**No *Response* BUT written agreement:** Petitioner attaches the signed and notarized agreement to the proposed *Judgment* (form FL-180), together with all other needed forms. See "Default Case with Written Agreement" at *courts.ca.gov/defaultagree*.

### Respondent files a *Response*

***Response* AND written agreement:** Either party files *Appearance, Stipulations, and Waivers* (form FL-130) and the proposed *Judgment* with written agreement attached and other needed forms. See "Uncontested Case" at *courts.ca.gov/uncontested*.

***Response* and NO agreement:** Parties must go to trial to have a judge resolve the issues. See "Contested Case" at *courts.ca.gov/contested*.

### IMPORTANT NOTICES

- You earliest you can be divorced is six months and one day from one of these three dates (whichever occurs first): (1) the date Respondent was served with the *Summons* (form FL-110) and *Petition* (form FL-100), (2) the date the *Response* (form FL-120) was filed, or (3) the date *Appearance, Stipulations, and Waivers* (form FL-130) was filed. Legal separation has no waiting period. You are NOT divorced or legally separated until the court enters a *Judgment* in your case.
- If you need court orders for child support, custody, parenting time (visitation), spousal or partner support, restraining orders, or other issues, file a *Request for Order* (form FL-300) asking for temporary orders. See "Request for Order Information" at *courts.ca.gov/divorcerequests* for more information.
- Annulments: See *courts.ca.gov/annulment* for information about annulments.
- You must keep the court and the other party informed of any change in your mailing address or other contact information. File and serve a *Notice of Change of Address or Other Contact Information* (form MC-040) on the other party or his or her attorney to let them know about the change in your contact information.

**Do you have a registered domestic partnership?** The process for a divorce or legal separation of a domestic partnership is the same as on page 1. For information about ending your domestic partnership in the superior court, see *courts.ca.gov/filing*. To find out if you are eligible to end your domestic partnership through the Secretary of State, see *courts.ca.gov/summdissodp*. Note: There may be differences in federal taxes and other issues for domestic partnerships. Seek advice from an attorney experienced in domestic partner law.

**What if you want a legal separation?** The process on page 1 is the same, except you will **NOT** get a *Judgment* for legal separation unless both parties agree to a legal separation OR if **respondent** has not filed a *Response*. If both parties agree to be legally separated but do not agree on other issues, the parties must go to trial to have a judge resolve those issues. You are **NOT** legally separated until you receive a *Judgment* signed by the court. For more information, see "Legal Separation" at *courts.ca.gov/legalseparation*. AFTER the court enters a judgment for legal separation, if you decide you want a divorce, you must start a new case to request a divorce and pay another filing fee.

## Getting help to resolve divorce or legal separation cases

You may prefer to resolve some or all of the issues in your divorce or legal separation case without having the court decide for you. You and your spouse or domestic partner can put your agreement in writing and file it in your case. But your agreement must follow all legal requirements.

### Court Services

- **Family Law Facilitators and Self-Help Centers** help with court forms and instructions. They can provide samples of agreements and other information and, in some cases, help with mediation.
- **Family Court Services**. If you and the other parent already have a family law case and have filed a *Request for Order* (form FL-300) seeking orders about child custody and visitation (parenting time), the court will refer you to Family Court Services. They provide child custody mediation or child custody recommending counseling to try to help you both make a parenting plan that is in the best interests of your child. Note**:** They cannot help with financial issues.
- **Settlement Conferences**. An informal process in which a judge or an experienced lawyer meets with the parties and their lawyers to discuss the case and their positions and suggests a resolution. The parties can either agree to the suggestions or use the suggestions to help in further settlement discussions.

### Private services (which you can hire to help you resolve your case):

- **Lawyers.** Also called attorneys, lawyers can help work out agreements between the parties and represent you at court hearings and trials.
- **Collaborative Lawyers**. Lawyers who represent each party but do not go to court. They try to reach an agreement. If court is necessary, the parties must hire new lawyers.
- **Mediators**. A lawyer or counselor who helps the parties communicate to explore options and reach a mutually acceptable resolution.

### Where can I get help?

This information sheet gives you only basic information on the divorce or legal separation and is not legal advice. If you want legal advice, ask a lawyer for help. You may also:

- Contact the family law facilitator or self-help center in your court for information, court forms, and referrals to local legal resources. For more information, see *courts.ca.gov/courtresources.*
- Find a lawyer through a certified lawyer referral service on the State Bar of California's website: *calbar.ca.gov/LRS* or by calling 866-442-2529 (toll-free).
- Hire a private mediator. For more information about court and private services, see *courts.ca.gov/selfhelp-adr.htm.*
- Find information on the California Courts Online Self-Help Center website: *courts.ca.gov/selfhelp*.
- *Find free and low-cost legal help (if you qualify) at lawhelpcalifornia.org*.
- Find information at your local law library or public library.

### What if there is domestic violence?

If there is domestic violence or a protective or restraining order, talk to a lawyer, counselor, or mediator before making agreements.

For domestic violence help, call the National Domestic Violence Hotline: 800-799-7233; TDD: 800-787-3224; or 211 (if available in your area).

# SUMMONS (Family Law)

# *CITACIÓN (Derecho familiar)*

**NOTICE TO RESPONDENT *(Name):***
***AVISO AL DEMANDADO (Nombre):***

FOR COURT USE ONLY
*(SOLO PARA USO DE LA CORTE)*

**You have been sued. Read the information below and on the next page.**
***Lo han demandado. Lea la información a continuación y en la página siguiente.***

**Petitioner's name is:**
***Nombre del demandante:***

CASE NUMBER *(NÚMERO DE CASO):*

| | |
|---|---|
| You have **30 calendar days** after this *Summons* and *Petition* are served on you to file a *Response* (form FL-120) at the court and have a copy served on the petitioner. A letter, phone call, or court appearance will not protect you.<br><br>If you do not file your *Response* on time, the court may make orders affecting your marriage or domestic partnership, your property, and custody of your children. You may be ordered to pay support and attorney fees and costs.<br><br>For legal advice, contact a lawyer immediately. Get help finding a lawyer at the California Courts Online Self-Help Center *(www.courts.ca.gov/selfhelp)*, at the California Legal Services website *(www.lawhelpca.org)*, or by contacting your local county bar association. | *Tiene* ***30 días de calendario*** *después de haber recibido la entrega legal de esta* Citación *y* Petición *para presentar una* Respuesta *(formulario FL-120) ante la corte y efectuar la entrega legal de una copia al demandante. Una carta o llamada telefónica o una audiencia de la corte no basta para protegerlo.*<br><br>*Si no presenta su* Respuesta *a tiempo, la corte puede dar órdenes que afecten su matrimonio o pareja de hecho, sus bienes y la custodia de sus hijos. La corte también le puede ordenar que pague manutención, y honorarios y costos legales.*<br><br>*Para asesoramiento legal, póngase en contacto de inmediato con un abogado. Puede obtener información para encontrar un abogado en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en el sitio web de los Servicios Legales de California (www.lawhelpca.org) o poniéndose en contacto con el colegio de abogados de su condado.* |
| **NOTICE—RESTRAINING ORDERS ARE ON PAGE 2:** These restraining orders are effective against both spouses or domestic partners until the petition is dismissed, a judgment is entered, or the court makes further orders. They are enforceable anywhere in California by any law enforcement officer who has received or seen a copy of them. | ***AVISO—LAS ÓRDENES DE RESTRICCIÓN SE ENCUENTRAN EN LA PÁGINA 2:*** *Las órdenes de restricción están en vigencia en cuanto a ambos cónyuges o miembros de la pareja de hecho hasta que se despida la petición, se emita un fallo o la corte dé otras órdenes. Cualquier agencia del orden público que haya recibido o visto una copia de estas órdenes puede hacerlas acatar en cualquier lugar de California.* |
| **FEE WAIVER:** If you cannot pay the filing fee, ask the clerk for a fee waiver form**.** The court may order you to pay back all or part of the fees and costs that the court waived for you or the other party. | ***EXENCIÓN DE CUOTAS:*** *Si no puede pagar la cuota de presentación, pida al secretario un formulario de exención de cuotas. La corte puede ordenar que usted pague, ya sea en parte o por completo, las cuotas y costos de la corte previamente exentos a petición de usted o de la otra parte.* |

[SEAL]

1. The name and address of the court are *(El nombre y dirección de la corte son):*

2. The name, address, and telephone number of the petitioner's attorney, or the petitioner without an attorney, are: *(El nombre, dirección y número de teléfono del abogado del demandante, o del demandante si no tiene abogado, son):*

Date *(Fecha):* Clerk , by *(Secretario, por)* ____________________ , Deputy *(Asistente)*



Form Adopted for Mandatory Use
Judicial Council of California
FL-110 [Rev. January 1, 2015]

**SUMMONS**
**(Family Law)**

Family Code, §§ 232, 233, 2024.7, 2040, 7700;
Code of Civil Procedure, §§ 412.20, 416.60–416.90
*www.courts.ca.gov*

## STANDARD FAMILY LAW RESTRAINING ORDERS

**Starting immediately, you and your spouse or domestic partner are restrained from:**

1. removing the minor children of the parties from the state or applying for a new or replacement passport for those minor children without the prior written consent of the other party or an order of the court;
2. cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties and their minor children;
3. transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life; and
4. creating a nonprobate transfer or modifying a nonprobate transfer in a manner that affects the disposition of property subject to the transfer, without the written consent of the other party or an order of the court. Before revocation of a nonprobate transfer can take effect or a right of survivorship to property can be eliminated, notice of the change must be filed and served on the other party.

You must notify each other of any proposed extraordinary expenditures at least five business days prior to incurring these extraordinary expenditures and account to the court for all extraordinary expenditures made after these restraining orders are effective. However, you may use community property, quasi-community property, or your own separate property to pay an attorney to help you or to pay court costs.

## *ÓRDENES DE RESTRICCIÓN ESTÁNDAR DE DERECHO FAMILIAR*

***En forma inmediata, usted y su cónyuge o pareja de hecho tienen prohibido:***

1. *llevarse del estado de California a los hijos menores de las partes, o solicitar un pasaporte nuevo o de repuesto para los hijos menores, sin el consentimiento previo por escrito de la otra parte o sin una orden de la corte;*
2. *cobrar, pedir prestado, cancelar, transferir, deshacerse o cambiar el nombre de los beneficiarios de cualquier seguro u otro tipo de cobertura, como de vida, salud, vehículo y discapacidad, que tenga como beneficiario(s) a las partes y su(s) hijo(s) menor(es);*
3. *transferir, gravar, hipotecar, ocultar o deshacerse de cualquier manera de cualquier propiedad, inmueble o personal, ya sea comunitaria, cuasicomunitaria o separada, sin el consentimiento escrito de la otra parte o una orden de la corte, excepto en el curso habitual de actividades personales y comerciales o para satisfacer las necesidades de la vida; y*
4. *crear o modificar una transferencia no testamentaria de manera que afecte la asignación de una propiedad sujeta a transferencia, sin el consentimiento por escrito de la otra parte o una orden de la corte. Antes de que se pueda eliminar la revocación de una transferencia no testamentaria, se debe presentar ante la corte un aviso del cambio y hacer una entrega legal de dicho aviso a la otra parte.*

*Cada parte tiene que notificar a la otra sobre cualquier gasto extraordinario propuesto por lo menos cinco días hábiles antes de realizarlo, y rendir cuenta a la corte de todos los gastos extraordinarios realizados después de que estas órdenes de restricción hayan entrado en vigencia. No obstante, puede usar propiedad comunitaria, cuasicomunitaria o suya separada para pagar a un abogado que lo ayude o para pagar los costos de la corte.*

**NOTICE—ACCESS TO AFFORDABLE HEALTH INSURANCE:** Do you or someone in your household need affordable health insurance? If so, you should apply for Covered California. Covered California can help reduce the cost you pay towards high quality affordable health care. For more information, visit *www.coveredca.com*. Or call Covered California at 1-800-300-1506.

***AVISO—ACCESO A SEGURO DE SALUD MÁS ECONÓMICO:*** ¿Necesita seguro de salud a un costo asequible, ya sea para usted o alguien en su hogar? Si es así, puede presentar una solicitud con Covered California. Covered California lo puede ayudar a reducir el costo que paga por seguro de salud asequible y de alta calidad. Para obtener más información, visite *www.coveredca.com*. O llame a Covered California al 1-800-300-0213.

## WARNING—IMPORTANT INFORMATION

**California law provides that, for purposes of division of property upon dissolution of a marriage or domestic partnership or upon legal separation, property acquired by the parties during marriage or domestic partnership in joint form is presumed to be community property. If either party to this action should die before the jointly held community property is divided, the language in the deed that characterizes how title is held (i.e., joint tenancy, tenants in common, or community property) will be controlling, and not the community property presumption. You should consult your attorney if you want the community property presumption to be written into the recorded title to the property.**

## *ADVERTENCIA—IMFORMACIÓN IMPORTANTE*

***De acuerdo a la ley de California, las propiedades adquiridas por las partes durante su matrimonio o pareja de hecho en forma conjunta se consideran propiedad comunitaria para fines de la división de bienes que ocurre cuando se produce una disolución o separación legal del matrimonio o pareja de hecho. Si cualquiera de las partes de este caso llega a fallecer antes de que se divida la propiedad comunitaria de tenencia conjunta, el destino de la misma quedará determinado por las cláusulas de la escritura correspondiente que describen su tenencia (por ej., tenencia conjunta, tenencia en común o propiedad comunitaria) y no por la presunción de propiedad comunitaria. Si quiere que la presunción comunitaria quede registrada en la escritura de la propiedad, debería consultar con un abogado.***

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*

TELEPHONE NO.: FAX NO. :
E-MAIL ADDRESS:
ATTORNEY FOR (*Name*):

FOR COURT USE ONLY

**DRAFT**

**NOT APPROVED BY THE JUDICIAL COUNCIL**

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

PETITIONER:

RESPONDENT:

**PROOF OF SERVICE OF SUMMONS**

CASE NUMBER:

1. At the time of service I was at least 18 years of age and not a party to this action. **I served the respondent with copies of:**
   a. ☐ Family Law—Marriage/Domestic Partnership: *Petition—Marriage/Domestic Partnership* (form FL-100), *Summons* (form FL-110), and blank *Response—Marriage/Domestic Partnership* (form FL-120)

   **–or–**

   b. ☐ Uniform Parentage: *Petition to Establish Parental Relationship* (form FL-200), *Summons* (form FL-210), and blank *Response to Petition to Establish Parental Relationship* (form FL-220)

   **–or–**

   c. ☐ Custody and Support: *Petition for Custody and Support of Minor Children* (form FL-260), *Summons* (form FL-210), and blank *Response to Petition for Custody and Support of Minor Children* (form FL-270)

   **and**

   d. ☐ (1) ☐ Completed and blank *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act* (form FL-105)
   (2) ☐ Completed and blank *Declaration of Disclosure* (form FL-140)
   (3) ☐ Completed and blank *Schedule of Assets and Debts* (form FL-142)
   (4) ☐ Completed and blank *Income and Expense Declaration* (form FL-150)
   (5) ☐ Completed and blank *Financial Statement (Simplified)* (form FL-155)
   (6) ☐ Completed and blank *Property Declaration* (form FL-160)
   (7) ☐ *Request for Order* (form FL-300), and blank *Responsive Declaration to Request for Order* (form FL-320)
   (8) ☐ Other *(specify):*

2. Address where respondent was served:

3. I served the respondent by the following means *(check proper box):*
   a. ☐ Personal service. I personally delivered the copies to the respondent (Code Civ. Proc., § 415.10)
   on *(date):* at *(time):*
   b. ☐ Substituted service. I left the copies with or in the presence of *(name):*
   who is *(specify title or relationship to respondent):*
   (1) ☐ (Business) a person at least 18 years of age who was apparently in charge at the office or usual place of business of the respondent. I informed him or her of the general nature of the papers.
   (2) ☐ (Home) a competent member of the household (at least 18 years of age) at the home of the respondent. I informed him or her of the general nature of the papers.
   on *(date):* at *(time):*

   I thereafter mailed additional copies (by first class, postage prepaid) to the respondent at the place where the copies were left (Code Civ. Proc., § 415.20b) on *(date):*

   A **declaration of diligence** is attached, stating the actions taken to first attempt personal service.



Form Approved for Optional Use
Judicial Council of California
FL-115 [Rev. January 1, 2015]

**PROOF OF SERVICE OF SUMMONS**
**(Family Law—Uniform Parentage—Custody and Support)**

Code of Civil Procedure, § 417.10
*www.courts.ca.gov*

3. c. ☐ Mail and acknowledgment service. I mailed the copies to the respondent, addressed as shown in item 2, by first-class mail, postage prepaid, on *(date):* from *(city):*
   (1) ☐ with two copies of the *Notice and Acknowledgment of Receipt* (form FL-117) and a postage-paid return envelope addressed to me. **(Attach completed *Notice and Acknowledgment of Receipt* (form FL-117).)** **(**Code Civ. Proc., § 415.30.)
   (2) ☐ to an address outside California (by registered or certified mail with return receipt requested). **(Attach signed return receipt or other evidence of actual delivery to the respondent.)** (Code Civ. Proc., §§ 415.40, 417.20.)
   d. ☐ Other *(specify code section):*
   ☐ Continued on Attachment 3d.

4. **Person who served papers**
   Name:
   Address:

   Telephone number:

   This person is
   a. ☐ exempt from registration under Business and Professions Code section 22350(b).
   b. ☐ not a registered California process server.
   c. ☐ a registered California process server: ☐ an employee or ☐ an independent contractor
      (1) Registration no.:
      (2) County:
   d. **The fee** for service was *(specify):* $

5. ☐ **I declare** under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

**–or–**

6. ☐ **I am a California sheriff, marshal, or constable**, and I certify that the foregoing is true and correct.

Date:

(NAME OF PERSON WHO SERVED PAPERS) (SIGNATURE OF PERSON WHO SERVED PAPERS)

| ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* | FOR COURT USE ONLY |
|---|---|
| TELEPHONE NO.: FAX NO. :<br>E-MAIL ADDRESS:<br>ATTORNEY FOR (*Name*): | **DRAFT**<br><br>**NOT APPROVED BY THE JUDICIAL COUNCIL** |
| **SUPERIOR COURT OF CALIFORNIA, COUNTY OF**<br>STREET ADDRESS:<br>MAILING ADDRESS:<br>CITY AND ZIP CODE:<br>BRANCH NAME: | |
| PETITIONER:<br>RESPONDENT: | |
| **NOTICE AND ACKNOWLEDGMENT OF RECEIPT** | CASE NUMBER: |

*(Sender completes items 1 through 4 and signs before mailing. Recipient completes items 5 and 6, signs, then returns.)*

1. To (*name of individual being served):* ______________________

**NOTICE**

The documents identified below are being served on you by mail with this acknowledgment form. You must personally sign, or a person authorized by you must sign, this form to acknowledge receipt of the documents.

If the documents described below include a summons and you fail to complete and return this acknowledgment form to the sender within 20 days of the date of mailing, you will be liable for the reasonable expenses incurred after that date in serving you or attempting to serve you with these documents by any other methods permitted by law. If you return this form to the sender, service of a summons is deemed complete on the date you sign the acknowledgment of receipt below. This is **not** an answer to the action. If you do not agree with what is being requested, you must submit a completed *Response* form to the court within 30 calendar days.

2. Date of mailing *(specify):* ______________________

3. ______________________ (TYPE OR PRINT SENDER'S NAME) ▶ ______________________ (SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE AND MUST BE 18 YEARS OR OLDER)

**ACKNOWLEDGMENT OF RECEIPT**

4. I agree I received the following:
   a. ☐ Family Law: *Petition—Marriage/Domestic Partnership* (form FL-100), *Summons* (form FL-110), and blank *Response—Marriage/Domestic Partnership* (form FL-120)
   b. ☐ Uniform Parentage: *Petition to Establish Parental Relationship* (form FL-200), *Summons* (form FL-210), and blank *Response to Petition to Establish Parental Relationship* (form FL-220)
   c. ☐ Custody and Support: *Petition for Custody and Support of Minor Children* (form FL-260), *Summons* (form FL-210), and blank *Response to Petition for Custody and Support of Minor Children* (form FL-270)
   d. ☐ (1) ☐ Completed and blank *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act* (form FL-105)
   (2) ☐ Completed and blank *Declaration of Disclosure* (form FL-140)
   (3) ☐ Completed and blank *Schedule of Assets and Debts* (form FL-142)
   (4) ☐ Completed and blank *Property Declaration* (form FL-160)
   (5) ☐ Completed and blank *Income and Expense Declaration* (form FL-150)
   (6) ☐ Completed and blank *Financial Statement (Simplified)* (form FL-155)
   (7) ☐ *Request for Order* (form FL-300), and blank *Responsive Declaration to Request for Order* (form FL-320)
   (8) ☐ Other *(specify):*

5. Recipient signed this acknowledgment on *(specify date):* ______________________

6. ______________________ (TYPE OR PRINT NAME OF PERSON ACKNOWLEDGING RECEIPT) ▶ ______________________ (SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT



Form Approved for Optional Use
Judicial Council of California
FL-117 [Rev. January 1, 2015]

**NOTICE AND ACKNOWLEDGMENT OF RECEIPT**
**(Family LaW)**

Code of Civil Procedure, § 415.30, 417.10
*www.courts.ca.gov*

| ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* | FOR COURT USE ONLY |
|---|---|
| TELEPHONE NO.: FAX NO. :<br>E-MAIL ADDRESS:<br>ATTORNEY FOR (*Name*): | **OPTION 4**<br>**NOT APPROVED BY THE JUDICIAL COUNCIL**<br>**(3 pages)** |
| **SUPERIOR COURT OF CALIFORNIA, COUNTY OF**<br>STREET ADDRESS:<br>MAILING ADDRESS:<br>CITY AND ZIP CODE:<br>BRANCH NAME: | |
| PETITIONER:<br>RESPONDENT: | |
| **RESPONSE** ☐ **AND REQUEST FOR** ☐ **AMENDED**<br>☐ **Dissolution (Divorce) of:** ☐ Marriage ☐ Domestic Partnership<br>☐ **Legal Separation of:** ☐ Marriage ☐ Domestic Partnership<br>☐ **Nullity of:** ☐ Marriage ☐ Domestic Partnership | CASE NUMBER: |

1. **LEGAL RELATIONSHIP** *(check all that apply)*
   a. ☐ We are married.
   b. ☐ We are domestic partners and our domestic partnership was established in California.
   c. ☐ We are domestic partners and our domestic partnership was NOT established in California.

2. **RESIDENCE REQUIREMENTS**
   a. ☐ *Divorce.* ☐ Petitioner ☐ Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this *Petition. (For a divorce, at least one person in the legal relationship described in 1a and 1c must comply with this requirement.)*
   b. ☐ *Divorce*. We are the same sex and were married in California but are not residents of California. Neither of us lives in a state or nation that will dissolve the marriage. This case is filed in the county in which we married.
   Petitioner's residence *(state or nation):* Respondent's residence *(state or nation):*

3. **STATISTICAL FACTS**
   a. ☐ (1) Date of marriage *(specify):*
   (2) Date of separation *(specify):*
   (3) Time from date of marriage to date of separation *(specify):* Years Months
   b. ☐ (1) Registration date of domestic partnership with the California Secretary of State or other state equivalent:
   (2) Date of separation *(specify):*
   (3) Time from date of registration of domestic partnership to date of separation *(specify):* Years Months

4. **MINOR CHILDREN** *(children born before (or born or adopted during) the marriage or domestic partnership):*
   a. ☐ There are no minor children.
   b. ☐ The minor children are:

| Child's name | Birthdate | Age | Sex |
|---|---|---|---|

   (1) ☐ Continued on Attachment 4b.
   (2) ☐ a child who is not yet born.
   c. If there are minor children of Petitioner and Respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.
   d. ☐ Petitioner and Respondent signed a voluntary declaration of paternity. A copy ☐ is ☐ is not attached.



Form Adopted for Mandatory Use
Judicial Council of California
FL-120 [Rev. January 1, 2015]

**RESPONSE—MARRIAGE/DOMESTIC PARTNERSHIP**
**(Family Law)**

**Respondent requests that the court make the following orders:**

5. **LEGAL GROUNDS** (Family Code sections 2200–2210; 2310–2312)
   - a. ☐ **Respondent contends** that the parties never legally married or registered a domestic partnership.
   - b. ☐ **Respondent denies** the grounds set forth in item 5 of the petition.
   - c. ☐ **Respondent requests**
     - (1) ☐ divorce ☐ legal separation of the marriage or domestic partnership based on
       - (a) ☐ irreconcilable differences. (b) ☐ incurable insanity.
     - (2) ☐ nullity of void marriage or domestic partnership based on
       - (a) ☐ incest. (b) ☐ bigamy.
     - (3) ☐ nullity of voidable marriage or domestic partnership based on
       - (a) ☐ respondent's age at time of registration of domestic partnership or marriage.
       - (b) ☐ prior existing marriage or domestic partnership.
       - (c) ☐ unsound mind.
       - (d) ☐ fraud.
       - (e) ☐ force.
       - (f) ☐ physical incapacity.

6. **CHILD CUSTODY AND VISITATION (PARENTING TIME)**

| | Petitioner | Respondent | Joint | Other |
|---|---|---|---|---|
| a. Legal custody of children to | ☐ | ☐ | ☐ | ☐ |
| b. Physical custody of children to | ☐ | ☐ | ☐ | ☐ |
| c. Child visitation (parenting time) be granted to | ☐ | ☐ | ☐ | ☐ |

As requested in: ☐ form FL-311 ☐ form FL-312 ☐ form FL-341(C) ☐ form FL-341(D) ☐ form FL-341(E) ☐ Attachment 6e(1)

   - d. ☐ Determine the parentage of children born to Petitioner and Respondent before the marriage or domestic partnership.

7. **CHILD SUPPORT**
   - a. If there are minor children born to or adopted by Petitioner and Respondent before or during this marriage or domestic partnership, the court will make orders for the support of the children upon request and submission of financial forms by the requesting party.
   - b. An earnings assignment may be issued without further notice.
   - c. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.
   - d. ☐ *Other (specify):*

8. **SPOUSAL OR DOMESTIC PARTNER SUPPORT**
   - a. ☐ Spousal or domestic partner support payable to ☐ Petitioner ☐ Respondent
   - b. ☐ Terminate (end) the court's ability to award support to ☐ Petitioner ☐ Respondent
   - c. ☐ Reserve for future determination the issue of support payable to ☐ Petitioner ☐ Respondent
   - d. ☐ Other *(specify)*:

9. **SEPARATE PROPERTY**
   - a. ☐ There are no such assets or debts that I know of to be confirmed or divided by the court.
   - b. ☐ Confirm as separate property the assets and debts in ☐ *Property Declaration* (form FL-160) ☐ Attachment 9b ☐ the following list.

Item | Confirm to

10. **COMMUNITY AND QUASI-COMMUNITY PROPERTY**
   a. ☐ There are no such assets or debts that I know of to be divided by the court.
   b. ☐ Determine rights to community and quasi-community assets and debts. All such assets and debts are listed
      ☐ in *Property Declaration* (form FL-160) ☐ in Attachment 10b.
      ☐ as follows *(specify)*:

11. **OTHER REQUESTS**
   a. ☐ Attorney's fees and costs payable by ☐ Petitioner ☐ Respondent
   b ☐ Respondent's former name be restored to *(specify):*
   c. ☐ Other *(specify):*

      ☐ Continued on Attachment 11c.

12. **I HAVE READ THE RESTRAINING ORDERS ON THE BACK OF THE SUMMONS, AND I UNDERSTAND THAT THEY APPLY TO ME WHEN THIS PETITION IS FILED.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF RESPONDENT)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ATTORNEY FOR RESPONDENT)

**NOTICE:** You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child, spousal or partner support.

**NOTICE—CANCELLATION OF RIGHTS:** Dissolution or legal separation may automatically cancel the rights of a domestic partner or spouse under the other domestic partner's or spouse's will, trust, retirement plan, power of attorney, pay-on-death bank account, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the right of a domestic partner or spouse as beneficiary of the other partner's or spouse's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance polices, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions. Some changes may require the agreement of your partner or spouse or a court order.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*

FOR COURT USE ONLY

TELEPHONE NO. : FAX NO. *(Optional):*
E-MAIL ADDRESS *(Optional):*
ATTORNEY FOR *(Name):*

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

☐ **DOMESTIC PARTNERSHIP OF** ☐ **MARRIAGE OF**
PETITIONER:
RESPONDENT:

**PETITION FOR** ☐ **AMENDED**
☐ **Dissolution of** ☐ **Domestic Partnership** ☐ **Marriage**
☐ **Legal Separation of** ☐ **Domestic Partnership** ☐ **Marriage**
☐ **Nullity of** ☐ **Domestic Partnership** ☐ **Marriage**

CASE NUMBER:

**NOTICE: If petitioner and respondent are of the same sex, use this form. If petitioner and respondent are of the opposite sex and are *not* also domestic partners, use form FL-100.**

**REVOKE**

1. STATISTICAL FACTS
   a. ☐ (1) Registration date of domestic partnership with the California Secretary of State or other state equivalent:
   (2) Date of separation:
   (3) Time from date of registration of domestic partnership to date of separation *(specify):* Years Months
   b. ☐ (1) Date of marriage: (2) Date of separation:
   (3) Time from date of marriage to date of separation *(specify):* Years Months
2. RESIDENCE *(check all that apply)*
   a. ☐ Our domestic partnership was established in California. Neither of us has to be a resident or have a domicile in California to dissolve our partnership here.
   b. ☐ Our domestic partnership was established in a place other than California. ☐ Petitioner ☐ Respondent has been a resident of the state of California for at least six months and of this county for at least three months immediately preceding the filing of this *Petition.*
   c. ☐ We are the same sex and are married. ☐ We are the opposite sex and are married. We are also domestic partners. ☐ Petitioner ☐ Respondent has been a resident of the state of California for at least six months and of this county for at least three months immediately preceding the filing of this *Petition.*
   d. ☐ We are the same sex and were married in California but are not residents of California. Neither of us lives in a state or nation that will dissolve the marriage. This case is filed in the county in which we married.
   Petitioner's residence *(state or nation):* Respondent's residence *(state or nation):*
3. DECLARATION REGARDING MINOR CHILDREN *(include children of this relationship born or adopted prior to or during this domestic partnership or marriage)*
   a. ☐ There are no minor children.
   b. ☐ The minor children are

| Child's name | Birthdate | Age | Sex |
|---|---|---|---|

   ☐ Continued on Attachment 3b.
   c. If there are minor children of the petitioner and respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.

**NOTICE: You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child or partner support.**

| Petitioner: <br> Respondent: | CASE NUMBER: |
|---|---|

4. DECLARATION REGARDING SEPARATE PROPERTY AS CURRENTLY KNOWN
   a. ☐ There are no such assets or debts subject to disposition by the court in this proceeding.
   b. ☐ All such assets and debts listed are listed in ☐ *Property Declaration* (form FL-160) ☐ Attachment 4b and should be confirmed as petitioner's or respondent's separate property as indicated in form FL-160 or Attachment 4b.
5. DECLARATION REGARDING COMMUNITY AND QUASI-COMMUNITY ASSETS AND DEBTS AS CURRENTLY KNOWN
   a. ☐ There are no such assets or debts subject to disposition by the court in this proceeding.
   b. ☐ All such assets and debts are listed in ☐ *Property Declaration* (form FL-160) ☐ Attachment 5b and should be divided between petitioner and respondent as indicated in form FL-160 or Attachment 5b.
6. **Petitioner requests**
   a. ☐ dissolution of the ☐ domestic partnership ☐ marriage based on
      (1) ☐ irreconcilable differences. (Fam. Code, § 2310(a).) (2) ☐ incurable insanity. (Fam. Code, § 2310(b).)
   b. ☐ legal separation of the ☐ domestic partnership ☐ marriage based on
      (1) ☐ irreconcilable differences. (Fam. Code, § 2310(a).) (2) ☐ incurable insanity. (Fam. Code, § 2310(b).)
   c. ☐ nullity of void ☐ domestic partnership ☐ marriage based on
      (1) ☐ incest. (Fam. Code, § 2200.) (2) ☐ bigamy. (Fam. Code, § 2201.)
   d. ☐ nullity of voidable ☐ domestic partnership ☐ marriage based on
      (1) ☐ petitioner's age at time of registration of domestic partnership or marriage. (Fam. Code, § 2210(a).)
      (2) ☐ prior existing marriage or domestic partnership. (Fam. Code, § 2210(b).)
      (3) ☐ unsound mind. (Fam. Code, § 2210(c).)
      (4) ☐ fraud. (Fam. Code, § 2210(d).)
      (5) ☐ force. (Fam. Code, § 2210(e).)
      (6) ☐ physical incapacity. (Fam. Code, § 2210(f).)
7. **Petitioner requests** that the court grant the above relief and make injunctive (including restraining) and other orders as follows:

REVOKE

| | Petitioner | Respondent | Joint | Other |
|---|---|---|---|---|
| a. Legal custody of children to | ☐ | ☐ | ☐ | ☐ |
| b. Physical custody of children to | ☐ | ☐ | ☐ | ☐ |
| c. Child visitation granted to | ☐ | ☐ | | ☐ |

   As requested in form: ☐ FL-311 ☐ FL-312 ☐ FL-341(C) ☐ FL-341(D) ☐ FL-341(E) ☐ Attachment 7c.
   d. ☐ Determination of parentage of any children born to the petitioner and respondent prior to the domestic partnership or marriage.

| | Petitioner | Respondent |
|---|---|---|
| e. Attorney fees and costs payable by | ☐ | ☐ |
| f. Partner or spousal support payable to | ☐ | ☐ |

   g. ☐ Terminate the court's jurisdiction (ability) to award partner or spousal support to respondent.
   h. ☐ Determine property rights.
   i. ☐ Restore petitioner's former name *(specify):*
   j. ☐ Other *(specify):*
      ☐ Continued on Attachment 7j.
8. **Child support:** If there are minor children who were born to or adopted by the petitioner and respondent before or during this domestic partnership or marriage, the court will make orders for the support of the children on request and submission of financial forms by the requesting party. An earnings assignment may be issued without further notice. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.
9. **I HAVE READ THE RESTRAINING ORDERS ON THE BACK OF THE SUMMONS, AND I UNDERSTAND THAT THEY APPLY TO ME WHEN THIS PETITION IS FILED.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY FOR PETITIONER)

**NOTICE:** Dissolution or legal separation may automatically cancel the rights of a domestic partner or spouse under the other domestic partner's or spouse's will, trust, retirement plan, power of attorney, pay-on-death bank account, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the right of a domestic partner or spouse as beneficiary of the other partner's or spouse's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance polices, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions. However, some changes may require the agreement of your partner or spouse or a court order (see Fam. Code, §§ 231–235).

| ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* | FOR COURT USE ONLY |
|---|---|
| TELEPHONE NO.: FAX NO. *(Optional):*<br>E-MAIL ADDRESS *(Optional):*<br>ATTORNEY FOR *(Name):* | |
| **SUPERIOR COURT OF CALIFORNIA, COUNTY OF**<br>STREET ADDRESS:<br>MAILING ADDRESS:<br>CITY AND ZIP CODE:<br>BRANCH NAME: | |
| ☐ **DOMESTIC PARTNERSHIP OF** ☐ **MARRIAGE OF**<br>PETITIONER:<br>RESPONDENT: | |
| **RESPONSE** ☐ **and REQUEST FOR** ☐ **AMENDED**<br>☐ **Dissolution of** ☐ **Domestic Partnership** ☐ **Marriage**<br>☐ **Legal Separation of** ☐ **Domestic Partnership** ☐ **Marriage**<br>☐ **Nullity of** ☐ **Domestic Partnership** ☐ **Marriage** | CASE NUMBER: |

**NOTICE: Use this form to respond to *Petition—Domestic Partnership/Marriage* (form FL-103).**

REVOKE

1. STATISTICAL FACTS
   a. ☐ (1) Registration date of domestic partnership with the California Secretary of State or other state equivalent:
      (2) Date of separation:
      (3) Time from date of registration of domestic partnership to date of separation *(specify):* Years Months
   b. ☐ (1) Date of marriage: (2) Date of separation:
      (3) Time from date of marriage to date of separation *(specify):* Years Months
2. RESIDENCE *(check all that apply)*
   a. ☐ Our domestic partnership was established in California. Neither of us has to be a resident or have a domicile in California to dissolve our partnership here.
   b. ☐ Our domestic partnership was established in a place other than California. ☐ Petitioner ☐ Respondent has been a resident of the state of California for at least six months and of this county for at least three months immediately preceding the filing of this *Petition.*
   c. ☐ We are the same sex and are married. ☐ We are the opposite sex and are married. We are also domestic partners. ☐ Petitioner ☐ Respondent has been a resident of the state of California for at least six months and of this county for at least three months immediately preceding the filing of this *Petition.*
   d. ☐ We are the same sex and were married in California but are not residents of California. Neither of us lives in a state or nation that will dissolve the marriage. This case is filed in the county in which we married.
      Petitioner's residence *(state or nation):* Respondent's residence *(state or nation):*
3. DECLARATION REGARDING MINOR CHILDREN *(include children of this relationship born or adopted prior to or during this domestic partnership or marriage)*
   a. ☐ There are no minor children.
   b. ☐ The minor children are

| Child's name | Birthdate | Age | Sex |
|---|---|---|---|

   ☐ Continued on Attachment 3b.

   c. If there are minor children of the petitioner and the respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.

**NOTICE: You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child or partner support.**



Form Adopted for Mandatory Use
Judicial Council of California
FL-123 [Rev. January 1, 2013]

**RESPONSE—DOMESTIC PARTNERSHIP/MARRIAGE**
**(Family Law)**

Family Code, §§ 299, 308, 2020
*www.courts.ca.gov*

| Petitioner: <br> Respondent: | CASE NUMBER: |
|---|---|

4. DECLARATION REGARDING SEPARATE PROPERTY AS CURRENTLY KNOWN
   a. ☐ There are no such assets or debts subject to disposition by the court in this proceeding.
   b. ☐ All such assets and debts listed are listed in ☐ *Property Declaration* (form FL-160) ☐ Attachment 4b and should be confirmed as petitioner's or respondent's separate property as indicated in form FL-160 or Attachment 4b.
5. DECLARATION REGARDING COMMUNITY AND QUASI-COMMUNITY ASSETS AND DEBTS AS CURRENTLY KNOWN
   a. ☐ There are no such assets or debts subject to disposition by the court in this proceeding.
   b. ☐ All such assets and debts are listed in ☐ *Property Declaration* (form FL-160) ☐ Attachment 5b and should be divided between petitioner or respondent as indicated in form FL-160 or Attachment 5b.
6. ☐ **Respondent contends** that there is not a valid domestic partnership, marriage, or equivalent.
7. ☐ **Respondent denies** the grounds stated in item 6 of the petition.
8. **Respondent requests**
   a. ☐ dissolution of the ☐ domestic partnership ☐ marriage based on
      (1) ☐ irreconcilable differences. (Fam. Code, § 2310(a).) (2) ☐ incurable insanity. (Fam. Code, § 2310(b).)
   b. ☐ legal separation of the ☐ domestic partnership ☐ marriage based on
      (1) ☐ irreconcilable differences. (Fam. Code, § 2310(a).) (2) ☐ incurable insanity. (Fam. Code, § 2310(b).)
   c. ☐ nullity of void ☐ domestic partnership ☐ marriage based on
      (1) ☐ incest. (Fam. Code, § 2200.) (2) ☐ bigamy. (Fam. Code, § 2201.)
   d. ☐ nullity of voidable ☐ domestic partnership ☐ marriage based on
      (1) ☐ respondent's age at time of registration of domestic partnership or marriage. (Fam. Code, § 2210(a).)
      (2) ☐ prior existing marriage or domestic partnership (Fam. Code, § 2210(b).)
      (3) ☐ unsound mind. (Fam. Code, § 2210(c).)
      (4) ☐ fraud. (Fam. Code, § 2210(d).)
      (5) ☐ force. (Fam. Code, § 2210(e).)
      (6) ☐ physical incapacity. (Fam. Code, § 2210(f).)

**REVOKE**

9. **Respondent requests** that the court grant the above relief and make injunctive (including restraining) and other orders as follows:

| | Petitioner | Respondent | Joint | Other |
|---|---|---|---|---|
| a. Legal custody of children to | ☐ | ☐ | ☐ | ☐ |
| b. Physical custody of children to | ☐ | ☐ | ☐ | ☐ |
| c. Child visitation granted to | ☐ | ☐ | | ☐ |

   As requested in form: ☐ FL-311 ☐ FL-312 ☐ FL-341(C) ☐ FL-341(D) ☐ FL-341(E) ☐ Attachment 9c.

   d. ☐ Determination of parentage of any children born to the petitioner and respondent prior to the domestic partnership or marriage.

| | Petitioner | Respondent |
|---|---|---|
| e. Attorney fees and costs payable by | ☐ | ☐ |
| f. Partner or spousal support payable to | ☐ | ☐ |

   g. ☐ Terminate the court's jurisdiction (ability) to award partner or spousal support to the petitioner.
   h. ☐ Determine property rights.
   i. ☐ Restore respondent's former name *(specify):*
   j. ☐ Other *(specify):*
      ☐ Continued on Attachment 9j.
10. **Child support:** If there are minor children who were born to or adopted by the petitioner and respondent before or during this domestic partnership or marriage, the court will make orders for the support of the children on request and submission of financial forms by the requesting party. An earnings assignment may be issued without further notice. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_______________________ (TYPE OR PRINT NAME) _______________________ (SIGNATURE OF RESPONDENT)

Date:

_______________________ (TYPE OR PRINT NAME) _______________________ (SIGNATURE OF ATTORNEY FOR RESPONDENT)

**The original response must be filed in the court with proof of service of a copy on petitioner.**

**SPR14-09**
**Family Law: Petition and Response for Dissolution, Legal Separation, and Nullity of Marriage and Domestic Partnership** (amend Cal. Rules of Court, rule 5.76; revise forms FL-100, FL-107-INFO, FL-110, FL-115, FL-117, and FL-120; revoke forms FL-103 and FL-123)
All comments are verbatim unless indicated by an asterisk (*).

| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
|---|---|---|---|---|
| | **Commentator** | **Position** | **Comment** | **Committee Response** |
| 1. | Stephanie M. Bamberger<br>Attorney<br>Sacramento | N | See comments on specific provisions below. | See response to specific provisions below. |
| 2. | Hon. John Chemeleski<br>Court Commissioner<br>Superior Court of Los Angeles County | AM | See comments on specific provisions below. | See response to specific provisions below. |
| 3. | Jolene Dashut, LDA<br>Studio City | NI | See comments on specific provisions below. | See response to specific provisions below. |
| 4. | Richard deBlois<br>Family Law Facilitator<br>Superior Court of Solano County | NI | See comments on specific provisions below. | See response to specific provisions below. |
| 5. | Executive Committee of the Family Law Section of the State Bar (FLEXCOM)<br>by Saul Bercovitch<br>Legislative Counsel<br>San Francisco | AM | See comments on specific provisions below. | See response to specific provisions below. |
| 6. | Stacy Larson<br>Family Law Facilitator<br>Superior Court of Shasta County | AM | See comments on specific provisions below. | See response to specific provisions below. |
| 7. | National Center for Lesbian Rights<br>by Catherine Sakimura<br>Family Law Director<br>San Francisco | AM | See comments on specific provisions below. | See response to specific provisions below. |
| 8. | State Bar of California's Standing | A | * The proposed new forms seem streamlined | No response required. |

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

| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
|---|---|---|---|---|
| | **Commentator** | **Position** | **Comment** | **Committee Response** |
| | Committee on the Delivery of Legal Services (SCDLS)<br>by Maria Livingston<br>Vice Chair<br>Los Angeles | | and easy to follow. It will avoid confusion by those who are already confused by "which forms" they need to file. The committee feels that the advantages of having one standard form for dissolving all marital relationships outweighs the option of maintaining separate forms for different types of relationships. | |
| 9. | Superior Court of Los Angeles County | AM | See comments on specific provisions below. | See response to specific provisions below. |
| 10. | Superior Court of Orange County<br>by Paul E. Alberga<br>Administrative Analyst/Officer II<br>Juvenile & Family Law Units | AM | Two months may not be sufficient time to implement proposed changes as there will be an impact to court operation for updating and discontinuing affected forms:<br>• SmartForm programming and update will be required.<br>• Updates to codes and mappings within CMS system.<br>• Form packet updates will require coordination with Self-Help Center, Legal Aid, etc…<br>• Three to six months for implementation is suggested.<br><br>Court operations prefers that FORM and INFO | The committee believes that its revised recommendation to not incorporate form FL-107-INFO into form FL-100 will reduce the impact on courts. Therefore, the committee recommends that the proposed changes take effect January 1, 2015.<br><br>The committee also recommends maintaining |

| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
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| | **Commentator** | **Position** | **Comment** | **Committee Response** |
| | | | sheets remain separate documents.<br>• Separation allows for less copying and scanning into CMS.<br>• Reduced costs for copies due to fewer pages on form.<br>• In Orange County, the INFO form is already included within the general fee waiver packet.<br><br>Summary Dissolution forms should be updated as well.<br>• References at the bottom of FL-830: *Notice Of Revocation Of Joint Petition For Summary Dissolution* should be changed.<br>• In some cases, a party may wish to revoke summary dissolution for the sake of legal separation (rather than divorce).<br>• Recommend the "Notice" at the bottom | *Petition* (form FL-100), *Response* (form FL-120, and *Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO) as a separate document.<br><br>The committee agrees with the change suggested by the commentator, and recommends that form FL-830 be revised with the other summary dissolution forms that are expected to be changed in July 2015, to reflect changes in the California Consumer Price Index. |

| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
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| | **Commentator** | **Position** | **Comment** | **Committee Response** |
| | | | of FL-830 to read as follows:<br><br>"*If the clerk's certificate of mailing above has been dated and signed by the clerk, this summary dissolution case is ended. You are still married and/or domestic partners. If you want to get a divorce or a legal separation, you must use Form FL-100, Petition – Marriage/Domestic Partnership.*"<br><br>See comments on specific provisions below. | See response to specific provisions below. |
| 11. | Superior Court of Riverside County<br>by Daniel Wolfe<br>Managing Attorney | AM | See comments on specific provisions below. | See response to specific provisions below. |
| 12. | Superior Court of San Diego County<br>by Mike Roddy<br>Executive Officer | A | No specific comment provided. | No response required. |
| 13. | Superior Court of Santa Barbara County<br>by Deborah Mullin<br>Family Law Facilitator | AM | Overall, I believe the proposed changes are an excellent idea. Consolidation would be good and easier for all concerned. The court has decided that we should all be treated the same. Using the same forms is a step in that direction. | No response required. |

**SPR14-09**
**Family Law: Petition and Response for Dissolution, Legal Separation, and Nullity of Marriage and Domestic Partnership** (amend Cal. Rules of Court, rule 5.76; revise forms FL-100, FL-107-INFO, FL-110, FL-115, FL-117, and FL-120; revoke forms FL-103 and FL-123)
All comments are verbatim unless indicated by an asterisk (*).

| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
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| | **Commentator** | **Position** | **Comment** | **Committee Response** |
| | | | See comments on specific provisions below. | See response to specific provisions below. |
| 14. | Superior Court of Sonoma County<br>by Joyce MacLaury<br>Family Law Facilitator | AM | 1. Should forms FL-100 and FL-120 be streamlined for use as multipurpose forms that incorporate actions for dissolution, legal separation, or nullity of domestic partnerships or both marriages and domestic partnerships? YES.<br><br>2. Is there any advantage to maintaining separate procedures for those who want to dissolve both a marriage and domestic partnership using forms FL-103 and FL-123? NO COMMENT<br><br>3. Are there other changes that are important to make in response to the Supreme Court decisions striking down the Defense of Marriage Act? NO COMMENT<br><br>4. Will the proposal provide cost savings? If so please quantify.<br>• What are the implementation requirements for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, | No response required.<br><br>No response required.<br><br>No response required.<br><br>No response required. |

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

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| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
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| | **Commentator** | **Position** | **Comment** | **Committee Response** |
| | | | or modifying case management system.<br><br>ANSWER: No processing changes required. Minimal training or orientation on changes. No revision of processes or procedures.<br><br>• Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? ANSWER: Yes.<br><br>• How well would this proposal work in courts of different sizes? ANSWER: No comment<br><br>See comments on specific provisions below. | <br><br>No response required.<br><br><br><br>No response required.<br><br><br><br>No response required.<br><br><br>See response to specific provisions below. |
| 15. | Gregory S. Tanaka<br>Supervising Attorney<br>Family Law Facilitator/Self-Help Center<br>Superior Court of San Mateo County | NI | See comments on specific provisions below. | See response to specific provisions below. |
| 16. | Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)<br>Joint Rules Working Group | A | The proposal conforms existing forms to a change of law.<br><br>Impact on existing automated systems<br>Trial courts may experience a slight impact to updating automated case management systems | No response required.<br><br><br>The committee believes that its revised recommendation to not incorporate form FL-107-INFO into form FL-100 will reduce the impact |

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

**SPR14-09**
**Family Law: Petition and Response for Dissolution, Legal Separation, and Nullity of Marriage and Domestic Partnership** (amend Cal. Rules of Court, rule 5.76; revise forms FL-100, FL-107-INFO, FL-110, FL-115, FL-117, and FL-120; revoke forms FL-103 and FL-123)
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| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
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| | **Commentator** | **Position** | **Comment** | **Committee Response** |
| | | | with minor coding changes.<br><br><br><br><u>Results in additional trial court staff training</u><br>Staff training would be required on the new forms. Existing procedures would need to be updated. Time and cost amounts estimated to complete training and procedural updates is minimal. | on courts. Therefore, the committee recommends that the proposed changes take effect January 1, 2015.<br><br>Same as above response. |

**SPR14-09**
**Family Law: Petition and Response for Dissolution, Legal Separation, and Nullity of Marriage and Domestic Partnership** (amend Cal. Rules of Court, rule 5.76; revise forms FL-100, FL-107-INFO, FL-110, FL-115, FL-117, and FL-120; revoke forms FL-103 and FL-123)
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| Revise form FL-100 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| Stephanie Bamberger<br>Sacramento | I believe the proposed revised form FL-100 is too "busy" and will be extremely confusing for pro per litigants who already have difficulty in completing the existing form correctly.<br><br>The proposed revision does not allow for a listing of community property items on the form which can pose a notice problem if the attachment is not completed and there are issues involving real estate or pensions/retirement accounts in a default situation.<br><br>While I understand the desire to streamline, I am concerned that pro per litigants who make up the majority of our litigants in Family Court will be unduly confused by the number of boxes and will not complete the paperwork correctly which will cause even more delays in completing their dissolution processes. | The committee recommends maintaining *Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO) as a separate document which will make the form easier to read.<br><br>The committee recommends revising form FL-100 and form FL-120 to include fillable space to list items of community and quasi-community property.<br><br>The committee recommends providing and updating materials to help litigants complete the revised form. |
| Hon. John Chemeleski<br>Court Commissioner<br>Superior Court of Los Angeles County | Although I agree with the proposal to combine the existing FL-100 and FL-103 forms, and the corresponding response forms, into one form for both purposes, I do not agree that it is necessary or appropriate to expand both the Petition and Response to four pages. | The committee was unable to find a way to limit the FL-100 and FL-120 to two pages given the additional information required from forms FL-103 and FL-123. This would allow the form to be used to also request dissolution, legal separation, or nullity of a domestic partnership or both a marriage and domestic partnership in one proceeding. |

**SPR14-09**
**Family Law: Petition and Response for Dissolution, Legal Separation, and Nullity of Marriage and Domestic Partnership** (amend Cal. Rules of Court, rule 5.76; revise forms FL-100, FL-107-INFO, FL-110, FL-115, FL-117, and FL-120; revoke forms FL-103 and FL-123)
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| **Revise form FL-100** | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | Any benefit from such expansion will by outweighed by the addition pages that will have to be copied, processed, served and stored. For the approximately 100,000 dissolution cases filed in this sate each year that means 400,000 extra pages to be handled, filed, stored and transported by the court clerks back and forth from storage to the court room for each proceeding. All this for forms that have no use in the proceeding after the filing thereof. Another 400,000 copies will be made by each party for their records. An additional 400,000 pages will have to be copied to be served on the respondents and many of those will be copied again to be provided to attorneys.<br><br>I urge the committee to keep the instructions on a separate form that must be served but not filed with the court and to keep the Petition and Response at two pages each and avoid the above mentioned problems and save hundreds of thousands of unnecessarily wasted pages each year. | Reducing the expansion of the forms FL-100 and FL-120 from four to three pages, and including only notices that are required by statute to be on the *Petition* and *Response*, will decrease the impact on courts described by the commentator.<br><br>The committee agrees to recommend maintaining *Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO) as a separate document and not including information from the form on the *Petition* or *Response*. |
| Richard deBlois<br>Family Law Facilitator<br>Superior Court of California, County of Solano | I'd like to submit a suggestion for an additional change to the FL-100.<br><br>A petitioner who does not meet the residency requirements at the time they file their paperwork can file for legal separation initially and then amend to a petition for dissolution of marriage once they do meet the residency requirements. Family Code section 2321(b) requires that notice of that amendment be given as follows: "If the other party has | Instead of providing a specific item on form FL-100 for a notice of intent to amend a petition of legal separation under Family Code section 2321(b), the committee prefers to expand the amount of fillable space under “Other Requests” for a party to provide the notice to the other party. |

| Revise form FL-100 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | appeared in the proceeding, notice of the amendment shall be given to the other party in the manner provided by rules adopted by the Judicial Council. If no appearance has been made by the other party in the proceeding, notice of the amendment may be given to the other party by mail to the last known address of the other party, or by personal service, if the intent of the party to so amend upon satisfaction of the residence requirements of Section 2320 is set forth in the initial petition or pleading in the manner provided by rules adopted by the Judicial Council." To the best of my knowledge, there are no CRCs that specifically implement Section 2321. The FL-100 does not currently provide a place for the petitioner to give notice of the intent to amend once the residency requirements are satisfied. I suggest that a checkbox be added somewhere on the FL-100 that allows the petitioner to give the notice of the intent to amend per Family Code section 2321(b). | |
| Executive Committee of the Family Law Section of the State Bar (FLEXCOM)<br>by Saul Bercovitch<br>Legislative Counsel<br>San Francisco | The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal, with modification.<br><br>FLEXCOM agrees that forms FL-100 and FL-120 should be streamlined for use as multipurpose forms that incorporate actions for dissolutions, legal separation, or nullity of domestic partnerships or both marriages and domestic partnerships.<br><br>FLEXCOM does not believe there is an advantage to maintaining separate procedures for those who want to dissolve | No response required.<br><br>No response required.<br><br>Given the large amount of information that could potentially be included on this form, the committee |

| Revise form FL-100 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | both a marriage and domestic partnership using forms FL-103 and FL123, and that a single form would work, provided that single form contains a warning that under federal law, there is a distinction between marriages and domestic partnerships. | prefers to limit the notices on *Petition* and *Response* to those required by statute. The California Courts Online Self-Help Center and form FL-107-INFO include information notifying the parties about differences in tax and other issues relating to the dissolution of a domestic partnership. |
| | Using the same form for dissolution of marriages and dissolution of domestic partnerships may send a message that the legal issues are the same. They are not, because marriages are federally recognized and domestic partnerships are not. Thus, the tax consequences of interspousal transfers and inter-domestic partnership transfers are completely different. Among other issues, support calculations need to be done differently because support payments to a domestic partner are not deductible to the payor, and domestic partnership cases generally cannot use qualified domestic relations orders. | Same as above response. |
| | For these reasons, FLEXCOM supports the combination of the two forms into one, as long as there is an admonishment on the form (preferably in bold font) that says something to the effect of:<br><br>YOU ARE ADVISED THAT CALIFORNIA DOMESTIC PARTNERSHIPS ARE NOT RECOGNIZED AS MARRIAGES UNDER FEDERAL LAW. THEREFORE THE FINANCIAL ISSUES THAT COME UP IN DISSOLUTIONS | The committee prefers to limit the notices on the *Petition* and *Response* to those required by statute. The California Courts Online Self-Help Center and form FL-107-INFO include information notifying the parties about differences in tax and other issues relating to the dissolution of a domestic partnership. |

| **Revise form FL-100** | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | (FOR EXAMPLE TAXABILITY OF INTERSPOUSAL TRANSFERS, DEDUCTIBILITY OF SPOUSAL SUPPORT) MUST BE TREATED DIFFERENTLY. | |
| Stacy Larson<br>Family Law Facilitator<br>Superior Court of Shasta County | I agree that using the FL-100 and FL-120 as all-purpose forms relating to both marriages and domestic partnerships is consistent with current law and efficient. From my perspective as a facilitator, I will now be able to integrate same-sex-marriage litigants into my general dissolution/legal separation/nullity class more seamlessly.<br><br>FL-100, Caption: The revised caption facilitates the use of this form for multiple purposes. However, there is no longer room to easily clarify that a litigant is pleading in the alternative pursuant to CRC 5.60(b). For example, litigants may plead in the alternative for a nullity OR a dissolution (so that the dissolution will be granted if the nullity is denied) or a legal separation OR a dissolution (if they do not yet meet the jurisdictional requirements). Can a checkbox or more space be added to accommodate these situations in the caption?<br><br>FL-100, subsection (1): Litigants who are seeking a nullity are often asserting that they are NOT legally married, but rather that their marriage is void or voidable. They may be unwilling to sign under penalty of perjury that "they are married" as specified in item 1.a. | No response required.<br><br>The committee does not recommend revising the caption to include a new item titled "Alternative Relief." This addition could cause confusion to parties. The committee recommends providing additional space in the "Other requests" item on the petition for this purpose.<br><br>The committee believes that the situation described can be addressed by providing information and education to litigants instead of revising the form. |

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| **Revise form FL-100** | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | FL-100, subsection (6)(b) *(now item 4(b))*[1]: It would be helpful if there was a checkbox for unborn children for application when a party to the marriage is currently pregnant with the other party's child. It could be placed horizontal and to the right of the "Continued on Attachment 6b" checkbox.<br><br>FL-100, subsection (6)(c) *(now item 4(c))*: We should omit the "the" before "Petitioner" or make "petitioner" and "respondent" lower case. Capitalizing "Petitioner" and "Respondent" indicate they are proper nouns while the "the" in front of them indicates they are common nouns.<br><br>FL-100, subsection (6)(e)(2) *(now item 6)*: We should omit the "the" before "Petitioner" or make "petitioner" and "respondent" lower case. Capitalizing "Petitioner" and "Respondent" indicate they are proper nouns while the "the" in front of them indicates they are common nouns.<br><br>FL-100, subsection (7)(a): We should omit the "the" before "Petitioner" or make "petitioner" and "respondent" lower case. Capitalizing "Petitioner" and "Respondent" indicate they are proper nouns while the "the" in front of them indicates they are | The committee recommends revising form FL-100 and FL-120 to include a new item for a party to list a child who is not yet born at the time the action is filed.<br><br>The committee recommends including the change suggested by the commentator.<br><br>The committee recommends the change suggested by the commentator.<br><br>The committee recommends the change suggested by the commentator. |

[1] Form FL-100 has changed since circulation for comment. Item 4, **LEGAL GROUNDS**, is now listed as item 5. Items 6(a)-(d), MINOR CHILDREN, are now listed as items items 4 (a)-(d). Items 6(e)(1)-(2) are now listed as items 6(a)-(d) under the heading **CHILD CUSTODY AND VISITATION (PARENTING TIME)**. Any item and/or numbering changes are indicated in parenthesis.

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| Revise form FL-100 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | common nouns.<br><br>FL-100, subsection (9)(a): This section on "separate property" is different than our current version as it involves a checkbox. It would be helpful if the "separate property" section had a checkbox item similar to the one for community property that states that there is no separate property for the court to confirm. Self-represented litigants frequently do not fill in the sections on "separate property" nor "community property," also not stating that there is no such property for the Court to divide/confirm. This creates problems at the time of default judgment as their proposed judgments do not match their initial pleadings. Their judgments are rejected if they state that there is no such property to divide because this was not stated in their initial petitions. Similarly, their judgments are rejected if they leave these sections blank as their "final judgments on all issues" fails to address the issue of property/debt. Making the separate/community property sections "checkbox" items may exacerbate this problem as checkboxes generally mean that the section is optional rather than mandatory.<br><br>FL-100, headings on page 2 and subsequent pages: Changing the heading on page 2 and subsequent pages to the standard "Petitioner" and "Respondent" instead of the current "Marriage of . . ." is a good idea as it promotes consistency for the litigants. | The committee recommends incorporating the suggested revision into form FL-100.<br><br>No response required. |
| National Center for Lesbian Rights | NCLR strongly supports the elimination of forms FL-103 and | No response required. |

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| Revise form FL-100 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| by Catherine Sakimura<br>Family Law Director<br>San Francisco | FL-123 and the amendments to FL-100 and FL-120 to allow these latter forms to be used for both same-sex and different-sex couples in marriages and domestic partnerships seeking dissolution, legal separation, or declarations of nullity.<br><br>NCLR agrees with the committee that now that marriages between same-sex and different-sex couples are treated exactly the same under both state and federal law, there is no need for separate forms for same-sex married spouses. Maintaining 2 separate forms would only create confusion about the rights and responsibilities of same-sex spouses and unnecessarily stigmatize same-sex spouses.<br><br>However, because the federal government does not recognize domestic partnerships for many purposes, including federal taxes, NCLR recommends that a notice be included in the information section that couples who are only dissolving a domestic partnership (entered in California or another state) may face federal tax consequences because these relationships are not recognized by the IRS, and are encouraged to seek advice from an attorney.<br><br>Space permitting, we also recommend inclusion of a note that same-sex and different-sex spouses are treated exactly the same under both California and federal law for all purposes.<br><br>Finally, we also recommend that information about the | <br><br><br><br><br>No response required.<br><br><br><br><br><br><br><br><br>The committee prefers to limit the notices on the Petition and Response to those required by statute. The California Courts Online Self-Help Center and form FL-107-INFO include information notifying the parties about differences in tax and other issues relating to the dissolution of a domestic partnership.<br><br><br><br><br><br>Same as above response.<br><br><br><br><br>The committee agrees with the commentator to promote |

| Revise form FL-100 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | remaining differential treatment of domestic partners by the federal government be included where appropriate in any court training on the use of the new forms. | continuing education about the differential treatment of domestic partners by the federal government. |
| Superior Court of Los Angeles County | **Impact on Court staff and budget** - These changes will have a minimal impact on Court operations. Court staff will need to be briefly trained on the changes and the form packets will need to be updated.<br><br>***Formatting issues** - In the caption of [form FL-100…], we propose using bold font for the far left list of options - Dissolution, Legal Sep, Nullity - in order to offset them.<br><br>*At item 4a *(now item 5(a))* on the FL-100 …, we propose adding the word "or" between Divorce and Legal Separation. We hope this will discourage litigants from inadvertently marking both boxes.<br><br>At item 9, it might be helpful to have instruction like "select one of the following" before items 9b and 9c. Litigants might completely skip the community property questions having completed separate property.<br><br>We recommend eliminating page 4 of the proposed Petition and Response. The instructions page is quite dense and self-represented litigants will find it hard to follow.<br>We understand and appreciate the intent to give litigants useful information about the court process and to meet the | No response required.<br><br>The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.<br><br>The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.<br><br>The committee agrees to revise the form to provide separate headings for separate and community and quasi-community property.<br><br>The committee agrees to eliminate page 4 of the proposed Petition and Response. The committee also recommends maintaining *Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO) as a separate document which allows local courts to distribute their |

| **Revise form FL-100** | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | requirements of Rules of Court Rule 5.83, but we think that the Road Map we currently distribute is a more useful handout<br><br>We still intend to distribute that packet even if the proposed 4th page instructions are added to the Petition and Response. | own information to comply with CRC 5.83.<br><br>No response required. |
| Superior Court of Orange County<br>by Paul E. Alberga<br>Administrative Analyst/Officer II<br>Juvenile & Family Law Units | Under Section 6 *(now item 4)* we suggest that this section regarding minor children be moved to the first page.<br><br>o This information is required at case initiation to determine case type and many courts capture minor children names and date of birth in their case management systems.<br><br>o Having this information on the face page creates ease and efficiency for court staff and judicial officers referencing the Petition.<br><br>o Section 4 *(now item 5)*, "Legal Grounds," could be moved | The committee recommends maintaining statistical information about minor children on page one of form FL-100 and adding another item on the form for a party to specify his or her request about child custody and visitation (parenting time).<br><br>Same as above response.<br><br>Same as above response.<br><br>The committee recommends moving "Legal Grounds" to |

| Revise form FL-100 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | to second page as it is rarely referenced at case initiation.<br><br>On pages 3 & 4 we object to the inclusion of basic information on the form.<br><br>o All other information forms are separate from the form being submitted to the court.<br><br>o This change will unnecessarily increase:<br><br>▪ Processing time for additional page scans into the CMS.<br><br>▪ Printing costs should a judicial officer in an electronic environment request a copy for reference.<br><br>▪ Cost for persons requesting a copy from the court file. | page 2 of the forms.<br><br>The committee recommends expanding forms FL-100 and FL-120 to three pages to include the information required from forms FL-103 and FL-123. This would allow the form to be used to also request dissolution, legal separation, or nullity of a domestic partnership or both a marriage and domestic partnership in one proceeding. The committee also recommends maintaining *Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO) as a separate document. |
| Superior Court of Riverside County<br>by Daniel Wolfe<br>Managing Attorney | Riverside has no objection to consolidating the FL-103 and FL-123 into the FL-100 and FL-120.<br><br>[H]owever, we request that the FL-107-INFO form **not** be consolidated into the Petition (FL-100).<br><br>Riverside Court has developed its own flow chart based on how | No response required.<br><br>The committee recommends not consolidating but maintaining *Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO) as a separate document. |

## SPR14-09

**Family Law: Petition and Response for Dissolution, Legal Separation, and Nullity of Marriage and Domestic Partnership** (amend Cal. Rules of Court, rule 5.76; revise forms FL-100, FL-107-INFO, FL-110, FL-115, FL-117, and FL-120; revoke forms FL-103 and FL-123)

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| Revise form FL-100 | | |
|---|---|---|
| **Commentator** | **Comment** | **Committee Response** |
| | our Family Law Caseflow Management process works and provides specific information on Self Help resources in Riverside. | |
| | If however, the FL-107-INFO is incorporated, we ask that the Spanish version (FL-107-INFO S) be incorporated into the Spanish version of the petition (FL-100 S). | The committee also recommends not consolidating but maintaining *Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO) as a separate document. |
| | If the FL-123 is revoked, the FL-110 (Summons - Family Law) would also need to be updated. In addition, the Spanish versions of the FL-100 S and FL-120 S would also need to be updated if the forms were consolidated. | The committee agrees to recommend revising *Summons* form FL-110 and FL-110S) to delete references to form FL-123. |
| | **Impact**<br>Consolidating the FL-103 and FL-123 into the FL-100 and FL-120 would have a moderate effect on the Riverside Superior Court. The changes our court would have to make are no different than with any other form change. | No response required. |
| | • Slight impact to update our automated case management system with minor coding changes. The consolidating of forms would not affect our new case management process in family law or our eMinder system. | No response required. |

**SPR14-09**
**Family Law: Petition and Response for Dissolution, Legal Separation, and Nullity of Marriage and Domestic Partnership** (amend Cal. Rules of Court, rule 5.76; revise forms FL-100, FL-107-INFO, FL-110, FL-115, FL-117, and FL-120; revoke forms FL-103 and FL-123)
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| Revise form FL-100 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | • Form packet(s) would need to be updated/eliminated based on the form consolidation.<br><br>• Existing procedure would need to be updated.<br><br>• Staff training would be required training on the new forms.<br><br>On a side note, the AOC/Judicial Council has several Self Help webpages that provide instructions and videos on how to complete forms (http://www.courts.ca.gov/1229.htm). The committee may want to consider the impact on updating and revising these pages if the forms are consolidated. | No response required.<br><br>No response required.<br><br>No response required.<br><br>The committee's recommendation to maintain form FL-100 and FL-107-INFO as separate forms will reduce the impact on updating and revising the resources included on the California Courts Online Self-Help Center. |
| Superior Court of Santa Barbara County<br>by Deborah Mullin<br>Family Law Facilitator | The new Petition on p. 4/4 should be amended in the section re: "Important Notices" under step 4. It should indicate that "you will be divorced in six months and a day from the EARLIEST DATE of the following...." | Although the committee recommends not revising the petition to include a fourth page, the committee agrees to recommend revising form FL-107-INFO to include the commentator's suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption. |
| Superior Court of Sonoma County<br>by Joyce MacLaury<br>Family Law Facilitator | ADDITIONAL COMMENT, applicable to Petition FL-100 and Response: FL-120 and FL-107-INFO:<br><br>Item #5 on the proposed Petition leaves no blank space to list | The committee recommends adding fillable space for a |

| Revise form FL-100 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | minimal community property items (cars, credit cards, bank account) typical of a self represented litigant, yet leaves ample space under #4 to list separate property – space seldom used by SRL. The allotment of space should be reversed.<br><br>Item #7 Child Support: Add a box option for attaching an Income and Expense Declaration and Proposed Guideline Child Support calculation to maximize notice to Respondent of proposed child support order, minimize post-default court filings. | party to list items of community property on the form.<br><br>The committee recommends adding a check box for "Other" under the child support item to allow a party to indicate whether there is a specific request for child support or if other items are attached relating to child support. |

| Revise FL-107-INFO | | |
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| **Commentator** | **Comment** | **Committee Response** |
| Hon. John Chemeleski<br>Court Commissioner<br>Superior Court of Los Angeles County | * I urge the committee to keep the instructions on a separate form that must be served but not filed with the court and to keep the Petition and Response at two pages each and avoid the above mentioned problems and save hundreds of thousand of unnecessarily wasted pages each year. | The committee agrees with the comment and recommends not consolidating but maintaining *Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO) as a separate document. |
| Superior Court of Riverside County<br>by Daniel Wolfe<br>Managing Attorne | *We request that the FL-107-INFO form **not** be consolidated into the Petition (FL-100).<br><br>Riverside Court has developed its own flow chart based on how our Family Law Caseflow Management process works and provides specific information on Self Help resources in Riverside. If however, the FL-107-INFO is incorporated, we | The committee recommends not consolidating form FL-107-INFO into form FL-100. |

| Revise FL-107-INFO | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | ask that the Spanish version (FL-107-INFO S) be incorporated into the Spanish version of the petition (FL-100 S). | |
| Superior Court of Santa Barbara County<br>by Deborah Mullin<br>Family Law Facilitator | The new Petition on p. 4/4 should be amended in the section re: "Important Notices" under step 4. It should indicate that "you will be divorced in six months and a day from the EARLIEST DATE of the following...." | Although the committee recommends not revising the petition to include a fourth page, the committee agrees to recommend revising form FL-107-INFO to include the commentator's suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption. |

| Revise form FL-110 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| Superior Court of Riverside County<br>by Daniel Wolfe<br>Managing Attorney | If the FL-123 is revoked, the FL-110 (Summons - Family Law) would also need to be updated. | The committee agrees to recommend that the Judicial Council revise form FL-110 to delete references to form FL-123, effective January 1, 2015. |

| Revise form FL-115 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| Stacy Larson<br>Family Law Facilitator<br>Superior Court of Shasta County | FL-115, subsection 1.d.(1)-(6): Although outside the scope of this revision, the litigants typically do not have blank copies of the FL-105, FL-140, FL-142, FL-150, FL-155, and FL-160 | The committee does not recommend revising the form as suggested. To help them comply with the rule on form FL-115, litigants could be referred to the California |

| Revise form FL-115 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | served on the respondents. To reflect this, they cross out the "and blank" part of each of these provisions, requiring numerous initials of changes. Can the "and blank" wording be omitted for each? | Courts Online Self-Help Center, local law libraries, and public libraries to obtain blank copies of the forms listed on the form. |
| | FL-115, subsection 1.d: Although outside the scope of this revision, it would be helpful to have a checkbox item for service of the last two years of tax returns to correlate with the FL-140, etc. | The committee does not recommend revising forms FL-115 to include a new entry for filed tax returns. The tax returns are served as part of the Declaration of Disclosure (form FL-140). |

| Revise form FL-117 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| Jolene Dashut, LDA<br>Studio City | Regarding form FL117, Notice and Acknowledgement of Receipt, I believe that it needs to be be revised. At least 50 percent of the time, the date is left off, or put in the wrong place. | The committee recommends revising form FL-117 by adding specific item numbers and making other formatting and substantive changes to highlight the areas that are required to be completed by the sender and the recipient. |
| | My suggestion would be to reverse the place for signature and the date, as we read left to right, the signer would see the place to date the form after signing it on the left hand side of the page. | The committee prefers to revise the form as above described. |
| | I understand changes are slow, budgets are tight, etc. and that this forms was recently revised last year, but it's still not working, and wanted to put this idea out there. This is such an | The committee recommends revising the form as previously described, effective January 1, 2015. |

**Revise form FL-117**

| Commentator | Comment | Committee Response |
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| | important form, establishing the Jurisdiction date in a Dissolution. | |
| Gregory S. Tanaka<br>Supervising Attorney<br>Family Law Facilitator/Self-Help Center<br>Superior Court of San Mateo County | * …the signature line on the proposed FL-117 for the person mailing the form (underneath the "Notice" section) states Petitioner as well whereas previously it required a 3rd party server to sign. It's not a Proof of Service so probably fine for Petitioner to sign the form but again, wasn't sure if that change was intended…<br><br>* …there appears to be a typo in the proposed *Notice of Acknowledgement of Receipt* (FL-117). On the signature line at the bottom where the recipient is supposed to sign, it incorrectly lists the Petitioner's name… | The committee recommends that the signature line in the notice section of the form reflect the correct language that is found on the current form, which states the following: "(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE AND MUST BE 18 YEARS OR OLDER)."<br><br>The committee recommends that the signature at the bottom of the form reflect the correct language that is found on the current form, which states the following: "(SIGNATURE PERSON ACKNOWLEDGING RECEIPT)." |
| Stacy Larson<br>Family Law Facilitator<br>Superior Court of Shasta County | FL-117, subsection d.(1)-(5): Although outside the scope of this revision, the litigants typically do not have blank copies of the FL-105, FL-140, FL-142, FL-150, FL-155, and FL-160 served on the respondents. To reflect this, they cross out the "and blank" part of each of these provisions, requiring numerous initials of changes. Can the "and blank" wording be omitted for each? | The committee does not recommend revising the form as suggested. To help them comply with the rule on form FL-115, litigants could be referred to the California Courts Online Self-Help Center, local law libraries, and public libraries to obtain blank copies of the forms listed on the form. |

**Revise form FL-120**

| Commentator | Comment | Committee Response |
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| Executive Committee of the Family Law Section of the State Bar (FLEXCOM)<br>by Saul Bercovitch<br>Legislative Counsel<br>San Francisco | The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal, with modification.<br><br>FLEXCOM agrees that forms FL-100 and FL-120 should be streamlined for use as multipurpose forms that incorporate actions for dissolutions, legal separation, or nullity of domestic partnerships or both marriages and domestic partnerships.<br><br>FLEXCOM does not believe there is an advantage to maintaining separate procedures for those who want to dissolve both a marriage and domestic partnership using forms FL-103 and FL123, and that a single form would work, provided that single form contains a warning that under federal law, there is a distinction between marriages and domestic partnerships.<br><br>Using the same form for dissolution of marriages and dissolution of domestic partnerships may send a message that the legal issues are the same. They are not, because marriages are federally recognized and domestic partnerships are not. Thus, the tax consequences of interspousal transfers and inter-domestic partnership transfers are completely different. Among other issues, support calculations need to be done differently because support payments to a domestic partner are not deductible to the payor, and domestic partnership cases generally cannot use qualified domestic relations orders.<br><br>For these reasons, FLEXCOM supports the combination of the | No response required.<br><br>No response required.<br><br>The committee prefers to limit the notices on *Petition* and *Response* to those required by statute. The California Courts Online Self-Help Center and form FL-107-INFO include information notifying the parties about differences in tax and other issues relating to the dissolution of a domestic partnership.<br><br>Same as above response.<br><br>The committee prefers to limit the notices on *Petition* |

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| | two forms into one, as long as there is an admonishment on the form (preferably in bold font) that says something to the effect of:<br><br>YOU ARE ADVISED THAT CALIFORNIA DOMESTIC PARTNERSHIPS ARE NOT RECOGNIZED AS MARRIAGES UNDER FEDERAL LAW. THEREFORE THE FINANCIAL ISSUES THAT COME UP IN DISSOLUTIONS (FOR EXAMPLE TAXABILITY OF INTERSPOUSAL TRANSFERS, DEDUCTIBILITY OF SPOUSAL SUPPORT) MUST BE TREATED DIFFERENTLY. | and *Response* to those required by statute. The California Courts Online Self-Help Center and form FL-107-INFO include information notifying the parties about differences in tax and other issues relating to the dissolution of a domestic partnership. |
| Stacy Larson<br>Family Law Facilitator<br>Superior Court of Shasta County | I agree that using the FL-100 and FL-120 as all-purpose forms relating to both marriages and domestic partnerships is consistent with current law and efficient. From my perspective as a facilitator, I will now be able to integrate same-sex-marriage litigants into my general dissolution/legal separation/nullity class more seamlessly.<br><br>FL-120, subsection (1): Litigants who are seeking a nullity are often asserting that they are NOT legally married, but rather that their marriage is void or voidable. They may be unwilling to sign under penalty of perjury that “they are married” as specified in item 1.a.<br><br>FL-120, Response: It is helpful how the numbers of each section on the response (e. g., Legal Relationship, Residence, Statistical Facts, etc.) correlate with the numbers on the petition. As a facilitator, litigants who wish to file a response to a dissolution/legal separation/nullity petition are in the same | No response required.<br><br>The committee believes that the situation described can be addressed by providing information and education to litigants instead of revising the form.<br><br>No response required. |

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| | class as those wishing to file petitions for this relief. When the numbers on the petition correlate with the numbers on the response, it eliminates confusion when I cover these issues. | |
| | * It would be helpful if the "Legal Grounds" section at Item 4 *(now item 5)*[2] of the Response saved the two special categories challenging the grounds stated in the petition, currently shown as 4.a. and 4.b. *(now items 5(a) and 5(b))*, for the end so that they became Items [5].d. and [5].e. so that the correlation would continue through Item 4. My perspective on this issue is extremely narrow, so I completely understand that it will be shared by few, if any! | The committee does not agree to revise form FL-120 as suggested by the commentator. |
| | FL-120, subsection (6)(b) *(now item 4(b))*: It would be helpful if there was a checkbox for unborn children for application when a party to the marriage is currently pregnant with the other party's child. It could be placed horizontal and to the right of the "Continued on Attachment 6b" *(now "Continued on Attachment 4b")* checkbox. | The committee recommends including the change suggested by the commentator among the other changes to form FL-120 being recommended to the Judicial Council. |
| | FL-120, subsection (6)(c) *(now item 4(c))*: We should omit the "the" before "Petitioner" or make "petitioner" and "respondent" lower case. Capitalizing "Petitioner" and "Respondent" indicate they are proper nouns while the "the" in | The committee recommends including the change suggested by the commentator among the other changes to form FL-120 being recommended to the Judicial Council. |

[2] Form FL-120 has changed since circulation for comment. Item 4, **LEGAL GROUNDS**, is now listed as item 5. Items 6(a)-(d), **MINOR CHILDREN**, are now listed as items 4 (a)-(d). Items 6(e)(1)-(2) are now listed as items 6(a)-(d) under the heading **CHILD CUSTODY AND VISITATION (PARENTING TIME)**. Any item and/or numbering changes are indicated in parenthesis.

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| | front of them indicates they are common nouns. | |
| | FL-120, subsection (9)(a) *(now item 9(b))*: This section on "separate property" is different than our current version as it involves a checkbox. It would be helpful if the "separate property" section had a checkbox item similar to the one for community property that states that there is no separate property for the court to confirm. | The committee agrees to recommend revising form FL-120 as suggested by the commentator. |
| | FL-120, subsection (6)(e)(2) *(now item 6(d))*: We should omit the "the" before "Petitioner" or make "petitioner" and "respondent" lower case. Capitalizing "Petitioner" and "Respondent" indicate they are proper nouns while the "the" in front of them indicates they are common nouns. | The committee recommends the change suggested by the commentator. |
| | FL-120, subsection (7)(a): We should omit the "the" before "Petitioner" or make "petitioner" and "respondent" lower case. Capitalizing "Petitioner" and "Respondent" indicate they are proper nouns while the "the" in front of them indicates they are common nouns. | The committee recommends the change suggested by the commentator. |
| | FL-120, subsection (9)(a) *(now item 9(b))*: This section on "separate property" is different than our current version as it involves a checkbox. It would be helpful if the "separate property" section had a checkbox item similar to the one for community property that states that there is no separate property for the court to confirm. Self-represented litigants frequently do not fill in the sections on "separate property" nor "community property," also not stating that there is no such | The committee agrees to revise form FL-120 as suggested by the commentator. |

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| | property for the Court to divide/confirm. This creates problems at the time of default judgment as their proposed judgments do not match their initial pleadings. Their judgments are rejected if they state that there is no such property to divide because this was not stated in their initial petitions. Similarly, their judgments are rejected if they leave these sections blank as their "final judgments on all issues" fails to address the issue of property/debt. Making the separate/community property sections "checkbox" items may exacerbate this problem as checkboxes generally mean that the section is optional rather than mandatory.<br><br>FL-120, Item 10.b. *(now item 11(b))*: This appears to be a typographical error. "Petitioner's" should be changed to "Respondent's." Sometimes the respondent is the one who wishes that her former name be restored. | <br><br><br><br><br><br><br><br><br><br><br><br>The committee recommends the change suggested by the commentator. |
| National Center for Lesbian Rights<br>by Catherine Sakimura<br>Family Law Director<br>San Francisco | NCLR strongly supports the elimination of forms FL-103 and FL-123 and the amendments to FL-100 and FL-120 to allow these latter forms to be used for both same-sex and different-sex couples in marriages and domestic partnerships seeking dissolution, legal separation, or declarations of nullity. NCLR agrees with the committee that now that marriages between same-sex and different-sex couples are treated exactly the same under both state and federal law, there is no need for separate forms for same-sex married spouses. Maintaining 2 separate forms would only create confusion about the rights and responsibilities of same-sex spouses and unnecessarily stigmatize same-sex spouses. | No response required. |

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| | However, because the federal government does not recognize domestic partnerships for many purposes, including federal taxes, NCLR recommends that a notice be included in the information section that couples who are only dissolving a domestic partnership (entered in California or another state) may face federal tax consequences because these relationships are not recognized by the IRS, and are encouraged to seek advice from an attorney.<br><br>Space permitting, we also recommend inclusion of a note that same-sex and different-sex spouses are treated exactly the same under both California and federal law for all purposes.<br><br>Finally, we also recommend that information about the remaining differential treatment of domestic partners by the federal government be included where appropriate in any court training on the use of the new forms. | The committee prefers including those notices on the petition and response that are mandated by statute. The committee recommends revising form FL-107-INFO to include a notice about federal tax consequences to parties who are filing actions to dissolve a domestic partnership.<br><br>The committee prefers including those notices on the petition and response that are mandated by statute.<br><br>The committee agrees with the commentator to promote continuing education to judicial officers about the differential treatment of domestic partners by the federal government. |
| Superior Court of Los Angeles County | **Impact on Court staff and budget** - These changes will have a minimal impact on Court operations. Court staff will need to be briefly trained on the changes and the form packets will need to be updated.<br><br>***Formatting issues** - In the caption of [form FL-120], we propose using bold font for the far left list of options - Dissolution, Legal Sep, Nullity - in order to offset them.<br><br>*At item 4c *(now item 5(c))* on form FL-120 we propose adding the word "or" between Divorce and Legal Separation. We hope this will discourage litigants from inadvertently | No response required.<br><br>The committee agrees to recommend the formatting change suggested by the commentator.<br><br>The committee agrees to recommend the change suggested by the commentator. |

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| | marking both boxes.<br><br>At item 9, it might be helpful to have instruction like "select one of the following" before items 9b *(now item 9(a))* and 9c *(now included in 9(b))*. Litigants might completely skip the community property questions having completed separate property.<br><br>We recommend eliminating page 4 of the proposed […Response]. The instructions page is quite dense and self-represented litigants will find it hard to follow.<br><br>We understand and appreciate the intent to give litigants useful information about the court process and to meet the requirements of Rules of Court Rule 5.83, but we think that the Road Map we currently distribute is a more useful handout. | To avoid the potential issue raised by the commentator, the committee recommends revising the form to include separate headings for "Separate Property" and "Community or Quasi-Community Property."<br><br>The committee agrees with the commentator and recommends limiting forms FL-100 and FL-120 to three pages.<br><br>The committee agrees to maintain form FL-107-INFO as a separate document. |
| Superior Court of Orange County by Paul E. Alberga Administrative Analyst/Officer II Juvenile & Family Law Units | Under Section 6 *(now item 4)* we suggest that this section regarding minor children be moved to the first page.<br><br>o This information is required at case initiation to determine case type and many courts capture minor children names and date of birth in their case management systems.<br><br>o Having this information on the face page creates ease and efficiency for court staff and judicial officers referencing the Petition.<br><br>o Section 4 *(now item 5)*, "Legal Grounds", could be moved | The committee recommends revising the form to maintain the issue of minor children on page one of form FL-100.<br><br>The committee recommends moving "Legal Grounds" to page two of the *Petition* and *Response*. |

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| | to second page as it is rarely referenced at case initiation.<br><br>On pages 3 & 4 we object to the inclusion of basic information on the form.<br><br>o All other information forms are separate from the form being submitted to the court.<br><br>o This change will unnecessarily increase:<br><br>▪ Processing time for additional page scans into the CMS.<br><br>▪ Printing costs should a judicial officer in an electronic environment request a copy for reference.<br><br>▪ Cost for persons requesting a copy from the court file. | The committee agrees with the recommendation to limit the inclusion of basic information on the form and recommends maintaining *Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO) as a separate document. |
| Superior Court of Riverside County<br>by Daniel Wolfe<br>Managing Attorney | Riverside has no objection to consolidating the FL-103 and FL-123 into the FL-100 and FL-120,<br><br>[H]owever we request that the FL-107-INFO form **not** be consolidated into the Petition (FL-100). Riverside Court has developed its own flow chart based on how our Family Law Caseflow Management process works and provides specific information on Self Help resources in Riverside. If however, the FL-107-INFO is incorporated, we ask that the Spanish version (FL-107-INFO S) be incorporated into the Spanish version of the petition (FL-100 S). | No response required.<br><br>The committee recommends not consolidating form FL-107-INFO into the petition and response. |

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| | If the FL-123 is revoked, the FL-110 (Summons - Family Law) would also need to be updated. In addition, the Spanish versions of the FL-100 S and FL-120 S would also need to be updated if the forms were consolidated. | The committee agrees to recommend revising *Summons* form FL-110 and FL-110S) to delete references to form FL-123, which is recommended to be revoked. No response required. |
| | **Impact**<br>Consolidating the FL-103 and FL-123 into the FL-100 and FL-120 would have a moderate effect on the Riverside Superior Court. The changes our court would have to make are no different than with any other form change. | No response required. |
| | • Slight impact to update our automated case management system with minor coding changes. The consolidating of forms would not affect our new case management process in family law or our eMinder system. | No response required. No response required. |
| | • Form packet(s) would need to be updated/eliminated based on the form consolidation. | No response required. |
| | • Existing procedure would need to be updated.<br>• Staff training would be required training on the new forms.<br>On a side note, the AOC/Judicial Council has several Self Help webpages that provide instructions and videos on how to | The committee's recommendations will reduce the impact on updating and revising the resources included on the California Courts Online Self-Help Center. |

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| | complete forms (http://www.courts.ca.gov/1229.htm). The committee may want to consider the impact on updating and revising these pages if the forms are consolidated. | |
| Superior Court of Sonoma County by Joyce MacLaury Family Law Facilitator | ADDITIONAL COMMENT, applicable to Petition FL-100 and Response: FL-120 and FL-107-INFO:<br><br>Item #9c on the proposed [Response] leaves no blank space to list minimal community property items (cars, credit cards, bank account) typical of a self represented litigant, yet leaves ample space under #9a to list separate property – space seldom used by SRL. The allotment of space should be reversed.<br><br>Item #7 Child Support: Add a box option for attaching an Income and Expense Declaration and Proposed Guideline Child Support calculation to maximize notice to Respondent of proposed child support order, minimize post-default court filings. | The committee recommends revising form FL-120 to include fillable space for a party to list items of community and quasi-community property on the form, and maintaining the fillable space to list separate property items.<br><br>The committee recommends adding a check box for “Other” under the child support item to allow a party to indicate whether there is a specific request for child support orders or if there are other items attached to the petition relating to child support. |

| **Revoke FL-103** | | |
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| **Commentator** | **Comment** | **Committee Response** |
| Executive Committee of the Family Law Section of the State Bar (FLEXCOM)<br>by Saul Bercovitch<br>Legislative Counsel<br>San Francisco | FLEXCOM does not believe there is an advantage to maintaining separate procedures for those who want to dissolve both a marriage and domestic partnership using forms FL-103 and FL123, and that a single form would work, provided that single form contains a warning that under federal law, there is a distinction between marriages and domestic partnerships. | The committee recommends revoking form FL-103. However, the committee prefers to limit the notices on *Petition* and *Response* to those required by statute and revising content of the California Courts Online Self-Help Center and form FL-107-INFO to include information about differences in tax and other issues relating to the dissolution of a domestic partnership. |
| | Using the same form for dissolution of marriages and dissolution of domestic partnerships may send a message that the legal issues are the same. They are not, because marriages are federally recognized and domestic partnerships are not. Thus, the tax consequences of interspousal transfers and inter-domestic partnership transfers are completely different. Among other issues, support calculations need to be done differently because support payments to a domestic partner are not deductible to the payor, and domestic partnership cases generally cannot use qualified domestic relations orders. | Same as above response. |
| | For these reasons, FLEXCOM supports the combination of the two forms into one, as long as there is an admonishment on the form (preferably in bold font) that says something to the effect of:<br><br>YOU ARE ADVISED THAT CALIFORNIA DOMESTIC | Same as above response. |

| Revoke FL-103 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | PARTNERSHIPS ARE NOT RECOGNIZED AS MARRIAGES UNDER FEDERAL LAW. THEREFORE THE FINANCIAL ISSUES THAT COME UP IN DISSOLUTIONS (FOR EXAMPLE TAXABILITY OF INTERSPOUSAL TRANSFERS, DEDUCTIBILITY OF SPOUSAL SUPPORT) MUST BE TREATED DIFFERENTLY. | |
| Stacy Larson<br>Family Law Facilitator<br>Superior Court of Shasta County | I am definitely in favor of revoking the FL-103/FL-123 in favor of using the FL-100/FL-120 as all-purpose forms. | The committee recommends revoking form FL-103 and FL-123. |

| Revoke Form FL-123 | | |
|---|---|---|
| **Commentator** | **Comment** | **Committee Response** |
| Executive Committee of the Family Law Section of the State Bar (FLEXCOM)<br>by Saul Bercovitch<br>Legislative Counsel<br>San Francisco | FLEXCOM does not believe there is an advantage to maintaining separate procedures for those who want to dissolve both a marriage and domestic partnership using forms FL-103 and FL123, and that a single form would work, provided that single form contains a warning that under federal law, there is a distinction between marriages and domestic partnerships.<br><br>Using the same form for dissolution of marriages and dissolution of domestic partnerships may send a message that the legal issues are the same. They are not, because marriages are federally recognized and domestic partnerships are not. | The committee recommends revoking form FL-123. However, the committee prefers to limit the notices on *Petition* and *Response* to those required by statute. The California Courts Online Self-Help Center and form FL-107-INFO include information notifying the parties about differences in tax and other issues relating to the dissolution of a domestic partnership.<br><br>Same as above response. |

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| | Thus, the tax consequences of interspousal transfers and inter-domestic partnership transfers are completely different. Among other issues, support calculations need to be done differently because support payments to a domestic partner are not deductible to the payor, and domestic partnership cases generally cannot use qualified domestic relations orders.<br><br>For these reasons, FLEXCOM supports the combination of the two forms into one, as long as there is an admonishment on the form (preferably in bold font) that says something to the effect of:<br><br>YOU ARE ADVISED THAT CALIFORNIA DOMESTIC PARTNERSHIPS ARE NOT RECOGNIZED AS MARRIAGES UNDER FEDERAL LAW. THEREFORE THE FINANCIAL ISSUES THAT COME UP IN DISSOLUTIONS (FOR EXAMPLE TAXABILITY OF INTERSPOUSAL TRANSFERS, DEDUCTIBILITY OF SPOUSAL SUPPORT) MUST BE TREATED DIFFERENTLY. | The committee recommends revoking form FL-123. However, the committee prefers to limit the notices on *Petition* and *Response* to those required by statute. The California Courts Online Self-Help Center and form FL-107-INFO include information notifying the parties about differences in tax and other issues relating to the dissolution of a domestic partnership. |
| Stacy Larson<br>Family Law Facilitator<br>Superior Court of Shasta County | I am definitely in favor of revoking the FL-103/FL-123 in favor of using the FL-100/FL-120 as all-purpose forms. | The committee recommends revoking forms FL-103 and FL-123. |
| Superior Court of Riverside County<br>by Daniel Wolfe<br>Managing Attorney | If the FL-123 is revoked, the FL-110 (Summons - Family Law) would also need to be updated. | The committee recommends that the Judicial Council, effective January 1, 2015, revise form FL-110 to remove the reference to form FL-123. |

# RUPRO ACTION REQUEST FORM

**RUPRO Meeting:** September 8, 2014

| RUPRO action requested: |
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| **Recommend JC approval (has circulated for comment)** |

| Title: Family Law: Uniform Standards of Practice for Providers of Supervised Visitation | Rules:<br><br>Standards: Amend Cal. Stds. Jud. Admin., std. 5.20<br><br>Forms: Revise form FL-341(A) |
| --- | --- |
| Committee or other entity submitting the proposal:<br><br>Family and Juvenile Law Advisory Committee<br>Hon. Jerilyn L. Borack, Cochair<br>Hon. Kimberly J. Nystrom-Geist, Cochair | Staff contact:<br>Tracy Kenny, 916-263-2838<br>tracy.kenny@jud.ca.gov |

| **If requesting July 1 or out of cycle, explain:** |
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| **Additional Information for RUPRO:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary, including any substantial argument in opposition and any expected individual or organization likely to support or oppose the proposal.) |
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JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

**Title**
Family Law: Uniform Standards of Practice for Providers of Supervised Visitation

**Rules, Forms, Standards, or Statutes Affected**
Amend Cal. Stds. Jud. Admin., std. 5.20; revise form FL-341(A)

**Recommended by**
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Kimberly J. Nystrom-Geist, Cochair

**Agenda Item Type**
Action Required

**Effective Date**
January 1, 2015

**Date of Report**
August 13, 2014

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## Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending standard 5.20 of the California Standards of Judicial Administration, governing providers of supervised visitation, to conform to the requirements of recently enacted Family Code section 3200.5. The committee also recommends making additional changes to standard 5.20 to enhance its internal consistency. In addition, the committee recommends revising the *Supervised Visitation Order* (form FL-341(A)) to eliminate references to "therapeutic visitation" to maintain consistency with the provisions of section 3200.5 and to make technical changes to make the form consistent with other Judicial Council forms that relate to child custody matters.

## Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2015:

1. Amend standard 5.20 of the California Standards of Judicial Administration to conform to recently enacted Family Code section 3200.5, which directs the council to incorporate new requirements into the standard, and to update the standard and enhance its internal clarity and consistency; and

2. Revise *Supervised Visitation Order* (form FL-341(A)) to eliminate references to "therapeutic visitation" consistent with the provisions of section 3200.5 and to make technical changes to make the form consistent with other Judicial Council forms that relate to child custody matters.

The text of the amended standard is attached at pages 9–16. The revised form is attached at page 17.

## Previous Council Action

Standard 5.20, on standards for providers of supervised visitation, was adopted as section 26.2, effective January 1, 1998, under legislation requiring the council to adopt such standards. Minor amendments were made when the standard was renumbered effective January 1, 2007.

The council adopted form FL-341(A) effective January 1, 1999 as form 1296.31(A)(1) as a mandatory attachment for ordering supervised visitation, and renumbered it effective January 1, 2003, when all family law forms were renumbered.

## Rationale for Recommendation

The Judicial Council adopted standard 5.20 to implement the provisions of Family Code section 3200, which was enacted in 1996. The legislation required the Judicial Council to enact standards for supervised visitation providers and identified the specific provisions that the council was required to consider in developing the standards of practice. In 2012, the Legislature enacted Assembly Bill 1674 (Stats. 2012, ch. 692), which added section 3200.5 to the Family Code. Section 3200.5 sets forth an array of mandatory provisions that are required to be included in the standards for supervised visitation that implement section 3200. Much of the language of Family Code section 3200.5 is drawn from the current text of standard 5.20. The key difference is that where standard 5.20 presents all of its provisions as suggested policies and best practices that supervised visitation providers *should* comply with, many of the provisions of section 3200.5 are mandatory requirements for the providers of supervised visitation (using the term *shall*). The legislative history for section 3200.5 shows that the intent of the Legislature in enacting it was to identify those provisions of standard 5.20 that needed to be required of all providers and to add in requirements that the Legislature identified as missing in the standard (e.g., a specific number of hours of training for providers).[1]

[1] See, for example, the July 2, 2012, Senate Judiciary Committee analysis of AB 1674.

**Existing suggested provisions of standard 5.20 that would become mandatory**

As described above, section 3200.5 codifies certain provisions of standard 5.20 and makes them mandatory.[2] For the standard to conform to those provisions, it needs to be reorganized and amended to substitute the term *must* for *should* with regard to the mandatory statutory provisions stated under Family Code section 3200.5. Specifically, standard 5.20 would be amended to:

- Break up the current subdivisions on nonprofessional and professional providers and specify those requirements for nonprofessional providers that are mandatory and those that remain suggested;
- Make all of the eligibility requirements for professional providers mandatory;
- Make the training requirements for professional providers mandatory;
- Require that professional providers keep certain case records;
- Require all providers to implement appropriate terms and conditions during each visit;
- Require professional providers to carry out specified legal obligations, including reporting suspected abuse and suspending or terminating visitation when required.
- Require all providers to make every effort to provide a safe visit, to make a record of any visit that is suspended or terminated, and to advise the parties of the reasons for the suspension or termination; and
- Require professional providers to prepare a written statement of the reasons for suspension or termination of a visit and provide that written statement to the parties and the court.

**New requirements incorporated into standard 5.20**

Although the majority of the language in section 3200.5 comes verbatim from the current standard, section 3200.5 did add additional requirements that are incorporated into amended standard 5.20 as follows:

- The requirement that the court specifically consider whether to use a professional or nonprofessional provider in any case in which the court has determined that domestic violence, child abuse, or neglect exists is incorporated into subdivision (c).
- The requirement that all professional providers receive 24 hours of training in specified areas is added.

[2] The committee recognizes that it is unusual to have mandatory provisions in a standard of judicial administration, but section 3200.5 specifically uses the term "standards" with reference to what the council is required to adopt; thus the committee has opted to modify the standard to make mandatory those items required by the statute while leaving the remainder of the standard's provisions as permissive best practices.

- The training areas are expanded to include basic knowledge of family and juvenile law.

- All professional providers are required to sign a declaration or a *Declaration of Supervised Visitation Provider* (form FL-324) stating that they have met all of the requirements to be a professional provider.

**Elimination of references to therapeutic visitation providers**

In its current form, standard 5.20 identifies three types of supervised visitation providers: nonprofessional, professional, and therapeutic. Family Code section 3200.5 identifies only two types of providers: professional or nonprofessional. To ensure that standard 5.20 is consistent with Family Code section 3200.5, this proposal deletes all references to therapeutic visitation providers. In addition, form FL-341(A) is revised to delete the option to order therapeutic visitation (at item 4c on the current form) because this option is not contemplated by the statute.

**Additional changes to enhance internal consistency**

In its review of standard 5.20, the committee identified a number of provisions that were internally inconsistent with the overall approach of the standard and proposes additional changes unrelated to Family Code section 3200.5 to ensure that the standard is clear and consistent, i.e.:

- Deleting the sentence excluding supervised exchange from subdivision (b) because supervised exchange clearly falls into the definition of supervised visitation described in the preceding sentence;

- Deleting "providers of supervised visitation" from the list of individuals in subdivision (c) who may make a recommendation to the court about the manner in which supervision is provided, and deleting from paragraph (3) of subdivision (j) (current subdivision (h)) the authority of the court to order a provider to give an opinion or recommendation on future visitation because the remainder of the standard makes clear that providers are to be neutral and thus should not be in the position of making recommendations;

- Changing the word "assess" in paragraph (2) of subdivision (g) ((e) in the current standard) to "understand" to make clear that providers are not in an evaluative role;

- Clarifying subdivision (g) ((e) in the current standard) to provide that all professional providers, and not just supervised visitation centers, should have written protocols addressing local law enforcement responses;

- In subdivision (i) on conflict of interest provisions ((g) in the current standard), clarifying that the specific requirements about having no outside relationship with a client apply only to professional providers and not to nonprofessional providers, who are often related to the parties;

- Adding the court to the list of those who should be given a copy of a court-ordered report of a visitation in paragraph (3) of subdivision (j) (current (h)) to make that section consistent with subdivision (q) (current (o)), which requires that the court, along with the parties and their attorneys, receive all reports of suspended or interrupted visits;

- Adding a provision to subdivision (*l*) (current (j)) concerning terms and conditions for supervised visitation to require that there be no contact between the parents unless ordered by the court; and

- In subdivision (m) (current (k)) regarding special considerations concerning sexual abuse allegation cases, deleting the word "prolonged" as a modifier of "hugging" to make clear that the parent should have no physical contact with the child, as the earlier clause indicates.

## Comments, Alternatives Considered, and Policy Implications

### Comments

This proposal circulated for comment as part of the spring 2014 invitation-to-comment cycle, from April 18 to June 18, 2014, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, and other juvenile law professionals. Sixteen individuals or organizations provided comment; 6 agreed with the proposal, 7 agreed if modified, 2 disagreed with the proposal, and 1 expressed no position but included comments. A chart with the full text of the comments received and the committee's responses is attached at pages 18–60.

The committee sought comment on three proposed modifications to standard 5.20, and most of the substantive comments were in response to the following issues: whether supervised exchanges should be subject to the standard; whether providers of supervised visitation services should be making recommendations about future visitation to the court; and whether the standard or the form should make any reference to therapeutic visitation. Each is discussed below. In addition, some commentators made suggestions for ensuring provider compliance with the training and qualification requirements of Family Code section 3200.5 and the amended standard beyond what is required by the statute.

***Supervised exchanges.*** Current standard 5.20 provides that supervised visitation is "contact between a noncustodial party and one or more children in the presence of a neutral third person" but then goes on to state that the standards and this definition do not include supervision of exchanges only. The committee proposed deleting this exception from the standard in the proposal circulated for comment based on feedback from professional providers of supervised visitation who opined that the exception was unwarranted and that supervised exchanges require the same care and standards as supervised visitation. The committee adopted their suggestion, but sought specific comment on this change. Five commentators specifically addressed this

issue: three were in support of applying the standards to supervised exchange—one by expressly including it in the definition and two by eliminating the exception as proposed; one supported the current exception; and one suggested new separate standards to be adopted for supervised exchange. The committee opted to maintain the deletion of the exception for supervised exchanges from the definition section thereby ensuring that all cases in which a neutral party is monitoring contact between a noncustodial parent and children would be subject to the same standards of practice.

***Recommendations by supervised visitation providers.*** Standard 5.20 sets forth a list of individuals who may make recommendations to the court about the manner in which supervision should be provided. Supervised visitation providers are on this list, along with the parties, their attorneys, and the attorney for the child as well as Family Court Services staff, child custody evaluators, and therapists. Because of concerns that making recommendations is fundamentally in conflict with the otherwise neutral role of the supervised visitation provider, the committee proposed to delete these providers from the list of those whose recommendations the court may consider in making its determination on visitation. The committee then sought specific comment on this change to determine its impact. Five commentators addressed this issue, with two arguing that providers continue to be allowed to make recommendations, two supporting the proposal to eliminate this authority as incompatible with the neutral role of the provider, and one expressing concern about the impact on the court without taking an express position. With the knowledge that many other professionals would still be available to the court for recommendations on future visitation, the committee was persuaded that the role conflict was sufficient to delete supervised visitation providers from the list.

***Therapeutic visitation.*** Standard 5.20 currently defines three types of supervised visitation providers: nonprofessional, professional, and therapeutic. Nonprofessional providers are not paid for their services, any provider who is paid is a professional provider, and a therapeutic provider is defined as a licensed mental health professional paid for supervising visitation. Because Family Code Section 3200.5 expressly provides that a provider "shall be a professional or a nonprofessional provider," the committee deleted all references to therapeutic providers from the standard and form FL-341(A), but sought comment on whether this deletion was necessary or if it was preferable to retain distinct references to these providers as a subcategory within the professional provider category. Seven commentators addressed this issue; of these four were in support of deleting all references to therapeutic visitation, one opposed such deletion, one wanted to include a subcategory on form FL-341(A), and one expressed some concern about current confusion about what therapeutic visitation includes. Given the express statutory language, and the fact that the Legislature appears to have purposefully deleted references to therapeutic visitation in section 3200.5 as versions prior to the enacted version of the statute included the term, the committee felt constrained to eliminate this term from the standard and the form consistent with the statute. The committee notes, however, that the proposed changes will not prevent licensed mental health professionals from offering supervised visitation services, nor will it restrict the authority of the court to order visitation with these licensed professionals.

***Compliance with the requirements of Family Code Section 3200.5.*** While Family Code section 3200.5 placed new mandatory requirements on supervised visitation providers, it did not enact any system for ensuring compliance with these requirements other than a requirement that each professional provider sign a declaration indicating that they meet the training and qualification requirements. To assist providers with this responsibility the council approved optional form FL-324 for providers to use to make their declaration. While the amended standard does require providers to sign the form or another declaration, it does not require them to take any other action with the declaration. Some commentators suggested requiring more in terms of compliance—one suggested requiring that the form be filed with the court in every case in which supervision is provided, while two others suggested requiring that each professional provider's case record contain a copy of the FL-324 and some verification that it was provided to the parties. The committee concluded that imposing requirements for filing in each case would be overly burdensome on the courts, and similarly concluded that it had no authority to require providers to maintain a form for each case and provide it to their clients, although providers are free to implement this practice if they deem it optimal.

The committee did make some minor amendments to the standard to ensure it was in complete conformance with section 3200.5, that providers were required to provide court-ordered reports, and that the standard was clarified as specifying that only those persons included in the visitation order may participate in a supervised visit. A number of commentators made suggestions that were either incompatible with the statutory requirements (e.g., relaxing the qualifications for providers or requiring additional training or education) or beyond the scope of this proposal.

### Alternatives Considered

The committee considered amending standard 5.20 to make it mirror Family Code section 3200.5, leaving out any content that was not included in that section. It determined that addressing each of the issues stated in section 3200 (not all of which are included in section 3200.5) was necessary and that it would be preferable to leave intact suggested best practices in the current standard as continuing guidance to those providing supervised visitation services rather than reducing the standard to only those provisions included in section 3200.5. The committee also refrained from adding new requirements for the courts or providers to enforce compliance with the standard (e.g., requiring courts to have a process to document the declarations of the professional providers), preferring instead to allow each court and/or provider flexibility to determine how best to comply with the requirements.

Additionally, the Family and Juvenile Law Advisory Committee intended to include technical changes to form FL-341(A) in response to public comments received in January 2014, to the proposal titled "SPR14-12, Family Law: Changes to Request for Order Rules and Form." The committee intended to recommend that the Judicial Council revise form FL-341(A), along with other child custody attachments in the above proposal, effective January 1, 2015, to add entries for "Other Parent/Party" where appropriate throughout the form. This change would allow the court to make orders applicable to another parent or party involved in the child custody matter,

and would also make the form consistent with other Judicial Council forms that relate to child custody matters, including the *Request for Order* (form FL-300).

In March 2014, the committee decided to defer the SPR14-12 proposal to the Winter 2015 public comment cycle. If adopted by the Judicial Council, revisions to the forms in the Winter 2015 cycle would become effective July 1, 2015. To avoid additional costs to the courts by revising form FL-341(A) in two consecutive cycles, the committee decided to include the technical changes to the form along with the other changes that are mandated by statute in this report to take effect on January 1, 2015.

### Implementation Requirements, Costs, and Operational Impacts

The committee recognizes that making many of the eligibility requirements for supervised visitation providers mandatory, rather than suggested best practices, may limit the available pool of supervised visitation providers. However, all of these changes are statutorily required and thus had to be included. The committee also notes that section 3200.5 and standard 5.20 do allow a court to order or the parties to stipulate to nonprofessional providers who do not meet these requirements, when appropriate. The court's ability to maintain discretion to meet the unique needs of its local jurisdiction and the circumstances of particular cases should mitigate some of the impact of the legislative change incorporated into amended standard 5.20.

### Relevant Strategic Plan Goals and Operational Plan Objectives

Because this proposal will ensure that standard 5.20 and form FL-341(A) are in conformity with statutory requirements and provide clear guidance to providers of supervised visitation services on the uniform standards of practice that they must and should follow, this proposal will advance Strategic Plan Goal III: Modernization of Management and Administration.

### Attachments

1. Cal. Stds. Jud. Admin., std. 5.20, at pages 9–16
2. Form FL-341(A), at page 17
3. Chart of comments, at pages 18–60

Standard 5.20 of the California Standards of Judicial Administration would be amended, effective January 1, 2015, to read:

**Standard 5.20. Uniform standards of practice for providers of supervised visitation**

**(a) Scope of service**

This standard defines the standards of practice, including duties and obligations, for providers of supervised visitation under Family Code sections 3200 and 3200.5. Unless specified otherwise, the standards of practice are designed to apply to all providers of supervised visitation, whether the provider is a friend, relative, paid independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency. The goal of these standards of practice is to assure the safety and welfare of the child, adults, and providers of supervised visitation. Once safety is assured, the best interest of the child is the paramount consideration at all stages and particularly in deciding the manner in which supervision is provided. Each court is encouraged to adopt local court rules necessary to implement these standards of practice.

**(b) Definition**

Family Code section 3200 defines the term "provider" as including any individual or supervised visitation center that monitors visitation. Supervised visitation is contact between a noncustodial party and one or more children in the presence of a neutral third person. ~~These standards of practice and this definition do not apply to supervision of visitation exchanges only, but may be useful in that context.~~

**(c) ~~Qualifications of the~~ Type of provider**

Who provides the supervision and the manner in which supervision is provided depends on different factors, including local resources, the financial situation of the parties, and the degree of risk in each case. While the court makes the final decision as to the manner in which supervision is provided and any terms or conditions, the court may consider recommendations by the attorney for the child, the parties and their attorneys, Family Court Services staff, evaluators, and therapists~~, and providers of supervised visitation~~. As specified in Family Code section 3200.5, in any case in which the court has determined that there is domestic violence or child abuse or neglect, as defined in section 11165.6 of the Penal Code, and the court determines supervision is necessary, the court must consider whether to use a professional or nonprofessional provider based on the child's best interest.

**(d) Qualifications of nonprofessional providers**

(1) A "nonprofessional provider" is any person who is not paid for providing supervised visitation services. Unless otherwise ordered by the court or stipulated by the parties, the nonprofessional provider ~~should~~ must:

~~(A) Be 21 years of age or older;~~

~~(B) Have no conviction for driving under the influence (DUI) within the last 5 years;~~

~~(C) Not have been on probation or parole for the last 10 years;~~

~~(D)~~(A) Have no record of a conviction for child molestation, child abuse, or other crimes against a person;

~~(E)~~(B) Have proof of automobile insurance if transporting the child;

~~(F) Have no civil, criminal, or juvenile restraining orders within the last 10 years;~~

~~(G)~~(C) Have no current or past court order in which the provider is the person being supervised; and

~~(H) Not be financially dependent on the person being supervised;~~

~~(I) Have no conflict of interest under (g); and~~

~~(J)~~(D) Agree to adhere to and enforce the court order regarding supervised visitation.

(2) Unless otherwise ordered by the court or stipulated by the parties, the nonprofessional provider should:

(A) Be 21 years of age or older;

(B) Have no record of conviction for driving under the influence (DUI) within the last 5 years;

(C) Not have been on probation or parole for the last 10 years;

(D) Have no civil, criminal, or juvenile restraining orders within the last 10 years; and

(E) Not be financially dependent on the person being supervised.

**(e) Qualifications of professional providers**

~~(2)~~ A "professional provider" is any person paid for providing supervised visitation services, or an independent contractor, employee, intern, or volunteer operating

independently or through a supervised visitation center or agency. The professional provider ~~should~~ must:

~~(A)~~(1) Be 21 years of age or older;

~~(B)~~(2) Have no record of conviction for driving under the influence (DUI) within the last 5 years;

~~(C)~~(3) Not have been on probation or parole for the last 10 years;

~~(D)~~(4) Have no record of a conviction for child molestation, child abuse, or other crimes against a person;

~~(E)~~(5) Have proof of automobile insurance if transporting the child;

~~(F)~~(6) Have no civil, criminal, or juvenile restraining orders within the last 10 years;

~~(G)~~(7) Have no current or past court order in which the provider is the person being supervised;

~~(H)~~(8) Be able to speak the language of the party being supervised and of the child, or the provider must provide a neutral interpreter over the age of 18 who is able to do so;

~~(I) Have no conflict of interest under (g); and~~

~~(J)~~(9) Agree to adhere to and enforce the court order regarding supervised visitation~~.~~;

(10) Meet the training requirements stated in (f); and

(11) Sign a declaration or *Declaration of Supervised Visitation Provider* (form FL-324) stating that all requirements to be a professional provider have been met.

~~(3) A "therapeutic provider" is a licensed mental health professional paid for providing supervised visitation services, including a psychiatrist, a psychologist, a clinical social worker, a marriage and family counselor, or an intern working under direct supervision of a qualified licensed mental health professional. A therapeutic provider should meet the qualifications provided in (c)(2). A judicial officer may order therapeutic supervision for cases requiring a clinical setting.~~

**~~(d)~~(f) Training for providers**

(1) Each court is encouraged to make available to all providers informational materials about the role of a provider, the terms and conditions of supervised visitation, and the legal responsibilities and obligations of a provider under this standard.

(2) In addition, professional ~~and therapeutic~~ providers ~~should~~ must receive 24 hours of training that ~~should~~ includes the following subjects:

(A) The role of a professional ~~and therapeutic~~ provider;

(B) Child abuse reporting laws;

(C) Record-keeping procedures;

(D) Screening, monitoring, and termination of visitation;

(E) Developmental needs of children;

(F) Legal responsibilities and obligations of a provider;

(G) Cultural sensitivity;

(H) Conflicts of interest;

(I) Confidentiality; ~~and~~

(J) Issues relating to substance abuse, child abuse, sexual abuse, and domestic violence~~.~~; and

(K) Basic knowledge of family and juvenile law.

**~~(e)~~(g) Safety and security procedures**

All providers ~~should~~must make every reasonable effort to assure the safety and welfare of the child and adults during the visitation. ~~Supervised visitation centers~~ Professional providers should establish a written protocol, with the assistance of the local law enforcement agency, that describes the emergency assistance and responses that can be expected from the local law enforcement agency. In addition, the professional ~~and therapeutic~~ provider should:

(1) Establish and state in writing minimum security procedures and inform the parties of these procedures before the commencement of supervised visitation;

(2) Conduct comprehensive intake and screening to ~~assess~~ understand the nature and degree of risk for each case. The procedures for intake should include separate

interviews with the parties before the first visit. During the interview, the provider should obtain identifying information and explain the reasons for temporary suspension or termination of a visit under this standard. If the child is of sufficient age and capacity, the provider should include the child in part of the intake or orientation process. Any discussion should be presented to the child in a manner appropriate to the child's developmental stage;

(3) Obtain during the intake process:

(A)–(D) * * *

(E) An account of the child's health needs if the child has a chronic health condition; and

(4) Establish written procedures that must be followed in the event a child is abducted during supervised visitation.~~; and~~

~~(5) Suspend or terminate supervised visitation if the provider determines that the risk factors present are placing in jeopardy the safety and welfare of the child or provider as enumerated in (j).~~

**~~(f)~~(h) Ratio of children to provider**

The ratio of children to a professional provider ~~should~~ must be contingent on:

(1) The degree of risk factors present in each case;

(2) The nature of supervision required in each case;

(3) The number and ages of the children to be supervised during a visit;

(4) The number of people, as provided in the court order, visiting the child during the visit;

(5) The duration and location of the visit; and

(6) The experience of the provider.

**~~(g)~~(i) Conflict of interest**

All providers should maintain neutrality by refusing to discuss the merits of the case or agree with or support one party over another. Any discussion between a provider and the parties should be for the purposes of arranging visitation and providing for the safety of the children. In order to avoid a conflict of interest, the professional provider should not:

(1)–(4) * * *

**~~(h)~~(j) Maintenance and disclosure of records for professional providers**

(1) Professional ~~and therapeutic~~ providers ~~should~~ must keep a record for each case, including the following:

(A) A written record of each contact and visit~~, including the date, time, and duration of the contact or visit~~;

(B) Who attended the visit;

~~(C) A summary of activities during the visit;~~

~~(D) Actions taken by the provider, including any interruptions, terminations of a visit, and reasons for these actions;~~

~~(E) An account of critical incidents, including physical or verbal altercations and threats;~~

~~(F) Violations of protective or court visitation orders;~~

~~(G)~~(C) Any failure to comply with the terms and conditions of the visitation; and

~~(H)~~(D) Any incidence of abuse as required by law.

(2) * * *

(3) If ordered by the court or requested by either party or the attorney for either party or the attorney for the child, a report about the supervised visit ~~should~~ must be produced. These reports should include facts, observations, and direct statements and not opinions or recommendations regarding future visitation. ~~unless ordered by the court. A copy of any report should be sent to all parties, their attorneys, and the attorney for the child.~~ The original report must be sent to the court if so ordered, or to the requesting party or attorney, and copies should be sent to all parties, their attorneys, and the attorney for the child.

(4) * * *

**~~(i)~~(k) Confidentiality**

Communications between parties and providers of supervised visitation are not protected by any privilege of confidentiality. ~~The psychotherapist-patient privilege does not apply~~

~~during therapeutic supervision.~~ Professional ~~and therapeutic~~ providers should, whenever possible, maintain confidentiality regarding the case except when:

(1)–(5) * * *

**~~(j)~~(*l*) Delineation of terms and conditions**

The provider bears the sole responsibility for enforcement of all the terms and conditions of any supervised visitation. Unless otherwise ordered by the court, the provider should implement the following terms and conditions:

(1)–(10) * * *

(11) Allow no emotional, verbal, physical, or sexual abuse; ~~and~~

(12) Allow no contact between the custodial and noncustodial parents unless ordered by the court; and

~~(12)~~(13) Ensure that the parties follow any additional rules stated by the provider or the court.

**~~(k)~~(m) Safety considerations for sexual abuse cases**

In cases where there are allegations of sexual abuse, in addition to the requirements of ~~(j)~~(*l*), the provider should comply with the following terms and conditions, unless otherwise ordered by the court:

(1)–(2) * * *

(3) Allow no physical contact with the child such as lap sitting, hair combing, stroking, hand holding, ~~prolonged~~ hugging, wrestling, tickling, horseplaying, changing diapers, or accompanying the child to the bathroom;

(4)–(5) * * *

**~~(*l*)~~(n) Legal responsibilities and obligations of a provider**

All nonprofessional providers of supervised visitation should, and all professional providers must:

(1) Advise the parties before commencement of supervised visitation that no confidential privilege exists;

(2) Report suspected child abuse to the appropriate agency, as provided by law, and inform the parties of the provider's obligation to make such reports; and

~~(3) Implement the terms and conditions under (j) and~~

~~(4)~~(3) Suspend or terminate visitation under ~~(n)~~(p).

**~~(m)~~(o) Additional legal responsibilities of professional ~~and therapeutic~~ providers**

In addition to the legal responsibilities and obligations required in ~~(*l*)~~(n), professional ~~and therapeutic~~ providers ~~should~~ must:

(1) Prepare a written contract to be signed by the parties before commencement of the supervised visitation. The contract should inform each party of the terms and conditions of supervised visitation; and

(2) Review custody and visitation orders relevant to the supervised visitation~~;~~.

~~(3) Implement an intake and screening procedure under (e)(2); and~~

~~(4) Comply with additional requirements under (o).~~

**~~(n)~~(p) Temporary suspension or termination of supervised visitation**

(1) All providers ~~should~~ must make every reasonable effort to provide a safe visit for the child and the noncustodial party.

(2) However, if a provider determines that the rules of the visit have been violated, the child has become acutely distressed, or the safety of the child or the provider is at risk, the visit may be temporarily interrupted, rescheduled at a later date, or terminated.

(3) All interruptions or terminations of visits ~~should~~ must be recorded in the case file.

(4) All providers ~~should~~ must advise both parties of the reasons for interruption of a visit or termination.

**~~(o)~~(q) Additional requirements for professional ~~and therapeutic~~ providers**

Professional ~~and therapeutic~~ providers ~~should~~ must state the reasons for temporary suspension or termination of supervised visitation in writing and provide the written statement to both parties, their attorneys, the attorney for the child, and the court.

| PETITIONER/PLAINTIFF:<br>RESPONDENT/DEFENDANT:<br>OTHER PARENT/PARTY: | CASE NUMBER: |
|---|---|

**SUPERVISED VISITATION ORDER**
**Attachment to *Child Custody and Visitation (Parenting Time) Order Attachment* (form FL-341)**

1. Evidence has been presented in support of a request that the contact of ☐ Petitioner ☐ Respondent ☐ Other Parent/Party with the child(ren) be supervised based upon allegations of
   ☐ abduction of child(ren) ☐ physical abuse ☐ drug abuse ☐ neglect
   ☐ sexual abuse ☐ domestic violence ☐ alcohol abuse ☐ other *(specify):*

   ☐ Petitioner ☐ Respondent ☐ Other Parent/Party disputes these allegations and the court reserves the findings on these issues pending further investigation and hearing or trial.

2. The court finds, under Family Code section 3100, that the best interest of the child(ren) requires that visitation by ☐ Petitioner ☐ Respondent ☐ Other Parent/Party must, until further order of the court, be limited to contact supervised by the person(s) set forth in item 6 below pending further investigation and hearing or trial.

**THE COURT MAKES THE FOLLOWING ORDERS**

3. **CHILD(REN) TO BE SUPERVISED**

| Child's Name | Birth Date | Age | Sex |
|---|---|---|---|

4. **TYPE**
   a. ☐ Supervised visitation b. ☐ Supervised exchange only

5. **SUPERVISED VISITATION PROVIDER**
   a. ☐ Professional (individual provider or supervised visitation center) b. ☐ Nonprofessional

6. **AUTHORIZED PROVIDER**

| Name | Address | Telephone |
|---|---|---|

   ☐ Any other mutually agreed-upon third party as arranged.

7. **DURATION AND FREQUENCY OF VISITS** *(see form FL-341 for specifics of visitation):*

8. **PAYMENT RESPONSIBILITY** Petitioner: % Respondent: % Other Parent/Party: %

9. ☐ Petitioner will contact professional provider or supervised visitation center no later than *(date):*
   ☐ Respondent will contact professional provider or supervised visitation center no later than *(date):*
   ☐ Other Parent/party will contact professional provider or supervised visitation center no later than *(date):*

10. **THE COURT FURTHER ORDERS**

Date:

JUDICIAL OFFICER



Form Adopted for Mandatory Use
Judicial Council of California
FL-341(A) [Rev. January 1, 2015]



Family Code, §§ 3100, 3031
*www.courts.ca.gov*

JUDICIAL COUNCIL OF CALIFORNIA

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

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

**Title**

Family Law: Uniform Standards of Practice for Providers of Supervised Visitation

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

Amend Cal. Stds. Jud. Admin., std. 5.20; revise form FL-341(A)

**Recommended by**

Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Kimberly J. Nystrom-Geist, Cochair

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2015

**Date of Report**

August 13, 2014

**Contact**

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## Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending standard 5.20 of the California Standards of Judicial Administration, governing providers of supervised visitation, to conform to the requirements of recently enacted Family Code section 3200.5. The committee also recommends making additional changes to standard 5.20 to enhance its internal consistency. In addition, the committee recommends revising the *Supervised Visitation Order* (form FL-341(A)) to eliminate references to “therapeutic visitation” to maintain consistency with the provisions of section 3200.5 and to make technical changes to make the form consistent with other Judicial Council forms that relate to child custody matters.

## Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2015:

1. Amend standard 5.20 of the California Standards of Judicial Administration to conform to recently enacted Family Code section 3200.5, which directs the council to incorporate new requirements into the standard, and to update the standard and enhance its internal clarity and consistency; and

2. Revise *Supervised Visitation Order* (form FL-341(A)) to eliminate references to "therapeutic visitation" consistent with the provisions of section 3200.5 and to make technical changes to make the form consistent with other Judicial Council forms that relate to child custody matters.

The text of the amended standard is attached at pages 9–16. The revised form is attached at page 17.

## Previous Council Action

Standard 5.20, on standards for providers of supervised visitation, was adopted as section 26.2, effective January 1, 1998, under legislation requiring the council to adopt such standards. Minor amendments were made when the standard was renumbered effective January 1, 2007.

The council adopted form FL-341(A) effective January 1, 1999 as form 1296.31(A)(1) as a mandatory attachment for ordering supervised visitation, and renumbered it effective January 1, 2003, when all family law forms were renumbered.

## Rationale for Recommendation

The Judicial Council adopted standard 5.20 to implement the provisions of Family Code section 3200, which was enacted in 1996. The legislation required the Judicial Council to enact standards for supervised visitation providers and identified the specific provisions that the council was required to consider in developing the standards of practice. In 2012, the Legislature enacted Assembly Bill 1674 (Stats. 2012, ch. 692), which added section 3200.5 to the Family Code. Section 3200.5 sets forth an array of mandatory provisions that are required to be included in the standards for supervised visitation that implement section 3200. Much of the language of Family Code section 3200.5 is drawn from the current text of standard 5.20. The key difference is that where standard 5.20 presents all of its provisions as suggested policies and best practices that supervised visitation providers *should* comply with, many of the provisions of section 3200.5 are mandatory requirements for the providers of supervised visitation (using the term *shall*). The legislative history for section 3200.5 shows that the intent of the Legislature in enacting it was to identify those provisions of standard 5.20 that needed to be required of all providers and to add in requirements that the Legislature identified as missing in the standard (e.g., a specific number of hours of training for providers).[1]

[1] See, for example, the July 2, 2012, Senate Judiciary Committee analysis of AB 1674.

### Existing suggested provisions of standard 5.20 that would become mandatory

As described above, section 3200.5 codifies certain provisions of standard 5.20 and makes them mandatory.[2] For the standard to conform to those provisions, it needs to be reorganized and amended to substitute the term *must* for *should* with regard to the mandatory statutory provisions stated under Family Code section 3200.5. Specifically, standard 5.20 would be amended to:

- Break up the current subdivisions on nonprofessional and professional providers and specify those requirements for nonprofessional providers that are mandatory and those that remain suggested;
- Make all of the eligibility requirements for professional providers mandatory;
- Make the training requirements for professional providers mandatory;
- Require that professional providers keep certain case records;
- Require all providers to implement appropriate terms and conditions during each visit;
- Require professional providers to carry out specified legal obligations, including reporting suspected abuse and suspending or terminating visitation when required.
- Require all providers to make every effort to provide a safe visit, to make a record of any visit that is suspended or terminated, and to advise the parties of the reasons for the suspension or termination; and
- Require professional providers to prepare a written statement of the reasons for suspension or termination of a visit and provide that written statement to the parties and the court.

### New requirements incorporated into standard 5.20

Although the majority of the language in section 3200.5 comes verbatim from the current standard, section 3200.5 did add additional requirements that are incorporated into amended standard 5.20 as follows:

- The requirement that the court specifically consider whether to use a professional or nonprofessional provider in any case in which the court has determined that domestic violence, child abuse, or neglect exists is incorporated into subdivision (c).
- The requirement that all professional providers receive 24 hours of training in specified areas is added.

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[2] The committee recognizes that it is unusual to have mandatory provisions in a standard of judicial administration, but section 3200.5 specifically uses the term “standards” with reference to what the council is required to adopt; thus the committee has opted to modify the standard to make mandatory those items required by the statute while leaving the remainder of the standard’s provisions as permissive best practices.

- The training areas are expanded to include basic knowledge of family and juvenile law.

- All professional providers are required to sign a declaration or a *Declaration of Supervised Visitation Provider* (form FL-324) stating that they have met all of the requirements to be a professional provider.

**Elimination of references to therapeutic visitation providers**

In its current form, standard 5.20 identifies three types of supervised visitation providers: nonprofessional, professional, and therapeutic. Family Code section 3200.5 identifies only two types of providers: professional or nonprofessional. To ensure that standard 5.20 is consistent with Family Code section 3200.5, this proposal deletes all references to therapeutic visitation providers. In addition, form FL-341(A) is revised to delete the option to order therapeutic visitation (at item 4c on the current form) because this option is not contemplated by the statute.

**Additional changes to enhance internal consistency**

In its review of standard 5.20, the committee identified a number of provisions that were internally inconsistent with the overall approach of the standard and proposes additional changes unrelated to Family Code section 3200.5 to ensure that the standard is clear and consistent, i.e.:

- Deleting the sentence excluding supervised exchange from subdivision (b) because supervised exchange clearly falls into the definition of supervised visitation described in the preceding sentence;

- Deleting "providers of supervised visitation" from the list of individuals in subdivision (c) who may make a recommendation to the court about the manner in which supervision is provided, and deleting from paragraph (3) of subdivision (j) (current subdivision (h)) the authority of the court to order a provider to give an opinion or recommendation on future visitation because the remainder of the standard makes clear that providers are to be neutral and thus should not be in the position of making recommendations;

- Changing the word "assess" in paragraph (2) of subdivision (g) ((e) in the current standard) to "understand" to make clear that providers are not in an evaluative role;

- Clarifying subdivision (g) ((e) in the current standard) to provide that all professional providers, and not just supervised visitation centers, should have written protocols addressing local law enforcement responses;

- In subdivision (i) on conflict of interest provisions ((g) in the current standard), clarifying that the specific requirements about having no outside relationship with a client apply only to professional providers and not to nonprofessional providers, who are often related to the parties;

- Adding the court to the list of those who should be given a copy of a court-ordered report of a visitation in paragraph (3) of subdivision (j) (current (h)) to make that section consistent with subdivision (q) (current (o)), which requires that the court, along with the parties and their attorneys, receive all reports of suspended or interrupted visits;

- Adding a provision to subdivision (*l*) (current (j)) concerning terms and conditions for supervised visitation to require that there be no contact between the parents unless ordered by the court; and

- In subdivision (m) (current (k)) regarding special considerations concerning sexual abuse allegation cases, deleting the word "prolonged" as a modifier of "hugging" to make clear that the parent should have no physical contact with the child, as the earlier clause indicates.

## Comments, Alternatives Considered, and Policy Implications

### Comments

This proposal circulated for comment as part of the spring 2014 invitation-to-comment cycle, from April 18 to June 18, 2014, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, and other juvenile law professionals. Sixteen individuals or organizations provided comment; 6 agreed with the proposal, 7 agreed if modified, 2 disagreed with the proposal, and 1 expressed no position but included comments. A chart with the full text of the comments received and the committee's responses is attached at pages 18–60.

The committee sought comment on three proposed modifications to standard 5.20, and most of the substantive comments were in response to the following issues: whether supervised exchanges should be subject to the standard; whether providers of supervised visitation services should be making recommendations about future visitation to the court; and whether the standard or the form should make any reference to therapeutic visitation. Each is discussed below. In addition, some commentators made suggestions for ensuring provider compliance with the training and qualification requirements of Family Code section 3200.5 and the amended standard beyond what is required by the statute.

***Supervised exchanges.*** Current standard 5.20 provides that supervised visitation is "contact between a noncustodial party and one or more children in the presence of a neutral third person" but then goes on to state that the standards and this definition do not include supervision of exchanges only. The committee proposed deleting this exception from the standard in the proposal circulated for comment based on feedback from professional providers of supervised visitation who opined that the exception was unwarranted and that supervised exchanges require the same care and standards as supervised visitation. The committee adopted their suggestion, but sought specific comment on this change. Five commentators specifically addressed this

issue: three were in support of applying the standards to supervised exchange—one by expressly including it in the definition and two by eliminating the exception as proposed; one supported the current exception; and one suggested new separate standards to be adopted for supervised exchange. The committee opted to maintain the deletion of the exception for supervised exchanges from the definition section thereby ensuring that all cases in which a neutral party is monitoring contact between a noncustodial parent and children would be subject to the same standards of practice.

***Recommendations by supervised visitation providers.*** Standard 5.20 sets forth a list of individuals who may make recommendations to the court about the manner in which supervision should be provided. Supervised visitation providers are on this list, along with the parties, their attorneys, and the attorney for the child as well as Family Court Services staff, child custody evaluators, and therapists. Because of concerns that making recommendations is fundamentally in conflict with the otherwise neutral role of the supervised visitation provider, the committee proposed to delete these providers from the list of those whose recommendations the court may consider in making its determination on visitation. The committee then sought specific comment on this change to determine its impact. Five commentators addressed this issue, with two arguing that providers continue to be allowed to make recommendations, two supporting the proposal to eliminate this authority as incompatible with the neutral role of the provider, and one expressing concern about the impact on the court without taking an express position. With the knowledge that many other professionals would still be available to the court for recommendations on future visitation, the committee was persuaded that the role conflict was sufficient to delete supervised visitation providers from the list.

***Therapeutic visitation.*** Standard 5.20 currently defines three types of supervised visitation providers: nonprofessional, professional, and therapeutic. Nonprofessional providers are not paid for their services, any provider who is paid is a professional provider, and a therapeutic provider is defined as a licensed mental health professional paid for supervising visitation. Because Family Code Section 3200.5 expressly provides that a provider “shall be a professional or a nonprofessional provider,” the committee deleted all references to therapeutic providers from the standard and form FL-341(A), but sought comment on whether this deletion was necessary or if it was preferable to retain distinct references to these providers as a subcategory within the professional provider category. Seven commentators addressed this issue; of these four were in support of deleting all references to therapeutic visitation, one opposed such deletion, one wanted to include a subcategory on form FL-341(A), and one expressed some concern about current confusion about what therapeutic visitation includes. Given the express statutory language, and the fact that the Legislature appears to have purposefully deleted references to therapeutic visitation in section 3200.5 as versions prior to the enacted version of the statute included the term, the committee felt constrained to eliminate this term from the standard and the form consistent with the statute. The committee notes, however, that the proposed changes will not prevent licensed mental health professionals from offering supervised visitation services, nor will it restrict the authority of the court to order visitation with these licensed professionals.

***Compliance with the requirements of Family Code Section 3200.5.*** While Family Code section 3200.5 placed new mandatory requirements on supervised visitation providers, it did not enact any system for ensuring compliance with these requirements other than a requirement that each professional provider sign a declaration indicating that they meet the training and qualification requirements. To assist providers with this responsibility the council approved optional form FL-324 for providers to use to make their declaration. While the amended standard does require providers to sign the form or another declaration, it does not require them to take any other action with the declaration. Some commentators suggested requiring more in terms of compliance—one suggested requiring that the form be filed with the court in every case in which supervision is provided, while two others suggested requiring that each professional provider's case record contain a copy of the FL-324 and some verification that it was provided to the parties. The committee concluded that imposing requirements for filing in each case would be overly burdensome on the courts, and similarly concluded that it had no authority to require providers to maintain a form for each case and provide it to their clients, although providers are free to implement this practice if they deem it optimal.

The committee did make some minor amendments to the standard to ensure it was in complete conformance with section 3200.5, that providers were required to provide court-ordered reports, and that the standard was clarified as specifying that only those persons included in the visitation order may participate in a supervised visit. A number of commentators made suggestions that were either incompatible with the statutory requirements (e.g., relaxing the qualifications for providers or requiring additional training or education) or beyond the scope of this proposal.

### Alternatives Considered

The committee considered amending standard 5.20 to make it mirror Family Code section 3200.5, leaving out any content that was not included in that section. It determined that addressing each of the issues stated in section 3200 (not all of which are included in section 3200.5) was necessary and that it would be preferable to leave intact suggested best practices in the current standard as continuing guidance to those providing supervised visitation services rather than reducing the standard to only those provisions included in section 3200.5. The committee also refrained from adding new requirements for the courts or providers to enforce compliance with the standard (e.g., requiring courts to have a process to document the declarations of the professional providers), preferring instead to allow each court and/or provider flexibility to determine how best to comply with the requirements.

Additionally, the Family and Juvenile Law Advisory Committee intended to include technical changes to form FL-341(A) in response to public comments received in January 2014, to the proposal titled "SPR14-12, Family Law: Changes to Request for Order Rules and Form." The committee intended to recommend that the Judicial Council revise form FL-341(A), along with other child custody attachments in the above proposal, effective January 1, 2015, to add entries for "Other Parent/Party" where appropriate throughout the form. This change would allow the court to make orders applicable to another parent or party involved in the child custody matter,

and would also make the form consistent with other Judicial Council forms that relate to child custody matters, including the *Request for Order* (form FL-300).

In March 2014, the committee decided to defer the SPR14-12 proposal to the Winter 2015 public comment cycle. If adopted by the Judicial Council, revisions to the forms in the Winter 2015 cycle would become effective July 1, 2015. To avoid additional costs to the courts by revising form FL-341(A) in two consecutive cycles, the committee decided to include the technical changes to the form along with the other changes that are mandated by statute in this report to take effect on January 1, 2015.

## Implementation Requirements, Costs, and Operational Impacts

The committee recognizes that making many of the eligibility requirements for supervised visitation providers mandatory, rather than suggested best practices, may limit the available pool of supervised visitation providers. However, all of these changes are statutorily required and thus had to be included. The committee also notes that section 3200.5 and standard 5.20 do allow a court to order or the parties to stipulate to nonprofessional providers who do not meet these requirements, when appropriate. The court's ability to maintain discretion to meet the unique needs of its local jurisdiction and the circumstances of particular cases should mitigate some of the impact of the legislative change incorporated into amended standard 5.20.

## Relevant Strategic Plan Goals and Operational Plan Objectives

Because this proposal will ensure that standard 5.20 and form FL-341(A) are in conformity with statutory requirements and provide clear guidance to providers of supervised visitation services on the uniform standards of practice that they must and should follow, this proposal will advance Strategic Plan Goal III: Modernization of Management and Administration.

## Attachments

1. Cal. Stds. Jud. Admin., std. 5.20, at pages 9–16
2. Form FL-341(A), at page 17
3. Chart of comments, at pages 18–60

Standard 5.20 of the California Standards of Judicial Administration would be amended, effective January 1, 2015, to read:

**Standard 5.20. Uniform standards of practice for providers of supervised visitation**

**(a) Scope of service**

This standard defines the standards of practice, including duties and obligations, for providers of supervised visitation under Family Code sections 3200 and 3200.5. Unless specified otherwise, the standards of practice are designed to apply to all providers of supervised visitation, whether the provider is a friend, relative, paid independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency. The goal of these standards of practice is to assure the safety and welfare of the child, adults, and providers of supervised visitation. Once safety is assured, the best interest of the child is the paramount consideration at all stages and particularly in deciding the manner in which supervision is provided. Each court is encouraged to adopt local court rules necessary to implement these standards of practice.

**(b) Definition**

Family Code section 3200 defines the term "provider" as including any individual or supervised visitation center that monitors visitation. Supervised visitation is contact between a noncustodial party and one or more children in the presence of a neutral third person. ~~These standards of practice and this definition do not apply to supervision of visitation exchanges only, but may be useful in that context.~~

**(c) ~~Qualifications of the~~ Type of provider**

Who provides the supervision and the manner in which supervision is provided depends on different factors, including local resources, the financial situation of the parties, and the degree of risk in each case. While the court makes the final decision as to the manner in which supervision is provided and any terms or conditions, the court may consider recommendations by the attorney for the child, the parties and their attorneys, Family Court Services staff, evaluators, and therapists~~, and providers of supervised visitation~~. As specified in Family Code section 3200.5, in any case in which the court has determined that there is domestic violence or child abuse or neglect, as defined in section 11165.6 of the Penal Code, and the court determines supervision is necessary, the court must consider whether to use a professional or nonprofessional provider based on the child's best interest.

**(d) Qualifications of nonprofessional providers**

(1) A "nonprofessional provider" is any person who is not paid for providing supervised visitation services. Unless otherwise ordered by the court or stipulated by the parties, the nonprofessional provider ~~should~~ must:

~~(A) Be 21 years of age or older;~~

~~(B) Have no conviction for driving under the influence (DUI) within the last 5 years;~~

~~(C) Not have been on probation or parole for the last 10 years;~~

~~(D)~~(A) Have no record of a conviction for child molestation, child abuse, or other crimes against a person;

~~(E)~~(B) Have proof of automobile insurance if transporting the child;

~~(F) Have no civil, criminal, or juvenile restraining orders within the last 10 years;~~

~~(G)~~(C) Have no current or past court order in which the provider is the person being supervised; and

~~(H) Not be financially dependent on the person being supervised;~~

~~(I) Have no conflict of interest under (g); and~~

~~(J)~~(D) Agree to adhere to and enforce the court order regarding supervised visitation.

(2) Unless otherwise ordered by the court or stipulated by the parties, the nonprofessional provider should:

(A) Be 21 years of age or older;

(B) Have no record of conviction for driving under the influence (DUI) within the last 5 years;

(C) Not have been on probation or parole for the last 10 years;

(D) Have no civil, criminal, or juvenile restraining orders within the last 10 years; and

(E) Not be financially dependent on the person being supervised.

**(e) Qualifications of professional providers**

~~(2)~~ A "professional provider" is any person paid for providing supervised visitation services, or an independent contractor, employee, intern, or volunteer operating

independently or through a supervised visitation center or agency. The professional provider ~~should~~ must:

~~(A)~~(1) Be 21 years of age or older;

~~(B)~~(2) Have no record of conviction for driving under the influence (DUI) within the last 5 years;

~~(C)~~(3) Not have been on probation or parole for the last 10 years;

~~(D)~~(4) Have no record of a conviction for child molestation, child abuse, or other crimes against a person;

~~(E)~~(5) Have proof of automobile insurance if transporting the child;

~~(F)~~(6) Have no civil, criminal, or juvenile restraining orders within the last 10 years;

~~(G)~~(7) Have no current or past court order in which the provider is the person being supervised;

~~(H)~~(8) Be able to speak the language of the party being supervised and of the child, or the provider must provide a neutral interpreter over the age of 18 who is able to do so;

~~(I) Have no conflict of interest under (g); and~~

~~(J)~~(9) Agree to adhere to and enforce the court order regarding supervised visitation~~.~~;

(10) Meet the training requirements stated in (f); and

(11) Sign a declaration or *Declaration of Supervised Visitation Provider* (form FL-324) stating that all requirements to be a professional provider have been met.

~~(3) A "therapeutic provider" is a licensed mental health professional paid for providing supervised visitation services, including a psychiatrist, a psychologist, a clinical social worker, a marriage and family counselor, or an intern working under direct supervision of a qualified licensed mental health professional. A therapeutic provider should meet the qualifications provided in (c)(2). A judicial officer may order therapeutic supervision for cases requiring a clinical setting.~~

**~~(d)~~(f) Training for providers**

(1) Each court is encouraged to make available to all providers informational materials about the role of a provider, the terms and conditions of supervised visitation, and the legal responsibilities and obligations of a provider under this standard.

(2) In addition, professional ~~and therapeutic~~ providers ~~should~~ must receive 24 hours of training that ~~should~~ includes the following subjects:

(A) The role of a professional ~~and therapeutic~~ provider;

(B) Child abuse reporting laws;

(C) Record-keeping procedures;

(D) Screening, monitoring, and termination of visitation;

(E) Developmental needs of children;

(F) Legal responsibilities and obligations of a provider;

(G) Cultural sensitivity;

(H) Conflicts of interest;

(I) Confidentiality; ~~and~~

(J) Issues relating to substance abuse, child abuse, sexual abuse, and domestic violence~~.~~; and

(K) Basic knowledge of family and juvenile law.

**~~(e)~~(g) Safety and security procedures**

All providers ~~should~~must make every reasonable effort to assure the safety and welfare of the child and adults during the visitation. ~~Supervised visitation centers~~ Professional providers should establish a written protocol, with the assistance of the local law enforcement agency, that describes the emergency assistance and responses that can be expected from the local law enforcement agency. In addition, the professional ~~and therapeutic~~ provider should:

(1) Establish and state in writing minimum security procedures and inform the parties of these procedures before the commencement of supervised visitation;

(2) Conduct comprehensive intake and screening to ~~assess~~ understand the nature and degree of risk for each case. The procedures for intake should include separate

interviews with the parties before the first visit. During the interview, the provider should obtain identifying information and explain the reasons for temporary suspension or termination of a visit under this standard. If the child is of sufficient age and capacity, the provider should include the child in part of the intake or orientation process. Any discussion should be presented to the child in a manner appropriate to the child's developmental stage;

(3) Obtain during the intake process:

(A)–(D) * * *

(E) An account of the child's health needs if the child has a chronic health condition; and

(4) Establish written procedures that must be followed in the event a child is abducted during supervised visitation.~~; and~~

~~(5) Suspend or terminate supervised visitation if the provider determines that the risk factors present are placing in jeopardy the safety and welfare of the child or provider as enumerated in (j).~~

**~~(f)~~(h) Ratio of children to provider**

The ratio of children to a professional provider ~~should~~ must be contingent on:

(1) The degree of risk factors present in each case;

(2) The nature of supervision required in each case;

(3) The number and ages of the children to be supervised during a visit;

(4) The number of people, as provided in the court order, visiting the child during the visit;

(5) The duration and location of the visit; and

(6) The experience of the provider.

**~~(g)~~(i) Conflict of interest**

All providers should maintain neutrality by refusing to discuss the merits of the case or agree with or support one party over another. Any discussion between a provider and the parties should be for the purposes of arranging visitation and providing for the safety of the children. In order to avoid a conflict of interest, the professional provider should not:

(1)–(4) * * *

**~~(h)~~(j) Maintenance and disclosure of records for professional providers**

(1) Professional ~~and therapeutic~~ providers ~~should~~ must keep a record for each case, including the following:

(A) A written record of each contact and visit~~, including the date, time, and duration of the contact or visit~~;

(B) Who attended the visit;

~~(C) A summary of activities during the visit;~~

~~(D) Actions taken by the provider, including any interruptions, terminations of a visit, and reasons for these actions;~~

~~(E) An account of critical incidents, including physical or verbal altercations and threats;~~

~~(F) Violations of protective or court visitation orders;~~

~~(G)~~(C) Any failure to comply with the terms and conditions of the visitation; and

~~(H)~~(D) Any incidence of abuse as required by law.

(2) * * *

(3) If ordered by the court or requested by either party or the attorney for either party or the attorney for the child, a report about the supervised visit ~~should~~ must be produced. These reports should include facts, observations, and direct statements and not opinions or recommendations regarding future visitation. ~~unless ordered by the court. A copy of any report should be sent to all parties, their attorneys, and the attorney for the child.~~ The original report must be sent to the court if so ordered, or to the requesting party or attorney, and copies should be sent to all parties, their attorneys, and the attorney for the child.

(4) * * *

**~~(i)~~(k) Confidentiality**

Communications between parties and providers of supervised visitation are not protected by any privilege of confidentiality. ~~The psychotherapist-patient privilege does not apply~~

~~during therapeutic supervision.~~ Professional ~~and therapeutic~~ providers should, whenever possible, maintain confidentiality regarding the case except when:

(1)–(5) * * *

**~~(j)~~*(l)* Delineation of terms and conditions**

The provider bears the sole responsibility for enforcement of all the terms and conditions of any supervised visitation. Unless otherwise ordered by the court, the provider should implement the following terms and conditions:

(1)–(10) * * *

(11) Allow no emotional, verbal, physical, or sexual abuse; ~~and~~

(12) Allow no contact between the custodial and noncustodial parents unless ordered by the court; and

~~(12)~~(13) Ensure that the parties follow any additional rules stated by the provider or the court.

**~~(k)~~(m) Safety considerations for sexual abuse cases**

In cases where there are allegations of sexual abuse, in addition to the requirements of ~~(j)~~(*l*), the provider should comply with the following terms and conditions, unless otherwise ordered by the court:

(1)–(2) * * *

(3) Allow no physical contact with the child such as lap sitting, hair combing, stroking, hand holding, ~~prolonged~~ hugging, wrestling, tickling, horseplaying, changing diapers, or accompanying the child to the bathroom;

(4)–(5) * * *

**~~(*l*)~~(n) Legal responsibilities and obligations of a provider**

All nonprofessional providers of supervised visitation should, and all professional providers must:

(1) Advise the parties before commencement of supervised visitation that no confidential privilege exists;

(2) Report suspected child abuse to the appropriate agency, as provided by law, and inform the parties of the provider's obligation to make such reports; and

~~(3) Implement the terms and conditions under (j) and~~
~~(4)~~(3) Suspend or terminate visitation under ~~(n)~~(p).

**~~(m)~~(o) Additional legal responsibilities of professional ~~and therapeutic~~ providers**

In addition to the legal responsibilities and obligations required in ~~(*l*)~~(n), professional ~~and therapeutic~~ providers ~~should~~ must:

(1) Prepare a written contract to be signed by the parties before commencement of the supervised visitation. The contract should inform each party of the terms and conditions of supervised visitation; and

(2) Review custody and visitation orders relevant to the supervised visitation~~;~~.

~~(3) Implement an intake and screening procedure under (e)(2); and~~

~~(4) Comply with additional requirements under (o).~~

**~~(n)~~(p) Temporary suspension or termination of supervised visitation**

(1) All providers ~~should~~ must make every reasonable effort to provide a safe visit for the child and the noncustodial party.

(2) However, if a provider determines that the rules of the visit have been violated, the child has become acutely distressed, or the safety of the child or the provider is at risk, the visit may be temporarily interrupted, rescheduled at a later date, or terminated.

(3) All interruptions or terminations of visits ~~should~~ must be recorded in the case file.

(4) All providers ~~should~~ must advise both parties of the reasons for interruption of a visit or termination.

**~~(o)~~(q) Additional requirements for professional ~~and therapeutic~~ providers**

Professional ~~and therapeutic~~ providers ~~should~~ must state the reasons for temporary suspension or termination of supervised visitation in writing and provide the written statement to both parties, their attorneys, the attorney for the child, and the court.

| PETITIONER/PLAINTIFF:<br>RESPONDENT/DEFENDANT:<br>OTHER PARENT/PARTY: | CASE NUMBER: |
|---|---|

**SUPERVISED VISITATION ORDER**
**Attachment to *Child Custody and Visitation (Parenting Time) Order Attachment* (form FL-341)**

1. Evidence has been presented in support of a request that the contact of ☐ Petitioner ☐ Respondent ☐ Other Parent/Party with the child(ren) be supervised based upon allegations of
   ☐ abduction of child(ren) ☐ physical abuse ☐ drug abuse ☐ neglect
   ☐ sexual abuse ☐ domestic violence ☐ alcohol abuse ☐ other *(specify):*

   ☐ Petitioner ☐ Respondent ☐ Other Parent/Party disputes these allegations and the court reserves the findings on these issues pending further investigation and hearing or trial.

2. The court finds, under Family Code section 3100, that the best interest of the child(ren) requires that visitation by ☐ Petitioner ☐ Respondent ☐ Other Parent/Party must, until further order of the court, be limited to contact supervised by the person(s) set forth in item 6 below pending further investigation and hearing or trial.

**THE COURT MAKES THE FOLLOWING ORDERS**

3. **CHILD(REN) TO BE SUPERVISED**

| Child's Name | Birth Date | Age | Sex |
|---|---|---|---|

4. **TYPE**
   a. ☐ Supervised visitation b. ☐ Supervised exchange only

5. **SUPERVISED VISITATION PROVIDER**
   a. ☐ Professional (individual provider or supervised visitation center) b. ☐ Nonprofessional

6. **AUTHORIZED PROVIDER**

| Name | Address | Telephone |
|---|---|---|

   ☐ Any other mutually agreed-upon third party as arranged.

7. **DURATION AND FREQUENCY OF VISITS** *(see form FL-341 for specifics of visitation):*

8. **PAYMENT RESPONSIBILITY** Petitioner: % Respondent: % Other Parent/Party: %

9. ☐ Petitioner will contact professional provider or supervised visitation center no later than *(date):*
   ☐ Respondent will contact professional provider or supervised visitation center no later than *(date):*
   ☐ Other Parent/party will contact professional provider or supervised visitation center no later than *(date):*

10. **THE COURT FURTHER ORDERS**

Date:

JUDICIAL OFFICER



Form Adopted for Mandatory Use
Judicial Council of California
FL-341(A) [Rev. January 1, 2015]



Family Code, §§ 3100, 3031
*www.courts.ca.gov*

**SP14-10**
**Family Law: Uniform Standards of Practice for Providers of Supervised Visitation** (amend Cal. Stds. of Jud. Admin., std. 5.20, revise form FL-341(A))
All comments are verbatim unless indicated by an asterisk (*)

| | Commentator | Position | Comment | Committee Response |
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| 1. | California Association of Supervised Visitation Providers<br>Sonia Melara, President | AM | 1. Does the proposal appropriately address the stated purpose?<br>a. Yes, the proposal appropriately addressed the stated purpose.<br><br>2. Should the committee consider any additional changes to the standard for supervised visitation providers?<br>a. Supervised Exchanges. May the current definition of supervised visitation expand to include supervised exchanges? For example, both supervised visitation and supervised exchanges involve "contact between the non-custodial party and one or more children in the presence of a neutral third person," as such, may it read "Supervised visitation/exchange is contact between a non-custodial party and one or more children in the presence of a neutral third person?" This is a natural extension as both services, supervised visitation and supervised exchanges involve the participation of the custodial parent, yet the custodial party is not mentioned in the definition – therefore, extending the definition to include the supervised exchanges would not present a conflict except for: (J) Delineation of Terms and Conditions: (2) Enforce the frequency and duration of the visits (and exchanges) as ordered by the court; and (8) Allow neither the provider nor the child to be used to gather information about the other party or caretaker or to transmit documents, | No response required<br><br>No response required.<br><br>The committee agrees that there need not be an exception for supervised exchanges that meet the definition in the standard for supervised visitation, thus rather than adding supervised exchange, the committee has chosen to maintain the deletion of the provision that excludes it, as the proposal was circulated for comment, thereby making supervised exchanges subject to the standards as applicable. |

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

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| | | | information, or personal possessions* (*exchanges involve the transfer of personal possessions i.e. child's clothing, games, etc. for the course of the exchange-related visit, so the bolded portion of this area would need to be revised for exchange-only services, and (K) Special Considerations for Sexual Abuse Cases.<br>i. Due to the nature of the service, all supervised visitations include a supervised exchange at the front and back end of the session. Additionally courts frequently order supervised/monitored exchanges and require those services to be conducted by a professional monitor, as defined by 3200.5. These services should be guided, as are visitations, by Standard 5.20 as it is beneficial for the provider to be trained the provisions of the standard, such as training, intake, orientation, safety practices, termination of services, recordkeeping, report writing (a report of the exchange should be produced also as it demonstrates pick up/return times, items exchanged at the time of visit), etc. Exchanges should still require an intake and orientation so that the provider can safety plan, and the participants can be oriented to the location of the exchange as well as the terms and conditions applicable to the exchange.<br>Should the council not agree with the statement above, at minimum we ask that a separate set of Standards be created for Supervised Exchanges and that this Standard is required to be followed by all professional providers. | |

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| | | | b. Determination of the type of provider. We ask that supervised visitation providers not participate in the recommendation process, rather their supervised visitation reports be reviewed by professionals who have trained to incorporative evaluative reviews into their professional roles. Currently, supervised visitation providers are required to provide direct statements and facts regarding the supervised visitation service. In this role, there is no more to add to the details of the service that are not contained in the supervised visitation report, and therefore their recommendation regarding future activities of the family in any context is unnecessary based on their role as neutral providers, and it causes concern to allow non-evaluators to provide recommendation, even at the courts request. Others identified in the recommendation process (attorney for the child, the parties and their attorneys, Family Court Services staff, evaluators, and therapists) naturally play an advocacy role and will recommend based on the best interest of their clients. Best interest are not an area that supervised providers are allowed to participate in, and their observations as documented in the supervised visitation reports, will provide all involved in the process of a picture of the visitation session. Supervised visitation monitors cannot predict future outcomes and many, educationally (and those who are limited to the 24 hours of | The committee agrees that making recommendations is inconsistent with the neutral role of a supervised visitation provider, and that the current requirements to provide a factual report consisting of observations and direct statements is all that should be contained in the provider's report. |

| | Commentator | Position | Comment | Committee Response |
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| | | | required training), are not qualified to serve in a professional evaluative role. Additionally, providers are asked in the provision, Conflict of interest, to not discuss the merits of the case and that any conversation held between the provider and the parties should be for the purpose of arranging visitation and providing for the safety of the children. Therefore, outside of the observations obtained during the supervised service, the professional provider should only be able to speak about factual details such as reasons stated by the parties as to why the service could not be arranged; and/or issues regarding the safety of the children as it relates to the provision of supervised visitation/exchanges services. Other recommendations by the professional provider would be purely speculative and would be based on guesswork. Finally, we support the redaction of the ending of the sentence in #3 – Maintenance and disclosure of records, as it now reads " . . . or recommendations regarding future visitation," which also supports our concerns as noted above. | No response required. |
| | | | c. Safety and security procedures. Replace the word must with the word 'should' as in "Professional providers 'must' establish a written protocol, with the assistance of the local law enforcement agency, that describes the emergency assistance and responses that can be expected from the local law enforcement agency." Also replace the word "should" with | While it is very unusual for a standard of judicial administration to use the term must, the committee has done so where necessary to meet the statutory requirements of Family Code section 3200.5 which specifically calls for a standard, rather than a rule of court, but also includes specified mandatory provisions. In order to |

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| | | | "must" in the following sentence: "In addition, the professional provider 'must'." It is important that providers review the areas that they plan to offer services (many field services at offered at local malls, parks, book stores and libraries, amusement parks, etc.) without consideration and full knowledge of an expected response to emergency period. Many of the providers work alone, and allow the parent to choose the service location, without the provider performing due diligence on safety reviews for the proposed site. A requirement to meet with local law enforcement will assist in safety preparations as the provider will have the opportunity to understand the expected response time, understand the local procedures for making emergency calls, and may receive recommendation on proposed locations by the law enforcement agency that will yield a faster response. | distinguish between those requirements that are required by the statute, and those that should be followed by all providers seeking to follow the best practices set forth in the standard the committee has opted to use must only in those provisions made mandatory by Family Code section 3200.5 with the exception of the provision concerning court ordered reports, which are similarly legally required. |
| | | | d. Confidentiality. Replace "should" with "must" to read, "Professional providers must, whenever possible, maintain confidentiality regarding the case…" | See response above. |
| | | | e. Delineation of terms and conditions. Replace "should" with "must" to read "Unless otherwise ordered by the court, the provider must . . ." | See response above. |
| | | | f. Safety considerations for sexual abuse cases. Replace "should" with "must" to read, "the provider must comply with the following terms and conditions, unless otherwise ordered | See response above. |

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| | | | by the court." Especially in sexual abuse cases, we emphasize that there should be no optional language for setting forth guidelines of no-contact. Additionally, #3, may an additional sentence be added to clarify that the examples are not exhaustive? This is a discussion that has come up in many trainings. Many providers believe that the examples provided are the only examples of physical contact, which is both dangerous and a demonstration on how important sexual abuse training is. Perhaps an additional sentence to read simply as "These are examples of contact, but this list is not exhaustive" may suffice. | The committee finds that the provision on physical contact is sufficiently precise, especially with the removal of the modifier "prolonged" before hugging. Thus the standard is no contact, and the list, which is preceded by the words "such as" is clearly illustrative and not which can be emphasized in training and education for providers. |
| | | | g. Legal responsibilities and obligations of a provider. We have nothing else to add, but want to state our agreement with the inclusion of nonprofessionals in this provision. While it is a recommendation that they "should," as opposed to must (and we wonder why it is not a requirement" it is a reminder that nonprofessional still have legal liabilities in the supervised visitation (and exchange) process. | As described above, the committee has limited the use of the term must to those provisions mandated by Family Code section 3200.5 |
| | | | h. Additional legal responsibilities of professional providers. The word "providers" is crossed out and should not be redacted in the title of the provision.(1) . . . "The contract 'must' (instead of 'should') inform each party . . . (2) "Review custody and visitation orders relevant to the supervised visitation (and exchange). . ." | The committee concurs that the term "providers" needs to be restored to the title of subdivision o, but as described above has opted to limit the use of the term must to legally mandated provisions. |

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| | | | 3. Is there value in preserving the suggested elements of the current standard in addition to those provisions made mandatory by Family Code section 3200.5?<br>a. Yes, there is value in preserving the suggested elements of the current standard, in addition to those provisions made mandatory by Family Code section 3200.5. The Standard provides with a general flow chart of procedures that, if followed, will equip the provider in understanding the level of attention to detail that is expected. The standard flows from general (e.g. scope, definition) to more detailed expectations for the provider and their services. It is beneficial to have a guiding document that provides a foundation from which providers can build reasonably safe and accountable practices. | No response required. |
| | | | 4. Is it appropriate to delete the exception for supervised exchange because it is a form of supervised visitation, or will the application of the standard to supervised visitation be problematic?<br>a. See above. It is the position of CASVSP that exchanges be included in the definition of supervised visitation, and not be referenced as an exception. They are natural to the visitation process, with few distinctions. E.g. a transfer of items will naturally occur in a supervised exchange, such as clothing and other personal items. Many providers review the backpack and/or items that will follow the child | The committee concurs that elimination of the exception for supervised exchanges is the appropriate course of action to ensure that all conduct that falls within the definition of supervised visitation is subject to the standard. |

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| | | | to/from each parent; so areas identified in the Delineation of Terms and Conditions will still apply – as even on exchanges, messages should not be transferred from one parent to another. Special considerations for sexual abuse cases would not apply; however the other provisions would likely still apply. | |
| | | | 5. Should supervised visitation providers be deleted from the list of those who may make recommendations to the court on the manner of visitation?<br>a. Yes, see above. | No response required. |
| | | | 6. Should references to therapeutic visitation providers be removed from Standard 5.20 and form FL-341(A) for consistency with the statutory identification of only two types of providers, or is there a need to identify therapeutic providers as a subcategory of professional providers in the standards or on the family law form? | |
| | | | a. Yes, references to therapeutic visitation providers should be removed from Standard 5.20, Form FL-341(A) and any other forms on which it appears. Therapeutic services vary greatly from non-therapeutic, neutral services and as such, should not be referenced in relation to an order for supervised visitation. The order should be for therapeutic counseling, where the supervision of the interactions between the non-custodial and the child/ren will naturally occur. The mere use of the term "therapeutic" suggests that therapy, on some level, will be involved in | The committee agrees that the term therapeutic visitation may be confusing, and due to the plain language of Family Code section 3200.5 which provides that non-professional and professional visitation are the only types of visitation to be subject to the standard, agrees that the term must be deleted from the form and the standard. |

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| | | | the process. The definition provided in the Standard specifically states that it is not a therapy session, however many providers (including therapeutic providers) and some within the Courts have an expectation of some level of therapy to occur if this type of visitation is ordered. Many providers (non-therapeutic and therapeutic) have reported that this provision is unclear and forces a person to make a case-by-case decision on the level of therapy they believe the Court is asking them to provide. In fact it has been reported that the language is conflicting, ambiguous, and essentially unnecessary since the role of the provider does not change simply because they are a clinician. Naturally this begets the other question: "Why is therapeutic visitation ordered when it is known that the clinician serves in the role as a professional (neutral) provider, and not a clinician." The session is not a therapy session, rather it the same service (supervised visitation) with a trained professional whose training exceeds that as required by Family Code 3200.5 (24 hours). Additionally, while "clinical settings" are suggested, what comprises a clinical setting is left to the direction of the clinician who is serving in the role of a professional provider, and not a clinician. As such, trained clinicians performing non-clinical work are working in questionable places such as park, malls, and other public settings on cases specially ordered | |

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| | | | to “therapeutic” services. Finally, licensed mental health care professionals have a different perspective and are mainly an advocate for either their client – or the person they perceive as their client. They are bound by a different set of rules, with its own regulatory oversight agency (unlike professional supervised visitation providers) and these regulations impose other requirements upon the clinician. In regards to the supervised visitation report, a therapist does not standardly document in a non-neutral fashion, and this also serves possibly conflict with key elements required in the supervised visitation report: Documentation of direct statements, facts and observations, not opinions. This is itself undermines the core of supervised visitation performed by professional providers: neutrality. We believe that, if the decision by the council is that therapeutic supervised visitation should remain as a part of the standards - then it should be specified therapists are not providing “therapy”, but rather simply “supervised visitation” services. | |
| | | | 7. Do the other changes made to enhance and clarify the standard succeed in making it more straightforward and internally consistent?<br>a. Yes. | No response required. |
| | | | 8. Other Areas for Consideration:<br>a. Training for providers: May another line be added to this section to state that while A-K are mandatory, additional training (e.g. conflict resolution, understanding the stages of | The committee finds the current training standards to be expansive and comprehensive opts not to add additional areas of training that providers may wish to seek on their own. |

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| | | | grief, etc.) in other areas may also be beneficial – or something to that effect? | |
| | | | b. Safety and security procedures. May #2 be reworded to provide clarity as to "sufficient capacity," such as "If the child is of sufficient age and capacity, as determined by the providers knowledge and understanding of the developmental stages of growth, the provider should include the child in part of the intake or orientation process." | While the committee recognizes that there is significant discretion afforded to providers to determine whether a child is of sufficient age and capacity to be included in the intake and orientation, any individualized determination of whether a child is of sufficient age and capacity will require the exercise of professional judgment. The suggested additional language seems superfluous rather than clarifying. |
| | | | c. Ratio of Children to Provider: It is a safety risk, especially for solo providers, to allow others to attend the visit. This risk may be reduced by limiting the number of participants in the visitation to only those identified in the court order. While many agencies have adopted their own guidelines about this process, other providers have shared that it would be beneficial to have this identified in the Standard to support their commitment to measuring for safety during the intake process. May this section (#4) be reworded to read (e.g.) "The number of people, as named in the court order, visiting the child during the visit." | The committee agrees that those participating in the visit should be limited to those specified in the court order and has modified this provision as suggested. |
| | | | Additionally, providers have asked for clear information regarding the "nature of supervision," as identified in #2 because it is unclear who is determining the nature – although provision C states that the court determines the nature, many court orders lack | Because the standard is already clear in subdivision (c) that the manner of supervision is ordered by the court the committee finds this change unnecessary. |

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| | | | these details. May this be reworded to highlight that the nature of supervision (per C) is determined by the court, and not the provider. For example, "The nature of supervision, as determined by the court, required in each case." Providers that continue to receive unclear court orders should not, in the opinion of CASVSP, perform services under Standard 5.20 because they would have to continue to speculate on the terms and conditions of the court order. | |
| | | | d. Maintenance and disclosure of records. May it be considered that the Declaration Form, FL-324, also be identified as a document that is maintained as a record in each case? E.g. A written document of receipt that a separate copy of the FL-324, as well as Standard 5.20 and Family Code 3200.5 was provided separately to each party during the orientation process? This action would support the courts to educate the parties about the process, and the declared qualifications of the provider. Just as in provision F-Training for providers, courts are encouraged to make available to all providers informational materials, the provider could assist (which would result in paper reduction and cost savings) in the parent-education process through inclusion of these mandatory documents in the orientation process (i.e. with their program agreements and/or policies for services). This action also empowers the family that is participating in the process as they have the assurance of knowing that the selected | Form FL-324 is an optional form to assist providers to fulfill their obligation to certify their compliance with Family Code section 3200.5. The committee finds that the suggested requirement that providers provide that form as well as copies of the standard and the statute to all parties to be overly burdensome on providers and potentially more overwhelming than informative to consumers. The statute requires that a declaration be executed, but it does not require the provider to certify this compliance to each party. |

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| | | | provider has declared both their professionalism and adherence to Standard 5.20 and Family Code 3200.5 to the court from which the order was made.<br>i. Declaration Form FL-324: Information regarding maintenance of this document is necessary as it contains identifying information regarding families involved in the court system. CASVSP recommends consideration for a process that will address the use of a Custodian of Record. I.e. .for agencies or those that employ multiple monitors sign along with the monitor, as a "Custodian of Record," and may the "Custodian of Record," maintain a copy of FL-324 in the event of future subpoena and the monitor is no longer employed with the agency? We are not suggesting that the Custodian of Record sign in place of the monitor, but along with the monitor and their signature is validated in the event that the monitor is no longer reachable. Additionally, the design of the document suggests that it is required for each case, as opposed to a general document filed once (or upon request from the Court) from the provider and the case information is not inserted because it will apply to all cases that the provider serves. Instructions on the use of this form vary from court to court, and a written uniform practice for guidance would be appreciated. It is our suggestion that this form be applied on a "per case" basis, it is signed by the provider during the orientation meeting, and | As described above, form FL-324 is an optional form that can be used by providers. While it allows for the inclusion of case specific information in the event that a court determines that its local policy is to have the form maintained for each case, it is not a requirement of the standard or Family Code section 3200.5 that it be maintained in the case file for each case. This may well be a practice that many providers adopt, but the committee finds no authority in the statute to require it in every case. Since the standard and Family Code section 3200.5 do not require the maintenance of the FL-324 in every case, the suggestion regarding custodians of record appears to be outside the scope of this proposal. |

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| | | | a copy be maintained in the client file. Each provider assigned to a case must sign the Declaration. A separate file contains all originals (original copies signed by the provider) for all cases must be maintained in the event that it is solicited by the court. This is paper reduction on the part of the courts and best practices for accountability on the part of the provider(s). | |
| | | | ii. Storage and Disposal of Records: Neither the current nor the proposed revised version of Standard 5.20 address the issue of file storage and disposal. It is our recommendation that files are maintained for a period no less than 4 years in a locked and separate file cabinet as they contain identifying information regarding clients; and that files are destroyed in a manner consistent with other industry standards, such as shredding, burning, or pulverization. A log sheet should be maintained for the life of the business that provides details regarding: File Name (as shown on court order), date of destruction, and signature of the person that destroyed the document after the period of 4 years. | The standard does require providers to maintain certain case records, and the committee recognizes that providers, like any professionals, will need to exercise due care in maintaining their case records and disposing of them as appropriate in the usual course of their business. The committee does not believe that it is necessary for the standard to contain express requirements to this effect but trusts that providers will implement standard practices. |
| | | | iii. Additionally, #3, please replace "should" with "must" to read ". . . a report about the supervised visit (and exchange, if adopted – see comments above) must be produced." Also, the additional sentence is recommended for clarification. It now reads as though the report will only be sent to the court, | The committee concurs that since these reports may be court ordered, the use of the term "must" in this provision is appropriate. The committee finds the newly added sentence clear on the point that the report is sent to the court only if it is so ordered, and that otherwise it is sent to the requester and that in all cases copies go to all |

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| | | | and the requesting party or attorney if so ordered. May it read as follows: "The original report must be provided to: (1) the requesting party or attorney, and copies 'must' be sent to all parties, their attorneys, and the attorney for the child. In addition, the original report 'must' be sent to the court if so ordered. | parties, their attorneys, and the attorney for the child. |
| 2. | Comprehensive Youth Services<br>Lisa Brott<br>Program Manager | N | I am employed by an agency that provides therapeutic supervised visits. Families referred for TSV derive great benefit from this type of visitation and to eliminate it as an option would be a great disservice. I strongly object to the elimination. | The committee eliminated references in the standard to "therapeutic visitation" because Family Code section 3200.5 specifically provides that a supervised visitation provider for purposes of the standard is either a professional provider or a nonprofessional provider. Moreover, an earlier version of the legislation enacting section 3200.5 did include references to therapeutic visitation, but those provisions were not included in the final Chaptered version, indicating to the committee that the intent of the legislature was not to include a special category of therapeutic visitation in the standards. The committee also notes that the prior standard did not define a different service that therapeutic providers would offer but simply defined that service in relation to the type of provider, so that a therapeutic visitation provider was a licensed mental health professional providing the same services as a professional provider, but in a clinical setting. While the standard has been revised altered to conform with the new statutory provisions, there is nothing in the standard that bars mental health professionals from continuing to offer professional supervised visitation services or prevents courts from making |

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| | | | | an order for visitation that requires the use of a mental health professional as a provider if the courts deems that necessary. The committee also notes that Family Code section 3190 gives the court the authority to order the parents and the child to participate in counseling if it makes specific findings, so if the court believes that the family needs counseling, it has the clear authority to make such an order. |
| 3. | Cope Family Center<br>Melinda Daugherty<br>Program Manager | AM | ELIMINATION OF REFERENCES TO THERAPEUTIC VISITATION PROVIDERS: I believe all reference to therapeutic supervised visitation should be removed from the standards. Based on my professional experience, there has been much confusion over the years as to the role of a "therapeutic supervised visitation" provider. Most people in general, including judicial officers seem to have the expectation of a certain level of therapy in conjunction with supervised visitation. In order to maintain true neutrality for visitations, the provision of supervised visitation should be of a narrow scope. Licensed mental health care professionals have a different perspective and are mainly an advocate for either their client – or the person they perceive as their client. In addition, mental health care providers also have a different set of rules and regulations to follow in conjunction with the licensing agencies that oversee them. For a therapist to not be able to provide visitation observation notes in a neutral fashion, undermines the core of supervised | The committee agrees that the term therapeutic visitation may be confusing, and due to the plain language of Family Code section 3200.5 which provides that non-professional and professional visitation are the only types of visitation to be referenced in the standard, agrees that it must be deleted from the form and the standard. |

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| | | | visitation: neutrality. Therapy and Supervised Visitation should be two separate processes, therefore I believe all references to “therapeutic supervised visitation” should be removed from the Standards.<br><br>If the decision by the committee is that therapeutic supervised visitation should remain as a part of the Standards - then it should be specified therapists are not providing “therapy”, but rather simply providing “supervised visitation” services. | |
| | | | ADDITIONAL CHANGES TO ENHANCE INTERNAL CONSISTENCY:<br>As far as supervised exchanges, my opinion is there should be a separate standard set for exchanges. While they may be very similar in some respects to a visitation - meaning the front and back end of a supervised visitation - that is where the similarities end. The exchanges are typically for the most part, a temporary measure as the “dust settles” between the conflicting parties and the intent, in my opinion (based on my professional experience) is a little different than supervised visitation - and the rules should reflect that. For example, a natural consequence of parents switching the children back and forth on a weekly or bi-weekly basis can and does result in backpacks, toys, and other items being passed through, as well as messages such as what medications a child may have taken, | The committee has deleted the exception in the rule for supervised exchanges to make clear that when an exchange is within the supervised visitation definition of the standard (i.e. contact between the noncustodial party and one or more children in the presence of a neutral third party) then it is a form of supervised visitation subject to the standard. The provisions of the standard that are deemed problematic by the commenter can be overcome by a court order to the contrary, thus an order for supervised exchange can provide for exchange of information and possessions where appropriate. As a result the committee declines to set up a separate set of standards of practice for supervised exchange as the current standards will apply. |

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| | | | school appointments, etc. There are too many variables with exchanges that simply do not occur with supervised visitations.<br><br>STANDARDS SECTION D: QUALIFICATIONS OF NON-PROFESSIONAL PROVIDERS: (PAGE 8, LINE 38)<br>Add SECTION (2) (F): Not be the custodial parent of the children being supervised. | As discussed above, supervised visitation is contact between a noncustodial parent and a child in the presence of a neutral third party. The custodial parent is not a neutral third party and thus by definition cannot be a nonprofessional supervised visitation provider. If the court were to order visits in the presence of the custodial parent that situation would not be subject to these standards as it falls outside the definition of supervised visitation. |
| | | | TRAINING FOR PROVIDERS (PAGE 10, LINE 27 SECTION F)<br>Providers should receive training via "approved" trainings or by "approved" trainers only. All providers should be trained in a consistent manner so as to maintain integrity in the field. Some of the various trainings provided up and down the state of California are inconsistent and also have provided misinformation. For example at one training it was announced the Standards did not exist any longer as the Family Code 3200.5 was now in place. This was a training provided to over thirty new providers. Oversight of trainers and their curriculums will provide consistency and also go a long way into maintaining the integrity of the field of Supervised Visitation. | The committee cannot require training by approved providers because there is no entity charged with approving training providers for supervised visitation. The legislature opted to make training mandatory but then left to providers the responsibility to obtain and certify their compliance with the training. Neither the courts nor the Judicial Council have the authority or the resources to oversee this training. |

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| | | | In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:<br>• • Does the proposal appropriately address the stated purpose?<br>o Yes<br>• • Should the committee consider any additional changes to the standard for supervised visitation providers?<br>o Yes, as stated above, in regards to non-professional providers – the custodial parent should not be the one supervising the visitation between their own children and the other parent.<br>• • Is it appropriate to delete the exception for supervised exchange because it is a form of supervised visitation, or will the application of the standard to supervised exchange be problematic?<br>o Yes, I believe the application of the standard to supervised exchange would be problematic – the services may be similar in some respects, but different in a variety of ways. The differences are intent or reasoning behind the necessity for exchanges and also the logistics of custodial exchanges as children naturally will need to carry items such as backpacks, clothes, toys etc back and forth between homes. Parents also need to keep the other informed with regards to issues related to school, medical appointments, medications, etc. This in of itself will necessitate messages to be | No response required.<br><br>See response above.<br><br>See response above. |

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| | | | passed through. Please see above comments.<br>• • Should supervised visitation providers be deleted from the list of those who may make recommendations to the court on the manner of visitation?<br>o I do believe they should be deleted from the list, however if they are not deleted from the list - the court should carefully consider the provider as to the level of experience and length of time providing services to the particular family. The decision as to what (if any) weight to be given to a provider's recommendation should rest completely with the judicial officer making the decision as to visitation.<br>o If the committee chooses to delete supervised visitation providers from the list of those who may make recommendations - an alternative would be that providers who have been qualified as an expert in the field of supervised visitation should be considered for opinion on cases they have not directly supervised, which in turn, maintains neutrality, yet provides another tool for the judicial officer to make an informed decision on visitation. This would be especially helpful in counties with non-recommending mediation services.<br>• • Should references to therapeutic visitation providers be removed from standard 5.20 and form FL-341(A) for consistency with the statutory identification of only two types of providers, or is there a need to identify therapeutic providers as a subcategory of | The committee agrees that making recommendations is inconsistent with the neutral role of supervised visitation providers and has therefore deleted them from the list of those authorized to do so.<br><br>See response above. |

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| | | | professional providers in the standards or on the family law form?<br>o Therapeutic visitation in my opinion, is a completely different service than supervised visitation – and therefore, should not be a part of these standards.<br>• • Do the other changes made to enhance and clarify the standard succeed in making it more straightforward and internally consistent?<br>o Yes they do. | No response required. |
| 4. | Growth Motivator Enterprises Inc.<br>Tamara L. Daniels<br>Professional Monitor | A | Whereas the proposed changes are agreed with, however, I would like to add the following comment for consideration: that the 'requirements' for non-professional monitors (i.e. immediate family members, relatives or friends) are modified to include a 'minimum of 8 hours training in supervised visitation training. As a professional visitation provider, I have seen cases where the order allowed monitored visitation via a non-professional (i.e. immediate family member, relative or friend) whereby a) were not aware of the visitation guidelines or b) were aware but chose not to implement the guidelines due to the conflict of interest monitoring a 'family' member or 'friend'. Hence, in some cases, the minor is now at-risk.<br><br>For example, the 'family/friend' leaves the minor alone with the NCP, allows derogatory comments to be made, allows in-appropriate | While the committee appreciates the underlying intent of the suggested requirement to impose training requirements on non-professional supervised visitation providers, it has no authority to do so under Family Code section 3200.5. The statute is clear that non-professional providers are not required to receive any training, and the committee is legally required to conform the standard to the statute. |

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| | | | activities to occur, is aware the visiting parent is slightly under the influence and allows the visit to take place.<br><br>The CHALLENGE is this; for most family members, it is difficult to supervise a son, daughter, friend, etc. Non-professionals who are not exposed to/given a chance to fully understand the 5 basic roles of a provider per the Uniform Standards are, in many cases set up for failure and therefore place minors at-risk.<br><br>Please 'consider' adding a minimum training qualifier to the non-professional requirements. | |
| 5. | Stacy Larson<br>Family Law Facilitator<br>Superior Court of Shasta County | AM | § It's helpful to break down the Standard into specific categories such as Scope of Service, Definition, Determination of the type of provider, etc. This creates easier reference to the relevant provision while also clarifying the context of each provision.<br>§ Standard 5.20, subsection (c): The proposed elimination of "providers of supervised visitation" is an important and necessary change. The suggested insertion of the final sentence (e. g., "In any case in which the court has determined . . . child's best interest.") appears to be intended to require the court to fulfill its role in considering and making a specific order regarding whether supervised visitation should be monitored by a professional or nonprofessional after making findings of domestic violence, child abuse, or | No response required.<br><br><br><br><br><br>The committee has opted to use the language from Family Code section 3200.5 which requires the court to "consider" rather than requiring a specific finding or determination. The legislative history of section 3200.5 shows that the legislature was trying to preserve discretion for the court while ensuring the safety of children subject to supervised visitation orders and determined that a requirement that the court consider which type of provider was appropriate struck the appropriate balance. As a result the committee finds that the standard must be in conformance with that |

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| | | | neglect. The sheer volume of family-law cases heard on each calendar in most cases often results in lack of specificity of orders, and as we all know, lack of specificity leads to lack of enforceability and increased conflict between the parties. I suggest that this last sentence be more clear—and more meaty—by requiring the court to make a specific determination regarding whether the supervised visitation shall be monitored by a professional or non-professional, not simply ordering the court to "consider" the issue. | language and not exceed it. |
| | | | § Standard 5.20, subsection (c): I agree that the reference to Penal Code §11165.6 for definition of domestic violence, child abuse, or neglect mirrors that found in Family Code §3200.5(b); however, this reference is very narrow. I assume this is intentional, but it does essentially eviscerate the requirement that the court should specifically determine the necessity of a professional rather than unprofessional supervisor. It is extremely rare that a court, at least those I've appeared in, makes a specific finding under this Penal Code section, but it is extremely common that the court determines supervised visitation to be necessary. Other statutes, such as Family Code §3100 and §3031(c) (pertaining to domestic violence) require the court to consider whether supervision by a neutral third-party is in the child's best interest. In these circumstances, it | The legislature limited the requirement that the court consider whether to use professional or non-professional providers to those cases in which the court has determined that there is domestic violence, child abuse, or neglect. As a result, the committee has modified the standard to conform to the statute. |

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| | | | is equally important that the court analyze, and specifically order, whether a professional or nonprofessional supervisor is in the child's best interest. Similarly, see Family Code §3048(b)(2)(A). | |
| | | | § Standard 5.20, subsection (d)(1)(C): I agree with this modification as it mirrors Family Code §3200.5(c)(1). I'm not sure if it comes up very much as I have observed Family Code §3200 or §3200.5 being litigated by the parties nor enforced by the Court; however, it would be interesting to learn whether nonprofessional supervisors should also be barred if there was previously a temporary "past court order in which the provider is the person being supervised." The sad reality is that temporary orders for supervised visitation can frequently be granted on the "facts" of the requesting party with no notice to the responding party only later to be rescinded when they are determined to be completely false. The wording here does not distinguish between temporary orders (often made without notice or opportunity to be heard and based upon the allegations of only the moving party) and "permanent" orders made after the Court makes findings of truth. This would seem to mean that even temporary supervised-visitation orders would forever bar an individual from ever serving as a nonprofessional supervisor, which further limits the pool of nonprofessional supervisors available to some litigants. | The language of this provision comes verbatim from Family Code section 3200.5 and was part of the current language of Standard 5.20. Given this fact the committee does not deem it within its authority to distinguish between temporary orders and orders after a hearing with regard to this requirement. However, if a court were to read this language as applying to temporary orders, the committee notes that the court may order and/or the parties may stipulate to a provider who does not meet the requirements of the standard, thus providing a means to rectify any injustice that would arise from inclusion of temporary orders. |

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

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| | | | § Standard 5.20, subsection (e)(1): This was reworked to be consistent with Family Code §3200.5(c)(2)(A). Why not use the same wording (e. g. "be at least 21 years of age" rather than the proposed "be 21 years of age or older"). | The committee finds no difference in meaning between the two expressions and has opted to use the language of the current standard. |
| | | | § Standard 5.20, subsection (e)(2): This was reworked to be consistent with Family Code §3200.5(c)(2)(B). Why not use the same wording (e. g. "have no record of a conviction for driving under the influence (DUI) within the last five years" rather than the proposed "Have no conviction for driving under the influence (DUI) within the last 5 years"). In Standard 5.20, subsection (e)(4), the exact language from Family Code §3200.5(c)(2)(D) is used: "Have no record of conviction for child molestation, child abuse, or other crimes against a person." | The committee agrees that the preferable approach is to mirror the statutory language and has added "no record of" to the DUI conviction language. |
| | | | § Standard 5.20, subsection (e)(6): I agree with this modification as it mirrors Family Code §3200.5(c)(2)(F). I'm not sure if it comes up very much as I have observed Family Code §3200 or §3200.5 being litigated by the parties nor enforced by the Court; however, it would be interesting to learn whether professional supervisors should also be barred if there was a temporary "civil, criminal, or juvenile restraining order within the last 10 years." The sad reality is that temporary restraining orders can frequently be granted on the "facts" of the requesting party with no notice to the responding party only later to be | As discussed above with reference to temporary supervised visitation orders, the committee is bound by the statutory language but reiterates that if a court found this language to include temporary orders it could nevertheless affirmatively make an order for visitation with a provider who was otherwise appropriate and/or the parties could stipulate to such a provider. |

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| | | | rescinded when they are determined to be completely unjustified. The wording here does not distinguish between temporary orders (often made without notice or opportunity to be heard and based upon the allegations of only the moving party) and "permanent" orders made after the Court makes findings of truth. This would seem to mean that even temporary restraining orders would forever bar an individual from ever serving as a nonprofessional supervisor, which further limits the pool of professional supervisors available to litigants within a specific county. | |
| | | | § Standard 5.20, subsection (e)(7): I agree with this modification as it mirrors Family Code §3200.5(c)(2)(G). I'm not sure if it comes up very much as I have observed Family Code §3200 or §3200.5 being litigated by the parties nor enforced by the Court; however, it would be interesting to learn whether professional supervisors should also be barred if there was previously a temporary "past court order in which the provider is the person being supervised." The sad reality is that temporary orders for supervised visitation can frequently be granted on the "facts" of the requesting party with no notice to the responding party only later to be rescinded when they are determined to be completely false. The wording here does not distinguish between temporary orders (often made without notice or opportunity to be heard and based upon the allegations of only the | See discussion above. |

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| | | | moving party) and "permanent" orders made after the Court makes findings of truth. This would seem to mean that even temporary supervised-visitation orders would forever bar an individual from ever serving as a professional supervisor, which further limits the pool of professional supervisors available to some litigants. | |
| | | | § Standard 5.20, subsection (e)(11): It would be helpful to clarify that the FL-324 (or its equivalent) must be signed and filed with the court. | Family Code section 3200.5 does not require that a declaration be filed with the court in each case, but only that professional providers have signed such a declaration. Given the resource constraints faced by courts and litigants seeking supervised visitation, the committee has opted not to go beyond the statute in making such filing a standard requirement, but rather to leave it to each court to determine to what extent they wish to document compliance with this requirement. |
| | | | § Standard 5.20, subsection (f)(1): It would be helpful to have a uniform "Information Sheet" on a Judicial Council form for this purpose. The provision that each court "is encouraged to make available to all providers informational materials about . . . the terms and conditions of supervised visitation . . ." is a bit unclear. Terms and conditions of specific supervised visitation orders can vary dramatically depending on the best-interest-of-the-child standard, and they may be contained within confidential files. If specific orders are to be provided to supervised-visitation | Judicial Council staff has prepared a guide for non-professional providers of supervised visitation that is available to the courts and the public on the courts.ca.gov website. It provides helpful guidance to non-professionals for understanding their role under the standards and for ensuring a safe visit. For professional providers the training requirements in the standard should ensure a more in depth understanding of the standards of practice and other issues essential to professional providers. Thus the committee does not believe that an additional information sheet is required. |

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| | | | providers, it would seem most appropriate for the parties to provide copies of these orders to their chosen provider. I suspect this is intended in a broader sense to mean general information about the provider's role, etc., but it is unclear what a general, all-purpose definition of "terms and conditions of supervised visitation" if or how it would be useful to providers in general (?). | |
| | | | § Standard 5.20, subsection (f)(2)(C): Family Code §3200.5(d)(1)(C) does not hyphenate "recordkeeping" but this subsection of Standard 5.20 does . . . an argument in favor of consistency can be made that we should just mirror the statute and not hyphenate "recordkeeping" in this section. | The committee has conformed the standard to the statutory language and made it one word without a hyphen. |
| | | | § Standard 5.20, subsection (g): The first paragraph ("All providers should make every reasonable effort to assure the safety and welfare of the child and adults during the visitation . . ." ) is worded as a "should" recommendation, but it is based upon Family Code §3200.5(h)(1), which is worded as a "shall" mandatory requirement. To clarify, we could change the "should" in the first sentence to a "shall." | The committee agrees and has modified this sentence to make it mandatory consistent with the statute. |
| | | | § Standard 5.20, subsection (g)(5): This provision ("suspend or terminate supervised visitation if the provider determines that the risk factors present are placing in . . ." is delineated as a "should," indicating it is a recommendation but not a mandatory requirement under the | The revised standard does require professional providers to suspend or terminate visitation under the specified circumstances of section 3200.5 in paragraph (3) of subdivision (n). To eliminate any confusion the committee has deleted this language from subdivision (g) of the standard as it |

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| | | | Standard. However, Family Code §3200.5(f)(3) and (h)(2) make this a mandatory provision. | is redundant. |
| | | | § Standard 5.20, subsection (g)(5): It appears the reference to (l) is in error (?). | The committee has deleted this language and thus need not correct this reference. |
| | | | § Standard 5.20, subsection (j), "Maintenance and disclosure of records": This section appears to apply only to professional providers, and it would be helpful if this was made clear in the title. For example, the title could read, "Maintenance and disclosure of records for professional providers" | The committee has adopted this suggestion. |
| | | | § Standard 5.20, subsection (o): We should re-insert the word "providers" at the end of the title, e. g., "Additional legal responsibilities of professional providers" | The committee has modified the rule to correct this error. |
| | | | § Standard 5.20, subsection (p)(1): This section appears repetitive with subsection (g). Standard 5.20, subsection (p)(1) could be omitted as it is covered earlier in the section "Safety and security procedures." Subsection (2) could be reworded to read, "If a provider determines that the rules . . ." | The committee finds that in this instance the redundancy is appropriate and each subdivision is clearer with the language included. |
| | | | § Standard 5.20, subsection (q): This section appears to be a continuation of subsection (p). Why not make this the last subsection under "(p) Temporary suspension or termination of supervised visitation"? | The committee has retained this subdivision as a separate requirement to highlight that it applies only to professional providers, while much of subdivision (p) applies to all providers. |
| | | | § FL-341(A), subsection (6): Non-professional supervisors are often the best due to the financial limitations of the non-custodial parent. Non-professional supervisors are most | The suggested change is too substantive to make without further circulation for comment and is thus outside the scope of this proposal. |

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| | | | often friends or family members of the custodial parent. The willingness to continue acting as a supervisor (as well as their availability) can change dramatically once an order is made, which severely limits the non-custodial parent's ability to exercise visitation rights. Courts frequently provide flexibility in these orders such as "a nonprofessional supervisor at the mother's discretion." This allows the parties some flexibility in adjusting the name/address/telephone number of the approved supervisor without filing additional motions or stipulations. It would be helpful to add this option at Item (6) by inserting something like, "a non-professional supervisor at the mother's/father's discretion who had completed and filed an FL-324 "Declaration of Supervised Visitation Provider" or its equivalent. | |
| | | | § FL-341(a), subsection (9): In situations where the non-custodial parent's involvement in the child's life has been minimal or inconsistent, courts often do not make specific orders regarding deadlines for contacting the professional supervisor. An example would be when the custodial parent requests modification of the existing custody/visitation order based upon the non-custodial parent's incarceration or long-term absence from the child's life. Rather than ordering "no visitation," the court may order "supervised visitation by a professional provider." The only party present could be the | The committee notes that the current form does not require the court to check a box on line 9, and does provide a subsection for the court to make an alternative order that clarifies the court's intent on line 10 which allows the court to make further specifications about the order. Given this line the committee thinks inclusion of an "other" checkbox on line 9 is unnecessary. |

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| | | | custodial parent, and the intent of the court's order is that the non-custodial parent must contact a professional supervisor to orchestrate professional supervised visitation once he/she reappears in the child's life. It would be helpful if (9) accommodated this flexibility, perhaps by including an "other" checkbox section. | |
| 6. | Beth Miller<br>Family Court Services Mediator<br>Superior Court of Napa County | AM | I have concerns about the Court's policies pertaining to the practices of supervised visitation private providers. | |
| | | | 1) I believe it is impossible for professional supervisors to work with families in public without the Court's support. Private providers need liability insurance and it is not available thru private means so I suggest that the Court must indemnify the private providers. | This suggestion goes beyond the scope of the standard and its purpose. The committee has no authority to require courts to indemnify private providers. |
| | | | 2) Since the Court orders parenting time for the non custodial parent ranging from 2-8 hours at a time, the report writing becomes tedious and difficult. The visits are often held outside, in public child friendly locales that offer age appropriate stimulation to the child/children. If every utterance needs to be memorialized in the body of the private provider's report, I suggest that the visits should be audio taped or employ the use of video. Many Judicial Officers report that they read just the opening paragraph because they are only interested in the greeting between the child and the parent as well as the last paragraph describing the goodbye and | While reports on a visit may be ordered by the court or requested by the parties, the committee does not view the standard as requiring that every action or statement will be documented. The report is required to be limited to a factual report that may include observations and direct statements, but there is no requirement that every such statement be documented. As to training requirements for professional providers, the suggestion appears to address a current practice rather than the standard, and would be better addressed by clarifying expectations when the reports are ordered or requested. Moreover, the suggestion that the training be designed to have an |

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| | | | ignore all that is written in between.<br>If that is true, then it appears that the job requirements do not fit the needs of the Court and some adjustment must be made. I would like to suggest that the training includes an evaluation process so that those professionals who are deemed suitable for the job of private provider of supervised visitation services can use summary instead of writing every word spoken and a written description of every movement made by the children and their supervised parent during the visit. I recognize that this idea is a huge departure from current expectations however, the current status quo is not in line with the reality of the Court's needs and the ability for professionals to provide excellence when performing their duties as it pertains to the written reports. | evaluative component conflicts with the neutral role that the supervised visitation provider is intended to fulfill. |
| 7. | Quality-Time Visitation Group, Inc.<br>Connie J. Thomas<br>Professional Visitation Monitor | N | 1. Does the proposal appropriately address the stated purpose? No<br><br>2. Should the committee consider any additional changes to the standards for supervised visitation providers?<br>Yes, like any profession people who call themselves professional should be educated because education and training is too different things. The ideal that uneducated people have an impact on the lives of parents and children has never made sense. Also, anyone can become a monitor and mistakes have been made because of not having the experience, training | No comment required.<br><br>Because Family Code section 3200.5 sets training standards for professional visitation providers the committee has elected to align the training requirements with those statutory requirements and not add additional educational requirements not mandated by the legislature. |

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| | | | and or education to deal with people on this level. Additionally, monitoring families should be of great concern to everyone and safety of both the adult and children should be top priority. Yes, there should be more oversight of people who are engaged in providing this type of service as with any other profession. | The legislation requiring standards of practice for supervised visitation providers did not require that there be any monitoring of the supervised visitation providers and there is no state entity authorized to carry out such monitoring or oversight |
| | | | 3. Is there value in preserving the suggested elements of the current standard in addition to those provisions made mandatory by Family Code section 3200.5?<br>Yes | The proposal continues to include the non-mandatory provisions. |
| | | | 4. Is it appropriate to delete the exception for supervised exchange because it is a form of supervised visitation, or will application of the standards to supervised exchange be problematic? The supervised exchange should be removed from the Standards because if the Court has agreed to remove this type of monitoring and parents agree to work with each other at a mutual exchange location, why should monitors be involved at this level. This only prevents the parents the opportunity to move on with their lives. | The current version of the standard defines supervised visitation as "contact between a noncustodial party and one or more children in the presence of a neutral third person" thus the committee opted to delete the provision providing that supervised exchange was not subject to the standard in favor of an approach that includes all monitored contact between the noncustodial party and the child/ren that meets the definition in the supervised visitation standard to ensure consistency and clarity. |
| | | | 5. Should supervised visitation providers be deleted from the list of those who may make recommendations to the court on the manner of visitation? No, because those of us that are truly | The committee appreciates the dedication of supervised visitation providers but has concluded |

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| | | | involved with these families for the right reason of assisting them in having a normal relationship. Also, we are able to see up front and personal whether a parent is a threat or not. Again, this comes back to education, training and experience. | that a provider cannot serve as a neutral third party if the provider may also be asked to make recommendations to the court. The provider can, however, provide information to the court describing the visits that would be of value to the court in determining how to proceed with visitation orders. |
| | | | 6. Should references to therapeutic visitation providers be removed from standard 5.20 and form FL-341(A) for consistency with the statutory identification of only two types of providers, or is there a need to identify therapeutic providers as a subcategory of professional providers in the standards or on the family law form? Yes, because therapeutic visitation is another field. I'm hearing a lot about family therapeutic sessions set up like visitations instead therapy sessions as a result parents are confused. | The committee concurs with this commenter that there is some confusion around what therapeutic visitation is intended to describe. In the current standard, therapeutic visitation does not involve any provision of therapy by the supervised visitation provider, but rather is professional visitation provided by a licensed clinician or trainee. Because the legislature identified only two types of supervised visitation providers (the professional and nonprofessional), the committee has conformed the standards to the statute. See response to comment 2 for further discussion of this issue. |
| | | | 7. Do the other changes made to enhance and clarify the standards succeed in making it more straightforward and internally consistent? No | No response required. |
| 8. | Bobbi Richards<br>Administrative Consultant<br>California Association of Supervised Visitation Service Providers | AM | Agree with the discussion regarding form FL-324 (Declaration). Would ask the Council to consider the storage/maintenance of this document to both reduce the paper burden on the Courts as well as to educate the parents at | As discussed above the committee does not wish to place additional burdens on providers beyond those imposed by Family Code section 3200.5. Providers must determine for themselves, consistent with any local court requirements, how |

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| | | | the time of intake. May this form be provided, to inform the parents, of the provider's declared qualifications at the time of intake, and house/where should copies of the document be maintained (i.e. separate file, per case, etc at the provider's office/file location). | to manage the optional FL-324 form. |
| 9. | Sacramento Counseling and Family Service<br>April Hayes<br>Executive Director | AM | I have six issues to address.<br>1. Professional requirements: E(7) There are social workers that have had CPS cases before being a social worker. There are police officers that have been arrested for minor issues before they came an officer. There are therapist with mental health issues. There are frequent allegations against a parent that the court will decide as a precaution to require a parent to do supervised visitation or even in a CPS case where a grandparent is doing supervised visitation out of now fault of their own. Stating in general terms that a professional provider should never previously been a subject of supervision seems to be inappropriate. Sometimes parents that have made mistakes in the past have made significant progress in their life and maybe a perfect candidate to provide such services.<br><br>2. L 12 - Understandable why there should be no contact between parents during the supervised visitation processed. But Visitation monitors have no control of contact between parents outside of the visitation process. | The requirements cited here for professional providers are set forth in Family Code section 3200.5 and thus the Committee is required by the statute to include them in the standards and has no authority to modify them, however, the standard allows the court to order or the parties to stipulate to a provider who does not meet the standards..<br><br>Each of the provisions in the standard applies to the supervised visitation process only. The committee finds no ambiguity about when and where the standards apply. |

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| | | | 3. There is also reference to follow any additional rules from court order. What does a provider do when there are additional court orders that are contrary to the standards? Such as allow custodial parent to participate in visitation, allow sex offender to physical interact with child? | The standard provisions referred to here are best practices that are not a binding obligation on the provider. Thus a court order that directs the provider to take a specific action in a specific case is not in conflict with the standard, but may require the visitation provider to determine whether or not he or she can provide the ordered services. |
| | | | 4. Sexual abuse allegations: ALLEGATIONS: there is no guidance when there are old allegations and then CPS and police investigate and unsubstantiate the allegations. - But the court requires supervised visitation for precaution or for other reasons. What happens to allegations against a different child - a step child or a child other than their own. They are ALLEGATIONS and a child that is used to be hugged or some other minor contact is now no longer able to touch the parent. Who is that punishing? What are we supposed to do when there is an ALLEGATION by a teenager with emotional disturbances against an adult whom has an infant. Is the supervised parent supposed to stare at the infant while the monitor takes care of it? We have had these situations come up - and frequently even the custodial parent thinks the requirements are not cohesive and now monitors are now not even allowed to assess risks. If we cannot assess anything, then the standards should account for every possible | The standard specifically provides that the specific terms and conditions that apply in sexual abuse allegation matters need not be complied with if there is a contrary order by the court. If a parent against whom there is a sexual abuse allegation wishes to have physical contact during visitation that parent can request the court to make such an order. Absent such an order the committee believes the best practice is to disallow physical contact in these cases. |

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| | | | situation. We keep having to send a case back to court, back to court to figure these things out, and a year later - the child still doesn't get to see their parent. | |
| | | | 5. Opinions: mediators, attorneys, judges: Professional monitors are not allowed to have opinions. So we write reports with no opinions. Subsequently, mediator is calling for an opinion. Monitor is given a subpoena for an opinion. Attorneys are asking for opinion. When monitors refuse to offer an opinion on the stand - the judge is asking for an opinion. | Since they were originally adopted, the standards for supervised visitation providers have been clear that supervised visitation is a neutral service, and that the role of the provider is to ensure the safety of the visit for all involved. Likewise, the standards have provided that reports on a visitation session be factual and simply describe what occurred during the visit. The clarifications of the standard proposed by the committee strengthen this neutral role by removing provisions authorizing supervised visitation providers to make recommendations about future visitation. As a result of these changes to the standard, it will be clear that the role of the provider does not include making recommendations or expressing opinions, and that those responsibilities should be left to those who are appointed to do so (e.g. minor's counsel, child custody recommending counselors and evaluators). |
| | | | 6. Therapist - Evidently therapists are not required to be monitors. I frequently see supervised visitation monitor being referred to as a therapist in court orders. Frequently therapists are doing the supervision. As a visitation monitor a therapist is not allowed to | The committee's decision to eliminate references to therapeutic visitation is explained in the response to comment 2 above. The committee notes that the court has a number of means to obtain recommendations about visitation and custody without requiring supervised visitation |

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| | | | have an opinion. As a therapist we are always being asked for a therapeutic opinion on many types of clients. According to the standards - there are no exceptions when a therapist is supervising a visit, offers no opinion, but is court ordered to give an opinion. If there is going to be no exception for therapists, then can there be a reference if such opinions are needed - then the family should be referred for family therapy or reunification counseling. | providers to step into that role as well as authority to order family therapy when the court makes specific findings. |
| 10. | State Bar of California, Family Law Section<br>Saul Bercovitch<br>Legislative Counsel | A | The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal. | No response required. |
| 11. | State Bar of California, Standing Committee on the Delivery of Legal Services<br>Sharon Ngim<br>Program Developer and Staff Liaison | AM | The proposal would clarify requirements for non-professional and professional visitations. Eliminating the exception for supervised exchange is appropriate here. The committee recommends that supervised visitation providers not be deleted from the list of those who may make recommendations to the court about the manner of visitations, because they may have insights or other important information to consider regarding the next visitation or past visitations, while judicial officers would still have the discretion as to how to weigh those recommendations. | The committee has concluded that making recommendations is inconsistent with the role of supervised visitation providers who are required to serve as a neutral third person. Given the other avenues for the court to obtain recommendations, the committee finds it appropriate to eliminate this role conflict. |
| 12. | Superior Court of Los Angeles County<br>(no name provided) | A | • Does the proposal appropriately address the stated purpose? Yes.<br><br>• Should the committee consider any additional changes to the standard for supervised | No response required.<br><br>No response required. |

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

| | Commentator | Position | Comment | Committee Response |
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| | | | visitation providers? No.<br><br>• Is there value in preserving the suggested elements of the current standard in addition to those provisions made mandatory by Family Code section 3200.5? No. | <br><br>The committee has opted to maintain the provisions of the standard that were not included in Family Code section 3200.5 as the most of the provider community has expressed an interest in maintaining those standards of practice and no argument has been made in favor of deleting them. |
| | | | • Is it appropriate to delete the exception for supervised exchange because it is a form of supervised visitation, or will the application of the standard to supervised exchange be problematic? Yes, it's appropriate. | The committee concurs and has opted to maintain the deletion of the exception. |
| | | | • Should supervised visitation providers be deleted from the list of those who may make recommendations to the court on the manner of visitation? Yes. | The committee agrees and has chosen to leave providers off the list of those who can make recommendations. |
| | | | • Should references to therapeutic visitation providers be removed from standard 5.20 and form FL-341(A) for consistency with the statutory identification of only two types of providers, or is there a need to identify therapeutic providers as a subcategory of professional providers in the standards or on the family law form?<br>It is suggested that "Therapeutic" be moved below "Professional Monitoring" in the event "Therapeutic" monitoring is ordered by | As discussed in the response to comment 2, the committee finds that the statutory language directing the council to make a standard for non-professional and professional providers makes it necessary to delete references to therapeutic monitoring, but notes that courts are always free to specify that they want a monitor who is a licensed mental health professional when making the visitation order. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | the Court or stipulated to by the parties.<br><br>• Do the other changes made to enhance and clarify the standard succeed in making it more straightforward and internally consistent? Yes.<br><br>The advisory committee also seeks comments from courts on the following cost and implementation<br>matters:<br>• Would the proposal provide cost savings? If so, please quantify. No.<br>• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems or modifying case management systems? N/A<br>• Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.<br>• How well would this proposal work in courts of different sizes? We have no reason to believe it would not work in large and small courts. | <br><br>No response required.<br><br><br><br>No response required. |
| 13. | Superior Court of Riverside County<br>Riverside Superior Court Staff | A | Agree with proposal. | No response required. |
| 14. | Superior Court of San Diego County<br>Michael M. Roddy, Court Executive Officer | A | No specific comments provided. | No response required. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | | |
| 15. | Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee<br>Joint Rules Working Group | A | The proposal is required to conform to a change of law.<br>General comments<br>Approve as submitted. | No response required. |
| 16. | Wynspring Family Resource Center<br>Darlene K. Aiello<br>Business Manager | NI | Both AB1674, 5.20's and 3200.5 are clear on what training Professional Monitor must meet. What is not clear is if this is ongoing training or just a onetime shot. Most professions will keep up with continual training as the modalities are always changing or new models of handing certain things become available. Professionals know that keeping up on the latest advancements, or keeping updated skills is both beneficial and necessary.<br><br>The question then becomes where and who will be giving the training needed.<br>This issues around who can and cannot give the needed training, even though none of the codes address this issue, has become frustrating.<br><br>The codes are clear on the training and all of the training is given on a regular basis through many avenues. The question then becomes which avenues are acceptable. The ideal of limiting the training to only one center or trainer may and will cause an issue. As there are many workshops, classes and seminars, that meet the needs of the training required, as most of the professionals already meet or exceed the training requirements. | The committee has concluded that the absence of any language requiring ongoing training for professional monitors means that the minimum requirement is a one-time requirement. Monitors are free to obtain additional training as they see fit, but the *required* training in the standard cannot exceed the 24 hours provided in statute.<br><br>The statute set forth no provision for certifying training providers and thus the committee has no authority to implement such a requirement.<br><br>As described in the response above, the committee finds no authority in the statute to create standards for supervised visitation provider training providers. Each provider must determine how to meet the 24 hour requirement. |

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | Also, by allowing only one center or person to do all the training could lead to professional being shut of their field due to not meeting the ideals of the training place or person.<br><br>Example.. Professional Visitation agency is part of a larger agency that also does Foster Care, along with mental health services, and parenting, anger management and so forth. The Foster Care requirements for training go above and beyond the training needed for the supervised visitation monitor. Because all staff are required to take the same training through the agency, no matter the department, which overlap in most if not all of the areas. I.E. Documentation is documentation, filing and intake are almost the same, Report requirements are not that different and so forth. So, limiting where the training can occur will limit the ability of the Professional to do their job.<br><br>The removing of Therapeutic Visitation is advisable as this monitor can do no more or less then the monitor. The training is the same, the ability to keep the child safe is the same and the Therapeutic monitor cannot do therapy or counseling in the visitation. This puts a burden on families in regards to paying higher rates to have a therapist in the room doing the same exact same visitation as the non-therapeutic monitor. | The committee agrees and has retained the elimination of references to therapeutic visitation providers.<br><br>No response required. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | Change is good and consistency is better. A better understanding of what is required is always the best. Therefore change is always good and only enhances the services that are given to families. | |

# RUPRO ACTION REQUEST FORM

**RUPRO Meeting:** September 8, 2014

| RUPRO action requested: **Submit to JC (without circulating for comment)** |
| --- |

| Title: Child Support: Revise Income Withholding for Support and Related Instructions | Rules:<br><br>Standards:<br><br>Forms: Revise forms FL-195 and FL196 |
| --- | --- |
| Committee or other entity submitting the proposal:<br><br>Family and Juvenile Law Advisory Committee<br>Hon. Jerilyn L. Borack, Cochair<br>Hon. Kimberly J. Nystrom-Geist, Cochair | Staff contact:<br>Anna L. Maves, 916-263-8624<br>anna.maves@jud.ca.gov |

| **If requesting July 1 or out of cycle, explain:** |
| --- |

| **Additional Information for RUPRO:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary, including any substantial argument in opposition and any expected individual or organization likely to support or oppose the proposal.) |
| --- |

# JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

**Title**
Child Support: Revise Income Withholding for Support and Related Instructions

**Rules, Forms, Standards, or Statutes Affected**
Revise forms FL-195 and FL-196

**Recommended by**
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Kimberly J. Nystrom-Geist, Cochair

**Agenda Item Type**
Action Required

**Effective Date**
January 1, 2015

**Date of Report**
August 26, 2014

**Contact**
Anna L. Maves, 916-263-8624
anna.maves@jud.ca.gov

## Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising *Income Withholding for Support* (form FL-195/OMB No. 0970-0154) and *Income Withholding for Support—Instructions* (form FL-196/OMB No. 0970-0154) to comply with Family Code section 5208 and federal law.

## Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2015, revise *Income Withholding for Support* (FL-195/OMB No. 0970-0154) and *Income Withholding for Support—Instructions* (FL-196/OMB No. 0970-0154) to comply with Family Code section 5208 and federal law.

The proposed forms are attached at pages 6–16.

## Previous Council Action

*Income Withholding for Support* (FL-195/OMB No. 0970-0154) and *Income Withholding for Support—Instructions* (FL-196/OMB No. 0970-154) were developed by the federal Office of Child Support Enforcement and were adopted by the Judicial Council on December 2, 1999. The *Income Withholding for Support* form was renumbered, effective January 1, 2003, as FL-195 and the instructions for the FL-195 were renumbered as FL-196. The federal Office of Management and Budget (OMB) revised the form and instructions in 2007, and the Judicial Council revised FL-195 and FL-196 to incorporate the changes made to the federal form effective July 1, 2008. Most recently, the federal OMB revised the form and instructions on May 16, 2011, and the Judicial Council revised FL-195 and FL-196, without circulating the forms for public comment, to incorporate the changes made to the federal forms effective January 1, 2012.

## Rationale for Recommendation

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub.L. No. 104-193) instituted welfare reform, which included a requirement that the Office of Child Support Enforcement (OCSE) develop a standardized form to collect child support payments in all title IV-D cases and in nontitle IV-D cases with orders initially issued in the state on or after January 1, 1994. Local child support agencies and the courts that are authorized under state law to issue Income Withholding Orders (IWOs) must use the federal Office of Management and Budget–approved IWO for all child support income withheld by employers.

Family Code section 5208 was amended in 1999 to comply with this federal mandate and required that the federal form *Order/Notice to Withhold Income for Child Support*[1] be used as the earnings assignment order in any action in which child or family support is ordered.[2] Under Family Code section 5208, the Judicial Council must adopt a new version of the federal form without any modifications. California courts are provided an opportunity to comment when federal OCSE solicits comments for revisions to the form via the Federal Register.

In governmental child support cases, after a judgment for child support is issued or child support is modified, the *Income Withholding for Support* (FL-195) is prepared by the local child support agency and sent to the obligor's employer. The employer then withholds child support from the obligor's earnings consistent with the instruction on the form and sends the child support to the State Distribution Unit. In family law cases where the local child support agency is not involved in enforcing the support order, the wage assignment is usually prepared by the obligee and then filed with the court. The court must issue the order and the order becomes part of the court's record. The obligee then sends the order to the employer for withholding. The Judicial Council adopted the federal form as a Judicial Council form to make this commonly-used form readily

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[1] In 2007, the federal form was renamed *Income Withholding for Support*.

[2] PRWORA requires that states transmit orders and notices for income withholding to employers using uniform formats prescribed by the Secretary of Health and Human Services. (42 U.S.C. § 666(b)(6)(A)(ii).) A copy of 42 U.S.C. § 666(b) can be found at *http://www.law.cornell.edu/uscode/42/usc_sec_42_00000666----000-.html*. Family Code section 5208 is available at *http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=2327708132+1+0+0&WAISaction=retrieve.*

accessible to family law litigants who are often self-represented, and because this form becomes part of the court's record when the court issues the order.

The Income Withholding for Support form previously approved by the Office of Management and Budget was modified to address items identified by states and employers/income withholders. The federal Office of Child Support Enforcement solicited comments for revisions to the Income Withholding Order via the *Federal Register* on July 9, 2013.[3] The comments were reviewed and many of the recommended changes were incorporated into the revised form. The revised form was issued on July 15, 2014, and became effective immediately, but states are allowed until July 31, 2015, to implement the changes to the form.

Consistent with the changes to the federal form, *Income Withholding for Support* (FL-195) has been revised. These key changes include:

- Updating the hyperlinks in the form to provide the current OCSE web pages.
- Standardizing the terms in the form such as changing "Remittance ID" to "remittance identifier" and revising legal citations to all appear in similar fashion.
- Enlarging the font size to improve readability and adding more lines to allow states to include state-specific information. These and other changes resulted in the addition of one page in the total number of pages of the IWO form.
- Adding language to the ***Remittance Information*** section on page 2 that directs employers/income withholders to Supplemental Information on page 3 for withholding limits for nonemployees.
- Updating the headers on pages 2–4 so they contain all of the same information, which includes the employer name and Federal Employer Identification Number, employee name and social security number, child support agency case identifier, and order identifier.
- Clarifying that tribal law governs withholding limits for tribal orders.

In addition to the changes made by the federal Office of Child Support Enforcement, the Family and Juvenile Law Advisory Committee recommends that the remittance section on page 2 of FL-195 be pre-populated with the address of the California State Disbursement Unit. This addition would ensure compliance with federal and state law which requires employers to send all earnings withheld pursuant to the terms of an earnings assignment order to the State Disbursement Unit for disbursement to the obligee, and not directly to the obligee, whether the local child support agency is providing services or not. Adding the State Disbursement Unit address would not modify the language of the form, but instead pre-populate the form to add information required to be completed by the litigant. In some rare circumstances an attorney or litigant may need to access an income withholding order in which the child support payments

[3] The federal website does not provide the actual content of the comments, but more information on the comments and how to individually request them can be found at *http://www.gpo.gov/fdsys/pkg/FR-2013-07-19/pdf/2013-17331.pdf.*

should not be sent to the California State Disbursement Unit. These circumstances include an attorney who is assisting someone who resides in another state or members of a tribe who have a title IV-D program. In both these circumstance, the payments are still required to be sent to a state disbursement unit, but not California's. In these uncommon situations, a wage withholding order without the California State Disbursement Unit's pre-populated address can be obtained on the federal Office of Child Support Enforcement's website.

*Income Withholding for Support—Instructions* (FL-196) has also been revised to provide guidance in the instructions to the form that one IWO form must be issued for each title IV-D case (as defined in 45 C.F.R. § 305.1).

*Income Withholding for Support* (FL-195) continues to require that the employee's social security number be included on the form. The intention of this requirement is so that employers can do their due diligence in making sure that the wage assignment received is for the correct employee or where the employer may employ several people with the same name. There may be some concerns regarding potential identity theft and confidentiality. Because this is a mandatory federal form, it cannot be revised to remove this item or provide further instruction to the person completing the form. However, rule 1.20(b)(2)(A) of the California Rules of Court provides, "If an individual's social security number is required in a pleading or other paper filed in the public file, only the last four digits of that number may be used." Compliance with this rule by the person filling out the form will protect the obligor's confidential information while still providing sufficient information for the employer and substantially adhering to the federal form.

Significant amounts of federal funding for both welfare and child support programs are contingent on compliance with federal child support program regulations. Thus, it is important that state forms and procedures comply with these regulations. The federal government requires that the form be adopted without any local changes to either content or format although—because these are Judicial Council forms—the Judicial Council form numbers would continue to appear on the forms. Adopting these federal forms as Judicial Council forms FL-195 and FL-196 ensures that they are published and made easily available for California users.

## Comments, Alternatives Considered, and Policy Implications

The Family and Juvenile Law Advisory Committee did not circulate FL-195 or FL-196 for comment because these forms must be implemented exactly as approved by the OMB without any local changes. The federal forms approval process included a public comment period and stakeholder input through a federal Office of Child Support Enforcement workgroup, review of the forms and recommendations for changes by the U.S. Government Accountability Office, and approval by OMB.

Because the recommended revisions of *Income Withholding for Support* (FL-195/OMB No. 0970-0154) and *Income Withholding for Support—Instructions* (FL-196/OMB No. 0970-0154) are necessary to comply with federal requirements, no alternative actions were considered.

## Implementation Requirements, Costs, and Operational Impacts

The committee is not aware of any implementation requirements, costs, or operational impacts affecting the local courts that will result from approval of the proposed forms other than standard reproduction costs. The forms will be posted on the California Courts website. Courts will not incur costs beyond those that they may incur if they provide the forms to the public.

## Attachment

1. Forms FL-195 and FL-196, at pages 6–16.

# INCOME WITHHOLDING FOR SUPPORT

☐ **ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)**
☐ **AMENDED IWO**
☐ **ONE-TIME ORDER/NOTICE FOR LUMP SUM PAYMENT**
☐ **TERMINATION OF IWO**

**Date:** ______________

☐ Child Support Enforcement (CSE) Agency ☐ Court ☐ Attorney ☐ Private Individual/Entity (Check One)

**NOTE:** This IWO must be regular on its face. Under certain circumstances you must reject this IWO and return it to the sender (see IWO instructions www.acf.hhs.gov/programs/css/resource/income-withholding-for-support-instructions). If you receive this document from someone other than a state or tribal CSE agency or a court, a copy of the underlying order must be attached.

State/Tribe/Territory ______________ Remittance ID (include w/payment) ______________
City/County/Dist./Tribe ______________ Order ID ______________
Private Individual/Entity ______________ CSE Agency Case ID ______________

______________
Employer/Income Withholder's Name

______________
Employer/Income Withholder's Address

______________

______________

RE: ______________
Employee/Obligor's Name (Last, First, Middle)

______________
Employee/Obligor's Social Security Number

______________
Custodial Party/Obligee's Name (Last, First, Middle)

Employer/Income Withholder's FEIN ______________

Child(ren)'s Name(s) (Last, First, Middle) | Child(ren)'s Birth Date(s)

***ORDER INFORMATION**:* This document is based on the support or withholding order from ______________ (State/Tribe). You are required by law to deduct these amounts from the employee/obligor's income until further notice.

$ ________ Per ________ current child support
$ ________ Per ________ past-due child support - **Arrears greater than 12 weeks?** ☐ Yes ☐ No
$ ________ Per ________ current cash medical support
$ ________ Per ________ past-due cash medical support
$ ________ Per ________ current spousal support
$ ________ Per ________ past-due spousal support
$ ________ Per ________ other (must specify) ______________.

for a **Total Amount to Withhold** of **$** ________ per ________.

***AMOUNTS TO WITHHOLD:*** You do not have to vary your pay cycle to be in compliance with the *Order Information*. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

$ ________ per weekly pay period $ ________ per semimonthly pay period (twice a month)
$ ________ per biweekly pay period (every two weeks) $ ________ per monthly pay period
$ ________ **Lump Sum Payment:** Do not stop any existing IWO unless you receive a termination order.

Document Tracking ID ______________

Employer's Name: ______________________ Employer FEIN: ______________

Employee/Obligor's Name: ______________________ SSN: ______________

CSE Agency Case Identifier: ______________ Order Identifier: ______________

***REMITTANCE INFORMATION:*** If the employee/obligor's principal place of employment is ______________ (State/Tribe), you must begin withholding no later than the first pay period that occurs ____ days after the date of _________ . Send payment within ____ working days of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold up to ____ % of disposable income. If the obligor is a non-employee, obtain withholding limits from Supplemental Information on page 3. If the employee/obligor's principal place of employment is not ______________________ (State/Tribe), obtain withholding limitations, time requirements, and any allowable employer fees at www.acf.hhs.gov/programs/css/resource/state-income-withholding-contacts-and-program-information for the employee/obligor's principal place of employment.

For electronic payment requirements and centralized payment collection and disbursement facility information (State Disbursement Unit (SDU)), see www.acf.hhs.gov/programs/css/employers/electronic-payments.

Include the ***Remittance ID* with the payment** and if necessary this FIPS code: ______________________ .

**Remit payment to** California State Disbursement Unit (SDU/Tribal Order Payee)
at P.O. Box 989067, West Sacramento, CA 95798-9067 (SDU/Tribal Payee Address)

☐ **Return to Sender [Completed by Employer/Income Withholder].** Payment must be directed to an SDU in accordance with 42 USC §666(b)(5) and (b)(6) or Tribal Payee (see Payments to SDU below). If payment is not directed to an SDU/Tribal Payee or this IWO is not regular on its face, you *must* check this box and return the IWO to the sender.

Signature of Judge/Issuing Official (if Required by State or Tribal Law): ______________________
Print Name of Judge/Issuing Official: ______________________
Title of Judge/Issuing Official: ______________________
Date of Signature: ______________________

If the employee/obligor works in a state or for a tribe that is different from the state or tribe that issued this order, a copy of this IWO must be provided to the employee/obligor.
☐ If checked, the employer/income withholder must provide a copy of this form to the employee/obligor.

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## ADDITIONAL INFORMATION FOR EMPLOYERS/INCOME WITHHOLDERS

State-specific contact and withholding information can be found on the Federal Employer Services website located at www.acf.hhs.gov/programs/css/resource/state-income-withholding-contacts-and-program-information.

**Priority:** Withholding for support has priority over any other legal process under State law against the same income (42 USC §666(b)(7)). If a federal tax levy is in effect, please notify the sender.

**Combining Payments:** When remitting payments to an SDU or tribal CSE agency, you may combine withheld amounts from more than one employee/obligor's income in a single payment. You must, however, separately identify each employee/obligor's portion of the payment.

**Payments To SDU:** You must send child support payments payable by income withholding to the appropriate SDU or to a tribal CSE agency. If this IWO instructs you to send a payment to an entity other than an SDU (e.g., payable to the custodial party, court, or attorney), you must check the box above and return this notice to the sender. Exception: If this IWO was sent by a court, attorney, or private individual/entity and the initial order was entered before January 1, 1994 or the order was issued by a tribal CSE agency, you must follow the “Remit payment to” instructions on this form.

**Reporting the Pay Date:** You must report the pay date when sending the payment. The pay date is the date on which the amount was withheld from the employee/obligor's wages. You must comply with the law of the state (or tribal law if applicable) of the employee/obligor's principal place of employment regarding time periods within which you must implement the withholding and forward the support payments.

**Multiple IWOs:** If there is more than one IWO against this employee/obligor and you are unable to fully honor all IWOs due to federal, state, or tribal withholding limits, you must honor all IWOs to the greatest extent possible, giving priority to current support before payment of any past-due support. Follow the state or tribal law/procedure of the employee/obligor's principal place of employment to determine the appropriate allocation method.

Employer's Name: ______________________ Employer FEIN: ____________

Employee/Obligor's Name: ______________________ SSN: ____________

CSE Agency Case Identifier: ____________ Order Identifier: ______________________

**Lump Sum Payments:** You may be required to notify a state or tribal CSE agency of upcoming lump sum payments to this employee/obligor such as bonuses, commissions, or severance pay. Contact the sender to determine if you are required to report and/or withhold lump sum payments.

**Liability:** If you have any doubts about the validity of this IWO, contact the sender. If you fail to withhold income from the employee/obligor's income as the IWO directs, you are liable for both the accumulated amount you should have withheld and any penalties set by state or tribal law/procedure.

**Anti-discrimination:** You are subject to a fine determined under state or tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against an employee/obligor because of this IWO.

**Withholding Limits:** You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (CCPA) (15 USC §1673(b)); or 2) the amounts allowed by the state of the employee/obligor's principal place of employment or tribal law if a tribal order (see *Remittance Information*). Disposable income is the net income after mandatory deductions such as: state, federal, local taxes; Social Security taxes; statutory pension contributions; and Medicare taxes. The federal limit is 50% of the disposable income if the obligor is supporting another family and 60% of the disposable income if the obligor is not supporting another family. However, those limits increase 5% --to 55% and 65% --if the arrears are greater than 12 weeks. If permitted by the state or tribe, you may deduct a fee for administrative costs. The combined support amount and fee may not exceed the limit indicated in this section.

For tribal orders, you may not withhold more than the amounts allowed under the law of the issuing tribe. For tribal employers/income withholders who receive a state IWO, you may not withhold more than the limit set by tribal law.

Depending upon applicable state or tribal law, you may need to consider amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.

**Arrears greater than 12 weeks?** If the *Order Information* does not indicate that the arrears are greater than 12 weeks, then the employer should calculate the CCPA limit using the lower percentage.

**Supplemental Information:**

IMPORTANT: The person completing this form is advised that the information may be shared with the employee/obligor.

Employer's Name: ______________________________ Employer FEIN: ______________

Employee/Obligor's Name: ______________________________ SSN: ______________

CSE Agency Case Identifier: ______________ Order Identifier: ______________________________

**NOTIFICATION OF EMPLOYMENT TERMINATION OR INCOME STATUS:** If this employee/obligor never worked for you or you are no longer withholding income for this employee/obligor, you must promptly notify the CSE agency and/or the sender by returning this form to the address listed in the contact information below:

☐ This person has never worked for this employer nor received periodic income.

☐ This person no longer works for this employer nor receives periodic income.

Please provide the following information for the employee/obligor:

Termination date: ______________________ Last known phone number: ______________

Last known address: ______________________________________________

______________________________________________

Final payment date to SDU/tribal payee: ______________ Final payment amount: ______________

New employer's name: ______________________________________________

New employer's address: ______________________________________________

______________________________________________

**CONTACT INFORMATION:**

**<u>To Employer/Income Withholder:</u>** If you have questions, contact ______________________ (issuer name)

by phone: __________ , by fax: __________ , by e-mail or website: ______________________ .

Send termination/income status notice and other correspondence to:

______________________________________________ (issuer address).

**<u>To Employee/Obligor:</u>** If the employee/obligor has questions, contact ______________________ (issuer name)

by phone: __________ , by fax: __________ , by e-mail or website: ______________________ .

<u>The Paperwork Reduction Act of 1995</u>
This information collection and associated responses are conducted in accordance with 45 CFR 303.100 of the Child Support Enforcement Program. This form is designed to provide uniformity and standardization. Public reporting burden for this collection of information is estimated to average 5 minutes per response for Non-IV-D CPs; 2 minutes per response for employers; 3 seconds for e-IWO employers, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

# INCOME WITHHOLDING FOR SUPPORT - Instructions

The Income Withholding for Support (IWO) is the OMB-approved form used for income withholding in tribal, intrastate, and interstate cases as well as all child support orders initially issued in the state on or after January 1, 1994, and all child support orders initially issued (or modified) in the state before January 1, 1994 if arrearages occur. This form is the standard format prescribed by the Secretary in accordance with 42 USC §666(b)(6)(A)(ii). Except as noted, the following information is required and must be included.

**Please note:**

- For the purpose of this IWO form and these instructions, "state" is defined as a state or territory.
- Do's and don'ts on using this form are found at www.acf.hhs.gov/programs/css/resource/using-the-income-withholding-for-support-form-dos-and-donts.

## COMPLETED BY SENDER:

1a. **Original Income Withholding Order/Notice for Support (IWO).** Check the box if this is an initial or original IWO.

1b. **Amended IWO.** Check the box to indicate that this form amends a previous IWO. Any changes to an IWO must be done through an amended IWO.

1c. **One-Time Order/Notice For Lump Sum Payment.** Check the box when this IWO is to attach a one-time collection of a lump sum payment. When this box is checked, enter the amount in field 14, Lump Sum Payment, in the *Amounts to Withhold* section. Additional IWOs must be issued to collect subsequent lump sum payments.

1d. **Termination of IWO.** Check the box to stop income withholding on a child support order. Complete all applicable identifying information to aid the employer/income withholder in terminating the correct IWO.

1e. **Date.** Date this form is completed and/or signed.

1f. **Child Support Enforcement (CSE) Agency, Court, Attorney, Private Individual/Entity (Check One).** Check the appropriate box to indicate which entity is sending the IWO. If this IWO is **not** completed by a state or tribal CSE agency, the sender should contact the CSE agency (see www.acf.hhs.gov/programs/css/resource/state-income-withholding-contacts-and-program-information) to determine if the CSE agency needs a copy of this form to facilitate payment processing.

## NOTE TO EMPLOYER/INCOME WITHHOLDER:

This IWO must be regular on its face. The IWO must be rejected and returned to sender under the following circumstances:

- IWO instructs the employer/income withholder to send a payment to an entity other than a state disbursement unit (for example, payable to the custodial party, court, or attorney). Each state is required to operate a state disbursement unit (SDU), which is a centralized facility for collection and disbursement of child support payments. Exception: If this IWO is issued by a court, attorney, or private individual/entity and the initial child support order was entered before January 1, 1994 or the order was issued by a tribal CSE agency, the employer/income withholder must follow the payment instructions on the form.
- Form does not contain all information necessary for the employer to comply with the withholding.
- Form is altered or contains invalid information.
- Amount to withhold is not a dollar amount.
- Sender has not used the OMB-approved form for the IWO.
- A copy of the underlying order is required and not included.

If you receive this document from an attorney or private individual/entity, a copy of the underlying order containing a provision authorizing income withholding must be attached.

## COMPLETED BY SENDER:

1g. **State/Tribe/Territory.** Name of state or tribe sending this form. This must be a governmental entity of the state or a tribal organization authorized by a tribal government to operate a CSE program. If you are a tribe submitting this form on behalf of another tribe, complete line 1i.

1h. **Remittance ID (include w/payment).** Identifier that employers must include when sending payments for this IWO. The Remittance ID is entered as the case identifier on the electronic funds transfer/electronic data interchange (EFT/EDI) record.

## NOTE TO EMPLOYER/INCOME WITHHOLDER:

The employer/income withholder must use the Remittance ID when remitting payments so the SDU or tribe can identify and apply the payment correctly. The Remittance ID is entered as the case identifier on the EFT/EDI record.

## COMPLETED BY SENDER:

1i. **City/County/Dist./Tribe.** Name of the city, county, or district sending this form. This must be a government entity of the state or the name of the tribe authorized by a tribal government to operate a CSE program for which this form is being sent. (A tribe should leave this field blank unless submitting this form on behalf of another tribe.)

1j. **Order ID.** Unique identifier associated with a specific child support obligation. It could be a court case number, docket number, or other identifier designated by the sender.

1k. **Private Individual/Entity.** Name of the private individual/entity or non-IV-D tribal CSE organization sending this form.

1l. **CSE Agency Case ID.** Unique identifier assigned to a state or tribal CSE case. In a state IV-D case as defined at 45 Code of Federal Regulations (CFR) 305.1, this is the identifier reported to the Federal Case Registry (FCR). One IWO must be issued for each IV-D case and must use the unique CSE Agency Case ID. For tribes, this would be either the FCR identifier or other applicable identifier.

Fields 2 and 3 refer to the employee/obligor’s employer/income withholder and specific case information.

2a. **Employer/Income Withholder's Name.** Name of employer or income withholder.

2b. **Employer/Income Withholder's Address.** Employer/income withholder's mailing address including street/PO box, city, state, and zip code. (This may differ from the employee/obligor’s work site.) If the employer/income withholder is a federal government agency, the IWO should be sent to the address listed under Federal Agency Income Withholding Contacts and Program Information at www.acf.hhs.gov/programs/css/resource/federal-agency-income-withholding-contact-information.

2c. **Employer/Income Withholder's FEIN.** Employer/income withholder's nine-digit Federal Employer Identification Number (if available).

3a. **Employee/Obligor’s Name.** Employee/obligor’s last name, first name, middle name.

3b. **Employee/Obligor’s Social Security Number.** Employee/obligor’s Social Security number or

other taxpayer identification number.

3c. **Custodial Party/Obligee's Name.** Custodial party/obligee's last name, first name, middle name. Enter one custodial party/obligee's name on each IWO form. Multiple custodial parties/obligees are not to be entered on a single IWO. Issue one IWO per state IV-D case as defined at 45 CFR 305.1

3d. **Child(ren)'s Name(s).** Child(ren)'s last name(s), first name(s), middle name(s). (Note: If there are more than six children for this IWO, list additional children's names and birth dates in field 33 - Supplemental Information). Enter the child(ren) associated with the custodial party/obligee and employee/obligor only. Child(ren) of multiple custodial parties/obligees is not to be entered on an IWO.

3e. **Child(ren)'s Birth Date(s).** Date of birth for each child named.

3f. **Blank box.** Space for court stamps, bar codes, or other information.

***ORDER INFORMATION*** – Field 4 identifies which state or tribe issued the order. Fields 5 through 12 identify the dollar amount to withhold for a specific kind of support (taken directly from the support order) for a specific time period.

4. **State/Tribe.** Name of the state or tribe that issued the order.

5a-b. **Current Child Support.** Dollar amount to be withheld **per** the time period (for example, week, month) specified in the underlying order.

6a-b. **Past-due Child Support.** Dollar amount to be withheld **per** the time period (for example, week, month) specified in the underlying order.

6c. **Arrears Greater Than 12 Weeks?** The appropriate box (Yes/No) must be checked indicating whether arrears are greater than 12 weeks so the employer/income withholder can determine the withholding limit.

7a-b. **Current Cash Medical Support.** Dollar amount to be withheld **per** the time period (for example, week, month) specified in the underlying order.

8a-b. **Past-due Cash Medical Support.** Dollar amount to be withheld **per** the time period (for example, week, month) specified in the underlying order.

9a-b. **Current Spousal Support.** (Alimony) Dollar amount to be withheld **per** the time period (for example, week, month) specified in the underlying order.

10a-b. **Past-due Spousal Support.** (Alimony) Dollar amount to be withheld **per** the time period (for example, week, month) specified in the underlying order.

11a-c. **Other.** Miscellaneous obligations dollar amount to be withheld **per** the time period (for example, week, month) specified in the underlying order. **Must specify** a description of the obligation (for example, court fees).

12a-b. **Total Amount to Withhold.** The total amount of the deductions **per** the corresponding time period. Fields 5a, 6a, 7a, 8a, 9a, 10a, and 11a should total the amount in 12a.

## NOTE TO EMPLOYER/INCOME WITHHOLDER:

An acceptable method of determining the amount to be paid on a weekly or biweekly basis is to multiply the monthly amount due by 12 and divide that result by the number of pay periods in a year.

***AMOUNTS TO WITHHOLD*** - Fields 13a through 13d specify the dollar amount to be withheld for this IWO if the employer/income withholder's pay cycle does not correspond with field 12b.

13a. **Per Weekly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid weekly.

13b. **Per Semimonthly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid twice a month.

13c. **Per Biweekly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid every two weeks.

13d. **Per Monthly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid once a month.

14. **Lump Sum Payment.** Dollar amount withheld when the IWO is used to attach a lump sum payment. This field should be used when field 1c is checked.

***REMITTANCE INFORMATION*** - Payments are forwarded to the SDU in each state, unless the order was issued by a tribal CSE agency. If the order was issued by a tribal CSE agency, the employer/income withholder must follow the remittance instructions on the form.

15. **State/Tribe.** Name of the state or tribe sending this document.

16. **Days.** Number of days after the effective date noted in field 17 in which withholding must begin according to the state or tribal laws/procedures for the employee/obligor's principal place of employment.

17. **Date.** Effective date of this IWO.

18. **Working Days.** Number of working days within which an employer/income withholder must remit amounts withheld pursuant to the state or tribal laws/procedures of the principal place of employment.

19. **% of Disposable Income.** The percentage of disposable income that may be withheld from the employee/obligor's paycheck.

## NOTE TO EMPLOYER/INCOME WITHHOLDER:

For state orders, the employer/income withholder may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 USC §1673(b)); or 2) the amounts allowed by the state of the employee/obligor's principal place of employment.

For tribal orders, the employer/income withholder may not withhold more than the amounts allowed under the law of the issuing tribe. For tribal employers/income withholders who receive a state order, the employer/income withholder may not withhold more than the limit set by the law of the jurisdiction in which the employer/income withholder is located or the maximum amount permitted under section 303 (b) of the Federal Consumer Credit Protection Act (15 USC §1673(b)).

A federal government agency may withhold from a variety of incomes and forms of payment, including voluntary separation incentive payments (buy-out payments), incentive pay, and cash awards. For a more complete list, see 5 CFR 581.103.

## COMPLETED BY SENDER:

20. **State/Tribe.** Name of the state or tribe sending this document.

21. **Document Tracking ID.** Optional unique identifier for this form assigned by the sender.

**Please Note:** Employer's Name, FEIN, Employee/Obligor's Name and SSN, Remittance ID, CSE Agency Case ID, and Order ID must appear in the header on pages two and subsequent pages.

22. **FIPS Code.** Federal Information Processing Standards code.

23. **SDU/Tribal Order Payee.** Name of SDU (or payee specified in the underlying tribal support order) to which payments must be sent. Federal law requires payments made by IWO to be sent to the SDU except for payments in which the initial child support order was entered before January 1, 1994 or payments in tribal CSE orders.

24. **SDU/Tribal Payee Address.** Address of the SDU (or payee specified in the underlying tribal support order) to which payments must be sent. Federal law requires payments made by IWO to be sent to the SDU except for payments in which the initial child support order was entered before January 1, 1994 or payments in tribal CSE orders.

## COMPLETED BY EMPLOYER/INCOME WITHHOLDER:

25. **Return to Sender Checkbox.** The employer/income withholder should check this box and return the IWO to the sender if this IWO is not payable to an SDU or tribal payee or this IWO is not regular on its face. Federal law requires payments made by IWO to be sent to the SDU except for payments in which the initial child support order was entered before January 1, 1994 or payments in tribal CSE orders.

## COMPLETED BY SENDER:

26. **Signature of Judge/Issuing Official.** Signature (if required by state or tribal law) of the official authorizing this IWO.

27. **Print Name of Judge/Issuing Official.** Name of the official authorizing this IWO.

28. **Title of Judge/Issuing Official.** Title of the official authorizing this IWO.

29. **Date of Signature.** Optional date the judge/issuing official signs this IWO.

30. **Copy of IWO checkbox.** Check this box for all intergovernmental IWOs. If checked, the employer/income withholder is required to provide a copy of the IWO to the employee/obligor.

***ADDITIONAL INFORMATION FOR EMPLOYERS/INCOME WITHHOLDERS***

The following fields refer to federal, state, or tribal laws that apply to issuing an IWO to an employer/income withholder. State-or tribal-specific information may be included only in the fields below.

## COMPLETED BY SENDER:

31. **Liability.** Additional information on the penalty and/or citation of the penalty for an employer/income withholder who fails to comply with the IWO. The state or tribal law/procedures of the employee/obligor's principal place of employment govern the penalty.

32. **Anti-discrimination.** Additional information on the penalty and/or citation of the penalty for an employer/income withholder who discharges, refuses to employ, or disciplines an

employee/obligor as a result of the IWO. The state or tribal law/procedures of the employee/obligor's principal place of employment govern the penalty.

33. **Supplemental Information.** Any state-specific information needed, such as maximum withholding percentage for non-employees, fees the employer/income withholder may charge the obligor for income withholding, or children's names and DOBs if there are more than six children on this IWO. Additional information must be consistent with the requirements of the form and the instructions.

## COMPLETED BY EMPLOYER/INCOME WITHHOLDER:

### *NOTIFICATION OF EMPLOYMENT TERMINATION OR INCOME STATUS*

The employer must complete this section when the employee/obligor's employment is terminated, income withholding ceases, or if the employee/obligor has never worked for the employer.

34a-b. **Employment/Income Status Checkbox.** Check the employment/income status of the employee/obligor.

35. **Termination Date.** If applicable, date employee/obligor was terminated.

36. **Last Known Phone Number.** Last known (home/cell/other) phone number of the employee/obligor.

37. **Last Known Address.** Last known home/mailing address of the employee/obligor.

38. **Final Payment Date.** Date employer sent final payment to SDU/tribal payee.

39. **Final Payment Amount.** Amount of final payment sent to SDU/tribal payee.

40. **New Employer's Name.** Name of employee's/obligor's new employer (if known).

41. **New Employer's Address.** Address of employee's/obligor's new employer (if known).

## COMPLETED BY SENDER:

### *CONTACT INFORMATION*

42. **Issuer Name (Employer/Income Withholder Contact).** Name of the contact person that the employer/income withholder can call for information regarding this IWO.

43. **Issuer Phone Number.** Phone number of the contact person.

44. **Issuer Fax Number.** Fax number of the contact person.

45. **Issuer E-mail/Website.** E-mail or website of the contact person.

46. **Termination/Income Status and Correspondence Address.** Address to which the employer should return the Employment Termination or Income Status notice. It is also the address that the employer should use to correspond with the issuing entity.

47. **Issuer Name (Employee/Obligor Contact).** Name of the contact person that the employee/obligor can call for information.

48. **Issuer Phone Number.** Phone number of the contact person.

49. **Issuer Fax Number.** Fax number of the contact person.

50. **Issuer E-mail/Website.** E-mail or website of the contact person.

The Paperwork Reduction Act of 1995

This information collection and associated responses are conducted in accordance with 45 CFR 303.100 of the Child Support Enforcement Program. This form is designed to provide uniformity and standardization. Public reporting burden for this collection of information is estimated to average 5 minutes per response for Non-IV-D CPs; 2 minutes per response for employers; 3 seconds for e-IWO employers, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

# RUPRO ACTION REQUEST FORM

**RUPRO Meeting:** September 8, 2014

RUPRO action requested:

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

| Title: Juvenile Dependency: Information Form for Parents | Rules:<br><br>Standards:<br><br>Forms: Revoke forms JV-050 and JV-055; approve new optional form JV-050-INFO |
|---|---|
| Committee or other entity submitting the proposal:<br><br>Family and Juvenile Law Advisory Committee<br>Hon. Jerilyn L. Borack, Cochair<br>Hon. Kimberly J. Nystrom-Geist, Cochair | Staff contact:<br>Tracy Kenny, 916-263-2838<br>tracy.kenny@jud.ca.gov |

**If requesting July 1 or out of cycle, explain:**

**Additional Information for RUPRO:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary, including any substantial argument in opposition and any expected individual or organization likely to support or oppose the proposal.)

Judicial Council of California · Administrative Office of the Courts

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

www.courts.ca.gov

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

**Title**
Juvenile Dependency: Information Form for Parents

**Rules, Forms, Standards, or Statutes Affected**
Revoke forms JV-050 and JV-055; approve new optional form JV-050-INFO

**Recommended by**
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Kimberly J. Nystrom-Geist, Cochair

**Agenda Item Type**
Action Required

**Effective Date**
January 1, 2015

**Date of Report**
August 13, 2014

**Contact**
Tracy Kenny, 916-263-2838
tracy.kenny@jud.ca.gov

## Executive Summary

The Family and Juvenile Law Advisory Committee recommends revoking two existing dependency court information forms and approving a new information form that complies with the statutory requirements of Welfare and Institutions Code section 307.4, which requires the Judicial Council, in consultation with the County Welfare Directors Association of California (CWDA), to adopt a form to provide to parents or guardians whose children are being removed that explains their procedural rights and the preliminary stages of the dependency process.

## Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2015:

1. Revoke existing information forms about the juvenile court process, *Juvenile Court Information for Parents* (form JV-050) AND *The Dependency Court: How It Works* (form JV-055).

2. Approve new *What happens if your child is taken from your home?* (form JV-050-INFO) for optional use to provide a plain-language one-page information sheet consistent with the requirements of Welfare and Institutions Code section 307.4.

## Previous Council Action

The Judicial Council approved forms JV-050 and JV-055 to be effective January 1, 1999. Form JV-055 was revised effective January 1, 2001 to incorporate language regarding kinship adoption agreements.

## Rationale for Recommendation

Welfare and Institutions Code section 307.4 requires the Judicial Council, in consultation with the County Welfare Directors Association of California (CWDA), to adopt a form to provide to parents or guardians whose children are being removed that explains their procedural rights and the preliminary stages of the dependency process. There are currently two Judicial Council forms that provide basic information to parents about the dependency court process, but neither of them contains all of the information required by section 307.4. These forms were originally developed in the late 1990s, before the widespread use of the Internet as an information source. In the intervening years the public has grown to look to the Internet for information in various media, and these forms are no longer the primary information source that the courts provide to parents.[1] However, while more-comprehensive and easily updated information is now available for parents, the Judicial Council must adopt a form to comply with the requirements of section 307.4. The committee has prepared a new JV-050-INFO form in consultation with CWDA[2] with basic information about the early stages of a dependency matter that can be provided to parents and guardians at the time a child is removed from their custody. The information is presented in a simple question-and-answer format, seeking to address the most immediate questions that parents may have after a child is removed. In addition to the content on the current forms, the proposed replacement form includes information on the child and the parent's right to have counsel, the privilege against self-incrimination, and appellate rights as required by section 307.4. This one-page form can serve as a source of the basic information needed when a child is removed, and direct parents and guardians to additional sources of information available on the judicial branch website. The committee streamlined the content of the form to keep it to one-

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[1] Detailed information is available on the California Courts website, including a pamphlet for parents *www.courts.ca.gov/documents/juvenile-dendency-court-and-you.pdf* and orientation video *www.youtube.com/watch?v=Y7Xz4QdNoEY* (accessed Jan. 30, 2014).

[2] The committee sought input on its content from CWDA when the new form was being developed and then sought additional comment during the public comment period.

page to both ensure that parents are not overwhelmed and to provide courts and justice partners the option of printing translated text on the back.[3]

## Comments, Alternatives Considered, and Policy Implications

### Comments

This proposal circulated for comment as part of the spring 2014 invitation to comment cycle, from April 18 to June 18, 2014, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, and other juvenile law professionals. Nine individuals or organizations provided comment; three agreed with the proposal, four agreed if modified, one disagreed with the proposal, and one expressed no position but included comments. A chart with the full text of the comments received and the committee's responses is attached at pages 12–20.

Most commentators seeking modifications wanted to add additional content to the form to provide more information to parents entering the dependency system, including information about the Child Abuse Central Index and more information about the role of the social worker. The committee carefully considered these proposals but opted to make only minor clarifying changes in order to ensure that the form could be printed as one page. Because the JV-050-INFO is designed to provide some very basic statutorily required information to parents at the time a child is removed, the committee concluded that it was best for the form to be basic and not overwhelm the parents during a charged time. The committee ensured that the form made parents aware both that counsel will be appointed who can address their questions, and that significant additional information about the dependency court process can be found at the judicial branch website and other websites. Given these other avenues for obtaining more-comprehensive and nuanced information, the committee opted to keep the content of the JV-050-INFO simple and basic given its limited purpose.

The commentator who disagreed with the proposal suggested instead that all of the content of the existing forms be incorporated into a multipage form with some additional content and that the council adopt a requirement that this new form be attached to all juvenile petitions. The committee concluded, as described above, that the new one-page form was preferable to this option from a cost and an accessibility perspective, noting particularly that the newly proposed form is essentially the content of the two prior forms streamlined and translated into plain language. The committee saw the recommendation to require the form to be provided with all dependency petitions as beyond the scope of this proposal given that the JV-055-INFO was circulated for comment as a new optional form, and was further concerned that such a requirement would be overly burdensome on the courts without providing sufficient benefit to parents.

[3] The existing forms were translated into many languages, and the committee directed staff to seek translation of the new form as well.

#### Alternatives considered

The committee considered adopting a new, additional form to satisfy section 307.4 or revising one of the existing forms, but determined that the optimal approach would be to maintain only one simple, text-based information form that would meet the statutory requirements and need minimal updating and revising. Other information sources will continue to be maintained and added on the California Courts website to provide more-comprehensive, detailed, and timely information for the public.

### Implementation Requirements, Costs, and Operational Impacts

Section 307.4 puts the responsibility for printing and distributing the required form on the county. It also requires that the form be made available for distribution through "all public schools, probation offices, and appropriate welfare offices." As a result, the primary operational impacts will fall on the counties, which will print the form and provide it to parents at the time a child is removed. Courts may incur some expense for printing the new, one-page form, but it should not increase their costs as there will no longer be a need to print the two currently available forms, which, together, total six pages in length. The new form will need to be translated into the languages most commonly found in dependency proceedings, but federal court improvement funds are available for this purpose so there will be no state general fund costs for this action.

### Relevant Strategic Plan Goals and Operational Plan Objectives

The new information form for parents whose children are removed will advance Goal I: Access, Fairness and Diversity and Objective I.2 by ensuring that parents understand the basic structure of the dependency court process as well as their own legal rights in these cases.

### Attachments

1. Existing forms JV-050 and JV-055 at pages 5–10
2. New form JV-050-INFO, at page 11
3. Chart of comments, at pages 12–20

## Additional Information:

__________________ County Juvenile Court

Address of the juvenile court

______________________________________________

______________________________________________

______________________________________________

Phone number of the juvenile court

______________________________________________

You can get more information about where your child is and about the court processes from your child's social worker or your local child welfare agency. The following is a list of local helpful telephone numbers:

Social worker: ________________________________

Other useful numbers to be provided by the county

______________________________________________

______________________________________________

______________________________________________



REVOKED

# _________ County
# JUVENILE COURT
# INFORMATION FOR PARENTS

Form Approved by the
Judicial Council of California
JV-050 [New January 1, 1999]

Dear Parent or Guardian:

**PLEASE READ THIS INFORMATION.**

**1. Why is this matter being investigated?**

There have been one or more reports about the safety of your child; a police officer or social worker must investigate to see if your child's safety and protection require official intervention through the juvenile court.

**2. If my child was taken from me, why?**

Your child may have been taken from you and placed in protective custody because a police officer or social worker believes it necessary for the protection of your child. Some of the reasons may be:

a. Your child had inadequate care or supervision;
b. Your child was neglected or abused or molested;
c. Your child was left with someone who could not or would not provide adequate care.

**3. If my child is not with me, where is my child?**

Your child may be at a county shelter or in a temporary foster home. The social worker will provide additional information or give you a number to call to find out more about the arrangements that have been made for your child's care and about your future contact with your child. To learn more, call your child's social worker at the number on the back of this pamphlet during regular business hours.

**4. Will my child be returned to me?**

It is possible that your child will be returned to you. The social worker assigned to investigate the case will



review information about you, your home, and your child and will act according to what appears to be the best way to make sure your child is safe. If your child is not returned to you, your child may be temporarily placed with:

a. Your child's other legal parent (if you are not living together);
b. A relative;
c. A foster or shelter home.

**5. What about relatives?**

The law requires that you tell the social worker the names, addresses, phone numbers, and other information about your child's other legal parent or other relatives who may be able to care for your child. The social worker will contact them, see if they can provide for your child, and determine if the home will be safe for your child. In this way, your child may not have to go to someone your child and you do not know.

**6. What happens now?**

If the social worker believes your child is not safe, the social worker will file papers in juvenile court, asking the court to declare your child to be a dependent of the court and to make orders regarding the care, custody, and supervision of your child.

The first paper filed is called a "petition," and it must be filed within two court days (regular work days) of the time your child was taken from you or within a reasonable time if your child remains with you.

You will be notified of the date, time, and place of the first court hearing.

***It is very important for you to come to court for this hearing.***



REVOKED

**SOME IMPORTANT THINGS FOR YOU TO REMEMBER:**

1. The social worker cannot give you legal advice but will explain procedures.

2. If you have additional questions about the process, please ask your lawyer or the judge.

3. You must tell the court and the social worker where your mail should be sent so you will receive all the important documents about your child. If you change your mailing address, you must tell your social worker immediately.

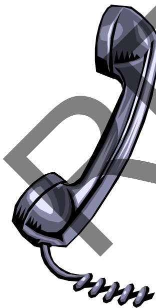
## Additional Information:

Some important telephone numbers:

Social worker: ________________

Juvenile court: ________________

Lawyer: ____________________



The date of my next hearing is:

_____________________________________________

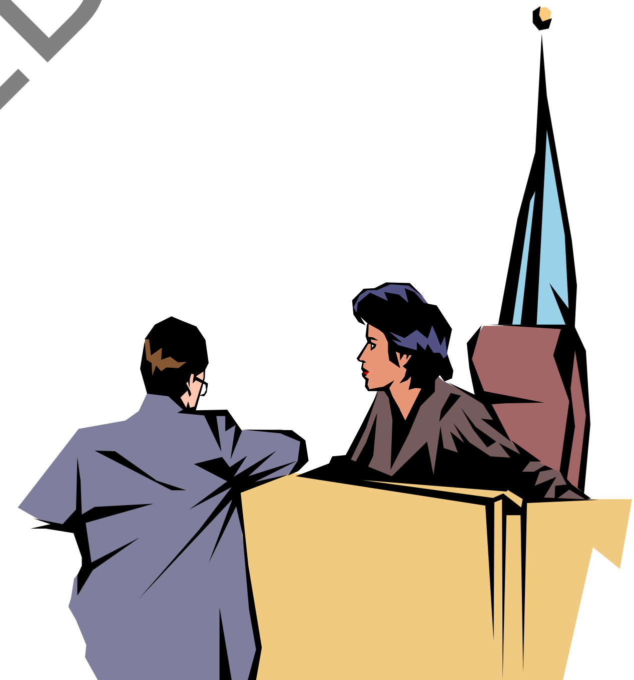


REVOKED

__________ County

# JUVENILE COURT

# THE DEPENDENCY COURT: HOW IT WORKS



Form Approved for Optional Use
Judicial Council of California
JV–055 [Rev. January 1, 2001]

One of the goals of the dependency court is to have the matter regarding your child resolved as quickly as possible. We need your help and cooperation to do that. The court has become involved with you and your child because certain things have happened in your life that led to this involvement; you will be required to follow specific steps to end court involvement. You must follow these steps within certain time limits. The steps and the time limits will be explained to you.

If your child becomes a dependent of the court, that means that the court will make orders for you, for your child, and for the social worker, so that your child will be protected. In most cases, you will have an opportunity to end court involvement.

As a court dependent:

1. The court may allow your child to reside in your home under court supervision; or

2. The court may place your child outside of your home.

If, during the time your child is a dependent of the court, reunification services are not ordered, or reunification efforts fail, your child could be adopted.

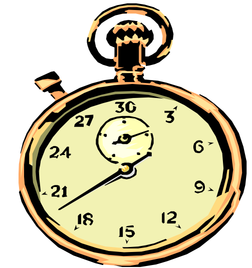
The specific reasons you are in court are stated in the petition and in other papers you may have received.

**PLEASE READ THE PETITION CAREFULLY.**



**6. How does the court make a permanent plan for my child?**

a. If the court decides that your child will not be returned to you and another plan for the child is required, the court MUST set a hearing within four months to decide what should happen to your child.



b. At that hearing, the court has only three choices, in the following order of preference:

(1) To terminate your parental rights and order the child placed for adoption ("Terminating your parental rights" means that legally you are no longer the child's parent);

(2) To appoint a legal guardian for your child; or

(3) To place your child in long-term foster care.

If a relative adopts your child, you, the adoptive parent(s), and the child may agree to postadoption contact between you and your child. Your lawyer can explain this "Kinship Adoption Agreement" to you if adoption by a relative is the permanent plan.

REVOKED

c. If your child was **under three years old** when he or she was first removed from your care, and you have not participated regularly in court ordered treatment, or if you have not contacted or visited your child for the last six months, the court can end services. If a brother or sister of the child under three was also removed, services may end for that child also.

d. If your child was **over three years old**, and the child is not returned to you after six months, the court can order services for six more months.

e. Services to reunify your child with you will end after 12 months unless the court decides there is a ***substantial probability*** that your child can be returned to you by the end of 18 months from the time the police officer or social worker took your child away.

f. If services are ended, the court will set a hearing to make a permanent plan for the child.

***In order for the court to consider returning your child to you, you must follow the orders of the court without delay.***

***BECAUSE if the court orders a hearing for a permanent plan, your child will not be returned to you and there will be NO more assistance by the social worker or the court to help you reunify with your child.***



**1. Do I need a lawyer?**

You have the right to have a lawyer represent you in court, and the first court hearing in your case may be postponed for a short time so that you may hire one. If you cannot afford a lawyer, the court may appoint one for you. You may have to repay the court for the costs of your lawyer according to your ability to pay.

**2. Will anyone else have a lawyer?**

The county counsel may be representing the social worker and the court may also appoint a lawyer to represent your child. The lawyer's job is to represent the interests of your child. A Court Appointed Special Advocate, called a CASA volunteer, may also be appointed by the court to assist your child.

**3. What will happen at the first hearing?**

a. If your child has been taken away from you, at the first court hearing the judge will decide whether your child will be returned to you until the next court hearing, or whether your child will remain away from you.

b. Be sure to tell the social worker or your lawyer about any of the child's relatives who might be able to care for your child until the next hearing (or longer) if your child is not returned to you at the first hearing.



REVOKED

c. In most cases you will be able to have visits with your child if the child is not returned to you.

**4. What happens then?**

a. You have a right to have a trial where the judge will decide whether the statements in the petition are true.

b. If there is to be a trial, a date will be set for that trial.

c. Whether your child is with you or not, if you admit that all or part of the statements in the petition are true, or allow the judge to make a decision based on the reports presented, there will not be a trial on those issues.

The social worker will prepare a report for the court, based on an investigation that will include talking to you and to others. The report will include recommendations about where your child should be living for the next six months (when the next court hearing will be held) and what you and others can do to help solve the problems that brought you and your child into court.

If the judge decides that the statements in the petition are true, the judge will probably make your child a dependent child of the court, which means that your control over your child will be limited and the child may be removed from your custody.

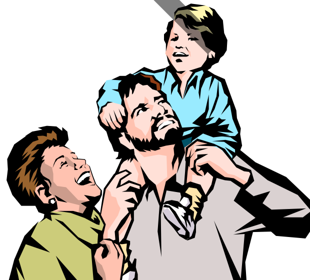
There will be a case plan that will be worked out by you and the social worker; this plan will be presented to the court. The court will *probably* order that all or part of the case plan be carried out. The case plan may include such things as the following:

a. Parenting classes

b. Individual counseling

c. Family counseling

d. Treatment for abuse of alcohol and other drugs

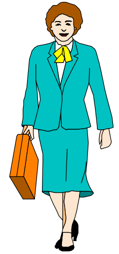




e. Special programs and classes

f. Visitation with your child

If your child is removed from your custody and there is a case plan ordered, the social worker will be required to include in the case plan: (1) services to help you reunify with your child and (2) services to achieve legal permanence for your child should reunification fail. Legal permanence may include adoption or appointment of a legal guardian.



If, at any time after your child is removed from you, you decide that you are not interested in reunifying with your child, you can talk with your social worker. You should also talk with your lawyer, who can explain your right to (1) waive reunification services, (2) relinquish your parental rights, and (3) assist in the development of a permanent plan for your child.

**5. What do I need to do then?**

a. The social worker and others will be required to assist you to obtain the services listed in your case plan.

***It is important that you get started on your case plan as soon as possible. Following the case plan, within the required time lines, is the key to reunification with your child.***

b. The court will review your case at least every six months. At the first review hearing, the court will consider whether court dependency for your child is still required and, if your child has been removed from your home, whether your child may be returned home.



REVOKED

# JV-050-INFO What happens if your child is taken from your home?

## Why was my child taken from me?

Someone made a report about your child's safety. To protect your child, a police officer or social worker has:

- Taken your child out of your home, and
- Asked the court to get involved in this case to protect your child.

## Where is my child now?

Your child may be at a temporary foster home or shelter in this county. To find out more about what is happening with your child, call the social worker for this case:

Social Worker:
Phone:
E-mail:

## Will my child be returned to me soon?

It depends. A social worker will review your home situation and decide how best to keep your child safe.

If your child is not returned home before you go to court, your child may be sent temporarily to stay with:

- Your child's other legal parent (if you do not live together),
- A relative or extended family member, or
- A foster parent.

## Do I have the right to try to get my child back?

Yes. You have the right to:

- A lawyer. (The court will give you one if you cannot afford one.)
- Take part in all court hearings about your child.
- Have an interpreter in court if you do not speak English well.
- Refuse to answer questions that could lead to criminal charges against you.

Tell your lawyer if you have questions about your rights or about what happens in court.

## Does my child have rights, too?

Yes. Your child has the same rights that you have. Your child will have a different lawyer who will:

- Tell the court what the child wants, and
- Ask the court to do what is best for the child.

## Can my child be placed with relatives?

Yes. You **must** give the social worker names and contact information for your child's other legal parent and relatives who may be able to care for your child. The social worker will contact them to see if their home is available and safe for your child.

## How will I know when to go to court?

You will get a *Notice* with the time, date, and location of the court hearing.

***Important!*** The court and the social worker will mail you many important documents. If your mailing address changes, tell your social worker right away.

## What to expect…

1. After your child is taken from your home, a social worker has **2 full working days** to decide if your child is safe with you. If the social worker thinks your child is **not** safe with you, she or he will:
   - Take a *Petition* to a special court for children (Juvenile Court), and
   - Ask the court to be in charge of your child's care, custody, and supervision.

   ***Important!*** Read the *Petition.* It lists the reasons *(allegations)* your child is not safe in your home. If you do not understand it, ask your lawyer.
2. The court has **1 full working day** to hold a **detention hearing.** This hearing will decide:
   - To return the child to you right away, or
   - Where the child will stay for now and how you can visit him or her.
3. The next hearing will be within **15 working days** unless the judge decides more time is needed. It's called a **jurisdictional hearing.** That's when the judge will look more closely at your child's situation and decide if any allegation in the *Petition* is true.
   - If the judge decides none of them is true, your child will be returned to you.
   - If the judge believes any allegation *is* true, your child may become the **court's dependent.**

## If your child becomes the court's dependent…

There will be another hearing (called a **dispositional hearing**), when the judge will decide:

- Where your child should live,
- When, where, and how you can visit your child, and
- What must be done to take care of the problems that caused your child to be taken out of the home. (This is called a *reunification plan.*)

This hearing may be at the same time as the jurisdictional hearing. If you or your child disagrees with the judge's decision, you may ask a higher court (Court of Appeal) to review the judge's decision. Your lawyer can tell you more about this.

**Questions?** Talk to your lawyer, and learn more about cases like yours at:
*http://www.courts.ca.gov/selfhelp-childabuse.htm*

| | Commentator | Position | Comment | Committee Response |
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| 1. | Los Angeles County Counsel's Office<br>Dawyn Harrison<br>Assistant County Counsel – Division Chief Dependency | AM | The Office of the Los Angeles County Counsel agrees with the proposal. However, it is requested that the form be printed on the front and back so that additional important information may be added to the form. In the section of the new informational form entitled "Why was my child taken from me?," it is requested that the following information taken from the current JV-050 form be added:<br><br>"Some of the reasons may be:<br>Your child had inadequate care or supervision; Your child was neglected or abused or molested; Your child was left with someone who could not or would not provide adequate care."<br><br>In the section that discusses the jurisdiction hearing, it is requested that the following information be added:<br><br>"The social worker will prepare a report for the court, based on an investigation that will include talking to you and to others. The report will include recommendations about where your child should be living for the next six months (when the next court hearing will be held) and what you and others can do to help solve the problems that brought you and your child into court." | The committee appreciates the interest in making the form as comprehensive as possible, but believes that keeping it to one page is more critical than adding back this information which may be unhelpful if it does not describe the specific reasons that a child has been removed. The committee also notes that a one-page form will allow a translation of the form to be printed on the back and that translations of the form are planned.<br><br>As discussed above this information has been deemed less essential, and the committee is committed to keeping the form to one page to make it most likely that parents will be able to digest its contents. The committee notes that the form directs parent to a web link that will allow them to obtain a great deal more information including this information about the dependency process if they wish to read more, and that by the time of a jurisdictional hearing an attorney is available to explain the social worker's report. |
| 2. | Orange County Bar Association<br>Thomas Bienert, Jr., President | AM | The OCBA recommends adopting the proposed JV050 form with amendments. The form | In order to clarify the issues raised in this comment, the committee has opted to modify the |

| | Commentator | Position | Comment | Committee Response |
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| | | | currently states that the Jurisdictional hearing will be held within 15 working days, however does not acknowledge that frequently there are time waivers which will cause the jurisdictional hearing to be held more than 15 working days after the detention hearing. To leave it as is may mislead the intended audience. The OCBA would suggest to change "The next hearing will be within 15 working days," to "The next hearing will be within 15 working days, unless time is waived."<br>The OCBA also has concerns that the form suggests that there is always a separate disposition hearing when it states, "There will be another hearing (called a dispositional hearing)." If the words "which may be combined with the jurisdictional hearing" are added this would avoid possible confusion. | sentence regarding the jurisdictional hearing to read "The next hearing will be within 15 working days unless the judge decides more time is needed."<br>To clarify that disposition and jurisdiction may be held at the same time the committee proposes adding a sentence at the end to read: "This hearing may be at the same time as the jurisdictional hearing." |
| 3. | Matthew Purcell, Certified Family Law Specialist<br>Prinicpal Attorney<br>Goyette and Associates | AM | While I am in agreement with the need for an updated information form, one of the continued injustices committed upon parents in this system is the failure to have any discussion of, or to provide information about, the California Central Child Abuse Index. If the parents are receiving this proposed form, a juvenile case has been opened. If the parents "submit," agree, or do not successfully challenge the Jurisdiction of the court, they will lose the right to contest having their names placed on the CACI. This will remain on their record indefinitely, and will have a serious impact on potential employment, housing, and the parents' ability to fully | The committee acknowledges that there are numerous potential consequences to being involved in a juvenile dependency matter, but not all of them can be addressed in a simple one page information form. This form is designed to give basic information about the earliest stages of a case – discussion of other consequences, such as the CACI or child support must be left to discussions with the parent's attorney, or more comprehensive information sources. |

| | Commentator | Position | Comment | Committee Response |
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| | | | participate in the lives of their children (those who may not have been removed, were wrongfully removed, or those who they may be reunified with). It is important for information about the CACI, and what the juvenile court proceedings could mean with regard to the ability of the parents to contest being listed on the CACI, to be presented to parties at the beginning of the process. This may not be mandated by 307.4, but if the forms are going to be revised, they should be complete. | |
| 4. | The State Bar of California, Family Law Section<br>Saul Bercovitch, Legislative Counsel | N | The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) does not agree with this proposal, but instead suggests a different approach.<br><br>FLEXCOM believes that replacing existing forms JV-050 "Juvenile Court Information for Parents" and JV-055 "The Dependency Court: How it Works" with the proposed one-page JV-050-INFO form entitled "What happens if your child is taken from your home" would not be adequate to provide fundamental and necessary information to explain the dependency system to parents and guardians, and properly assist them in navigating this complex area of the law, which is likely to be quite foreign and confusing to parties who enter the system involuntarily, frequently without adequate access to accurate and complete information.<br><br>FLEXCOM questions the assumption that | <br><br><br><br>The committee appreciates the goal of trying to provide the most useful information to parents whose children have been removed that this comment seeks to further, but has concluded that the proposed form provides the most essential information in a format and language that is most accessible to the target audience. The content includes what is statutorily required, and has been translated into plain language that is comprehensible to most people.<br><br>While the committee recognizes that some parents |

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| | | | parties who are in the juvenile dependency courts obtain adequate information from the Internet or sources other than the court. Juvenile dependency courts are, in large part, the courts of the poor and disadvantaged, a population that may not be informed about where to look on the Internet for information about their rights in juvenile dependency proceedings or how the juvenile dependency system operates.<br><br>Typically, the experience of a parent or guardian coming to dependency court for the first time is confusing and frightening. The parent or guardian does not receive a copy of the Petition in advance. Parents and guardians are, in the vast majority of cases, appointed counsel on the day of the hearing on which they have received notice to appear. Appointed counsel is typically handling a number of cases on the same day, attempting to read numerous court reports, and to read, digest and then discuss the Petition with their clients and other counsel assigned to the case in a span of minutes. If the party does attend the initial hearing with private counsel, private counsel all too frequently have little or no experience in juvenile dependency court. Parents and guardians typically do not receive any written information that they can read and digest while waiting for their hearing or take with them after the hearing, to allow them to educate | of children in the dependency system may not use online information sources, there is an increasing trend, via smart phones and other internet connected devices, for the public to look for online sources to address their questions. The proposed form provides the information needed to understand what will happen next, and also alerts parents to their other options for obtaining information including their social worker, attorney, and the judicial branch website. For those parents who want additional information, one or more of these options is likely to better meet their needs than a somewhat longer information form that is necessarily brief and generic. The committee acknowledges that caseloads for appointed counsel are too high in many counties, but notes that standards for representation are improving and does not agree that a form attached to the petition would be a better information source than the parent's appointed counsel. Parents appearing with private counsel are relatively few in number, and typically those parents are more information sophisticated than average and would likely access the more comprehensive information sources available online. The committee also notes that the more comprehensive information pamphlet for parents available online is also formatted for printing as a booklet, and can be provided to parents by parent's counsel for those parents seeking a printed information source that is more extensive than this form. |

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| | | | themselves about the juvenile dependency process. This is particularly problematic for people coming into a system and a process that may end with the termination of their parental or guardianship rights and the complete loss of any relationship with their child or children. | |
| | | | In light of the foregoing, FLEXCOM does not support revocation of the existing forms, but instead recommends that the forms in either their existing format or in the revised format discussed below, be required to be attached to every Petition filed in a juvenile dependency matter, so that a parent or guardian receives not only the Petition itself, but the information in the forms as well. | The proposal to require that the form be attached to every petition is outside the scope of this proposal and would require further circulation for comment. The proposed form is intended to be provided even before a petition is filed and to be provided by whomever removes the child in conformance with the statute. Providing the information again at the time the petition is filed appears superfluous, especially as counsel is appointed at that time and can be a more effective information source for parents. |
| | | | FLEXCOM's suggestion for a revised form would combine the content of existing form JV-050 and JV-055 into a single form JV-050, which would also contain the information required by Welfare and Institutions Code § 304.7. Attached hereto is that proposed form, which FLEXCOM suggests be titled, "Juvenile Dependency Court: Information for Parents."<br><br>We also suggest the following additional language, where indicated in the attachment. [See Attachment A] | The committee believes that the proposed JV-050-INFO does combine the key content from the two existing forms into one form, and that this new form is preferable to the older ones in that the content has been translated into plain language and is therefore accessible to a wider array of literacy levels than the prior forms. The committee also notes that a one-page form will allow a translation of the form to be printed on the back and that translations of the form are planned. |

| | Commentator | Position | Comment | Committee Response |
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| | | | * At the end of the second paragraph on what would be page 4, we suggest that the following language be added to the end of the last sentence "... and have your child returned by following Court orders to participate in programs and tasks such as drug and alcohol testing, counseling and attending parenting instruction programs." | While the committee agrees that it is critical for parents to understand that compliance with court orders is critical to successful reunification, that information cannot be sufficiently described in one sentence. The Judicial Council has recently made available a booklet on the dependency process for parents that goes into considerable detail on this point and contains extensive advice from a parent who successfully reunified on the importance of following the case plan. The committee believes that this booklet, which can be made available to all parents by courts or their counsel, addresses that content more effectively than a form provided at removal would be able to do. |
| | | | ** In the section entitled, "Do I Need a Lawyer?" on what would be page 5, we suggest that the following language be added: "Juvenile Dependency law is a highly specialized field. If you choose to hire private counsel rather than be represented by appointed counsel, you should make sure that the counsel you hire has the required expertise and training to handle Juvenile Dependency cases." | Given the relatively small numbers of parents seeking private representation and the committee's conclusion that a one page form is optimal in this context, the committee does not believe that including this advisement is necessary on this form. |
| | | | *** In section 9c on what would be page 6, following the language that says, "In most cases you will be able to have visits with your child if your child is not returned to you," we suggest that the following language be added: "The Court may order visits to take place subject to | The new proposed form alerts the parent to the fact that conditions may be placed on visitation by informing the parent that the time, place and manner of visitation –"when, where, and how you can visit your child" will be determined at the dispositional hearing. The committee finds that |

| | Commentator | Position | Comment | Committee Response |
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| | | | certain conditions or restrictions. For instance, the visits may be ordered to occur at only particular locations or that the visits be supervised or 'monitored.' " | this information succinctly addresses the content that the commenter seeks to reach. |
| 5. | Superior Court of Los Angeles<br>(no name provided) | A | No direct cost savings to court.<br>No CMS changes.<br>No training required.<br>There is sufficient time for implementation within two months from Judicial Council approval of this proposal until its effective date.<br>New format is more helpful in Q & A. Deleted information on JV-055 regarding reunification does not need to be restored. One page is sufficient amount of information for parents to read. Important contact information added on page by social worker is valuable for the parents/guardians. Los Angeles County provides parents/guardians with a parent calendar at the detention hearing that provides very valuable information for parents that enhances what JV-055 provides. | No response required. |
| 6. | Superior Court of Orange County<br>Paul Alberga, Administrative Analyst | A | These changes will have little impact for trial court operations. We will need to update web site links to reference the updated JV-050-INFO form.<br>• We suggest providing this form in multiple languages. | No response required.<br><br>The committee plans to seek translation of the form into all languages in which the existing JV-050 and JV-055 are provided. |
| 7. | Superior Court of Riverside County<br>Daniel Wolfe, Managing Attorney | A | The only suggestion is to the JV-050-INFO form. Under 'What to Expect', the term 'working days' may be confusing to parents. Many parents work on weekends and might | While the term "working day" may not be clear to all parents the committee deemed it preferable to the more opaque "court day" and likely to signal that weekends and holidays were not included. |

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

| | Commentator | Position | Comment | Committee Response |
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| | | | assume that weekends are counted as 'working days'. | |
| 8. | Superior Court of San Diego County<br>Michael M. Roddy, Executive Officer | AM | Because WIC § 307.4 requires the written statement (Form JV-050-INFO) to include "(2) The rights to counsel, privileges against self-incrimination and rights to appeal possessed by the minor, and his or her parents, guardians, or responsible relative," the following alternative revisions are suggested to the paragraph under the heading "Does my child have rights, too?":<br><br>Do I have the right to try to get my child back?<br>Yes. You have the right to:<br>- A lawyer. (The court will give you one if you cannot afford one.)<br>- Take part in all court hearings about your child.<br>- Have an interpreter in court, if you do not speak English well.<br>- Refuse to answer questions that could lead to criminal charges against you.<br><br>Does my child have rights, too?<br>Yes. Your child ~~also~~ has the same rights ~~to take part in the court hearings~~ that you have. Your child will have a different lawyer who will:<br>- Tell the court what the child wants, and<br>- Ask the court to do what is best for the child.<br><br>OR | The committee agrees that full compliance with Welfare Institutions Code section 307.4 requires highlighting the child's right not to self-incriminate and has revised the form to indicate that the child and parent have the same rights as suggested in the first option provided by this commenter. |

| | Commentator | Position | Comment | Committee Response |
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| | | | Does my child have rights, too?<br>Yes. Your child also has the right to take part in the court hearings, have an interpreter, and refuse to answer questions that could lead to criminal charges. Your child will have a different lawyer who will:<br>- Tell the court what the child wants, and<br>- Ask the court to do what is best for the child. | |
| 9. | Wynspring Family Resource Center<br>Darlene K. Aiello<br>Business Director | N/I | Working on the Foster Care side, we often have new parents in the system ask what their rights are when the child has been removed. We are unable to answer their question and must refer them back to their County Social Work, or the court appointed attorney.<br><br>We hear the same thing that they are not being told, or are being ignored until the Judge gets involved, which could be days or weeks later.<br><br>The changing of how dependency is done would be beneficial to both the parents and the County. It would clear up some misunderstandings and misconceptions of parents and hopefully cause less anxiety for the parent/s and less hassle for the County and State. | No response required. |

# RUPRO ACTION REQUEST FORM

**RUPRO Meeting:** September 8, 2014

| RUPRO action requested: |
| --- |
| **Recommend JC approval (has circulated for comment)** |

| Title: Juvenile Dependency: Attorney Training | Rules: 5.660<br><br>Standards:<br><br>Forms: |
| --- | --- |
| Committee or other entity submitting the proposal:<br>Family and Juvenile Law Advisory Committee<br>Hon. Jerilyn L. Borack, Cochair<br>Hon. Kimberly J. Nystrom-Geist | Staff contact:<br>Corby Sturges, Attorney<br>415-865-4507;<br>corby.sturges@jud.ca.gov |

| **If requesting July 1 or out of cycle, explain:** |
| --- |
| |

| **Additional Information for RUPRO:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary, including any substantial argument in opposition and any expected individual or organization likely to support or oppose the proposal.) |
| --- |
| |

JUDICIAL COUNCIL OF CALIFORNIA

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

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

**Title**
Juvenile Dependency: Attorney Training

**Agenda Item Type**
Action Required

**Rules, Forms, Standards, or Statutes Affected**
Amend Cal. Rules of Court, rule 5.660

**Effective Date**
January 1, 2015

**Recommended by**
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Kimberly J. Nystrom-Geist, Cochair

**Date of Report**
August 19, 2014

**Contact**
Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

## Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending rule 5.660 to conform to a recent statutory change to the education and training requirements for attorneys appointed to represent children in juvenile dependency proceedings. Assembly Bill 868 amended section 317(c) of the Welfare and Institutions Code, effective January 1, 2014, to require that this training include instruction on sensitivity to the needs of lesbian, gay, bisexual, and transgender youth. The proposed amendment would add this topic to those required by the rule and make other minor, nonsubstantive modifications to clarify the text.

## Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2015, amend rule 5.660(d)(3) to clarify that training for an attorney appointed to represent a child in dependency proceedings must include instruction on "cultural competency and sensitivity relating to, and best practices for, providing care to lesbian, gay, bisexual, and transgender youth in out-of-home care."

The text of the amended rule is attached at pages 6–7.

## Previous Council Action

The Judicial Council adopted rule 5.660 as rule 1438, effective January 1, 1996. The rule has since been amended six times, most significantly in July 2001 in response to Senate Bill 2160 (Stats. 2000, ch. 450). SB 2160 directed the council to "promulgate rules of court that establish caseload standards, training requirements, and guidelines for appointed counsel" in dependency proceedings. The rule was renumbered as 5.660, effective January 1, 2007, as part of a global reorganization of the rules of court.

## Rationale for Recommendation

Assembly Bill 868 (Stats. 2013, ch. 300) amended section 68553 of the Government Code and sections 102(d), 304.7(a), and 317(c) of the Welfare and Institutions Code[1] to incorporate additional required elements into training and education programs for family and juvenile court judicial officers, Court Appointed Special Advocate (CASA) volunteers, and court-appointed attorneys representing children in juvenile dependency proceedings. All of the amended code sections implicate topics addressed by certain rules of court or standards of judicial administration. Sections 102(d) and 317(c) expressly require the Judicial Council to implement their respective mandates by adopting rules of court.[2] However, because of the manner in which the council has exercised its authority with respect to education standards and requirements for judicial officers and CASA volunteers, only rule 5.660, covering training for court-appointed attorneys, requires amendment.

***Rule 5.660.*** Section 4 of AB 868 amends section 317(c) to require that the mandatory training for court-appointed dependency attorneys for children, established by rule of court, "include instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender [LGBT] youth in out-of-home care." (Welf. & Inst. Code, § 317(c).) Rule 5.660(d), which establishes experience and education requirements for attorneys appointed in juvenile dependency proceedings as required by sections 317, 317.5, and 317.6, lists, by topic, the information that must be included in training for these attorneys. It does not currently include the requirement added by section 4 of AB 868. Failing to include the new requirement in rule 5.660(d) would be inconsistent with the statutory change. The committee therefore recommends amending the rule to include the new requirement.

## Comments, Alternatives Considered, and Policy Implications

This proposal was circulated for comment as part of the spring 2014 invitation-to-comment cycle from April 18 to June 18. The committee received 8 comments on this proposal.[3] All

[1] All further statutory citations refer to the Welfare and Institutions Code unless otherwise specified.

[2] Government Code section 68553, which applies to Judicial Council training programs for family court bench officers and professionals, and section 304.7, which applies to Judicial Council training standards for juvenile dependency judges and subordinate judicial officers, do not expressly require implementation through rules of court.

[3] A chart providing the full text of the comments and the committee responses is attached at pages 8–12.

commentators agreed with the proposal; one suggested modifications. No commentators disagreed with the proposal.

The California CASA Association (CalCASA) first suggested amending rule 5.660(d)(1) and (d)(3) to require all attorneys, regardless of their level of experience, to receive training on serving LGBT youth before they are appointed to represent children. Recognizing that rule 5.660(d)(3) permits attorneys who have sufficient recent experience to be appointed in dependency proceedings without having fulfilled the eight-hour initial training requirement, CalCASA argued that "the intent of AB 868 was to ensure that all appointed attorneys had training to competently serve LGBT youth in out-of-home care—and not [to] exempt those who 'have sufficient recent experience.'"

The committee does not recommend the suggested amendments because they appear to impose requirements beyond those required by AB 868 and, therefore, beyond the scope of this proposal. Section 4 of AB 868 refers expressly and exclusively to the council's "training requirements" for counsel appointed to represent a child. There is no suggestion in the text or the legislative history of AB 868 that the Legislature intended to impose training or experience requirements on dependency counsel broader than those expressed. If the Legislature had so intended, it could have also amended section 317.6, which requires the council to establish minimum standards of experience and education for competent counsel in dependency proceedings.

CalCASA also suggested amending standards 5.30, 5.40, 10.12, and 10.13 of the Standards of Judicial Administration to reflect the "new training requirements" for judicial officers in section 304.7. The committee has reviewed the rules of court addressing minimum education requirements for judges and subordinate judicial officers as well as the applicable standards of judicial administration. The committee does not recommend amending these standards at this time. The committee believes that rules 10.469(c) and 10.701(c), by directly referencing section 304.7, appropriately incorporate that section's requirements for training each judge or subordinate judicial officer "who hears juvenile dependency matters." Subdivision (a) of section 304.7 imposes duties on the Judicial Council rather than on judicial officers. The council's Center for Judiciary Education and Research (CJER) has already updated its curricula for juvenile court bench officers to comply with section 304.7(a). Subdivision (b) requires subordinate judicial officers to meet the standards in (a). Rule 10.701(c) affirms the application of this requirement to subordinate judicial officers.

#### Alternatives considered

The committee considered whether sections 1, 2, and 3 of AB 868 required conforming amendments to the rules of court or standards of judicial administration. For the reasons discussed below, the committee concluded that they do not and therefore does not propose any further amendments to the rules or standards in response to AB 868.

***CASA programs and rule 5.655.*** Section 2 of AB 868 amends section 102(d) to require the Judicial Council's rules establishing an "initial and ongoing training program" for CASA

volunteers to include instruction on "[c]ultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth." (Welf. & Inst. Code, § 102(d).) Rule 5.655, which establishes guidelines for local CASA programs, incorporates the mandatory training topics in section 102(d) by referring directly to that code section, as currently in effect, rather than listing the topics. (See Cal. Rules of Court, rule 5.655(d).) Therefore, no amendment to rule 5.655 is required to conform to AB 868.

The committee noted, however, that although rule 5.655(d), which covers initial training, incorporates section 102(d)'s requirements by reference, rule 5.655(i), which covers ongoing training, does not. The committee considered proposing an amendment to fill this apparent gap, but ultimately concluded that no change was warranted. First, the rule is not directly affected by AB 868. Section 102(d) has used the language "initial and ongoing training program" since it was enacted in 1988. (Assem. Bill 4445; Stats. 1988, ch. 723, § 5.) Rule 5.655(i) has never listed topics required for ongoing training since its adoption, as rule 1424, in 1995. Second, the Judicial Council has received no indication that this omission has led to any shortcomings in the ongoing training provided to CASA volunteers. Indeed, when rule 1424 underwent extensive amendment in 2004, the continued omission of mandatory topics from the ongoing training requirements provoked no comment.

***Other training rules.*** Several rules of court in title 5[4] and title 10[5] address training and education requirements for judicial officers and court-connected professionals who perform duties in family law matters. After reviewing the statutory language, legislative history, and current rules of court, the committee does not recommend amending these rules.

Section 1 of AB 868 amends section 68553 of the Government Code to require the Judicial Council to include, in its training programs for specific court officers who perform duties in family law matters, instruction on the effects of gender identity and sexual orientation on family law proceedings. This amendment does not require any specific action by family law judicial officers or court personnel. The Judicial Council can comply with these mandates by ensuring that its family law training programs include the required elements. No amendment of the rules is needed.

In a similar way, section 3 of AB 868 amends section 304.7(a) of the Welfare and Institutions Code to require the council to include, in standards for the education of juvenile dependency judges, instruction on "cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth." Although judges are not required to complete this training, section 304.7(b) does require subordinate judicial officers assigned to dependency hearings to do so. The council has already implemented this requirement

[4] See rule 5.210 (custody mediators), rule 5.225 (custody evaluators), rule 5.242 (family law children's counsel), rule 5.340 (child support commissioners), and rule 5.430 (family law facilitators).

[5] See rule 10.462 (all trial judges and subordinate judicial officers), 10.463 (family court judges and subordinate judicial officers), 10.469 (training recommendations), and 10.701 (subordinate judicial officers).

through references to section 304.7(b) in rules 10.469(c) and 10.701(c).[6] No further amendment is needed.

## Implementation Requirements, Costs, and Operational Impacts

To the extent that they have not already done so in response to AB 868, providers of legal education and training for dependency attorneys will need to incorporate instruction on sensitivity to and care for lesbian, gay, bisexual, and transgender youth into their curricula. The committee does not anticipate that this requirement will lead to any significant cost or operational impact on the courts.

## Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal promotes Goal I, Access, Fairness, and Diversity, by removing a barrier to access by LGBT youth; Goal III, Modernization of Management and Administration, by bringing rule 5.660 into conformance with the amended statutes; and Goal IV, Quality of Justice and Service to the Public, by enabling the juvenile courts to receive the information they need to tailor dispositions that meet the needs of LGBT youth more effectively.

## Attachments and Links

1. Cal. Rules of Court, rule 5.660, at pages 6–7
2. Chart of comments, at pages 8–12
3. Assembly Bill 868 (Stats. 2013, ch. 300), leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB868&search_keywords

[6] Court-connected juvenile dependency mediators, for whom rule 5.518(e) establishes minimum training requirements, are not addressed by AB 868. In addition, rule 5.518(e)(3)(I) already includes a requirement that dependency mediators receive training on awareness of differing cultural values. For these reasons, no amendment to rule 5.518 is proposed.

Rule 5.660 of the California Rules of Court would be amended, effective January 1, 2015, to read:

**Rule 5.660. Attorneys for parties (§§ 317, 317.5, 317.6, 353, 366.26, 16010.6)**

**(a)–(c)** * * *

**(d) Competent counsel**

* * *

(1)–(2) * * *

(3) *Experience and education*

(A) Only those attorneys who have completed a minimum of eight hours of training or education in the area of juvenile dependency, or who have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency, may be appointed to represent parties. Attorney training must include:

(i) ~~In addition to a summary~~ An overview of dependency law and related statutes and cases~~,~~;

(ii) ~~training and education for attorneys must include~~ Information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts; and

(iii) For any attorney appointed to represent a child, instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home placement.

(B) Within every three years, attorneys must complete at least eight hours of continuing education related to dependency proceedings.

(4)–(6) * * *

**(e)–(g)** * * *

**Advisory Committee Comment**

* * *

Nothing in this rule is intended to ~~expend~~ extend the permissible scope of any judicial inquiry into an attorney's reasons for declining to represent one or more siblings or requesting to withdraw from representation of one or more siblings, due to an actual or reasonably likely

conflict of interest. (See ~~Cal. Bar Rules, Prof. Conduct R 3-310, Subd (C).~~State Bar Rules Prof. Conduct, rule 3-310(C).) While the court has the duty and authority to inquire as to the general nature of an asserted conflict of interest, it cannot require an attorney to disclose any privileged communication, even if such information forms the basis of the alleged conflict. (*In re James S.* (1991) 227 Cal.App.3d 930, 934; *Aceves v. Superior Court* (1996) 51 Cal.App.4th 584, 592–593.)

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| 1. | California CASA Association<br>by Phil Ladew,<br>Associate and Legal Director<br>Oakland | AM | **1. Rule 5.660(d)(3)**<br>Pursuant to Rule 5.600(d)(3), a court may appoint an attorney who has 1) completed the 8 hours of training/education **OR** 2) sufficient recent experience in dependency proceedings. The proposed amendment only requires training on LGBT issues if the attorney fits into the first category – i.e. completed the 8 hours of training/education.<br><br>However, the intent of AB 868 was to ensure that all appointed attorneys had training to competently serve LGBT youth in out-of-home care – and not exempt those who have "have sufficient recent experience."<br><br>**Suggestion**: Amend Rule 5.660(d)(1) to read:<br>(1)Definition<br>"Competent counsel" means an attorney who is a member in good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, *received instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care,* and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings, and procedures for filing petitions for extraordinary writs. | Please refer to responses to specific comments, below.<br><br>The committee does not recommend the suggested amendments because they appear to impose requirements beyond those required by AB 868 and, therefore, beyond the scope of this proposal. Section 4 of AB 868 refers expressly and exclusively to the council's "training requirements" for appointed counsel for a child. There is no suggestion in the text or the legislative history of AB 868 that the Legislature intended to impose training or experience requirements on dependency counsel broader than those expressed. If the Legislature had so intended, it could have also amended section 317.6, which requires the council to establish minimum standards of experience and education for competent counsel in dependency proceedings. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | **Suggestion**: Amend Rule 5.660(d)(3) to read:<br>(3)Experience and education<br>Only those attorneys who have *received instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care, and either 1)* completed a minimum of eight hours of training or education in the area of juvenile dependency, or *2)* who have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency, may be appointed to represent parties. In addition to a summary of dependency law and related statutes and cases, training and education for attorneys must include information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts. Within every three years attorneys must complete at least eight hours of continuing education related to dependency proceedings. | The committee does not recommend the suggested amendments because they appear to impose requirements beyond those required by AB 868 and, therefore, beyond the scope of this proposal. Section 4 of AB 868 refers expressly and exclusively to the council's "training requirements" for appointed counsel for a child. There is no suggestion in the text or the legislative history of AB 868 that the Legislature intended to impose training or experience requirements on dependency counsel broader than those expressed. If the Legislature had so intended, it could have also amended section 317.6, which requires the council to establish minimum standards of experience and education for competent counsel in dependency proceedings. |
| | | | **2. Rule 5.660(d)(3)**<br>The proposed amendment language regarding the out-of-home care subject matter does not mirror the statute (i.e. 317(c)). Why is this? The language in statute is clear and easy to understand. | |
| | | | **Suggestion**: Mirror the language of the statute. Instead of "Instruction on cultural competency and sensitivity relating to lesbian, gay, bisexual, | The committee agrees with this suggestion and has incorporated it, with minor alterations, into its recommendation. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | and transgender youth, and on best practices for providing adequate care to these youth when they are placed out of their homes" have the rule read, "Instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care."<br><br>**3. Omission: Standards for AB 868 and Welf. & Inst. Code § 304.7**<br>While not related to "attorney training," AB 868 also amended Welf. & Inst. Code, § 304.7, which affects standards for training and education of judges. However, there does not seem to be any suggestion from the Judicial Council to amend the Standards of Judicial Administration.<br><br>Here are my two thoughts. First, the Standards of Judicial Administration should be reviewed and amendments considered to reflect the new training topics in AB 868. Second, when amending the standards, care should be taken to ensure that all dependency bench officers are afforded this specific training topic. For example, Standard 10.12 discusses training for judicial officers "whose principal judicial assignment" is family or juvenile dependency. Std. 10.12, subd. (b) and (c). However, Welf. 304.7 applies to "all judges who conduct hearings pursuant to Section 300," which is a larger group. | |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | **Suggestion**: Amend Standards of Judicial Administration 10.12, 10.13 sub. (2) and (3), and consider amending 5.30 and 5.40 to reflect the new training requirements. | The committee has reviewed the rules of court addressing minimum education requirements for judges and subordinate judicial officers as well as the applicable standards of judicial administration. The committee does not recommend amending standards 5.30, 5.40, 10.12, or 10.13 at this time. The committee believes that rules 10.469(c) and 10.701(c), by directly referencing section 304.7, appropriately incorporate that section's requirements for training each judge or subordinate judicial officer "who hears juvenile dependency matters." Subdivision (a) of section 304.7 imposes duties on the Judicial Council rather than on judicial officers. The council's Center for Judiciary Education and Research (CJER) has already updated its curricula for juvenile court bench officers to comply with section 304.7(a). Subdivision (b) requires subordinate judicial officers to meet the standards in (a). Rule 10.701(c) affirms the application of this requirement to subordinate judicial officers. |
| 2. | Child Welfare Services, San Diego County<br>by Leesa Rosenberg, PSP Manager | A | No specific comment. | No response required. |
| 3. | Office of the County Counsel<br>by Dawyn Harrison, Assistant County Counsel—Chief Deputy, Dependency<br>Los Angeles | A | No specific comment. | No response required. |
| 4. | State Bar of California, Executive Committee of the Family Law Section (FLEXCOM)<br>San Francisco | A | The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal. | No response required. |
| 5. | State Bar of California, Standing Committee on the Delivery of Legal | A | Amending rule 5.660 would make the training for dependency advocates conform to recently | No response required. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | Services<br>by Maria Livingston, Vice Chair<br>San Francisco | | amended rules. | |
| 6. | Superior Court of Los Angeles County | A | No direct cost savings to court.<br><br>No CMS changes.<br><br>Training required for attorneys. There is likely not sufficient time for implementation within two months from Judicial Council approval of this proposal until its effective date. Training will need to be developed and approved. Should be no problem staying in compliance with 3-year training requirement per Rule 5.660(d)(3) for counsel. | No response required.<br><br>No response required.<br><br>The committee has recommended amending rule 5.660(d) to conform to AB 868's amendment of section 317(c) of the Welfare & Institutions Code, effective January 1, 2014, to require that training for attorneys representing children in dependency proceedings include instruction in sensitivity to and care for LGBT youth. Although the rule takes effect only two months after the council's action, attorneys will have had a full twelve months from the requirement's effective date to acquire the necessary training. Many training providers have already incorporated the required instruction into their courses. The committee does not, therefore, recommend an extension of time to comply with the rule amendments. |
| 7. | Superior Court of Riverside County | A | Agree with proposal. | No response required. |
| 8. | Superior Court of San Diego County<br>by Michael Roddy, Executive Officer | A | Agree with proposal. | No response required. |

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

# RUPRO ACTION REQUEST FORM

**RUPRO Meeting:** September 8, 2014

RUPRO action requested:

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

| Title: Family and Juvenile Law: Parentage | Rules: 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790<br><br>Standards:<br><br>Forms: FL-210, FL-240 |
|---|---|
| Committee or other entity submitting the proposal:<br>Family and Juvenile Advisory Committee<br>Hon. Jerilyn L. Borack, Cochair<br>Hon. Kimberly J. Nystrom-Geist, Cochair | Staff contact:<br>Corby Sturges, 415-865-4507<br>corby.sturges@jud.ca.gov |

**If requesting July 1 or out of cycle, explain:**

**Additional Information for RUPRO:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary, including any substantial argument in opposition and any expected individual or organization likely to support or oppose the proposal.)

# JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

**Title**
Family and Juvenile Law: Parentage

**Rules, Forms, Standards, or Statutes Affected**
Amend Cal. Rules of Court, rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, 5.790; revise Judicial Council forms FL-210, FL-240

**Recommended by**
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Kimberly J. Nystrom-Geist, Cochair

**Agenda Item Type**
Action Required

**Effective Date**
January 1, 2015

**Date of Report**
September 2, 2014

**Contact**
Corby Sturges; 415-865-4507;
corby.sturges@jud.ca.gov

## Executive Summary

The Family and Juvenile Advisory Committee recommends amending eleven rules of court and revising two mandatory Judicial Council forms to conform to recent legislation. Assembly Bill 1403 updated California's version of the Uniform Parentage Act to clarify that a *natural parent* need not be biologically related to his or her child and to replace the terms *father* and *paternity* with the gender-neutral terms *parent* and *parentage* where appropriate. The amendments and revisions ensure that the rules and forms are consistent with statute and case law. They also make technical corrections and clarifications.

## Recommendation

The committee recommends that the Judicial Council, effective January 1, 2015, amend eleven rules of court and revise two mandatory Judicial Council forms, as follows:

- Amend rule 5.510(c) to replace “paternity” with “parentage” and delete references to repealed Family Code section 7631;
- Amend rule 5.635(a) to clarify that the juvenile court’s authority to enter a judgment of parentage rests on the Uniform Parentage Act and delete references to repealed Family Code section 7631;
- Amend rule 5.635(b) to clarify when the court’s duty to inquire about a youth’s parentage begins;
- Amend rule 5.635(c)–(g) to make technical corrections;
- Amend rule 5.650(i) to clarify that this section also applies to a person who holds educational decision-making rights by virtue of his or her status as a child’s legal guardian;
- Amend rule 5.668(b) to replace “paternity” with “parentage” and delete “ a man.”
- Amend rule 5.695(a)(7) to make a technical correction;
- Amend rule 5.695(f)–(g) to clarify that the juvenile court is still required to determine on the record whether the agency has exercised due diligence in conducting the family-finding investigation required by section 309(e);
- Amend rule 5.695(h) to change “father” to “parent” where appropriate and to make technical corrections;
- Amend rule 5.695(i) to clarify the dates on which the respective time limits begin to run;
- Amend rule 5.708(n) to clarify that it applies to any parent who has relinquished the child for adoption, regardless of that parent’s legal status;
- Amend rules 5.710(c) and 5.720(b) to clarify that they also apply to a legal guardian;
- Amend rule 5.725(d) and (g) to make technical corrections;
- Amend rule 5.725(e) to clarify that a petition for adoption in juvenile court may not be granted until the appellate rights of all parents have been exhausted;
- Amend rule 5.725(g) to clarify that the rights of all parents must be terminated to free a child for adoption;
- Amend rule 5.740(a) to make a technical correction;
- Amend rule 5.790(f)–(g) to clarify that the juvenile court is required to determine on the record whether the agency has exercised due diligence in conducting the family-finding investigation required by section 628(d);
- Revise *Summons—Uniform Parentage—Petition for Custody and Support* (form FL-210) to replace “mother and father” with “each parent” and to replace other language, including the form’s name, and formatting to be appropriately consistent with *Summons (Family Law)* (form FL-110); and
- Revise *Stipulation for Entry of Judgment re: Establishment of Parental Relationship* (form FL-240) so that item 2 can accommodate same-sex parentage.[1]

[1] The committee also recommends minor revisions to forms FL-210 and FL-240 to accommodate the possibility that a court might now, in rare cases, find that a child has more than two parents. (See Sen. Bill 274; Stats. 2013, ch. 564.) The committee will consider revising additional forms to accommodate this possibility in future cycles as needed.

The text of the amended rules is attached at pages 12–22.
The revised forms are attached at pages 23–25.

## Previous Council Action

The Judicial Council adopted rule 5.510 as rule 1403, effective January 1, 1991. The rule has been amended twice since then.

The Judicial Council adopted rule 5.635 as rule 1413, effective January 1, 1995. The rule has been amended five times since then, most recently in 2007.

The Judicial Council adopted rule 5.650 as rule 1499, effective July 1, 2002. The rule has been amended four times since then, most recently in 2013 in response to statutory amendments.

The Judicial Council adopted rule 5.668 as rule 1441, effective January 1, 1998. The rule has been amended five times since then, most recently in 2008.

The Judicial Council adopted rule 5.695 as rule 1456, effective January 1, 1991. The rule has been amended five times since then, most recently in 2014. In particular, the Judicial Council amended rule 5.695(f)–(g) in 2011 in response to Assembly Bill 938 to add a requirement that the juvenile court determine, with a finding on the record, whether the agency had fulfilled its statutory duty to exercise due diligence in conducting an investigation to identify, locate, and notify a child's relatives that the child had been removed from his or her home. The council further amended these subdivisions in 2014, intending to streamline the rule's language without changing its substantive requirements.

The Judicial Council adopted rule 5.708, effective January 1, 2010. The rule has been amended twice since then, most recently in 2014.

The Judicial Council adopted rule 5.710 as rule 1460, effective January 1, 1990. The rule has been amended seventeen times since then, most recently in 2014.

The Judicial Council adopted rule 5.720 as rule 1462, effective January 1, 1990. The rule has been amended eighteen times since then, most recently in 2014.

The Judicial Council adopted rule 5.725 as rule 1463, effective January 1, 1991. The rule has been amended sixteen times since then, most recently in 2010.

The Judicial Council adopted rule 5.740 as rule 1465, effective January 1, 1991. The rule has been amended thirteen times since then, most recently in 2012.

The Judicial Council adopted rule 5.790 as rule 1441, effective January 1, 1998. The rule has been amended five times since then, most recently in 2014. In particular, the Judicial Council amended rule 5.790(f)–(g) in 2014 in response to Assembly Bill 938 to add a requirement that

the juvenile court determine, with a finding on the record, whether the probation department had fulfilled its statutory duty to exercise due diligence in conducting an investigation to identify, locate, and notify a child's relatives that the child had been detained and was at risk of entering foster care.

All juvenile court rules were renumbered and placed in title 5, effective January 1, 2007.

*Summons—Uniform Parentage—Petition for Custody and Support* (form FL-210) was adopted as rule 1296.605 for mandatory use, effective January 1, 1999. It was last revised effective January 1, 2007.

*Stipulation for Entry of Judgment re: Establishment of Parental Relationship* (form FL-240) was adopted as rule 1296.74 for mandatory use, effective January 1, 1999. It was last revised effective January 1, 2003.

## Rationale for Recommendation

Assembly Bill 1403 (Stats. 2013, ch. 510) codified a decade's worth of case law construing the Uniform Parentage Act (UPA)[2] to allow a man or a woman without a biological relationship to a child to be the child's presumed natural parent,[3] allow a man or a woman who "receives [a] child into his or her home and openly holds out the child as his or her natural child" to qualify as the child's presumed father or mother under section 7611(d) of the Family Code,[4] and allow two women or two men to be a child's natural parents.[5] Although the statutory language had not, until now, kept pace with the case law, many of the California Rules of Court and Judicial Council forms have already been amended or revised to replace gender-specific terms with gender-neutral language where appropriate. The committee recommends further amendments and revisions to bring remaining rules and forms up to date, as appropriate.

AB 1403 updated the language of the UPA to conform to the judicial recognition that the act applies neutrally to a man or a woman. In particular, the bill replaced "presumed father" with "presumed parent"; replaced "mother" and "father," when appropriate, with "parent"; and replaced "paternity," when appropriate, with "parentage." In some instances, for example, with respect to the voluntary declaration of paternity, the bill retained the gender-specific terms.

In light of the fact that AB 1403 is declarative of existing law and that many of the family and juvenile rules and forms have been updated in previous cycles to reflect law, the committee proposes only limited amendments and technical corrections. In particular, the committee has

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[2] Fam. Code, §§ 7600–7720.

[3] *In re Nicholas H.* (2002) 28 Cal.4th 56; *In re Karen C.* (2002) 101 Cal.App.4th 932, 938.

[4] *Elisa B. v. Super. Ct.* (2005) 37 Cal.4th 108, 119–121; *In re Karen C., supra,* 101 Cal.App.4th at 938; *In re Salvador M.* (2003) 111 Cal.App.4th 1353, 1357.

[5] *Elisa B., supra,* 37 Cal.4th at 119–121.

proposed revising only two mandatory forms for use in parentage actions. These forms have not been revised for several years and are, therefore, out of date in this and several other respects. They also use language inconsistent with the language in other Judicial Council forms mandated for use in parentage actions. To avoid confusion, the committee recommends revising the forms to update them and to use the same terminology as is used in other family law forms.

***Family finding determination.*** The committee recommends amending rules 5.695(f)–(g) and 5.790(f)–(g) to clarify the committee's consistent intent that the juvenile court determine and make a finding on the record whether the agency exercised due diligence in conducting the family-finding investigation required by sections 309(e) and 628(d). This change did not circulate for comment in the Spring 2014 cycle, but the committee recommends it as "a minor substantive change that is unlikely to create controversy" under rule 10.22(d)(2). Staff proposes adding to this proposal amendments to rule 5.695(f)–(g) (other subdivisions of which did circulate for comment) and rule 5.790(f)–(g) to clarify that the juvenile court needs to make a finding at the conclusion of its inquiry into whether the agency or department complied with its duties under sections 309(e) and 628(d), as well as rule 5.637.

The committee developed rule 5.695(f) in 2010 to implement AB 938, which amended sections 309(e) and 628(d) of the Welfare and Institutions Code to require social workers and probation officers to exercise due diligence in conducting an investigation to identify, locate, and notify a child's relatives of the child's removal or detention. The rule amendment was intended to require the juvenile court, at each dependency dispositional hearing, to consider whether the social worker had actually conducted the investigation with due diligence and to make a finding that the social worker either had or had not done so. No commentator who addressed rule 5.695(f) opposed the finding requirement, though it was noted without further comment by the Joint Rules Working Group of the Trial Court Presiding Judges/Court Executives Advisory Committees.

As adopted, effective January 1, 2011, subdivision (f) read as follows:

(1) The court must consider whether the social worker has used due diligence in conducting the investigation to identify, locate, and notify the child's relatives. The court may consider as examples of due diligence the activities listed in subdivision (g) of this rule.

    If the disposition hearing is continued, the court may set a hearing at any time after 30 days from the date of removal to consider whether the social worker has used due diligence in conducting the investigation to identify, locate, and contact the child's relatives.

(2) The court must make one of the following findings:

(A) The social worker has used due diligence in conducting its investigation to identify, locate, and notify the child's relatives; or

(B) The social worker has not used due diligence in conducting its investigation to identify, locate, and notify the child's relatives. If the court makes this finding, the court may order the social worker to use due diligence in conducting an investigation to identify, locate, and notify the child's relatives—except for any individual the social worker identifies who is inappropriate to notify under rule 5.637(b)—and may require a written or oral report to the court at a later time.

In 2013, statutory changes required the committee to amend rules 5.695 and 5.790 for reasons unrelated to family finding. At that time, the committee chose to extend the requirement for an inquiry and finding to dispositional hearings in delinquency cases under rule 5.790(f) consistent with section 628(d). The committee also elected to streamline the subdivision's language with no intention of changing the substance. No substantive comments were received on these amendments.

Amended subdivision (f) now reads as follows in both rules 5.695 and 5.790:

(1) If the child is removed, the court must consider whether the social worker [probation officer] has exercised due diligence in conducting the investigation to identify, locate, and notify the child's relatives. The court may consider the activities listed in (g) as examples of due diligence.

    If the disposition hearing is continued, the court may set a hearing to be held 30 days from the date of removal or as soon as possible thereafter to consider whether the social worker [probation officer] has exercised due diligence in conducting the investigation to identify, locate, and notify the child's relatives.

(2) If the court finds that the social worker [probation officer] has not exercised due diligence, the court may order the social worker [probation officer] to exercise due diligence in conducting an investigation to identify, locate, and notify the child's relatives—except for any individual the social worker [probation officer] identifies as inappropriate to notify under rule 5.637(b)—and may require a written or oral report to the court.

Some courts have interpreted the new language as absolving them of the duty to make a finding regarding the social worker's or probation officer's exercise of due diligence in the family-finding investigation. This was not the committee's intent. Acknowledging that the amendment to rule 5.790 would require the delinquency court to make an additional finding, the committee's report to the Judicial Council noted that "[r]ule 5.695 already require[d] the court to make these

findings at dispositional hearings in dependency proceedings."[6] The council report does not reveal any intent to relieve the court of that duty. Rather, it extends the duty to delinquency courts.

To clarify that the court must still make a finding as to the result of its inquiry, the committee now recommends the following amendment:

(1) If the child is removed, the court must consider and determine whether the social worker [probation officer] has exercised due diligence in conducting the required investigation to identify, locate, and notify the child's relatives. The court may consider the activities listed in (g) as examples of due diligence. The court must document its determination by making a finding on the record.

If the dispositional hearing is continued, the court may set a hearing to be held 30 days from the date of removal or as soon as possible thereafter to consider and determine whether the social worker [probation officer] has exercised due diligence in conducting the required investigation to identify, locate, and notify the child's relatives.

(2) * * *

## Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment as part of the spring 2014 invitation to comment cycle, from April 18 to June 18, 2014, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self help staff, social workers, probation officers, and other juvenile law professionals, and the National Center for Lesbian Rights.

The committee received nine comments on this proposal.[7] Two commentators agreed with the proposal as circulated, and seven commentators agreed while suggesting modifications. No commentators disagreed with the proposal. Many of the comments suggested minor or technical changes. The committee agreed with almost all of these without debate. The following suggestions generated the most committee discussion.

***More than two parents under SB 274.*** The committee proposed inserting an additional line in item 2 on *Stipulation for Entry of Judgment Re: Establishment of Parental Relationship* (form FL-240) to account for the possibility that a court might find more than two persons to be parents

[6] Family and Juvenile Law Advisory Committee, Report to the Judicial Council, Juvenile Law: Access to Services for Children, Nonminors, and Nonminor Dependents (Oct. 11, 2013), www.courts.ca.gov/documents/jc-20131025-itemA21.pdf.

[7] A chart providing the full text of the comments and the committee responses is attached at pages 26–65.

of a child under section 7612(c) of the Family Code, as amended by Senate Bill 274 (Stats. 2013, ch. 564, § 6).Three of the commentators who addressed this issue suggested that, because the Legislature intended for a court to find that a child had more than two parents only in rare cases, the addition of another line would be inappropriate. The other commentator who addressed this issue was concerned that the inclusion of a third line would imply that a court was limited to finding that a child had no more than three parents.

The committee also considered removing the proposed third line from item 2 on the revised form, reverting to two lines, and inserting a check box to indicate that additional parents may be listed on an attachment, if necessary, as well as recommending the adoption of the circulated revision with three lines in item 2.

Because of the intended rarity of cases requiring more than two parents, the committee recommends reverting to two lines in item 2 for identifying the parents without indicating that additional parents may be listed. If the use of the form reveals a need for a clearer way to indicate the existence of more than two parents, the committee will consider proposing revisions at that time.

***Voluntary declarations of paternity.*** Several commentators suggested that using the gender-neutral term "parentage" in rule 5.635(c), which addresses the effect of a voluntary declaration of paternity in a juvenile court proceeding, would be premature. They pointed out that AB 1403 did not amend sections 7570–7577 of the Family Code, which govern voluntary declarations of paternity, to use gender-neutral language. These sections continue to apply only to men and outline a procedure for establishing biological paternity. The committee agrees with these commentators and therefore recommends withdrawing the proposed amendment and retaining the use of "paternity" in rule 5.635(c).

Commentators also raised issues with the last sentence of rule 5.635(c). As circulated for comment, that sentence read: "A man is presumed to be the father of the child under Family Code section 7611, <u>subject to rebuttal under section 7612,</u> if the voluntary declaration has been properly executed and filed."

One commentator suggested that this sentence was an inaccurate statement of law because "a voluntary declaration of paternity does not create a presumption of paternity; rather, a valid and properly executed and filed declaration is treated as the equivalent of a court determination of parentage." Section 7611 does, however, expressly state that "a person is presumed to be the natural parent of a child if the person meets the conditions" in sections 7570–7577 of the Family Code, which provide for the execution and filing of voluntary declarations of paternity (VDOP).

Another commentator suggested that the sentence be stricken because it conflicts with *In re Brianna M.* (2013) 220 Cal.App.4th 1025, which arguably held that the references to the effect of a VDOP in sections 7611–7612 of the Family Code do not apply to dependency proceedings and that a properly executed and filed VDOP does not, therefore, entitle a man to presumed

father status in a dependency proceeding. The exclusive application of rule 5.635 to juvenile proceedings, and not to family proceedings, might seem to counsel deletion of this sentence. However, in February the Supreme Court unanimously granted review in *Brianna M.,* superseding the appellate opinion. (See *In re Brianna M.* (2014) 317 P.2d 1182, granting review and superseding the appellate opinion.) Unfortunately, the Court was required to dismiss the case without decision after appellant defaulted, resulting in continuing uncertainty about the effects of a VDOP.

Two commentators pointed out that a VDOP may be rescinded or set aside under sections 7575 and 7577, but argued that the presumption it creates is not rebuttable under section 7612. Although the matter might not be as clear as suggested, the commentator's point is well taken to the extent that a VDOP has the same effect as a judgment of paternity and section 7612(d) provides that a presumption under section 7611 is rebutted by such a judgment.

Because of the ongoing lack of agreement regarding the effect of a VDOP on the presumptions under the UPA and in juvenile court proceedings, the committee withdraws its proposed amendment and recommends retaining the last sentence of current rule 5.635(c) to await legislative or judicial clarification of those effects. The only amendment now recommended in subdivision (c) is replacing "Department of Social Services" with "Department of Child Support Services."

***County welfare department.*** One commentator suggested using the term "county child welfare department" in place of "county welfare department" in the rules that were circulated for comment. The commentator did not state a reason for the suggested change. Presumably, the commentator believed the longer term would provide a clearer, more specific reference to the appropriate county agency.

The committee considered inserting "child" in the rules to increase the specificity of the references, but does not recommend that amendment. First, the amendment is beyond the scope of this proposal. Second, the current term is consistent with terminology used pervasively in the code. See, e.g., §§ 215, 303, 306, 358.1, 11400, 11403(e)–(f), 11404. Although the code does use a wide variety of other terms—see, e.g., § 204 ("child protective services"); § 11364 ("county child welfare agency"); § 11403(c) ("county child welfare department"); § 16002 ("responsible local agency") § 16004.5 ("child welfare agencies"); § 16010 ("child protective agency")—staff is not aware of any confusion caused by the use of "county welfare department" in the rules of court. Third, the term is used consistently throughout the juvenile court rules. Amending the rules included in this proposal would render them inconsistent with the remainder of the juvenile court rules that use the term. Fourth, the juvenile court rules also refer to the "probation department" without specifying that they are addressed, for the most part, to the juvenile division. The use of the generic term "county welfare department" is consistent with the use of "probation department." The consistent, comprehensive terms also allow for differences in departmental structure and organization from county to county.

***Maternal cohabitation.*** One commentator disagreed with the proposal to amend rule 5.668(b)(3) to inquire whether the mother was cohabiting with "an adult" rather than with "a man" at the time of conception. The commentator pointed out that, "[a]lthough illegal, it *is* feasible for a mother to conceive with a cohabitant under 18 years of age" and suggested that the committee replace "an adult" with "anyone" to account for that possibility.

The committee agrees with the commentator's premise, but does not recommend the suggested change to rule 5.668(b)(3). The purpose of the inquiry in rule 5.668(b)(3) is not entirely clear. If it is intended to identify a candidate for paternity testing, then an amendment taking age into account might be appropriate. To the extent that the question in (b)(3) is calculated to elicit information relevant to the establishment of a presumption of parentage, age seems less relevant. The resolution of this issue is beyond the scope of the legislation and this proposal, and would require circulation for comment. In the meantime, the committee recommends using "cohabiting" without a referent, as cohabitation implicitly requires another person as a cohabitant.

***Minor additional revisions to form FL-210.*** Finally, after the comment period had ended, a committee member noticed that the proposed revisions to *Summons (Parentage—Custody and Support)* (form FL-210), did not conform to recent revisions to *Summons (Family Law)* (form FL-110). The committee recommends making additional revisions to form FL-210 render these forms consistent insofar as that is appropriate. First, the committee recommends deleting service-of-process requirements that apply to actions against corporations or associations, but do not apply in family law proceedings. The Judicial Council adopted identical revisions to form FL-110, effective January 1, 2014, based on the same reasoning.[8] Second, the committee recommends inserting a notice to litigants about the possibility of seeking a fee waiver. Form FL-110 contains an identical notice. Although these proposed revisions did not circulate for comment, they are consistent with law and technical in nature.

## Alternatives Considered

The committee considered several alternatives to the recommended amendments and revisions before circulation. First, the committee examined existing rules and forms to determine whether they could continue to serve the courts and the public without any amendment or revision. However, because one of the purposes of AB 1403 was to promote understanding of the law and legal processes by parties, the committee elected to recommend limited changes to those rules and mandatory forms that showed both lingering inconsistencies with statute and case law and inconsistencies with other rules and forms. A consistent set of rules and forms will help court users avoid unnecessary confusion.

The committee also considered eliminating all instances of gender-specific language in title 5 of the rules and in the family and juvenile forms. As the Legislature recognized, though, many

[8] See Family and Juvenile Law Advisory Committee, Report to the Judicial Council, Family Law: Revisions to Family Law Summons (Oct. 1, 2013), www.courts.ca.gov/documents/jc-20131025-itemA19.pdf.

provisions exist in which gender-specific language continues to be appropriate or even necessary. Furthermore, the sheer volume of forms—particularly optional forms—that use gender-specific terminology is daunting. The committee determined that the benefit to the public from updating those forms would almost certainly be outweighed by the cost to the trial courts of reproducing and providing these revised forms to the public. Because those forms are optional, courts may, if they wish, develop local forms that use gender-neutral language if they identify that as a pressing local need.

Some mandatory forms—for example, *Custody Order—Juvenile—Final Judgment* (form JV-200) and *Juvenile Court Transfer Orders* (form JV-550)—would benefit from revisions using gender-neutral language. However, the committee anticipates that these forms will require additional, substantive revisions within the next year and has elected to defer proposing any revisions at this time.

### Implementation Requirements, Costs, and Operational Impacts

Under the authority of the relevant case law and earlier rule amendments and form revisions, the family and juvenile courts are already largely proceeding under the law as articulated in the recommended rule amendments. If anything, the amendments should lead to more timely and efficient judicial proceedings by promoting parties' understanding of current law. Courts will incur some costs to reproduce and distribute the two revised forms and to integrate them into existing case management systems, but these costs may be offset by improved court operations if parties need less assistance from clerks or self-help centers.

### Attachments and Links

1. Cal. Rules of Court, rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790, at pages 12–22
2. Forms FL-210 and FL-240, at pages 23–25
3. Chart of comments, at pages 26–65
4. Assembly Bill 1403 (Stats. 2013, ch. 510), leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1403

Rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790 of the California Rules of Court would be amended, effective January 1, 2015, to read:

**Rule 5.510. Proper court; determination of child's residence; exclusive jurisdiction**

**(a)–(b)** * * *

**(c) Exclusive jurisdiction (§§ 304, 316.2, 726.4)**

(1) Once a petition has been filed under section 300, the juvenile court has exclusive jurisdiction of the following:

(A) * * *

(B) All issues and actions regarding ~~paternity~~ <u>the parentage</u> of the child under rule 5.635 and Family Code section 7630~~ or 7631~~.

(2) Once a petition has been filed under section 601 or 602, the juvenile court has exclusive jurisdiction to hear an action filed under Family Code section 7630 ~~or 7631~~.

**Rule 5.635. Parentage**

**(a) Authority to declare; duty to inquire (§ 316.2, 726.4)**

The juvenile court has a duty to inquire about and~~, if not otherwise determined,~~ to attempt to determine the parentage of each child who is the subject of a petition filed under section 300, 601, or 602. The court may establish and enter a judgment of parentage~~.~~ <u>under the Uniform Parentage Act. (Fam. Code, § 7600 et seq.)</u> Once a petition has been filed to declare a child a dependent or ward, and until the petition is dismissed or dependency or wardship is terminated, the juvenile court with jurisdiction over the action has exclusive jurisdiction to hear an action filed under Family Code section 7630~~ or 7631~~.

**(b) Parentage inquiry (§§ 316.2, 726.4)**

At the initial hearing on a petition filed under section 300 <u>or at the dispositional hearing on a petition filed under section</u>~~,~~ 601~~,~~ or 602, and at hearings thereafter until or unless parentage has been established, the court must inquire of the child's parents present at the hearing and of any other appropriate person present as to the identity and address of any and all presumed or alleged parents of the child. Questions, at the discretion of the court, may include the following and others that may provide information regarding parentage:

(1)–(8) * * *

**(c) Voluntary declaration**

If a voluntary declaration as described in Family Code section 7570 et seq. has been executed and filed with the California Department of ~~Social~~ Child Support Services, the declaration establishes the paternity of a child and has the same force and effect as a judgment of paternity by a court. A man is presumed to be the father of the child under Family Code section 7611 if the voluntary declaration has been properly executed and filed.

**(d) Issue raised; inquiry**

If, at any proceeding regarding the child, the issue of parentage is addressed by the court:

(1) * * *

(2) The court must direct the court clerk to prepare and transmit *Parentage Inquiry—Juvenile* (form JV-500) to the local child support agency requesting an inquiry regarding whether ~~or not~~ parentage has been established through any superior court order or judgment or through the execution and filing of a voluntary declaration under the Family Code;

(3) The office of child support enforcement must prepare and return the completed *Parentage Inquiry—Juvenile* (form JV-500) within 25 judicial days, with certified copies of any such order or judgment or proof of the filing of any voluntary declaration attached; and

(4) * * *

**(e) No prior determination**

* * *

(1) ~~The~~ Any alleged father and his counsel must complete and submit *Statement Regarding ~~Paternity~~ Parentage (Juvenile ~~Dependency~~)* (form JV-505). Form JV-505 must be made available in the courtroom.

(2) * * *

(3) The court may make its determination of parentage or nonparentage based on the testimony, declarations, or statements of the alleged parents. The court

must advise any alleged parent ~~indicating a wish to be declared the parent of the child~~ that if parentage is ~~declared~~ determined, the ~~declared~~ parent will have responsibility for the financial support of the child, and, if the child receives welfare benefits, the ~~declared~~ parent may be subject to an action to obtain support payments.

**(f) Notice to office of child support enforcement**

If the court establishes parentage of the child, the court must sign ~~and then direct the clerk to transmit~~ *Parentage~~—~~—Finding and Judgment (Juvenile)* (form JV-501) and direct the clerk to transmit the signed form to the local child support agency.

**(g) Dependency and delinquency; notice to alleged parents**

If, after inquiry by the court or through other information obtained by the county welfare department or probation department, one or more persons are identified as alleged parents of a child for whom a petition under section 300, 601, or 602 has been filed, the clerk must provide to each named alleged parent, at the last known address, by certified mail, return receipt requested, a copy of the petition, notice of the next scheduled hearing, and *Statement Regarding Parentage— (Juvenile)* (form JV-505) unless:

(1)–(2) * * *

(3) The alleged parent has previously filed a form JV-505 denying parentage and waiving further notice; or

(4) The alleged parent has relinquished custody of the child to the county welfare department.

**(h)** * * *

**Rule 5.650. Appointed Educational Rights Holder**

**(a)–(h)** * * *

**(i) Education and training of educational rights holder**

If the educational rights holder, including a ~~biological or adoptive~~ parent or guardian, asks for assistance in obtaining education and training in the laws incorporated in rule 5.651(a), the court must direct the clerk, social worker, or probation officer to inform the educational rights holder of all available resources,

including resources available through the California Department of Education, the California Department of Developmental Services, the local educational agency, and the local regional center.

### Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)

**(a)** * * *

**(b)** **~~Paternity~~ Parentage inquiry**

The court must also inquire of the child's mother and of any other appropriate person present as to the identity and address of any and all presumed or alleged parents ~~and alleged fathers~~ of the child. Questions, at the discretion of the court, may include:

(1) Has there been a judgment of ~~paternity~~ parentage?

(2) * * *

(3) Was the mother cohabiting ~~with a man~~ at the time of conception?

(4) * * *

(5) Has ~~a man~~ anyone formally or informally acknowledged ~~paternity~~ parentage, including through the execution of a voluntary declaration ~~of paternity~~ under Family Code section 7571?

(6) Have ~~paternity~~ tests to determine biological parentage been administered and, if so, what were the results?

**(c)** * * *

### Rule 5.695. Findings and orders of the court—disposition

**(a)** **Orders of the court (§§ 245.5, 358, 360, 361, 361.2, 390)**

At the disposition hearing, the court may:

(1)–(6) * * *

(7) Declare dependency, remove physical custody from the parent or guardian, and

(A) After stating on the record or in writing the factual basis for the order, order custody to ~~the~~ a noncustodial parent, terminate jurisdiction, and direct that *Custody Order—Juvenile—Final Judgment* (form JV-200) be prepared and filed under rule 5.700;

(B) After stating on the record or in writing the factual basis for the order, order custody to ~~the~~ a noncustodial parent with services to one or both parents; or

(C) * * *

**(b)–(e)** * * *

**(f) Family-finding determination (§ 309)**

(1) If the child is removed, the court must consider and determine whether the social worker has exercised due diligence in conducting the required investigation to identify, locate, and notify the child's relatives. The court may consider the activities listed in (g) as examples of due diligence. The court must document its determination by making a finding on the record.

If the dispositional hearing is continued, the court may set a hearing to be held 30 days from the date of removal or as soon as possible thereafter to consider and determine whether the social worker has exercised due diligence in conducting the required investigation to identify, locate, and notify the child's relatives.

(2) * * *

**(g) Due diligence (§ 309)**

When making the ~~inquiry~~ determination required in (f), the court may consider, among other examples of due diligence, whether the social worker has done any of the following:

(1)–(7) * * *

**(h) Provision of reunification services (§ 361.5)**

(1) Except as provided in (6), if a child is removed from the custody of a parent or legal guardian, the court must order the county welfare department to provide reunification services to the child and the child's mother and statutorily presumed ~~father~~ parent, or the child's legal guardian, to facilitate reunification of the family. [* * *]

(2)–(5) * * *

(6) Reunification services must not be provided when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or if the court has appointed a guardian under section 360. Reunification services need not be provided to a ~~mother, statutorily presumed father,~~ parent or guardian if the court finds, by clear and convincing evidence, any of the following:

(A)–(O) * * *

(7)–(12) * * *

(13) If the ~~mother, statutorily presumed father~~ parent~~,~~ or guardian is institutionalized, incarcerated, or detained by the United States Department of Homeland Security, or has been deported to his or her country of origin, the court must order reunification services unless it finds by clear and convincing evidence that the services would be detrimental to the child, with consideration of the factors in section 361.5(e). [* * *]

(14) * * *

(15) A judgment, order, or decree setting a hearing under section 366.26 is not an immediately appealable order. Review may be sought only by filing *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other petition for extraordinary writ. If a party wishes to preserve any right to review on appeal of the findings and orders made under this rule, the party must seek an extraordinary writ under rules 8.450~~,~~ and 8.452~~, and 5.600~~.

(16)–(17) * * *

(18) Failure to file a petition for extraordinary writ review within the period specified by rules 8.450~~,~~ and 8.452, ~~and 5.600~~ to substantively address the issues challenged, or to support the challenge by an adequate record~~,~~ precludes subsequent review on appeal of the findings and orders made under this rule.

(19) * * *

**(i) Information regarding termination of parent-child relationship (§§ 361, 361.5)**

If a child is removed from the physical custody of the parent or guardian under either section 361 or 361.5, the court must:

(1) * * *

(2) Notify the parents that their parental rights may be terminated if custody is not returned within 6 months of the dispositional hearing or within 12 months of the date the child ~~is determined to have~~ entered foster care, whichever time limit is applicable.

**(j)–(*l*)** * * *

**Rule 5.708. General review hearing requirements**

**(a)–(m)** * * *

**(n) Requirements on setting a section 366.26 hearing (§§ 366.21, 366.22, 366.25)**

* * *

(1)–(4) * * *

(5) * * *

(A) * * *

(B) The court must order that notice of the hearing under section 366.26 not be provided to any of the following:

~~(i) A parent, presumed parent, or alleged~~ Any parent—whether natural, presumed, biological, or alleged—who has relinquished the child for adoption and whose relinquishment has been accepted and filed with notice under Family Code section 8700; or

(ii) * * *

**Rule 5.710 Six-month review hearing**

**(a)–(b)** * * *

**(c) Setting a section 366.26 hearing (§§ 366.21, 366.215)**

(1) * * *

(A)–(C) * * *

(D) * * *

(i) * * *

(ii) The court, in determining whether court-ordered services may be extended to the 12-month point, must take into account any particular barriers to a parent's or guardian's ability to maintain contact with his or her child due to the parent's or guardian's incarceration, institutionalization, detention by the United States Department of Homeland Security, or deportation. The court may also consider, among other factors, whether the incarcerated, institutionalized, detained, or deported parent or guardian has made good faith efforts to maintain contact with the child and whether there are any other barriers to the parent's or guardian's access to services.

**Rule 5.720. Eighteen-month permanency review hearing**

**(a)** * * *

**(b) Determinations and conduct of hearing (§§ 361.5, 366.22)**

* * *

(1)–(2) * * *

(3) * * *

(A) [* * *] To extend services to the 24-month point, the court must also find by clear and convincing evidence that additional reunification services are in the best interest of the child and that the parent or legal

guardian is making significant and consistent progress in a substance abuse treatment program, or a parent or legal guardian has ~~is~~ recently been discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security~~,~~ and is making significant and consistent progress in establishing a safe home for the child's return. [* * *]

(B)–(C) * * *

(4) * * *

**Rule 5.725. Selection of permanent plan (§§ 366.26, 727.31)**

**(a)–(c)** * * *

**(d) Conduct of hearing**

* * *

(1)–(3) * * *

(4) The party claiming that termination of parental rights would be detrimental to the child ~~must have~~ has the burden of proving the detriment.

(5)–(10) * * *

**(e) Procedures—adoption**

(1)–(2) * * *

(3) If the court declares the child free from custody and control of the parents, the court must at the same time order the child referred to a licensed county adoption agency for adoptive placement. A petition for adoption of the child may be filed and heard in the juvenile court but may not be granted until the appellate rights of ~~the natural~~ all parents have been exhausted.

(4) * * *

**(f)** * * *

**(g) Purpose of termination of parental rights**

The purpose of termination of parental rights is to free the ~~dependent~~ child for adoption. Therefore, the court must not terminate the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state, or the other parent has relinquished custody of the child to the county welfare department. The rights of all parents—whether natural, presumed, biological, alleged, or unknown—~~the mother, any presumed father, any alleged father, and any unknown father or fathers~~ must be terminated in order to free the child for adoption.

**(h)** * * *

**Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3)**

**(a) Review hearings—adoption and guardianship**

* * *

(1) At the review hearing, the court must consider the report of the petitioner~~, as~~ required by section 366.3(~~f~~g), the report of any CASA volunteer, the case plan submitted for this hearing, and any report submitted by the child's caregiver under section 366.21(d); inquire about the progress being made to provide a permanent home for the child; consider the safety of the child; and enter findings as required by section 366.3(e).

(2)–(4) * * *

**(b)–(c)** * * *

**Rule 5.790. Orders of the court**

**(a)–(e)** * * *

**(f) Family-finding determination (§ 628(d))**

(1) If the child is detained or at risk of entering foster care, the court must consider and determine whether the probation officer has exercised due diligence in conducting the required investigation to identify, locate, and notify the child's relatives. The court may consider the activities listed in (g) as examples of due diligence. The court must document its determination by making a finding on the record.

If the dispositional hearing is continued, the court may set a hearing to be held 30 days from the date of detention or as soon as possible thereafter to consider and determine whether the probation officer has exercised due diligence in conducting the required investigation to identify, locate, and notify the child's relatives.

(2) * * *

**(g) Due diligence**

When making the ~~inquiry~~ determination required ~~under~~ in (f), the court may consider, among other examples of due diligence, whether the probation officer has done any of the following:

(1)–(7) * * *

**(h)–(j)** * * *

# SUMMONS
## (Parentage—Custody and Support)

## CITACIÓN (Paternidad—Custodia y Manutención)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

DRAFT

NOT APPROVED BY THE JUDICIAL COUNCIL

**NOTICE TO RESPONDENT *(Name):***

***AVISO AL DEMANDADO (Nombre):***

**You have been sued. Read the information below and on the next page.**
***Lo han demandado. Lea la información a continuación y en la página siguiente.***

**Petitioner's name:**

***El nombre del demandante:***

CASE NUMBER: *(Número de caso)*

| | |
|---|---|
| You have **30 calendar days** after this *Summons* and *Petition* are served on you to file a *Response* (form FL-220 or FL-270) at the court and have a copy served on the petitioner. A letter, phone call, or court appearance will not protect you. | *Tiene* ***30 dias de calendario*** *después de habir recibido la entrega legal de esta* Citación *y* Petición *para presentar una* Respuesta *(formulario FL-220 o FL-270) ante la corte y efectuar la entrega legal de una copia al demandante. Una carta o llamada telefónica o una audiencia de la corte no basta para protegerlo.* |
| If you do not file your *Response* on time, the court may make orders affecting your right to custody of your children. You may also be ordered to pay child support and attorney fees and costs. If you cannot pay the filing fee, ask the clerk for a fee waiver form. | *Si no presenta su* Respuesta *a tiempo, la corte puede dar órdenes que afecten la custodia de sus hijos. La corte también le puede ordenar que pague manutención de los hijos, y honorarios y costos legales. Si no puede pagar la cuota de presentación, pida al secretario un formulario de exención de cuotas.* |
| For legal advice, contact a lawyer immediately. Get help finding a lawyer at the California Courts Online Self-Help Center *(www.courts.ca.gov/selfhelp),* at the California Legal Services website *(www.lawhelpca.org),* or by contacting your local bar association. | *Para asesoramiento legal, póngase en contacto de inmediato con un abogado. Puede obtener información para encontrar un abogado en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en el sitio web de los Servicios Legales de California (www.lawhelpca.org), o poniéndose en contacto con el colegio de abogados de su condado.* |
| **NOTICE:** ***The restraining order on page 2*** *remains in effect against each parent until the petition is dismissed, a judgment is entered, or the court makes further orders. This order is enforceable anywhere in California by any law enforcement officer who has received or seen a copy of it.* | **AVISO:** ***La órden de protección que aparecen en la pagina 2*** *continuará en vigencia en cuanto a cada parte hasta que se emita un fallo final, se despida la petición o la corte dé otras órdenes. Cualquier agencia del orden público que haya recibido o visto una copia de estas orden puede hacerla acatar en cualquier lugar de California.* |
| **FEE WAIVER:** If you cannot pay the filing fee, ask the clerk for a fee waiver form**.** The court may order you to pay back all or part of the fees and costs that the court waived for you or the other party. | ***EXENCIÓN DE CUOTAS:*** *Si no puede pagar la cuota de presentación, pida al secretario un formulario de exención de cuotas. La corte puede ordenar que usted pague, ya sea en parte o por completo, las cuotas y costos de la corte previamente exentos a petición de usted o de la otra parte.* |

[SEAL]

1. The name and address of the court are: *(El nombre y dirección de la corte son:)*

2. The name, address, and telephone number of petitioner's attorney, or petitioner without an attorney, are: *(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante si no tiene abogado, son:)*

*Date (Fecha):* ______________ Clerk, by *(Secretario, por)* ______________ , Deputy *(Asistente)*



Form Adopted for Mandatory Use
Judicial Council of California
FL-210 [Rev. January 1, 2015]

**SUMMONS**
**(Parentage—Custody and Support)**

Family Code, §§ 232, 233, 7700;
Cal. Rules of Court, rule 5.50
*www.courts.ca.gov*

## STANDARD RESTRAINING ORDER—SUMMONS
**(Parentage—Custody and Support)**

## *ORDEN DE RESTRICCIÓN ESTÁNDAR*
***(Paternidad—Custodia y Manutención)***

**Starting immediately, you and every other party are restrained from removing from the state, or applying for a passport for, the minor child or children for whom this action seeks to establish a parent-child relationship or a custody order without the prior written consent of every other party or an order of the court.**

This restraining order takes effect against the petitioner when he or she files the petition and against the respondent when he or she is personally served with the *Summons* and *Petition* OR when he or she waives and accepts service.

This restraining order remains in effect until the judgment is entered, the petition is dismissed, or the court makes other orders.

This order is enforceable anywhere in California by any law enforcement officer who has received or seen a copy of it.

***En forma inmediata, usted y cada otra parte tienen prohibido llevarse del estado a los hijos menores para quienes esta acción judicial procura establecer una relación entre hijos y padres o una orden de custodia, ni pueden solicitar un pasaporte para los mismos, sin el consentimiento previo por escrito de cada otra parte o sin una orden de la corte.***

*Esta orden de restricción entrará en vigencia para el demandante una vez presentada la petición, y para el demandado una vez que éste reciba la notificación personal de la* Citación *y* Petición*, o una vez que renuncie su derecho a recibir dicha notificación y se dé por notificado.*

*Esta orden de restricción continuará en vigencia hasta que se emita un fallo final, se despida la petición o la corte dé otras órdenes.*

*Cualquier agencia del orden público que haya recibido o visto una copia de esta orden puede hacerla acatar en cualquier lugar de California.*

**NOTICE—ACCESS TO AFFORDABLE HEALTH INSURANCE** Do you or someone in your household need affordable health insurance? If so, you should apply for Covered California. Covered California can help reduce the cost you pay toward high-quality, affordable health care. For more information, visit *www.coveredca.com.* Or call Covered California at 1-800-300-1506.

***AVISO—ACCESO A SEGURA DE SALUD MÁS ECONOMICO*** *Necessita seguro de salud a un costo asequible, ya sea para usted o alguien en su hogar? Si es asi, puede presentar una solicitud con Covered California. Covered California lo puede ayudar a reducir al costo que paga por seguro de salud asequible y de alta calidad. Para obtener más información, visite www.coveredca.com. O llame a Covered California al 1-800-300-0213.*

| ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* | FOR COURT USE ONLY |
|---|---|
| TELEPHONE NO.: FAX NO. : | **DRAFT** |
| E-MAIL ADDRESS: | |
| ATTORNEY FOR (*Name*): | **NOT APPROVED BY THE JUDICIAL COUNCIL** |
| **SUPERIOR COURT OF CALIFORNIA, COUNTY OF** | |
| STREET ADDRESS: | |
| MAILING ADDRESS: | |
| CITY AND ZIP CODE: | |
| BRANCH NAME: | |
| PETITIONER: | |
| RESPONDENT: | |
| OTHER PARENT/PARTY: | |
| **STIPULATION FOR ENTRY OF JUDGMENT RE: ESTABLISHMENT OF PARENTAL RELATIONSHIP** | CASE NUMBER: |

**THE PARTIES STIPULATE THAT**

1. ☐ The parties have read and understand the *Advisement and Waiver of Rights Re: Establishment of Parental Relationship* (form FL-235), which is submitted with this *Stipulation for Entry of Judgment.* The parties give up those rights and freely agree that a judgment may be entered in accordance with this stipulation.
2. Name: ☐ Mother ☐ Father
   Name: ☐ Mother ☐ Father

   are the parents of the following children:

   Name          Date of Birth

3. ☐ Child custody and visitation shall be ordered as set forth in the proposed *Judgment (Uniform Parentage)* (form FL-250).
4. ☐ Child support shall be ordered as set forth in the proposed *Judgment (Uniform Parentage)* (form FL-250).
5. ☐ Attorney fees shall be ordered as set forth in the proposed *Judgment (Uniform Parentage)* (form FL-250).
6. ☐ Names of the children shall be changed as set forth in the proposed *Judgment (Uniform Parentage)* (form FL-250).
7. ☐ Reasonable costs of pregnancy and birth shall be paid as ordered in the proposed *Judgment (Uniform Parentage)* (form FL-250).
8. ☐ Other orders shall be as set forth in the proposed *Judgment (Uniform Parentage)* (form FL-250).
9. ☐ The parties further agree that the court make the following orders:

   ☐ See attachment 9.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PETITIONER)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF RESPONDENT)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ATTORNEY FOR PETITIONER)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ATTORNEY FOR RESPONDENT)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF OTHER PARTY OR ATTORNEY)



Form Adopted for Mandatory Use
Judicial Council of California
FL-240 [Rev. January 1, 2015]

**STIPULATION FOR ENTRY OF JUDGMENT RE: ESTABLISHMENT OF PARENTAL RELATIONSHIP (Parentage)**

Family Code, § 7600 et seq.
*www.courts.ca.gov*

## SPR14-11

**Family and Juvenile Law: Parentage** (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| 1. | California CASA Association<br>by Phil Ladew,<br>Associate and Legal Director<br>Oakland | AM | **1. Cal Rule of Court 5.725(g) – last sentence.**<br>"The rights of the mother, any presumed ~~father~~ *parent*, any alleged father, and any unknown father or fathers must be terminated in order to free the child for adoption."<br><br>The proposed amendment does not take into account the gender-neutral parentage intended by law. For example, under current law, a child can have no mother and two fathers. Thus, to list mother and change father to parent does not fit.<br><br>Family Code 7601(b) states that the "parent and child relationship" is a term that "includes the mother and child relationship and the father and child relationship. The law does not exclude others, and there are more than mothers and fathers.<br><br>**Suggestion**: Change the last sentence to read: "The rights of *any parent, including any mother or father, whether biological, presumed, alleged, or unknown,* must be terminated in order to free the child for adoption."<br><br>**2. Form FL-240**<br>See Number 2 on the form – it forces a choice of Mother or Father. That language is gender specific, and perhaps does not take into account issues such as undefined gender, gender that is in transition, or transgender, etc. issues. Perhaps it is outdated to think that "mother and | The committee agrees that the circulated language was too narrow and has incorporated broader language consistent with the suggestion into its recommendation.<br><br>The committee does not recommend making the suggested change. AB 1403 does not eliminate gender-based categories or recognize genders other than male or female. It simply recognizes, as case law had already done, that contemporary families are not necessarily composed of the |

| | Commentator | Position | Comment | Committee Response |
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| | | | father" are the only labels that can fit a parent.<br><br>**Suggestion**: There is no reason to ask whether someone classifies themselves as mother or father. Just have them fill in N*ame* and *Relationship to Child* columns that correspond with *Name* and *Date of Birth* for the children category. That way the individual can assign themselves to their relationship. | combination of genders that the statutes presumed before amendment. If it appears that the categories "mother" and "father" are insufficient to meet the ongoing needs of courts and litigants, the committee may consider further amendments, consistent with law, in a future rulemaking cycle. |
| | | | **3. Form FL-240**<br>See Number 2 on the form – why limit the list to three parents, but leave it blank for multiple children? Doesn't this imply that three parents are the limit? What if there are 4 parents? – then the form is unfillable, and a family might feel that the court process does not include them.<br><br>The complexity of familial structure is that there will be occasions where there will be more than one, two, or three parents. It is fundamental to government service that those families that do not fit into the "box" feel as though they have just as much access as others. The code does not prescribe a maximum number of parents; for example, the code states, "This part does not preclude a finding that a child has a parent and child relationship with more than two parents." Fam Code 7601(c). Also, "a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child." Fam Code 7612(c) | The committee agrees that providing three lines for parents' names could be misleading. Consistent with the Legislature's intent that a court find that more than two persons are a child's parents only in rare cases, the committee has chosen to retain two lines for parents' names. If it is necessary, in those rare cases contemplated by the Legislature, to identify more than two parents, the party completing the form may list additional names on an attachment. |

| | Commentator | Position | Comment | Committee Response |
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| | | | **Suggestion**: Do not limit the list to three, but perhaps leave a blank space as it is with the children heading, (i.e. the section under …are the parents of the following children:). Just have them fill in N*ame* and *Relationship to Child* columns that correspond with *Name* and *Date of Birth* for the children category. | |
| 2. | California Court of Appeal, Second Appellate District<br>Los Angeles | A | **Comment**<br>This appears to be a timely change which we support and with which we should be familiar. | No response required. |
| 3. | Stacy Larson<br>Family Law Facilitator<br>Superior Court of Shasta County | AM | § CRC 5.510(c)(1)(B): I agree that the proposed revision is needed.<br><br>§ CRC 5.635(a), first sentence: The proposed rewording of the first sentence is cumbersome and unnecessary. The existing CRC reads, "The juvenile court has a duty to inquire about and, if not otherwise determined, to attempt to determine . . ." The proposed revision is as follows: "The juvenile court has a duty to inquire about and, if it has not otherwise been determined, to attempt to determine. . ." Although the proposed revision is consistent with the meaning of the statute, it adds unnecessary verbiage and does not enhance its meaning.<br><br>§ CRC 5.635(a), second sentence "under the Uniform Parentage Act.": I agree that the proposed revision is needed.<br><br>§ CRC 5.635(a), last sentence: I agree that the | No response required.<br><br>The committee agrees that the proposed amendment did not adequately address the lack of clarity in the rule. The committee recommends a different amendment that it hopes will promote both clarity and economy.<br><br>No response required.<br><br>No response required. |

| | Commentator | Position | Comment | Committee Response |
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| | | | proposed revision is needed. | |
| | | | § CRC 5.635(c), "If a voluntary declaration as described in Family Code section 7570 et seq. has been executed and filed with the California Department of Child Support Services,": I agree that the proposed revision is needed. | No response required. |
| | | | § CRC 5.635(c), "the declaration establishes the ~~paternity~~ parentage of a child and has the same force and effect as a judgment of ~~paternity~~ parentage by a court." This revision appears to be premature. Currently, Family Code §7570 falls within Chapter 3, Establishment of Paternity by Voluntary Declaration." The entire chapter concerns establishment of paternity of a child by signing of the voluntary declaration of paternity (VDOP). The legislative intent was, in large part, "knowledge of medical history" and the recognition that "knowing one's father is important to a child's development." Fam. Code §7570(a). The VDOP is to be provided "at the place of birth, to the man identified by the natural mother as the natural father . . ." Fam. Code §7571(a). The VDOP form is to be signed by the mother and the father. Fam. Code §7574(b)(1-2). It can be signed by the unmarried mother and father only if they acknowledge that he "is the only possible father." There is nothing within this statutory scheme pertaining to VDOPs that applies to parentage, in general. It is solely designed to establish paternity. The proposed revision to | The committee agrees with the suggestion and has incorporated the change into its recommendation. |

| | Commentator | Position | Comment | Committee Response |
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| | | | CRC 5.635(c) is politically correct but not legally correct. The VDOP process is not currently applicable to circumstances involving two dads or two moms, etc., and the proposed revision to CRC should not occur until the VDOP can be used to establish the broad definition of parentage rather than the more specific definition of paternity. | |
| 4. | National Center for Lesbian Rights<br>by Catherine Sakimura, Family Law Director<br>San Francisco | AM | The National Center of Lesbian Rights (NCLR) thanks the Committee for its prompt action to make necessary alterations to Family Law Judicial Council forms to implement AB 1403, which codified case law requiring that the Uniform Parentage Act be applied gender neutrally and recognizing non-biological parents. We are grateful for the thoughtful consideration this Committee has given to the needs of mothers and non-biological parents who are accessing the Family Courts.<br><br>NCLR is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. We are based in California and have litigated numerous cases involving the rights of same-sex couples in California. NCLR submits the following comments for consideration by the Committee on the changes related to AB 1403, as well as changes related to SB 274, which changed California's parentage code to allow courts to recognize that a child may have more | No response required.<br><br>No response required. |

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | than two parents in limited circumstances.<br><br>NCLR strongly supports and appreciates the changes to California court rules and forms made by the proposed amendments to eliminate unnecessary use of gendered parentage terms in mandatory forms and rules. In particular, we strongly support the change to FL-240 to allow each parent to select mother or father, rather than listing one line for mother and one line for father. This change allows same-sex parents to use these forms without confusion or stigma.<br><br>We have two specific concerns with the amendments, explained below.<br><br>**1) Clarify that Rule 5.635(c) only applies to voluntary declarations of *paternity*, and delete the inaccurate description of the effect of a voluntary declaration of paternity in Rule 5.635(c)**<br><br>First, AB 1403 retained gendered terminology for voluntary declarations of paternity because California law only recognizes voluntary declarations of paternity, not voluntary declarations of maternity. (See Fam. Code, § 7570, *et seq*.) Changing the phrase “establishes the paternity of the child” in Rule 5.635, subdivision (c) to “establishes the parentage of the child” may create confusion as to the application of this law to women. Therefore, we recommend instead using the phrase “parentage | <br><br>No response required.<br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br>The committee agrees that using the term “parentage” in this context might promote confusion and has withdrawn this amendment from its recommendation. |

## SPR14-11

**Family and Juvenile Law: Parentage** (amend rules 5.510, 5.635, 5.650, 5.668, 5.695, 5.708, 5.710, 5.720, 5.725, 5.740, and 5.790; revise Judicial Council forms FL-210 and FL-240)

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | of the man who signed the voluntary declaration of paternity," or changing the title of the section to "Voluntary Declaration of Paternity."<br><br>Second, the last sentence of Rule 5.635, subdivision (c) inaccurately describes the effect of a voluntary declaration of paternity, stating that a man who has properly executed and filed a voluntary declaration of paternity is presumed to be a father under Family Code section 7611. The proposed amendments also add that this presumption may be rebutted under section 7612. A voluntary declaration of paternity does not create a presumption of paternity; rather, a valid and properly executed and filed declaration is treated as the equivalent of a court determination of parentage. (Fam. Code, § 7573 ["a completed voluntary declaration of paternity . . . shall establish the paternity of a child and shall have the same force and effect as a judgment for paternity issued by a court of competent jurisdiction"].) A voluntary declaration of paternity cannot be rebutted under Family Code section 7612; it may only be rescinded or set aside under Family Code sections 7575–7577 and 7612. We recommend that the Committee delete this last sentence of Rule 5.635, subdivision (c). | <br><br><br><br>The committee recommends retaining the last sentence of current rule 5.635(c) without amendment. The legal effect of a voluntary declaration of paternity (VDOP), both on a presumption of parentage under the Uniform Parentage Act and presumed parent status in juvenile court proceedings, appears to be in a state of flux. A narrow reading of its effect could extinguish a legitimate parental interest. A broad reading could result in the establishment of a parent-child relationship where none exists. Indeed, the Supreme Court voted unanimously in February to review *In re Brianna M.* (2013) 220 Cal.App.4th 1025, which held that the references in sections 7611–7612 of the Family Code to the effect of a VDOP do not apply to dependency proceedings and that a properly executed and filed VDOP does not, therefore, entitle a man to presumed father status in a dependency proceeding. (See *In re Brianna M.* (2014) 317 P.2d 1182, granting review and superseding the appellate opinion.). Unfortunately, the Court was required to dismiss the case without decision after appellant defaulted. Given the ongoing uncertainty and the likelihood that the Legislature or the Supreme Court will act to resolve it, the committee has elected to defer action on this element of the rule. |

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | **2) Remove the lines for a third parent in FL-240**<br><br>The proposed changes to FL-240, Stipulation for Entry of Judgment Re: Establishment of Parental Relationship, include an additional line for a third parent to be named, and the signature lines for parties and their counsel includes one additional line for "other required signature." We recommend against including additional lines on this form because the intent of SB 274, which allows courts to find that a child may have more than two parents in limited circumstances, was that the law would only apply in "rare" cases. (See Senate Bill No. 274 (2012-2013 Reg. Sess.), § 1, subd. (d) ["It is the intent of the Legislature that this bill will *only apply in the rare case* where a child truly has more than two parents, and a finding that a child has more than two parents is necessary to protect the child from the detriment of being separated from one of his or her parents," italics added].) We believe that including a line for a third parent will unnecessarily create confusion that the establishment of more than two parents is a typical result and an inference that parentage can be stipulated for more than two parents in a typical case. Regardless of how parentage is established, the court must find that "recognizing only two parents would be detrimental to the child," (Fam. Code, § 7612, subd. (c)), which is a standard that should rarely be met. Additionally, under the new law, there | The committee agrees that providing three lines for parents' names could be misleading. Consistent with the Legislature's intent that a court find that more than two persons are a child's parents only in rare cases, the committee has chosen to retain two lines for parents' names. If it is necessary, in those rare cases contemplated by the Legislature, to identify more than two parents, the party completing the form may list additional names on an attachment. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | is no specific limitation on the number of parents, so a child could conceivably have four parents – such as where a child is intentionally conceived and raised by a gay male couple and a lesbian couple – and such a family would still need to include an attachment to FL-240 to name all parents and provide signature lines for these parents and their counsel. We recommend that the stipulation only include lines for two parents, which may each be designated as "mother" or "father." In the rare cases where parentage for more than two parents is stipulated, parties may include the names and signatures of the additional parent(s) and counsel in an attachment. | |
| 5. | Office of the County Counsel<br>by Dawyn Harrison, Assistant County Counsel—Chief Deputy, Dependency<br>Los Angeles | AM | The Office of the Los Angeles County Counsel agrees with the proposal. Changing the Rules of Court to reflect that there may be more than two parents is appropriate given the recent changes in the law. The proposal does appropriately address its stated purpose.<br><br>However, one of the proposed changes to Rule 5.725. Selection of Permanent Plan, stated at line 40 of page 10 of the proposal, is problematic. The recommendation is to change "natural" parents to "current" parents. The reference to "current" is unclear and vague. In order to free a child for adoption, the juvenile court must terminate the rights of all persons with a parentage claim as to the child. The adoption cannot be finalized until all parents have exhausted their respective appellate rights. | No response required.<br><br>The committee agrees with the suggestion and has incorporated it, with minor alterations, into its recommendation. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | It is requested that the word "current" be changed to "all" to provide clarity. | |
| 6. | State Bar of California, Executive Committee of the Family Law Section (FLEXCOM)<br>San Francisco | AM | The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal, with modifications.<br><br>First, there appears to be a drafting oversight. The Invitation to Comment notes: "AB 1403 updated the language of the UPA to conform to the judicial recognition that the act applies neutrally to a man or a woman. In particular, the bill replaced 'presumed father' with 'presumed parent'; replaced 'mother' and 'father,' when appropriate, with 'parent'; and replaced 'paternity,' when appropriate, with 'parentage.' In some instances, for example, with respect to the voluntary declaration of paternity, the bill retained the gender-specific terms." The Invitation to Comment also notes that the following amendment is proposed: "Amend rule 5.635(c) to clarify that a man who has properly executed a voluntary declaration of paternity of a child is a presumed father of the child subject to the limits in section 7612 of the Family Code."<br><br>Rule 5.635(c) contains a proposal to change "paternity" to "parentage." This appears to be inadvertent. Changing "paternity" to "parentage" in this particular Rule of Court would create an impression of gender neutrality in an area of law that – as noted – is not gender neutral. This proposed change should therefore | No response required.<br><br>The committee agrees with the suggested change and has incorporated it into its recommendation. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | not be made in rule 5.635(c). | |
| | | | Second, FLEXCOM does not agree with the proposed addition of the following language to rule 5.635(c): "subject to rebuttal under section 7612." A properly executed voluntary declaration of paternity does not create a presumption of paternity subject to rebuttal under Family Code section 7612; rather, it establishes paternity to the same effect as a court order (i.e., it is subject to set-aside if invalid, but is not rebuttable under section 7612). Therefore, the proposed language should not be added to this rule. | The committee recommends retaining the last sentence of current rule 5.635(c) without amendment. The legal effect of a voluntary declaration of paternity (VDOP), both on a presumption of parentage under the Uniform Parentage Act and presumed parent status in juvenile court proceedings, appears to be in a state of flux. A narrow reading of its effect could extinguish a legitimate parental interest. A broad reading could result in the establishment of a parent-child relationship where none exists. Indeed, the Supreme Court voted unanimously in February to review *In re Brianna M.* (2013) 220 Cal.App.4th 1025, which held that the references in sections 7611–7612 of the Family Code to the effect of a VDOP do not apply to dependency proceedings and that a properly executed and filed VDOP does not, therefore, entitle a man to presumed father status in a dependency proceeding. (See *In re Brianna M.* (2014) 317 P.2d 1182, granting review and superseding the appellate opinion.). Unfortunately, the Court was required to dismiss the case without decision after appellant defaulted. Given the ongoing uncertainty and the likelihood that the Legislature or the Supreme Court will act to resolve it, the committee has elected to defer action on this element of the rule. |
| | | | Finally, this proposal would change the "Stipulation for Entry of Judgment re: | The committee agrees that providing three lines for parents' names could be misleading. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | Establishment of Parental Relationship" form to include three lines to designate a child's parents (rather than the current two) in every case where parentage is being established through the courts. This would be a mandatory form.<br><br>To add a third "parent" line to the mandatory form raises the question of whether each and every child whose parentage is being established in court may have more than two parents. This was not the intent of SB 274, which included the following language:<br><br>"The Legislature finds and declares all of the following:<br>(a) Most children have two parents, but in rare cases, children have more than two people who are that child's parent in every way.…<br>(d) It is the intent of the Legislature that this bill will only apply in the rare case where a child truly has more than two parents, and a finding that a child has more than two parents is necessary to protect the child from the detriment of being separated from one of his or her parents." | Consistent with the Legislature's intent that a court find that more than two persons are a child's parents only in rare cases, the committee has chosen to retain two lines for parents' names. If it is necessary, in those rare cases contemplated by the Legislature, to identify more than two parents, the party completing the form may list additional names on an attachment. |
| 7. | Superior Court of Los Angeles County | AM | No direct cost savings to court.<br><br>Training for staff will be required. JA training will be required. At this time no modification of CMS in Juvenile dependency. At this time a minimal change to CMS in Juvenile delinquency. | No response required.<br><br>No response required. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | Sufficient time for implementation would be more than the two months from Judicial Council approval of this proposal until its effective date. | The committee intends the recommended rule amendments and form revisions to conform to AB 1403, which, in turn, codified case law dating from 2005. Although the committee regrets the short time available to implement the changes, it hopes that the amount of time will not prove to be an insurmountable obstacle to implementation. The committee does not recommend extending the time to comply with the amendments and revisions. |
| | | | [P]roposed modifications: | |
| | | | **Rule 5.510. Proper court; determination of child's residence; exclusive jurisdiction**<br>**Agree** with proposed changes. | No response required. |
| | | | **Rule 5.635. Parentage**<br>**Agree** with proposed changes. | No response required. |
| | | | **Rule 5.668. Commencement of hearing – explanation of proceedings**<br>**Agree** with proposed changes. | No response required. |
| | | | **Rule 5.695. Findings and orders of the court – disposition**<br>**Agree** with proposed changes. | No response required. |
| | | | **Rule 5.725. Selection of permanent plan**<br>**Agree** with proposed changes. | No response required. |
| | | | **JUDICIAL COUNCIL FORMS** | |
| | | | **FL-210. Summons**<br>We have concerns about whether the Summons | The committee agrees to add the advisement |

| | Commentator | Position | Comment | Committee Response |
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| | | | should include ADVISEMENT about the Affordable Care Act (ACA). | regarding the ACA to form FL-210 so that this form is consistent with *Summons (Family Law)* (form FL-110). |
| | | | We have concerns about whether each Respondent/Co-Respondent receives a separate Summons OR whether to provide spacing to include all Respondents on the same Summons. | The committee does not recommend revising the form to add an option for multiple respondents. The current form is consistent with sections 412.10–412.20 of the Code of Civil Procedure, which apply to family law proceedings under section 210 of the Family Code and rule 5.50(a). These sections are intended to permit a plaintiff to secure the issuance of either a single summons for all defendants or a separate summons for one or more defendants. (See Judicial Council Comment to Code Civ. Proc. § 412.10.) This intent is consistent with section 10 of the Family Code and section 17 or the Code of Civil Procedure, which provide that words used in the singular include the plural. This form is also consistent with the format used in *Summons* (form SUM-100), which uses the singular "defendant." |
| | | | **FL-240. Stipulation for Entry of Judgment re: Establishment of Parental Relationship**<br><br>The following suggestions are being made to this form:<br><br>**Captions:**<br>Please remove the word "PLAINTIFF" | The committee agrees with the suggested change and has incorporated it into its recommendation. |
| | | | Please remove the word "DEFENDANT" | The committee agrees with the suggested change |

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| | | | | and has incorporated it into its recommendation. |
| | | | Please change "RESPONDENT" to "RESPONDENTS" | The committee does not recommend making the suggested change. See response to comment re: form FL-210, above. |
| | | | Stipulation: Section 9: Should there be language to disestablish paternity in the Stipulation for Entry of Judgment Re Establishment of Parental Relationship and Judgment of Paternity forms? If so, then we propose the following language to be included in Section 9 of FL 240:<br><br>"The Court finds Petitioner Respondent Other Party (name): is/are disestablished as a parent of the minor child listed in the Petition." | The committee does not recommend adding language to permit disestablishment of paternity using this form. The suggestion is beyond the scope of the current proposal. If the committee learns of a need to add language similar to that suggested, it may consider such a revision in a future rulemaking cycle. |
| | | | Signature Lines**:**<br>Please remove the word "PLAINTIFF" | The committee agrees with the suggested change and has incorporated it into its recommendation. |
| | | | Please remove the word "DEFENDANT" | The committee agrees with the suggested change and has incorporated it into its recommendation. |
| | | | Please add a line for Attorney for Other Parent as follows:<br>"Date: ___________ ___________________<br><br>Print Name Attorney for Other" | In light of the Legislature's intent that a court find that a child has more than two parents only in rare cases, the committee does not recommend making the suggested change at this time. |
| | | | **OTHER JUDICIAL COUNCIL FORMS TO** | The suggested changes to other forms, while |

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| | | | **CONFORM TO NEW RULES**<br>1) **FL-105. We suggest no changes to the form at this time.**<br><br>2) **FL-150.** Captions: Please remove Plaintiff and Defendant from all captions.<br>Section 4: Other Party's Income: We suggest providing adequate space to describe the estimate gross monthly income (before taxes) of the other party to include both Respondent and Other Parent in this case.<br>Section 16 b: Number of Children: We suggest providing adequate space to describe the percentage of time each parent (if minor children have more than two parents) spends with the minor children.<br><br>3) **FL-155.** Captions: Please remove Plaintiff and Defendant from captions.<br>Section 10: Other Party's Income: We suggest providing adequate space to describe the estimate gross monthly income (before taxes) of the other party to include both Respondent and Other Parent in this case.<br><br>4) **FL-158.** Captions: Please remove Plaintiff and Defendant from captions.<br><br>5) **FL-195. We suggest no changes to the form at this time.**<br><br>6) **FL-191.** Captions: We suggest **removing** the words "Plaintiff and "Defendant" from the | worthy of consideration, are beyond the scope of the current proposal. The committee does not recommend making them in this context. Some of the suggested changes have already been made. Others are the subject of other pending rules and forms proposals. To the extent that suggested changes respond to SB 274, the committee has taken the possibility of changes in response to that bill under advisement and will, if necessary, address them in a future rulemaking cycle. If appropriate, the committee may consider the remaining suggested changes when formulating proposals for revisions in future rulemaking cycles. |

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| | | | captions page.<br>Child Support Case Registry Form: We suggest adding a box to select "Other Party in the captions area.<br>Other Party's Name: We suggest to adding Section 7 to include the same sub-sections information under Father's Name and Mother's name<br>Section 7: We suggest changing the already printed Section 7 making it Section 8. We suggest adding Other Parent to already printed sections 7a, 7b and 7c.<br><br>7) **FL-192. We suggest no changes at this time.**<br><br>8) **FL-200.** Captions: Please add an additional line for "Other Party".<br>Number 2 on the form should include not only identification of more than one mother or father but also identification of more than two children.<br>Section 3: We suggest duplicating the information in Section 3 a-c and creating Section 4. Section 4 would use the words "Other Party" instead of Respondent.<br>Renumbering Subsequent Printed Sections: If the suggestion in Section 3 herein is accepted, then all subsequent printed sections need to be renumbered accordingly.<br>Section 5c: We suggest adding another line to include "Other Party" is the child's parent" as an option. | |

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| | | | Section 5d: We suggest adding another line to include "Other Party" is child's parent who has failed to support the child" as an option.<br>Section 8 Child Custody and Visitation: We suggest adding a column to include 'Other Party" between columns for Respondent and Joint<br>Section 8c (3): Please add language so litigants may select "Other Party" should have the right to visit the children as follows:<br>Section 9: Reasonable Expenses of Pregnancy and Birth: Please add a column between Respondent and Joint that says "Other P arty"<br>Section 10: Fees and Costs of Litigation: Please add a column between Respondent and Joint that says "Other Party"<br><br>9) **FL-235.** Captions: Please add an additional line for "Other Party".<br>Section re Interpreter's Declaration: Please include a designation for more than two parents. We are suggesting the following change: "Petitioner Respondent Other Party (name):"<br><br>10) **FL-250.** Caption: Please add an additional line for "Other Party".<br>Section 2e: Please add an additional line for "Other Party".<br>Renumbering Sections 2f – 2h: If suggestion in Section 2e herein is accepted, then Section s 2f – 2h need to be renumbered accordingly in sequential order.<br>Section 2g: Please duplicate the language found | |

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| | | | in Section 2(g: 1-5) except replace Respondent with “Other Party” . The new section should be identified as Section 2h (1-5).<br>Section 2h: If the suggestion in 2g (above herein) is accepted, then 2h needs to be renumbered to 2i.<br>Section 3 needs to add an additional line for a 3rd name and identify 3rd name as Other Party.<br>Additional Section to Disestablish: Should there be language to disestablish paternity in the Stipulation and Judgment of Paternity forms? If so, then we propose the following language: “The Court finds Petitioner Respondent Other Party (name): is/are disestablished as a parent of the minor child listed in the Petition.”<br><br>11) **FL-260.** Captions: Please add “Other Party” to captions area.<br>Section 1- Jurisdiction for Bringing Action: Please add an additional line after (b) to state, “The Other party is the Mother Father of the minor children. ”<br>Section 2: The language may need to be revised to include “Other Party” for each sentence under this section. By example: the Petitioner is married to the **Respondent / Other Party**, and no action is pending in any court for dissolution, legal separation, or nullity.<br>Section 6a: Fees and Costs of Litigation: Please add the following: “Other Party” after the word respondent.<br><br>12) **FL-270.** Captions: Please add “Other Party” | |

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| | | | to captions area.<br>Section 1- Jurisdiction for brining action: Please add an additional line after (b) Respondent to state, "The other party is the Mother Father of the minor children.<br>Section 2: The language may need to be revised to include "Other Party" for each sentence under this section. By example: the Petitioner is married to the **Respondent /Other Party**, and no action is pending in any court for dissolution, legal separation, or nullity.<br>Signature Line, Page 2: Please add language to include both Respondent and Other Party. By way of example:<br>"_____________________________"<br>Respondent Other Party<br>Section 6a: Fees and Costs of Litigation: Please add the following: "Other Party." after the word respondent.<br><br>13) **FL-272.** Captions: Please remove Plaintiff and Defendant from all captions.<br><br>14) **FL-273.** Captions: Please remove Plaintiff and Defendant from all captions.<br><br>15) **FL-274. We suggest no changes at this time.**<br><br>16) **FL-276.** Captions: Please remove Plaintiff and Defendant from all captions.<br><br>17) **FL-278.** Captions: Please remove Plaintiff | |

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| | | | and Defendant from all captions.<br><br>18) **FL-280.** Captions: Please remove Plaintiff and Defendant from all captions.<br><br>19) **FL-281. We suggest no changes at this time.**<br><br>20) **FL-290.** Captions: Please remove Plaintiff and Defendant from all captions.<br><br>21) **FL-300.** Captions: Please remove Plaintiff and Defendant from all captions.<br><br>22) **FL-300I. We suggest no changes at this time.**<br><br>23) **FL-305.** Captions: Please remove Plaintiff and Defendant from all captions<br>Section 2a: We suggest adding space to include an additional box followed by the words "Other Parent". By way of example, the section should be changed as follows: "Petitioner Respondent Other Party (name): will have temporary physical custody care and control of the minor children of the parties subject to the other party's rights of visitation as follows: "<br>Section 2b: We suggest adding space to include an additional box followed by the words "Other Parent". By way of example, the section should be changed as follows: "Petitioner Respondent Other Party (name): must not remove the minor child or children of the parties…. " | |

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| | | | 24) **FL-311.** Captions: Please remove Plaintiff and Defendant from all captions.<br>Section 2e: We suggest adding a box followed by the words “Other Parent to this section. By way of example, the section should state, “Visitation for “ Petitioner Respondent Other Party (name): will be as follows:”<br><br>25) **FL-312.** Captions: Please remove Plaintiff and Defendant from all captions.<br><br>26) **FL-313. We suggest no changes at this time.**<br><br>27) **FL-314I. We suggest no changes at this time.**<br><br>28) **FL-320.** Captions: Please remove Plaintiff and Defendant from all captions.<br><br>29) **FL-330.** Captions: Please remove Plaintiff and Defendant from all captions.<br><br>30) **FL-334.** Captions: Please remove Plaintiff and Defendant from all captions.<br><br>31) **FL-335.** Captions: Please remove Plaintiff and Defendant from all captions.<br><br>32) **FL-341.** Captions: We suggest **removing** the words “Plaintiff and “Defendant” and **adding** “Other Party” to the caption page. | |

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| | | | Section 7c: We are suggesting the form to include a designation for each party. By way of example, we suggest the section to state, "Reasonable right of visitation to the party without physical custody for the Petitioner Respondent Other Party (name): **(not appropriate in cases involving domestic violence)**"<br>Section 7d: Please change to include a designation for more than two parents. We are suggesting the following:<br>"No visitation for the Petitioner Respondent Other Party (name): "<br><br>33) **FL-341(A).** Captions: We suggest the Council to **remove** the words **"Plaintiff and "Defendant"** and **add** "**Other Party** to the caption page.<br>Global Change: A global change should include the following whenever a selection is offered between Petitioner and Respondent as in Sections 1, 2, 8, and 9. We recommend the following language to be included in this section: " Petitioner Respondent Other Party (name): "<br><br>34) **FL-341(B).** Captions: We suggest adding **"Other Party**" to caption area.<br><br>35) **FL-341(C).** Captions: We suggest adding **"Other Party**" to caption area.<br>Section 1: The sentence should be changed as follows:" The following table shows the holiday | |

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| | | | parenting schedules**. Write "Pet" or "Resp" or "Other Party" to specify each parent's years- odd, even, or both…….** Section 1 Cont.: The Columns labeled "Every Year", "Even Years" and "Odd Years' should include in each column the following: "Petitioner/Respondent/Other Parent". "Other Parent's Birthday" should be included in list of Holidays in Column 1 after Father's Birthday.<br><br>36) **FL-341(D) .** Captions: We suggest adding **"Other Party**" to caption area. Section 9: Please include a designation for more than two parents. We are suggesting the following change: " Petitioner Respondent Other Party (name): "<br><br>37) **FL-341(E).** Section 9: Please include a designation for more than two parents. We are suggesting the following change: " Petitioner Respondent Other Party (name): " Section 4**:** Please include a designation for more than two parents. We are suggesting the following change: " Petitioner Respondent Other Party (name): "<br><br>38) **FL-342.** Captions: We suggest removing the words "Plaintiff and "Defendant" and **add** "**Other Party** for consistency purposes. Global Change: We suggest redacting the words "Plaintiff and Defendant" from Section 2a, Section 3b, Section 4, Section 6a, Section | |

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| | | | 6b(1)(a), Section 6b (1)(b), Section 6c (2)(a); Section 6c(2)(b), Section 6d(1)(a), Section 6d(1)(b), Section 6d(2)(a), Section 6d(2)(b), Section 7(a), Section 7(b), and Section 10.<br><br>39) **FL-342(A) .** Captions: We suggest removing the words "Plaintiff and "Defendant" and **add** "**Other Party** for consistency purposes Section 2a: We suggest adding a box and words. By way of example, please see the following: " Other Party (name): "<br>Section 2d (3): We suggest adding a box and words. By way of example please see the following: " Other Party (name): "<br><br>40) **FL-350.** Captions: We suggest removing the words "Plaintiff and "Defendant".<br>Section 1a: We suggest adding an additional line after Father's net monthly disposable income to include " Other Party (name): net monthly income."<br>Section 2: We are suggesting the following language be added: "Other Party %"<br>Section 3: We suggest adding an additional section 3c to include the following language: "A hardship is being experienced by the Other Party $ per month because……"<br>Section 8c: We are suggesting the following language be added: "Other Party %"<br>Section 11: We are suggesting the following language be added: "Other Party %"<br>Signature Lines: We suggest adding an additional line for Other Party to Date, Print and | |

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| | | | Sign (following the Line for Attorney for Respondent) to conform to FL- 355.<br>Signature Lines: We suggest adding an additional line for the Attorney for Other Party to Date, Print and Sign to conform to FL -355.<br><br>41) **FL- 355. We suggest no changes at this time.** | |
| 8. | Superior Court of Riverside County | A | No specific comment. | No response required. |
| 9. | Superior Court of San Diego County by Michael Roddy, Executive Officer | AM | **Rule 5.510. Proper court; determination of child's residence; exclusive jurisdiction**<br>…<br>**(c) Exclusive jurisdiction (§§ 304, 316.2, 726.4)**<br><br>(1) Once a petition has been filed under section 300, the juvenile court has exclusive jurisdiction of the following:<br><br>(B) All issues and actions regarding paternity the parentage of the child under rule 5.635 and Family Code section 7630 ~~or 7631~~.<br>FC § 7631 has been repealed.<br><br>(2) ~~* * *~~ Once a petition has been filed under section 601 or 602, the juvenile court has exclusive jurisdiction to hear an action filed under Family Code section 7630 ~~or 7631~~.<br>FC § 7631 has been repealed.<br><br>**Rule 5.635. Parentage**<br><br>**(c) Voluntary declaration** | The committee agrees with the suggested changes to rule 5.510(c) and has incorporated them into its recommendation.<br><br>The committee recommends retaining the last |

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| | | | If a voluntary declaration as described in Family Code section 7570 et seq. has been executed and filed with the California Department of ~~Social~~ <u>Child Support</u> Services, the declaration establishes the ~~paternity~~ <u>parentage</u> of a child and has the same force and effect as a judgment of ~~paternity~~ <u>parentage</u> by a court. A man is presumed to be the father of the child under Family Code section 7611<u>, subject to rebuttal under section 7612,</u> if the voluntary declaration has been properly executed and filed.<br><br>The highlighted text is in <u>direct conflict</u> with ***In re Jovanni B.*** (2013) 221 Cal.App.4th 1482, 1491-1495 [holding that completed voluntary declaration "is not dispositive of presumed father status in a dependency proceeding"], citing *In re Brianna* (2013) 220 Cal.App.4th 1025, *In re E.O.* (2010) 182 Cal.App.4th 722. | sentence of current rule 5.635(c) without amendment. The legal effect of a voluntary declaration of paternity (VDOP), both on a presumption of parentage under the Uniform Parentage Act and presumed parent status in juvenile court proceedings, appears to be in a state of flux. A narrow reading of its effect could extinguish a legitimate parental interest. A broad reading could result in the establishment of a parent-child relationship where none exists. Indeed, the Supreme Court voted unanimously in February to review *In re Brianna M.* (2013) 220 Cal.App.4th 1025, which held that the references in sections 7611–7612 of the Family Code to the effect of a VDOP do not apply to dependency proceedings and that a properly executed and filed VDOP does not, therefore, entitle a man to presumed father status in a dependency proceeding. (See *In re Brianna M.* (2014) 317 P.2d 1182, granting review and superseding the appellate opinion.). Unfortunately, the Court was required to dismiss the case without decision after appellant defaulted. Given the ongoing uncertainty and the likelihood that the Legislature or the Supreme Court will act to resolve it, the committee has elected to defer action on this element of the rule. |
| | | | **(g) Dependency and delinquency; notice to alleged parents**<br>If, after inquiry by the court or through other | The committee does not recommend making the suggested changes to rule 5.635(g) at this time. The suggested changes are outside the scope of |

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| | | | information obtained by the county child welfare department or probation department, one or more persons are identified as alleged parents …<br>…<br>(4) The alleged parent has relinquished custody of the child to the county child welfare department. | the proposal circulated for comment. Moreover, the current language in the rule is consistent with terminology used frequently in the Welfare and Institutions Code to refer to the welfare department. See, e.g., §§ 215, 11400, 11403(e)–(f), 11404. Although the code does use a wide variety of terms—see, e.g., § 204 (“child protective services”); § 11364 (“county child welfare agency”); § 11403(c) (“county child welfare department”); § 16002 (“responsible local agency”) § 16004.5 (“child welfare agencies”); § 16010 (“child protective agency—the committee is not aware of any confusion caused by the consistent use of “county welfare department” in the rules of court. |
| | | | **Rule 5.668. Commencement of hearing—explanation of proceedings (§§ 316, 316.2)**<br><br>**(b) ~~Paternity~~ Parentage inquiry** | |
| | | | The court must also inquire of the child’s mother and of any other appropriate person present as to the identity and address of any and all presumed ~~parents~~ and alleged ~~fathers~~ parents of the child. Questions, at the discretion of the court, may include:<br>… | The committee agrees with the suggestion and has incorporated the change into its recommendation. |
| | | | (3) Was the mother cohabiting with ~~a man~~ ~~an adult~~ anyone at the time of conception? Although illegal, it *is* feasible for a mother to conceive with a cohabitant under 18 years of age. | The committee agrees with that the use of “adult” is too restrictive. Rather than substitute the term “anyone,” however, the committee recommends deleting all reference to another cohabitant based on its understanding that the verb “cohabit” |

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| | | | **Rule 5.695. Findings and orders of the court—disposition**<br>**(h) Provision of reunification services (§ 361.5)**<br><br>(1) Except as provided in (6), if a child is removed from the custody of a parent or legal guardian, the court must order the county child welfare department [*or change "county welfare department" to "social worker" for consistency with § 361.5(a)*] to provide reunification services to the child and the child's ~~mother and statutorily~~ presumed ~~father~~ parents, or the child's legal guardian, to facilitate reunification of the family. For a child who was three years of age or older on the date of initial removal, services must be provided during the time period beginning with the dispositional hearing and ending 12 months after the date the child entered foster care, as defined by section 361.49. For a child who was under three years of age on the date of initial removal, services must be provided for a period of 6 months from the dispositional hearing, but no longer than 12 months from the date the child entered foster care, as defined by section 361.49. The time period for the provision of family reunification services must be calculated consistent with section | necessarily implies that person's existence.<br><br>The committee does not recommend making the first suggested change to rule 5.695(h)(1) at this time. It is outside the scope of the proposal circulated for comment. See response to comment on rule 5.635(g), above. The committee also does not recommend making the second suggested change at this time. The mother-child relationship is conclusively established by proof of birth under section 7610(a). The suggested amendment risks eliminating a birth mother's entitlement to reunification services. |

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| | | | 361.5(a). The court must inform the parent or legal guardian of a child who was under three when initially removed that failure to participate regularly and make substantive progress in court-ordered treatment programs may result in the termination of reunification efforts after 6 months from the date of the dispositional hearing.<br>(2) … | |
| | | | (3) On a finding and declaration of ~~paternity~~ parentage by the juvenile court or proof of a prior declaration of ~~paternity~~ parentage by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that such services will benefit the child.<br>(4) …<br>(5) … | The committee does not recommend making the suggested change to rule 5.695(h)(3). The suggested change occurs in the context of a discussion of biological paternity. AB 1403 retained gender-specific terminology in that context. If the Legislature acts to express a contrary intent, the committee will consider any necessary rule amendments at that time. |
| | | | (6) … Reunification services need not be provided to a ~~mother, statutorily~~ presumed ~~father,~~ parent or guardian if the court finds, by clear and convincing evidence, any of the following:<br>(7) …<br>(8) … | The committee agrees with the suggested change and has incorporated it into its recommendation. |
| | | | (9) … If the parent or guardian is located prior to the 6-month review and requests reunification services, the child welfare department must seek a modification of the disposition orders. The time limits for reunification services must be calculated from the date of the initial removal, and not | The committee does not recommend making the suggested changes to rule 5.695(h)(9) at this time. The suggested changes are outside the scope of the proposal circulated for comment. See response to comment on rule 5.635(g), above. |

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| | | | from the date the parent is located or services are ordered.<br>(10) …<br>(11) …<br>(12) …<br>(13) If the ~~mother, statutorily presumed father,~~ <u>parent</u> or guardian is institutionalized, incarcerated, or detained by the United States Department of Homeland Security, or has been deported to his or her country of origin, the court must order reunification services unless it finds by clear and convincing evidence that the services would be detrimental to the child, with consideration of the factors in section 361.5(e). …The court may order reunification services with an institutionalized, incarcerated, detained, or deported biological father whose paternity has been declared by the juvenile court or another court of competent jurisdiction, if the court determines that such services would benefit the child, with consideration of the factors in section 361.5(e).<br>See WIC § 361.5(e)(1).<br>(14) …<br>(15) A judgment, order, or decree setting a hearing under section 366.26 is not an immediately appealable order. Review may be sought only by filing *Petition for Extraordinary Writ (California Rules of Court, Rules 8.452, 8.456)* (form JV-825) or other petition for extraordinary writ. If a | The committee agrees with the suggested change and has incorporated it into its recommendation.<br><br>The committee reads the highlighted text as identical to the amendment circulated for comment. |

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| | | | party wishes to preserve any right to review on appeal of the findings and orders made under this rule, the party must seek an extraordinary writ under rules 8.450~~,~~ and 8.452~~, and 5.600~~.<br>(16) …<br>(17) … | |
| | | | (18) Failure to file a petition for extraordinary writ review within the period specified by rules 8.450~~,~~ and 8.452~~, and 5.600~~ to substantively address the issues challenged, or to support the challenge by an adequate record, precludes subsequent review on appeal of the findings and orders made under this rule.<br>(19) … | The committee reads the highlighted text as identical to the amendment circulated for comment. |
| | | | **(i) Information regarding termination of parent-child relationship (§§ 361, 361.5)**<br>If a child is removed from the physical custody of the parent or guardian under either section 361 or 361.5, the court must:<br>(1) State the facts on which the decision is based; and<br>(2) Notify the parents that their parental rights may be terminated if custody is not returned within 6 months from the disposition hearing or 12 months ~~of~~ after the ~~specific~~ date the child ~~is determined to have~~ entered foster care, as defined by section 361.49, whichever time limit is applicable.<br>See CRC 5.695(h)(1.) | The committee agrees that rule 5.695(i)(2) is confusing as currently drafted, but does not recommend amending it to the extent suggested. The committee does recommend a less comprehensive amendment to clarify that the six-month time frame does not run from the date the child entered foster care. |

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| | | | **(k) Fifteen-day reviews (§ 367)**<br>If a child is detained pending the execution of the disposition order, the court must review the case at least every 15 calendar days to determine whether the delay is reasonable. During each review the court must inquire about the action taken by the ~~probation or~~ child welfare department to carry out the court's order, the reasons for the delay, and the effect of the delay on the child. | The committee does not recommend making the suggested change to rule 5.695(k), as it is beyond the scope of the current proposal. See response to comment on rule 5.635(g), above. |
| | | | **(*l*) Setting a hearing under section 366.26**<br>At the disposition hearing, the court may not set a hearing under section 366.26 to consider termination of the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state, or the other parent has relinquished custody of the child to the county child welfare department. | The committee does not recommend making the suggested change to rule 5.695(*l*), as it is beyond the scope of the current proposal. See response to comment on rule 5.635(g), above. |
| | | | **Rule 5.725. Selection of permanent plan** (§§ **366.26, 727.31**)<br>**(a) Application of rule**<br>This rule applies to children who have been declared dependents or wards of the juvenile court. | The committee does not recommend making the suggested changes to rule 5.725, as they are beyond the scope of the current proposal. See response to comment on rule 5.635(g), above. |

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| | | | (1) Only section 366.26 and division 12, part 3, chapter 5 (commencing with section 7660) of the Family Code or Family Code sections 8604, 8605, 8606, and 8700 apply for the termination of parental rights. Part 4 (commencing with section 7800) of division 12 of the Family Code does not apply.<br>(2) The court may not terminate the rights of only one parent under section 366.26 unless that parent is the only surviving parent; or unless the rights of the other parent have been terminated under division 12, part 3, chapter 5 (commencing with section 7660), or division 12, part 4 (commencing with section 7800) of the Family Code, or Family Code sections 8604, 8605, or 8606; or unless the other parent has relinquished custody of the child to the child welfare department.<br><br>**(g) Purpose of termination of parental rights**<br>The purpose of termination of parental rights is to free the ~~dependent~~ child for adoption. Therefore, the court must not terminate the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state, or the other parent has | |

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| | | | relinquished custody of the child to the county child welfare department. The rights of the mother, any presumed ~~father~~ parent, any alleged father, and any unknown father or fathers must be terminated in order to free the child for adoption.<br><br>**Q: "**Are there any other mandatory Judicial Council forms in the FL or JV series that use gender-specific language and urgently require revision to prevent confusion?"<br><br>**A:** No, but there are several additional CRC provisions that need revision: Rules 5.610, 5.614, 5.650, 5.678, 5.695, 5.705, 5.708, 5.710, 5.720, 5.725, and 5.740. Please see below; suggested revisions are highlighted in yellow. | |
| | | | **Rule 5.610. Transfer-out hearing**<br>**(a) Determination of residence-special rule on intercounty transfers (§§ 375, 750)**<br>(1) …<br>(2) …<br>(3) The juvenile court may make a finding of ~~paternity~~ parentage under rule 5.635. If there is no finding of ~~paternity~~ parentage, the mother is deemed to have physical custody. | The committee does not recommend the suggested change to rule 5.610 at this time. The committee anticipates proposing comprehensive modifications to the rules and forms associated with procedures for transferring juvenile cases in a future rulemaking cycle. The committee will consider the suggested change in the context of that proposal. |
| | | | **Rule 5.614. Courtesy supervision (§§ 380, 755)**<br>The court may authorize a child placed on | The committee does not recommend making the suggested change, as it is beyond the scope of the current proposal. See response to comment on rule |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | probation, a ward, or a dependent child to live in another county and to be placed under the supervision of the other county's ~~county~~ child welfare agency or probation department with the consent of the agency or department. The court in the county ordering placement retains jurisdiction over the child. | 5.635(g), above. |
| | | | **Rule 5.650. Appointed educational rights holder**<br>**(i) Education and training of educational rights holder**<br>If the educational rights holder, including a biological, presumed, or adoptive parent, asks for assistance in obtaining education and training in the laws incorporated in rule 5.651(a), the court must direct the clerk, social worker, or probation officer to inform the educational rights holder of all available resources, including resources available through the California Department of Education, the California Department of Developmental Services, the local educational agency, and the local regional center. | The committee agrees that the terminology in rule 5.650(i) is overly restrictive and has incorporated changes consistent with this suggestion into its recommendation. |
| | | | **Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts; detention alternatives**<br>(d) Order of the court (§ 319, 42 U.S.C., § 600 et seq.)<br>If the court orders the child detained, the court must order that temporary care and | The committee does not recommend making the suggested change, as it is beyond the scope of the current proposal. See response to comment on rule 5.635(g), above. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | custody of the child be vested with the county child welfare department pending disposition or further order of the court. | |
| | | | **Rule 5.705. Setting a hearing under section 366.26**<br>At a disposition hearing, a review hearing, or at any other hearing regarding a dependent child, the court must not set a hearing under section 366.26 to consider termination of the rights of only one parent unless that parent is the only surviving parent, or the rights of the other parent have been terminated by a California court of competent jurisdiction or by a court of competent jurisdiction of another state under the statutes of that state, or the other parent has relinquished custody of the child to the county child welfare department. | The committee does not recommend making the suggested change to rule 5.705, as it is beyond the scope of the current proposal. See response to comment on rule 5.635(g), above. |
| | | | **Rule 5.708. General review hearing requirements**<br>**(b) Notice of hearing (§ 293)**<br>The petitioner or the clerk must serve written notice of review hearings on *Notice of Review Hearing* (form JV-280), in the manner provided in section 293, to all persons or entities entitled to notice under section 293 and to any CASA volunteer, educational rights holder, or surrogate parent appointed on the case. | The committee agrees with the suggested technical change and has incorporated it into its recommendation. |
| | | | **(*l*) Setting a hearing under section 366.26 for one parent** | The committee does not recommend making the suggested change, as it is beyond the scope of the |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | The court may not set a hearing under section 366.26 to consider termination of the rights of only one parent unless:<br>…<br>(3) The other parent has relinquished custody of the child to the county child welfare department. | current proposal. See response to comment on rule 5.635(g), above. |
| | | | **(n) Requirements on setting a section 366.26 hearing (§§ 366.21, 366.22, 366.25)**<br>…<br>(5) The court must ensure that notice is provided as follows:<br>(A) …<br>(B) The court must order that notice of the hearing under section 366.26 not be provided to any of the following:<br>(i) A ~~parent,~~ presumed ~~parent,~~ biological, or alleged parent who has relinquished the child for adoption and whose relinquishment has been accepted and filed with notice under Family Code section 8700; or | The committee agrees with the suggested change and has incorporated it, with minor alterations, into its recommendation. |
| | | | **Rule 5.710. Six-month review hearing**<br>**(c) Setting a section 366.26 hearing (§§ 366.21, 366.215)**<br>(1) …<br>(D) …<br>(ii) The court, in determining whether | The committee agrees with the suggested technical changes and has incorporated them into its recommendation. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | court-ordered services may be extended to the 12-month point, must take into account any particular barriers to a parent's or guardian's ability to maintain contact with his or her child due to the parent's or guardian's incarceration, institutionalization, detention by the United States Department of Homeland Security, or deportation. The court may also consider, among other factors, whether the incarcerated, institutionalized, detained, or deported parent or guardian has made good faith efforts to maintain contact with the child and whether there are any other barriers to the parent's or guardian's access to services.<br>See WIC § 361.5(e)(1); CRC 5.715(b)(4)(A)(ii) [“parent or legal guardian”]. | |
| | | | **Rule 5.720. Eighteen-month permanency review hearing**<br>**(b) Determinations and conduct of hearing (§§ 361.5, 366.22)**<br>(3) …<br>(A) … To extend services to the 24-month point, the court must also find by clear and convincing evidence that additional reunification services are in the best interest of the child and that the parent or legal guardian is making | The committee agrees with the suggested technical change and has incorporated it, with minor alterations, into its recommendation. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | significant and consistent progress in a substance abuse treatment program, or a parent or guardian is recently discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security, and making significant and consistent progress in establishing a safe home for the child's return. … | |
| | | | **Rule 5.740. Hearings subsequent to a permanent plan (§§ 366.26, 366.3)**<br>**(a) Review hearings-adoption and guardianship**<br>(1) At the review hearing, the court must consider the report of the petitioner, as required by section 366.3(~~f~~g), the report of any CASA volunteer, the case plan submitted for this hearing, and any report . . . | The committee agrees with the suggested technical change to rule 5.740(a)(1) and has incorporated it, with minor alterations, into its recommendation. |

**Judicial Council of California**

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

**Title**
Probate Conservatorship and Guardianship: Accounting Schedules for Gains and Losses on Sales of Estate Assets

**Rules, Forms, Standards, or Statutes Affected**
Revise forms GC-400(B)/GC-405(B) and GC-400(D)/GC-405(D)

**Recommended by**
Probate and Mental Health Advisory Committee
Hon. Mitchell L. Beckloff, Chair

**Agenda Item Type**
Action Required

**Effective Date**
January 1, 2015

**Date of Report**
August 8, 2014

**Contact**
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## Executive Summary

The Probate and Mental Health Advisory Committee recommends that the Judicial Council revise the accounting schedules that may be, or in some cases must be, used by conservators and guardians of estates to show the gains and losses on the sale of estate assets. The revision would request the total of the carry values of the property sold and the total of the sale prices, in addition to the total of the gains or losses on the sales. This change is recommended to facilitate reconciliation of the accountings by judicial officers and court staff in their review and analysis of the accounts filed by these fiduciaries.

## Recommendation

The Probate and Mental Health Advisory Committee recommends that, effective January 1, 2015, the Judicial Council revise *Schedule B, Gains on Sales—Standard and Simplified Accounts* (form GC-400(B)/GC-405(B)) and *Schedule D, Losses on Sales—Standard and Simplified Accounts* (form GC-400(D)/GC-405(D)) to require the totals of the carry values and sale prices of the property sold, in addition to the total of the gains or losses on sales, to facilitate the court's

reconciliation, review, and analysis of the accountings filed by conservators and guardians on these forms.

The revised forms follow this report at pages 5 and 6.

## Previous Council Action

Judicial Council forms of standard and simplified accounting schedules to be used by conservators and guardians of estates in presenting their accountings for court approval, and a rule of court to govern their use, were mandated by Probate Code section 2620(a), as amended by the Omnibus Conservatorship and Guardianship Reform Act of 2006.[1] The Judicial Council responded to the Legislature by adopting rule 7. 575 of the California Rules of Court and approving 35 forms, designated as GC-400 for forms for use by standard account filers and GC-405 for use by simplified account filers under the rule. Each form designator also includes a suffix in one or more letters to denote its specific function. All of the forms and the rule of court became effective on January 1, 2008.

Forms that have the designator GC-400/GC-405 are to be used by both standard and simplified account filers. Under rule 7.575(e)(1), the dual-use forms approved as optional forms, including the two addressed in this report, are optional for standard account filers only. They are mandatory for simplified account filers.[2]

## Rationale for Recommendation

This proposal came to the advisory committee from the managing attorney of a superior court's probate department. It is intended to facilitate the court's review and approval of the accounts of conservators and guardians and, to a lesser extent, the accounts of many self-represented personal representatives of decedent estates, who increasingly use these forms. That review, initially by court probate staff—probate attorneys or examiners, involves a cash reconciliation as a means of verifying the cash entries in the accounting. Provision of the totals of carry values and sales prices as well as the total of gains or losses on asset sales will help in that reconciliation. Moreover, the required placement of those totals in the forms immediately below the figures leading to them should serve to help fiduciaries catch addition, transposition, or other misstatement errors before carrying them over to the summary schedules of the accounting.

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[1] Assem. Bill 1363 (Stats. 2006, ch. 493), § 24 (operative July 1, 2007). The rule of court is rule 7.575. A link to the rule is provided at the end of this report.

[2] Standard accounts are those in which estate receipts and disbursements are listed in the appropriate schedules in subject-matter categories. Simplified accounts show these entries in chronological order. Compare forms GC-400(A)(1)–(7) and GC-405(A) (receipts), and forms GC-400(C)(1)–(11) and GC-405(C) (disbursements). Any fiduciary may chose to file a standard account and fiduciaries of larger or more complex estates must do so. In some cases, a fiduciary may file a simplified account except for receipts and disbursements, which must be on schedules for standard accounts. See rule 7.575(a)–(c).

## Comments, Alternatives Considered, and Policy Implications

### External comments

This proposal was circulated as part of the spring 2014 comment cycle. Seven comments were received, all of which approved the proposal. No commenters recommended changes. A chart of the comments received and the committee's responses is attached at pages 7–10. Five of the comments were from court probate staff members or from court executives. Another favorable comment was from the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group, which concluded as follows:

> Approve as submitted. This proposal should be implemented because it adds information to forms GC-400(B)/GC-405(B) andGC-400(D)/GC-405(D), to determine if reconciliation amounts are correct and thereby, assists judges and probate staff when they review these accounts/schedules.

Specific comments were requested concerning (1) whether the proposal would result in net implementation and training costs or court staff expense savings over time; (2) what implementation requirements for courts would be; and (3) whether the proposal would work well in courts of varying sizes. Ms. Christine Donovan, a Senior Staff Probate and Family Law Attorney from the Superior Court of Solano County, responded to this request. Her responses were: (1) There would be a savings in court staff time in reviewing accountings that would exceed any implementation and staff training costs imposed by the change; (2) those costs would be minimal; and (3) the revised forms would work identically in courts of all sizes. Court staff could be initially trained to look for the additional totals requested in the forms and provided by the fiduciary and to verify their accuracy instead of having to calculate those totals on their own and then confirm the calculations.

### Alternatives considered

The proposal as circulated for public comment called for only the total of the sales prices of the assets sold at a gain or loss, in addition to the total of the gains or losses when those prices are compared to the carry values in the estate of those assets. When the committee considered the proposal and the comments received, a committee member recommended that the forms be further modified to also request the total of the carry values of the assets sold. The committee approved this additional change and it has been made in the proposed revised forms. Committee staff provided copies of the modified forms to the originator of the proposal, who supports the change.

This proposal is so modest that the committee initially considered its rejection. Had it come from a member of the committee, rejection might have been its fate as too small to support its imposition on the courts. However, the committee decided to proceed because the idea came from a court staff attorney intimately familiar with the reconciliation process his staff and judicial officers must complete in their review of fiduciary accountings. The uniformly positive comments from other court staff attorneys, in addition to direct input from probate staff

committee members who perform similar functions for their courts, and the support of the Joint Rules Working Group and other court executives, suggest that the committee's decision to proceed was sound.

## Implementation Requirements, Costs, and Operational Impacts

In addition to the usual costs to provide any new or revised form to the courts and for them to make copies available to the public, there will be modest familiarization and staff training costs. As noted above, costs saved by reducing court staff time reviewing and reconciling accounts filed on the revised forms should ultimately exceed these expenses.

## Relevant Strategic Plan Goals and Operational Plan Objectives

The recommendations in this report support Strategic Plan Goal III.B.2 ("Ensure that . . . court forms promote the fair, timely, effective, and efficient processing of cases and make court procedures easier to understand), and Operational Objective III.B.5.a ("Statewide . . . new or improved forms . . . to implement and improve practices and procedures in all court venues").

## Attachments and Links

1. Forms GC-400(B)/GC-405(B) and GC-400(D)/GC-405(D), at pages 5–6;
2. Chart of comments, at pages 7–10;
3. Cal. Rules of Court, rule 7.575:
   *www.courts.ca.gov/cms/rules/index.cfm?title=seven&linkid=rule7_575*

| ☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF<br>*(Name):*<br>☐ Conservatee ☐ Minor | CASE NUMBER: |
|---|---|

## Schedule B, Gains on Sales—Standard and Simplified Accounts

**Gains on sales during period of account**

| **Date** *(mm/dd/yyyy)* | **Property Sold** | **Carry Value *** | **Sale Price** | **Gain** |
|---|---|---|---|---|
| | | $ | $ | $ |
| ☐ **Totals, Carry Values, Sale Prices, and Gains:** | | $ | $ | $ |

* **See form GC-400(PH)(2)/GC-405(PH)(2) for information about Carry Value.**

*(List all property sold during the account period that resulted in gains (gross sale price higher than carry value). Include each property's Inventory and Appraisal item number and the date the Inventory and Appraisal containing the property was filed. Add pages as required. Check the box at the bottom of the last page of this schedule and total the carry values, sale prices, and the gains. Carry the total of gains over to line 4 of the* Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule B.)*

| ☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF<br>*(Name):*<br>☐ Conservatee ☐ Minor | CASE NUMBER: |
|---|---|

## Schedule D, Losses on Sales—Standard and Simplified Accounts

**Losses on sales during period of account**

| Date *(mm/dd/yyyy)* | Property Sold | Carry Value * | Sale Price | Loss |
|---|---|---|---|---|
| | | $ | $ | $ |
| ☐ **Totals, Carry Values, Sale Prices, and Losses:** | | $ | $ | $ |

* **See form GC-400(PH)(2)/GC-405(PH)(2) for information about Carry Value.**

*(List all property sold during the account period that resulted in losses (carry value higher than gross sale price). Include each property's inventory item number and the date the inventory containing the property was filed. Add pages as required. Check the box at the bottom of the last page of this schedule and total the carry values, sale prices, and the losses. Carry the total of losses over to line 9 of the* Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule D.)*

# SPR14-15

**Probate Conservatorship and Guardianship: Accounting Schedules for Gains and Losses on Sales of Assets**
(forms GC-400(B)/405(B), GC-400(D)/405(D))

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| 1. | Christine Donovan, CFLS<br>Senior Staff Attorney<br>Superior Court of Solano County<br>Fairfield | A | Comments<br>☐<br>**Does the proposal appropriately address the stated purpose?**<br><br>Yes, it does.<br><br>• **Would the proposal result in a net cost of implementation and training expenses over savings in court staff expense in their review and reconciliation of accountings filed by fiduciaries, or would such savings exceed the costs over time? If so please quantify.**<br><br>Although I am not responding on behalf of a court, I am a court employee with experience in this area. The proposal is a simple and smart way for court staff to expedite reviews and reconciliations of accountings. The change is minor and would therefore result in negligible implementation and training expenses. Any such expenses would be quickly outweighed by staff time savings.<br><br>• **What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.** | No response required. |

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | Although I am not responding on behalf of a court, I am a court employee with experience in this area.<br><br>The implementation requirements would be minimal. Probate staff would be trained to check this additional column of information on accountings, and procedures would be revised accordingly. No other training would be required. There will be no need to modify any case management systems or docket codes.<br><br>• **Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?**<br><br>Although I am not responding on behalf of a court, I am a court employee with experience in this area. Two months would provide ample time.<br><br>• **How well would this proposal work in courts of different sizes?**<br><br>Although I am not responding on behalf of a court, I am a court employee with experience in this area. The proposal should be equally effective in courts of all sizes. | |

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| 2. | Orange County Bar Association<br>By Thomas Bienert, Jr., President<br>Newport Beach | A | No specific comment made. | No response required. |
| 3. | Superior Court of Los Angeles County<br>Los Angeles | A | No specific comment made. | No response required. |
| 4. | Superior Court of San Joaquin County<br>By Julie M. Watts<br>Probate Examiner<br>Stockton | A | No specific comment. | No response required. |
| 5. | Superior Court of Riverside County<br>Riverside | A | Agree with proposal.<br><br>This proposal adds a total for the sale price column to the judicial council forms for gains and losses on sale. This total is necessary for our probate attorneys and paralegals to complete a cash reconciliation to verify that the figures in the accounting balance. Presently, we have to calculate this total. It will be a substantial time savings for this total to be supplied, especially for larger estates. This should have no negative effect on court operations, as these are already existing forms. | No response required. |

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

# SPR14-15

**Probate Conservatorship and Guardianship: Accounting Schedules for Gains and Losses on Sales of Assets**
(forms GC-400(B)/405(B), GC-400(D)/405(D))

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| 6. | Superior Court of San Diego County<br>By Michael M. Roddy,<br>Court Executive Officer<br>San Diego | A | Our court is very much in favor of this proposed change. The probate code requires calculation of the gross sale price so the updated forms will benefit the probate examiners when reviewing calculations for conservatorship and guardianship accountings. | No response required. |
| 7. | Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group | A | The proposal will provide some efficiencies.<br><br>**General comments:**<br>Approve as submitted. The proposal should be implemented because it adds information to forms GC-400(B)/GC-405(B) and GC-400(D)/GC-405(D), to determine if reconciliation amounts are correct and thereby, assists judges and probate staff when they review these accounts/schedules. | No response required. |

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

JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

**Title**
Decedents' Estates: Waiver of Bond by Beneficiaries of Estates

**Rules, Forms, Standards, or Statutes Affected**
Adopt form DE-142/DE-111(A-3d))

**Recommended by**
Probate and Mental Health Advisory Committee
Hon. Mitchell L. Beckloff, Chair

**Agenda Item Type**
Action Required

**Effective Date**
January 1, 2015

**Date of Report**
August 7, 2014

**Contact**
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## Executive Summary

In response to concerns expressed by judicial officers in the probate departments of several superior courts, the Probate and Mental Health Advisory Committee recommends the adoption of a mandatory form that beneficiaries of decedents' estates would be required to sign to waive surety bonds that otherwise would be required of the proposed personal representatives of these estates.

## Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council adopt *Waiver of Bond by Heir or Beneficiary* (form DE-142/DE-111(A-3d)), effective January 1, 2015. This mandatory form is proposed to create for use throughout the state a standard waiver form containing important information that beneficiaries of decedent estates should have before consenting to waive surety bonds the law requires from the personal representatives of the estates.

The proposed form is attached at page 8.

## Previous Council Action

California Rules of Court, rules 7.201–7.206, pertain to surety bonds in decedent estates. These rules were adopted effective on January 1, 2000, as part of the first wave of statewide probate rules. All of these rules have been modified in minor ways since then; the latest amendment was to rule 7.201, effective January 1, 2007. Rules 7.201 and 7.202 permit the court to require a bond notwithstanding its waiver by the decedent's will in two specific situations. No rules of court address the details of a waiver of bond by estate beneficiaries under Probate Code section 8481(a)(2).[1]

## Rationale for Recommendation

### Waivers of surety bonds in decedent estates

The personal representative[2] of a decedent's estate must post a surety bond for the benefit of persons interested in the estate, conditioned on the faithful execution of the duties of the office.[3] The decedent's will may require or waive the bond.[4] If the will neither requires nor waives the bond or there is no will, all beneficiaries of the estate may waive the bond.[5] The beneficiaries' waivers must be in writing and are to be attached to the petition for the personal representative's appointment.[6] Despite a waiver of bond by the decedent or by all beneficiaries, the court—on its own motion or on the petition of any interested person—may, for good cause, require a bond.[7]

Bond waivers to be signed by estate beneficiaries are usually prepared by the proposed personal representative or his or her counsel; circulated to all beneficiaries, sometimes by mail or e-mail; returned to the personal representative or attorney after execution; and collected for attachment to the appointment petition or for separate filing shortly after that petition is filed. The waivers are usually quite brief and do not explain the voluntary nature of the act or the consequences to estate beneficiaries if the bond is waived and problems that would have been covered by it arise in the administration of the estate. The form for a beneficiary's bond waiver provided in typical legal forms publications usually reads something like the following:

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[1] Unless otherwise stated, all code references are to the Probate Code.

[2] The term *personal representative* includes executors and general and special administrators. See section 58(a).

[3] Section 8480(a), (b).

[4] Section 8481(a)(1). A copy of section 8481 is provided as Attachment A to this report.

[5] See section 8481(a)(2). The term *beneficiary* as used in section 8481 refers to both a devisee of real or personal property under a decedent's will and an heir of an intestate decedent. See sections 24(a) and (b), 32, and 34(a).

[6] Section 8481(a)(2).

[7] Section 8481(b).

> [Name of beneficiary], [statement of relationship] to [name of decedent], the decedent in the above captioned matter, and beneficiary under the decedent's will, hereby waives posting of bond by [name of proposed personal representative], the proposed personal representative, with respect to the Petition for Probate filed on [date of filing] in this matter.[8]

Judicial officers in probate assignments in several courts have advised the committee that beneficiaries interested in estates that have had administration problems following bond waivers frequently complain that no one explained the consequences of the waivers they were asked to sign; some even say that they were led to believe that a waiver was necessary to permit administration to begin or continue or to enable them to receive their shares of the estate. The committee has concluded that estate beneficiaries asked to waive bond should be advised of (1) the possible consequences of a bond waiver by all beneficiaries; (2) their right to consult concerning the waiver with counsel independent of the proposed personal representative or the representative's counsel; and (3) their rights to expect commencement or timely completion of administration and to receive their shares of the estate whether or not they waive bond.

**The proposed waiver form**

The new form is modeled after an existing waiver form, the *Waiver of Notice of Proposed Action* (form DE-166), in that it consists of a notice section (a "warning" in form DE-166) followed by the text of the waiver. But a difference between the existing form and the form recommended here is that the latter is designed as both a standalone form (designated as form DE-142) and an attachment to a *Petition for Probate* (form DE-111) (designated as form DE-111(A-3d)).

This unusual design reflects current experience with beneficiary bond waivers. Most are filed as attachments to form DE-111 because section 8481(a)(2) calls for them to be attached to the petition for appointment of a personal representative, which is that form.[9] However, some waivers are not filed until after the petition has been filed, primarily because they have not been returned by beneficiaries in time to be attached to the petition before it is filed. In that situation, the petitioner has filed the appointment petition before receiving all of the signed waivers in the hope that all will be returned before the initial hearing on the petition, which may be 45 or more days after filing. The standalone form's design features—including full first-page attorney or party, court, and title caption boxes—would help ensure that late-filed waivers get to the proper case file in time for the matter to go forward without delay at the initial hearing.

The notice portion of the form consists of paragraphs A–G. The first three paragraphs summarize the basic requirement of a bond and exceptions to that requirement, including the beneficiary-waiver provisions of section 8481(a)(2). The description of a bond and the source of payment of its cost in paragraph A come from the answer to question 15, *"Should I require a bond?"* in the introduction to the California Statutory Will in section 6240.

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[8] See *West's California Code Forms: Probate* (Thomson West 7th ed.) §8481 Form 1.

[9] See items 3d(2) and 3d(3) on page 2 of form DE-111.

The most important notice to a beneficiary asked to sign the form is in bold text in paragraph D. This paragraph advises that if an estate with no bond suffers a loss that would have been covered by a bond, all or a part of the loss may not be recoverable from the personal representative and therefore may eliminate or reduce the share of the estate distributable to the beneficiary.

Paragraph E of the form advises beneficiaries that their waivers cannot be withdrawn after the personal representative is appointed without a bond, but they would remain eligible after the appointment to petition the court to require a bond for good cause, the same right held by any person interested in the estate under section 8481(b).

Paragraph F acts as a reminder to a personal representative interested in procuring bond waivers from estate beneficiaries that a guardian ad litem or other legal representative with specific authority to waive bond must sign the waiver for a minor, an incapacitated person, and certain beneficiaries that are unascertained or not yet in being.[10] The phrase *other legal representative* is intended to cover waivers by guardians or conservators of the estates of beneficiaries, as well as attorneys in fact of principal beneficiaries with capacity or under durable powers of attorney.

Paragraph G, in bold text for emphasis, advises beneficiaries not to sign the form until they have consulted with counsel independent of the lawyer for the proposed personal representative if they do not understand the form.

The waiver portion of the form consists of four numbered paragraphs. Perhaps the most important is paragraph 3, which confirms the beneficiary's understanding that he or she is not required to waive bond to allow estate administration to start or proceed or to receive his or her share of the estate. The express waiver in paragraph 4 is specific to a particular personal representative, whose name is to be inserted in the form. This limited waiver means that the signing beneficiary must be consulted again about waiving bond if a successor personal representative is required during the estate administration, and reflects that a waiver decision must be based in part on consideration of a particular personal representative's competence, experience, and integrity.

### Comments, Alternatives Considered, and Policy Implications

This proposal was circulated as part of the spring 2014 comment cycle. Eight comments were received. All commentators approved the proposal, including the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group.

Two commentators recommended changes, which were largely accepted by the advisory committee.[11] A third asked the committee to propose a second new form that would inquire into

[10] See section 1003.

[11] More than two commentators recommended changes, but the additional recommendations addressed a second version of the form that was proposed as an alternative if then-pending legislation, Assembly Bill 2567, which

a proposed personal representative's legal and financial history as an aid to a court in evaluating whether to require a bond despite its waiver under section 8481(b), a request that is beyond the scope of this proposal but is worthy of further study as an independent project. A chart of the comments received and the committee's responses is attached at pages 9–18.

The comment of TEXCOM recommended changing the number of paragraphs and the order of the sentences in some of those paragraphs in the Notice section of the form. This comment was entirely accepted; the attached form includes a restated Notice portion that follows the recommendation made by TEXCOM, with minor alterations recommended by Judge Mary E. Wiss, Superior Court of San Francisco County.

However, two TEXCOM recommendations were not accepted. Its draft of paragraph A would have ended with the following phrase after the text shown in the attached form: "which could reduce some or all of the beneficiaries' shares of the estate." The committee concluded that personal representatives or their counsel seeking bond waivers from beneficiaries are free to advise of the possible effect of bond premiums on the net estate available for distribution, but that effect on any beneficiary's share is usually very slight. A reference to that issue in this form would, in the committee's view, overemphasize its actual effect on a beneficiary's share of the estate.

TEXCOM's paragraph G would have read, "If you have questions about the possible consequences of signing this form, you should consult an attorney of your choice for advice." The committee decided to retain its draft of paragraph G, reading as follows: "If you do not understand this form, do not sign it until you have asked a lawyer (who is independent of the lawyer for the proposed personal representative) to explain it to you." The committee prefers this text because it emphasizes the need for advice from a source that is not connected to the attorney for the personal representative and is intended primarily for the beneficiary who may not understand enough about the consequences of a bond waiver to raise questions about it.

Attorney Terence S. Nunan of Los Angeles asked the committee to modify the form to include an estimate of the cost of the bond. The committee decided against that request because of its belief that a personal representative seeking a waiver could easily disclose that cost if significant in a particular estate, but this expense in fact has only a minor effect on beneficiaries' shares of estates in most situations.

Mr. Nunan also requested the development of a second form that would require disclosure to the court of a proposed personal representative's legal and financial history. The committee believes that this request may have merit but is beyond the scope of this proposal and should not interfere

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would modify section 8481, were to become law. That legislation failed in the 2014 Legislature. See the following discussion under Alternatives, and the opening comment of the Executive Committee of the Trusts and Estates Section of the State Bar of California (TEXCOM) and the committee's response in the comment chart, at page 9.

with adoption of the waiver form this year. The committee elected to seek permission to study this issue further in the committee's Annual Agenda for next year.

### Alternatives

Two alternative forms were circulated for public comment. The first version was based on existing law. The second version would have addressed beneficiary bond waivers under a revised section 8481, which was proposed in legislation introduced in the 2014 Legislature, Assembly Bill 2567. Current section 8481(b) permits the court—for good cause, on its own motion or on the motion of any interested person—to order a bond despite its waiver by the decedent or by all beneficiaries. The legislation would have modified section 8481 to provide that the court must require a bond despite its waiver by the decedent or by all beneficiaries unless the court makes a good faith determination that no harm would come to interested persons by the waiver. Assembly Bill 2567 failed. It never received a vote out of a committee and was not passed out of either house of the Legislature. The form recommended in this report is a slightly modified version of the draft based on existing law.

The committee took no formal position on Assembly Bill 2567 because the bill died before coming to the committee for review and a possible recommendation to the council's Policy Coordination and Liaison Committee. However, the committee believes that providing all estate beneficiaries with the clear, uniform, and important information they need to make intelligent waiver decisions may satisfy or at least alleviate the concerns behind that failed legislation.

### Policy implications

This form should reduce the number of estates in which surety bonds are waived by beneficiaries of estates because the risks inherent in doing so will have been disclosed to many more of them before they agree to waive bond. The net result will be fewer uncompensated losses suffered by estate beneficiaries as a result of mismanagement or defalcation by personal representatives.

## Implementation Requirements, Costs, and Operational Impacts

This form will require the modest costs of distribution of any new form to the courts. Training costs to court staff concerning the use of the form should also be minimal. The form has no optional or alternative items for users to select and court staff to review, beyond its identification as an attachment (by activation of a check box and filling in a "(2)" or "(3)" in a space provided in the title caption box of the form), if it is attached to and filed with the *Petition for Probate,* and execution by a single identified estate beneficiary. The form should actually reduce current court staff time and expense in their initial reviews of newly filed estates to ascertain whether all beneficiaries have waived bond because it is a single-page waiver of identical appearance for each beneficiary—save only for the identity of the signer—instead of a document with multiple signatures on a single sheet or separate signature blocks following variations of waivers prepared by personal representatives or their counsel.

### Relevant Strategic Plan Goals and Operational Plan Objectives

This recommendation supports the Judicial Council's strategic goal to ensure that court forms promote the fair, timely, and effective processing of cases and make court procedures easier to understand (Goal III.B.2); and objective III.B.5.a of the council's operational plan, the development of effective trial case management procedures and practices to promote the fair, consistent, and efficient processing of all types of cases by the creation of new or improved court forms.

### Attachments

1. Form DE-142/DE-111(A-3d), at page 8;
2. Chart of comments, at pages 9–18;
3. Attachment A: Probate Code section 8481, at page 19.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*

TELEPHONE NO.: FAX NO. *(Optional):*
E-MAIL ADDRESS *(Optional):*
ATTORNEY FOR *(Name):*

**Draft**
**Not Approved by the Judicial Council**

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

ESTATE OF *(Name):*

, DECEDENT

## WAIVER OF BOND BY HEIR OR BENEFICIARY

☐ **Attachment 3d** **to *Petition for Probate****

CASE NUMBER:

### NOTICE: READ PARAGRAPHS A–G BEFORE YOU SIGN

A. A bond is a form of insurance to replace assets that may be mismanaged or stolen by the executor or administrator (the estate's **personal representative**). The cost of the bond is paid from the assets of the estate.

B. A bond may not be required if the decedent's will admitted to probate waives a bond and the court approves.

C. If the decedent's will does not waive bond, or if the decedent died without a will, the law ordinarily requires the personal representative to give a bond approved and ordered by the court. However, all persons eligible to receive a share of the estate may waive the requirement of a bond. If they all waive bond and the court approves, the personal representative will NOT have to give a bond.

D. **If bond is not ordered by the court, and the estate suffers loss because the personal representative fails to properly perform the duties of the office, the loss or some part of it may not be recoverable from the personal representative. If so, your share of the estate may be partially or entirely lost.**

E. You may waive the requirement of a bond by signing this form and delivering it to the petitioner for appointment of a personal representative or to the petitioner's attorney. Your waiver cannot be withdrawn after the court appoints the personal representative without requiring a bond. However, if you sign a waiver of bond, you may later petition the court to require a bond.

F. A guardian ad litem or other legal representative with specific authority under law to waive bond must sign for a minor, an incapacitated person, an unascertained beneficiary, or a designated class of persons who are not ascertained or not yet in being. See Judicial Council forms DE-350 and DE-351 and Probate Code section 1003.

G. **If you do not understand this form, do not sign it until you have asked a lawyer (who is independent of the lawyer for the proposed personal representative) to explain it to you.**

### WAIVER

1. **I have read and understand paragraphs A through G above.**
2. **I understand that before signing this form, I am free to consult with a lawyer of my choice concerning the possible consequences to me of waiving bond.**
3. **I understand that I do not have to waive bond to allow the estate administration to begin or proceed, or to receive my share of the estate.**
4. **I WAIVE the posting of bond in this estate by** *(name of personal representative):* .

Date:

(TYPE OR PRINT NAME OF BENEFICIARY (AND AUTHORIZED SIGNER, IF BENEFICIARY IS NOT AN INDIVIDUAL))

▶ (SIGNATURE)

**(This form may be filed as a standalone form (as form DE-142) or as Attachment 3d(2) (will) or Attachment 3d(3) (intestacy) to the* Petition for Probate *(form DE-111) (as form DE-111(A-3d).)*

**SPR14-16**
**Probate Decedents' Estates: Waiver of Bond by Heirs or Beneficiaries of Estates**
(form DE-142/DE-111(A-3d))

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| 1. | Executive Committee of the Trusts and Estates Section of the State Bar of California<br>By Erin L. Prouty,<br>Hoffman, Sabban & Watenmaker, APC<br>Los Angeles | AM | The Executive Committee of the Trusts and Estates Section of the State Bar of California (TEXCOM) respectfully submits the following comments on SPR14-16. | |
| | | | Preliminarily, we understand that Assembly Bill 2567 (Daly) is not being pursued at this time. Accordingly, our comments address only the first alternative form, though they would also apply to the second alternative form. | This is also the committee's understanding. Twice the author pulled the bill after hearings were scheduled in the Assembly Judiciary Committee. No hearing concerning the bill by that committee or any other was ever held; the bill will not become law this year. Therefore, the first version of the form attached to the Invitation to Comment is the version now exclusively under consideration for an adoption recommendation. |
| | | | Our committee supports, in concept, the proposal to create a mandatory Judicial Council form (DE-142/DE-111) for waiver of bond by estate beneficiaries, for the reasons expressed in SPR14-16. However, we have some suggested revisions to the proposed form. | |
| | | | The language in paragraphs A and B may be confusing to estate beneficiaries. Paragraph A seems to express the only situation where bond may not be required (where the Will waives bond and the court agrees), but then paragraph B goes on to discuss the possibility of waiving bond. To eliminate this potential confusion, we suggest they be replaced with the following three paragraphs A, B and C (and the remaining paragraphs be re-labeled D through | The committee generally agrees with this comment (with exceptions noted below). The form proposed for adoption has been rewritten substantially as proposed by TEXCOM. |

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

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | G):<br><br>A. "A bond is a form of insurance to replace assets that may be mismanaged or stolen by the personal representative. The cost of the bond is paid from the assets of the estate, which could reduce some or all of the beneficiaries' shares of the estate." | A. The committee has rewritten paragraph A as recommended, with the exception of the last phrase "which could reduce some or all of the beneficiaries' shares of the estate." That phrase is deleted. Personal representatives or their counsel seeking bond waivers from beneficiaries will advise of the effect of bond premiums on the net estate available for distribution, but that effect on any beneficiary's share of the estate is usually very slight. A reference to that issue in this form would, in the committee's view, overemphasize its effect on a beneficiary's share of the estate. |
| | | | B. A bond may not be required if the decedent's will admitted to probate waives a bond and the court agrees. | B. This text as recommended by TEXCOM is accepted, except that "the court *approves*" is stated instead of "the court agrees," per the recommendation of Judge Mary Wiss (Comment No. 6 below). |
| | | | C. If the decedent's will does not waive bond, or if the decedent died without a will, the law ordinarily requires the executor or administrator of the estate (the estate's personal representative) to give a bond approved and ordered by the court. However, all persons eligible to receive a share of the estate may waive the requirement of a bond. If they all waive bond and the court agrees, the personal representative will NOT have to give a bond. | C. This text is accepted, except that "the court *approves*" is stated instead of "the court agrees," per the recommendation of Judge Wiss. |

# SPR14-16
**Probate Decedents' Estates: Waiver of Bond by Heirs or Beneficiaries of Estates**
(form DE-142/DE-111(A-3d))

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | We also suggest that the language of paragraph F (which may be re-labeled as paragraph G if our comment above is implemented) be changed to read as follows:<br><br>F/G. If you have questions about the possible consequences of signing this form, you should consult an attorney of your choice for advice.<br><br>We appreciate the opportunity to comment on this matter. | G. The committee decided to keep its draft of this paragraph (Paragraph F of the version circulated for comment, Paragraph G of the revised draft): "If you do not understand this form, do not sign it until you have asked a lawyer (who is independent of the lawyer for the proposed personal representative) to explain it to you."<br><br>This text emphasizes the need for advice from a source that is not connected to the attorney for the personal representative, and is intended primarily for the beneficiary who not only has questions, but who may not understand enough about the consequences of a bond waiver to raise questions about it.<br><br>The committee appreciates the support and helpful assistance TEXCOM has given to this project. |
| 2. | Terence Nunan<br>Parker, Milliken, Clark, O'Hara & Samuelian, APC<br>Los Angeles | AM | I am not sure the legislation is a good idea but if it is adopted I think the current proposed form needs to be modified so the beneficiary who being asked to waive bond has some idea what the cost of the bond would be. My | The legislation described in the Invitation to Comment has failed in this year's Legislature. The first version of the proposed form referenced in the Invitation to Comment is, therefore, the version that will be considered for adoption. |

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

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | impression is that often beneficiaries waive bond because they think the bond premium is very large. | The committee does not support modification of the form to require disclosure of the cost of the bond. A proposed fiduciary or his or her counsel is free to communicate with beneficiaries about a bond waiver and to provide that information in the communication. The cost of the bond is a relatively minor expense that typically does not have much of an effect on a beneficiary's gift from the estate. |
| | | | More importantly, I think you need a second form for the proposed fiduciary to fill out giving the court basic information about the fiduciary's legal and financial history. A court can not determine good cause without knowing if the proposed fiduciary has recently filed for bankruptcy, is a convicted felony, has judgments against him exceeding $100,000; is employed or not employed and is or is not a significant beneficiary of the estate. I have from time to time discussed the randomess with which courts waive or do not waive bond with both judges and bonding companies. | The request for a statement of the proposed fiduciary's legal history and financial condition is beyond the scope of this proposal, but Mr. Nunan raised an excellent point. If a bond is posted, the surety usually will have conducted a financial investigation to determine whether the proposed personal representative is an appropriate candidate for the bond. If bond is to be waived, the court's decision whether to require the bond despite the waiver and the court does not exercise its power under Probate Code section 8481(b) properly may be based on consideration of the candidate's financial history and condition. The committee will study the issue further. |
| 3. | Orange County Bar Association<br>By Thomas Bienert, Jr., President<br>Newport Beach | A | No specific comment made. | No response required. |

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

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| 4. | Superior Court of Los Angeles County<br>Los Angeles | A | No specific comment made. | No response required. |
| 5. | Superior Court of San Diego County<br>By Michael Roddy, Court Executive Officer<br>San Diego | AM | Our court supports these forms. It will simplify the probate examining review with minimal training for the probate examiners.<br><br>We believe the following change should be made:<br><br>DE-142/DE-111: Paragraph B: Instead of stating at the second sentence that the court joins the waiver, would it be more appropriate to use the language of AB 2567 that the court agrees after making good cause determination that the beneficiaries and creditors of the estate will not suffer harm as a result of the waiver or reduction in bond? | The proposed change would affect the second version of the form described in the Invitation to Comment, the version based upon passage of Assembly Bill 2567. The legislation has not passed the Legislature; the first version of the form is the one that will go forward, modified as described in response to comments in this chart and in the Judicial Council report on this proposal. Failure of the legislation means that the "good cause determination" standard for the court to support a waiver of bond by the decedent or the beneficiaries of the estate will not become law. However, "good cause" remains in section 8481(b) as the standard for a court to *require* a bond notwithstanding its waiver by the decedent or by the estate's beneficiaries. |
| 6. | Superior Court of San Francisco County<br>By Hon. Mary Wiss, Judge of the Superior Court<br>San Francisco | A | These forms are such a substantial improvement over the preliminary draft I recently reviewed that I am in favor of them. I had grave concerns over the earlier version because it was such an easy form to put under someone's nose (with only page 1 of text with the signature line | |

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | possibly on a second page) and ask them to sign without any explanation. However, I do have a couple of comments as follows: | |
| | | | Section A Form 1: the language "Unless the decedent's will admitted to probate waives a bond and the court agrees" is awkward. I do not think that by admitting a will to probate that the court "agrees" to waive bond as it sounds like the court is agreeing with the testator.<br><br>Change to: "and the court permits [accepts?, allows?] the waiver, . . .<br>or<br>It might be helpful to reverse the order of the phrases in Paragraph A and to use the word "obtain instead of "give": | The committee agrees with this recommendation and has made the change, from "agrees" to "approves" in paragraphs B and C. |
| | | | "When a will is admitted to probate, the law requires the executor or administrator of an estate (the estate's personal representative) to obtain a bond unless the decedent's will waives bond and the court allows the will to be probated without a bond. A bond is a form of insurance to replace assets that may be mismanaged or stolen by the personal representative. The cost of the bond is paid from the assets of the estate." | The committee has decided to adopt the order of paragraphs in the Notice section (those designated with capital letters rather than with numbers) proposed by TEXCOM (Comment No 1 above). That decision makes this recommended change unnecessary. |
| | | | Section A Form 2: the language "Unless waived by the decedent's will admitted to | The second form is no longer under consideration because the legislation referenced in the Invitation |

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | probate and by the court, after the court makes a good faith determination that the waiver will not harm the beneficiaries and creditors of the estate; the law requires . . ." could be revised to: "Unless decedent's will waives bond, and the court makes a good faith determination that the waiver will not harm the beneficiaries and creditors of the estate, the law requires . . ."<br><br>It might be helpful to reverse the order of the phrases in Paragraph A Form 2 and use the word "obtain" instead of "give":<br><br>"When a will is admitted to probate, the law requires the executor or administrator of an estate (the estate's personal representative) to obtain a bond unless the decedent's will waives bond and the court makes a good faith determination that the waiver will not harm the beneficiaries and creditors of the estate. A bond is a form of insurance to replace assets that may be mismanaged or stolen by the personal representative. The cost of the bond is paid from the assets of the estate."<br><br>Section B Form 2: the language "and the court joins in the waiver" is also not correct because the court does not "join" in a waiver with the beneficiaries/creditors. The court must make a finding on the waivers, not "join" in them. Change to: "If they all waive bond, and the | to Comment (AB 2567) will not be enacted in 2014. |

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | court makes a good faith determination that the waiver will not harm the beneficiaries and creditors of the estate, the court may allow the personal representative to act without a bond." Perhaps you can come up with some better language, but I do not think that the court "joins" in a waiver.<br><br>Section D on both forms: "but you would remain eligible to petition the court to require a bond after giving your waiver."<br>Change to: "However, if you signed a waiver of bond, you may later petition the court to require a bond." | <br><br><br><br><br><br><br>The committee supports and has made this change. This text is now found in paragraph E of the revised form. |
| 7. | Superior Court of Riverside County<br>Riverside | A | Agree with proposal.<br><br>This proposal implements a new mandatory form for the waiver of bond. Waivers are presently filed on a consistent basis as a pleading-based document. Having bond waivers in a judicial council form should make processing of them easier. The form should also have a positive result for litigants, both procedurally and substantively. Presently, there is no form available to waive a bond. Consequently, self-represented litigants find it difficult to know how to supply a waiver. As indicated in the proposal, the documents presently being used to waive bond do not show whether the party who executed the waiver is | No response necessary. |

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | aware of the potentially negative consequences of waiving bond. This form will assist the court in ensuring that a waiver is an informed decision. It should also eventually reduce continuances of hearings due to lack of a required waiver. The form should eventually decrease workload for our probate paralegals and attorneys because the document will be filed more often with the initial petition. It is necessary to make this a mandatory form to require written disclosure of the risks to be given before a waiver is obtained. | |
| 8. | Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group | A | **General comments:**<br>Although the proposal is not required by a change of law, it will assist judges and probate staff when reviewing accounts. It will streamline the process. Moreover, beneficiaries frequently complain that no one explained the consequences of waivers they were asked to sign, or even say that they were led to believe that a waiver was necessary to permit administration to begin or continue or to enable them to receive their shares of the estate.<br><br>This proposal creates a mandatory Judicial Council form for the waiver of bond by heirs or beneficiaries in a probate estate proceeding. The idea is that this form should provide additional warnings to those signing, so they have a better understanding of what rights they are giving up. | No response necessary. |

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | Currently, bond waivers are usually self prepared on pleading paper. The waivers do not explain what bond is, what happens if bond is waived or if a fiduciary steals funds after bond is waived. The information provided should spell out the risk a party is taking by signing.<br><br>There are two versions of the form, based on whether AB 2567 is passed. AB 2567 would modify Probate Code §8481 to make bond mandatory, unless waived for good cause by the Court. Currently, Probate Code §8481 states that bond is not required if waivers are provided, unless the Court finds good cause to impose a bond. The final version of the form adopted would depend on the passage of AB 2567.<br><br>**The following are responses to the proposal's Request for Specific Comments:**<br><br>**Would the proposal provide cost or time savings in staff review of beneficiary bond waivers? If so please quantify.**<br>There would probably be a very minor time savings for review purposes. Having one version of the form is usually helpful in that it is easier to (1) identify the form in the file, and (2) the language of the waiver has already been reviewed. It should also be helpful for the clerks to have a form to hand out upon request. | <br><br><br><br><br><br><br>AB 2567 failed passage in the 2014 Legislature. The form to be recommended for adoption is a revised version of the first of the two drafts of the form circulated with the Invitation to Comment. |

## Attachment A

## Probate Code section 8481

**8481.**

(a) A bond is not required in either of the following cases:

(1) The will waives the requirement of a bond.

(2) All beneficiaries waive in writing the requirement of a bond and the written waivers are attached to the petition for appointment of a personal representative. This paragraph does not apply if the will requires a bond.

(b) Notwithstanding the waiver of a bond by a will or by all the beneficiaries, on petition of any interested person or on its own motion, the court may for good cause require that a bond be given, either before or after issuance of letters.

# RUPRO ACTION REQUEST FORM

**RUPRO Meeting:** September 8, 2014

RUPRO action requested:

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

| Title:<br>Fee Waivers: Payments Over Time and Specific Fees Included in Waivers | Rules: **3.50, 3.51, 3.52, 3.55, and 8.818**<br><br>Standards:<br><br>Forms: **FW-001, FW-001-INFO, FW-002, FW-003, FW-005, FW-008, FW-012, APP-001, and APP-015/FW-015-INFO** |
|---|---|
| Committee or other entity submitting the proposal:<br>Civil and Small Claims Advisory Committee<br>Judge Patricia M. Lucas, Chair<br><br>Appellate Advisory Committee<br>Judge Raymond Ikola, Chair | Staff contact:<br>Anne M. Ronan, 415-865-8933, anne.ronan@jud.ca.gov<br>Heather Anderson, 415-865-7691, heather.anderson@jud.ca.gov |

**If requesting July 1 or out of cycle, explain:**

The committees are proposing a March 1, 2015 effective date of all the rules and forms because, as discussed in the report, it is likely that a further change will be required to a chart contained on two of the forms in February 2015. Deferring the effective date of all recommended amendments and revisions to March 1 will allow the council to approve the next set of changes before the new forms go into effect, and will eliminate the need for a second round of changes to those forms.

Also note, while most of this proposal has been circulated for comment, the amendments regarding court reporter fees to rules 3.55(7) and 3.56, and revisions to forms FW-002, FW-005, and FW-012 reflecting those amendments, were not part of the circulated proposal. The recommendation to revise those portions of the rules and forms arose from comments received to the circulated proposal and, as discussed in the report, are a technical change to bring the rules and forms in compliance with the mandate of current law.

**Additional Information for RUPRO:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary, including any substantial argument in opposition and any expected individual or organization likely to support or oppose the proposal.)

A description of the opposition to the proposal and the committee's response to it is contained in the report.

# JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

**Title**
Fee Waivers: Payments Over Time and Specific Fees Included in Waivers

**Rules, Forms, Standards, or Statutes Affected**
Amend Cal. Rules of Court, rules 3.50, 3.51, 3.52, 3.55, and 8.818; revise forms FW-001, FW-001-INFO, FW-002, FW-003, FW-005, FW-008, FW-012, APP-001, and APP-015/FW-015-INFO

**Recommended by**
Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, Chair

Appellate Advisory Committee
Hon. Raymond Ikola, Chair

**Agenda Item Type**
Action Required

**Effective Date**
March 1, 2015

**Date of Report**
August 21, 2014

**Contact**
Anne M. Ronan, Senior Attorney,
415-865-8933, anne.ronan@jud.ca.gov
Heather Anderson, Senior Attorney,
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Legal Services, Judicial Council

## Executive Summary

The Civil and Small Claims Advisory Committee recommends modifying the fee waiver rules and forms to (1) permit parties to waive the right to a hearing prior to the court's issuing an order denying a fee waiver application if the court has authorized payments over time following the denial and the parties are satisfied with making payments over time; (2) limit payments over time to first appearance fees and a payment period of three months; and (3) make other clarifying changes to the *Request to Waive Court Fees* (form FW-001). These changes should eliminate the costs to parties and the court for unnecessary hearings and limit the administrative burden of payments over time.

In addition, the Civil and Small Claims Advisory Committee and the Appellate Advisory Committee jointly recommend amendments to the rules that list the court fees that must be

waived as part of an initial fee waiver and those that may be waived at the court's discretion. The Appellate Advisory Committee recommends amending these rules to consolidate the list of mandatorily waived fees in one rule and to also list the new $50 fee for the court to hold in trust funds deposited to pay court reporters for a transcript. The Civil and Small Claims Advisory Committee recommends further rule amendments to reflect a recent change in law that mandates that any fees charged for the court's cost for court reporting services be included in a waiver. Several fee waiver forms and information sheets would be revised to reflect these changes.

## Recommendation

1. The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective March 1, 2015, amend California Rules of Court, rule 3.52 and *Request to Waive Court Fees* (form FW-001), *Information Sheet on Waiver of Superior Court Fees and Costs* (FW-001-INFO), and superior court fee waiver order forms (forms FW-003 and FW-008) to more directly address the payment of filing fees over time—including limiting such payment plans to initial filing fees and generally limiting the time period to three months—and to provide for an informed waiver of an advance hearing if such payments are satisfactory to the party in the event a fee waiver is denied. Other nonsubstantive, clarifying changes would be made to the forms at the same time.

2. The Civil and Small Claims Advisory Committee and Appellate Advisory Committee recommend that the Judicial Council, effective March 1, 2015:

   - Amend California Rules of Court, rules 3.55, 3.56, and 8.818 to:
     a. consolidate in rule 3.55 the list of superior court fees relating to appellate matters that are waived as part of an initial fee waiver, including adding the new $50 fee for the court to hold in trust funds deposited to pay court reporters for a transcript on appeal; and
     b. reflect in rules 3.55 and 3.56 the new statutory requirement that court fees for court reporting services be included in all fee waivers, and add an advisory committee comment to rule 3.55 to clarify that the inclusion of all court reporter's fees in the rule is not intended to mandate that a court reporter be provided for all fee waiver recipients.

   - Revise the list of waived fees on all the fee waiver order forms (forms FW-002, FW-003, FW-005, FW-008, and FW-012) and information sheets (forms FW-001-INFO, APP-001, and APP-015/FW-015-INFO) to reflect the changes in rules 3.55 and 3.56.

3. The Appellate Advisory Committee recommends that the Judicial Council, effective March 1, 2015, further revise form APP-001 to reflect recent changes in appellate fees, rules, and procedures.

The text of the amended rules and the revised forms are attached at pages 22–40. (The recommended revisions are highlighted on the forms.)

## Previous Council Action

The Judicial Council last amended the rules on fee waivers in July 2009, to implement council-sponsored legislation that revised the fee waiver procedures. New and revised forms became operative at that same time. Since then, only minor changes have been made to the rules and forms—primarily annual revisions of an income eligibility chart on forms FW-001 and APP-015/FW-015 to reflect changes in the federal poverty guidelines on which the chart is based.

The list of superior court fees that must be waived under rule 3.55 as part of an initial fee waiver was referenced in a report to the council in 2013. A proposal to establish a new $50 fee to be paid to the superior court by those litigants who deposit funds with the court to hold in trust to pay for a reporter's transcript on appeal was approved by the Judicial Council at its October 2013 meeting, and the new fee took effect on January 1, 2014. In the report to the council on the proposal, the Appellate Advisory Committee and the Court Executives Advisory Committee indicated that, based on the public comments received, they would recommend that this fee be added to the list of superior court fees that must be waived under rule 3.55 as part of an initial fee waiver.

## Rationale for Recommendation

### Payments of trial court fees over time

Government Code section 68634[1] governs how an application for a fee waiver is to be handled by the trial court.[2] A court may deny a fee waiver without a prior hearing only if the application is incomplete or because the information provided conclusively establishes that the applicant is not eligible. (§ 68634(e)(2) and (3).) If the information in the application does not establish that the applicant meets the eligibility requirements for a fee waiver but does not *conclusively* establish that the applicant is not eligible for one, then the court must hold an eligibility hearing with 10 days' notice to the applicant. (§ 68634(e)(5).) If at that hearing the court finds the applicant not eligible for a fee waiver (and so denies the fee waiver), the court may grant a partial waiver or permission to pay fees over time. (*Id.*)

To implement this statutory provision for allowing payments over time only after a hearing, the Judicial Council includes on its current *Order on Court Fee Waiver After Hearing* (*Superior Court)* (form FW-008) an item in which a court may order payments of filing fees or other items (to be identified in the order) over time. Several judicial officers[3] and the Ad Hoc Advisory Committee on Trial Court Efficiencies have requested that a similar item be added to the order form that is used when no hearing is required, *Order on Court Fee Waiver (Superior Court)* (form FW-003). The judicial officers have recommended that hearings should not be required before the grant of installment payments because many parties do not want to have to appear in court for a fee waiver eligibility hearing if they are going to be permitted to make payments over

[1] Unless otherwise indicated, all statutory references are to the Government Code.

[2] A separate statute, Government Code section 68634.5, addresses the handling of fee waiver applications in the appellate courts.

[3] Express requests have been received from judicial officers in the Superior Courts of Solano, San Diego, and Contra Costa Counties.

time. The judicial officers noted that requiring a hearing before all orders permitting payments over time is unnecessarily burdensome to both parties and courts.

As the same time, several court administrators have raised concerns that, when payments over time are permitted, problems can arise in ultimately collecting the full amount if the time period for payments is too long. When a time period of a year or more is allowed, the decisions on substantive issues can be issued and the main case completed long before the time for payment concludes—particularly in unlawful detainer cases and certain family law proceedings—and the unsuccessful parties in such cases are often unwilling to pay any remaining fees. In addition, spreading the payments out over a long period places a heavy administrative burden on the courts. The administrators suggested that the time period over which payments could be made should be fairly short. In addition, in those cases that do go on for a longer period, court administrators have asked for clarification as to exactly what filing fees are covered by an order permitting payments over time—only the initial filing fee or also fees for filing motions or ex parte applications.

Because statute mandates that a court provide an applicant with the opportunity for a hearing before denying a fee waiver and instead permitting payments over time, that provision may not be changed by rule of court.[4] This proposal would not, therefore, eliminate the opportunity for a hearing before the grant of payments over time when a fee waiver is denied, but rather provides that an applicant may make an informed waiver of the right to such a hearing and thus avoid unnecessary court appearances. The proposal would also limit the applications of payments over time to the initial filing fees and, as a general rule, limit the time period in which the payments can be made to three months. A court may, at its discretion, provide for a longer time period.

The committees propose making all the amendments to the fee waiver rules and forms effective March 1, 2015, because further amendments to a chart on forms FW-001 and APP-015/FW-015 will be needed if, as expected, the federal poverty guideline are amended in late January. The March effective date will result in those forms only being amended once in 2015.

The details of the recommended rule amendments and form revisions are described below.

***Rule 3.52***.[5] This rule, concerning how a superior court processes a fee waiver application, would be amended in a few places.

- The rule would be clarified to provide that an order on a fee waiver application that is issued without a hearing should be on form FW-003. (Rule 3.52(2).) [6]
- A new subdivision would be added regarding payments over time, limiting such orders to initial filing fees; providing that such payments should be for a period of three months, unless a court finds good cause for a longer period; and allowing orders

[4] The Judicial Council is authorized to make rules regarding payment of court fees in installments by applicants not eligible for a fee waiver (see Gov. Code, § 68640), but is not authorized to make rules inconsistent with statute.

[5] All references to rules in this report are to the California Rules of Court.

[6] This is not a substantive change in the rule, which already distinguishes between orders issued with or without a hearing. (Cf. rule 3.52(3) (any order issued determining an application for an initial fee waiver *after* a hearing in the trial court must be made on *Order on Court Fee Waiver After Hearing (Superior Court)* (form FW-008).)

permitting such payments to be made on form FW-003—and so without a hearing—if the advance hearing has been waived. (Rule 3.52(6).)

- Renumbered subdivision (7) would be revised to allow courts a grace period after this latest revision of the order forms, in which they may use forms created within their own electronic case management system rather than the Judicial Council so long as the forms met certain requirements. This is similar to the grace period provided when the current forms were adopted in 2009.

***Form FW-001,* Request to Waive Court Fees *would be revised as follows:***

- Item 5a, for eligibility based on eligibility to receive public benefits, would be amended to further abbreviate some of the longer names of the public benefits programs, to make one name longer (the descriptor of Supplemental Security Income) to avoid confusion, and to include an express reference to the information sheet (form FW-001-INFO) where the full names of all the public benefits programs can now be found.

- Item 5b, for eligibility based on a household's income being below 125% of the federal poverty guideline (§ 68633(b)), would not be amended at this time. The chart showing the maximum amount of income for this type of eligibility would be retained.[7] The specific amounts will be changed if, as expected, the federal poverty guidelines are revised in late January.

- Item 5c, for eligibility based on income not being sufficient for common necessities of life (§ 68633(c)), would be amended to clarify that any request for payments over time is only an alternative request in the event that a fee waiver is denied. The instruction that an applicant checking this basis for eligibility must complete all of the items on the back of the form has been moved and made more emphatic, in response to requests by several court administrators to emphasize this direction.

  The option to request to "waive some court fees" would be deleted from the item. While a partial waiver is a possible outcome for an applicant denied a waiver based on income not being sufficient for common necessities, there is no express statutory basis for asking for a partial waiver and, based on the experience of advisory committee members, a partial fee waiver is seldom, if ever, requested unless in conjunction with a full waiver. Removal of the item reduces confusion and provides more space on the form.

- New item 7, Waiver of Hearing With Payments Over Time, would be added at the top of the second page. The text describes the party's right to a hearing before a denial of a fee waiver, along with the possibility of waiving that right in the event a court allows payments over time. There are also instructions on how to provide facts to support good cause for making payments over a period longer than three months. Two check boxes are included so that the applicant can indicate whether or not he or she is waiving an advance hearing.

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[7] See discussion below in Alternatives Considered, at page 10.

- Items 9, 10, and 12, seeking financial information, would be amended, so that all items in the left column of the form will be for gross income figures—rather than some seeking net income and others gross—and the item for payroll deductions has been moved from the income items to the list of expenses in renumbered item 12 (*Your Monthly Deductions and Expenses*). The text in these items has also been clarified.

***Form FW-001-INFO.*** Some new items have been added to the *Information Sheet on Waiver of Superior Court Fees and Costs* and three current items have been revised, as described below. The changes will make this a two-page form.

- Paragraph 1 in the general instructions section, containing a list of fees that will be waived if a fee waiver is granted, would be revised to add two fees regarding appellate records and to revise the item for court reporter's fees to include all such fees.[8]

- Paragraph 2, listing the fees the court has the discretion to waive upon an additional request for waiver from the parties, would be revised to delete the item regarding court reporter's fees for a hearing after 60 days from the list of items the court has the discretion to waive, as all court reporter's fees are now automatically included in any fee waiver.

- Paragraph 3 is a new item added to provide information about the possibility of a court's permitting payment of the initial filing fee over time if a fee waiver request is denied. It identifies the item on the application form in which to ask the court to consider such an alternative and describes the applicant's potential right to a hearing in advance of a fee waiver denial and the possibility of giving up this right if the applicant does not want a hearing should payments over time be permitted by the court. It also warns the applicant that, if payments over time are permitted, the period of time will generally be for up to only three months unless the party provides the court with good cause for a longer time, and instructs the applicant on how to show good cause.

- A new paragraph on public benefits programs would be added to list the full names of all the public programs listed in item 5b on the fee waiver application. The programs are in the same order as they appear on the application form.

- The paragraph on court collections would be amended to expand the warning that the court can use collection proceedings and add a fee and costs for collection, to include the court's efforts to collect any unpaid fees that a party was permitted to pay over time.

- The paragraph on prisoner applicants would be revised to include a citation to the portion of the fee waiver statutes addressing applications by prisoners (§ 68635). This is an area that has caused some confusion among applicants and, while there has not yet been a separate set of forms developed for prisoner applications, the committee concluded that a

[8] The rationale for amending rules 3.55 and 3.52 regarding these fees, which is the reason for these revisions, is discussed below in the section on **Fees Waived by Initial Fee Waiver.**

cross-reference to the applicable statute may be helpful.

***Form FW-003.*** The *Order on Court Fee Waiver (Superior Court)* would be revised to:

- Add new item 4c. The major change to item 4would be the addition of this new sub-item on payments over time. It parallels the item on payments over time on the current form for an order after hearing (see form FW-008, at item 5b(2)) with the following changes:
  - o The item begins with a finding that the right to a hearing has been waived and a note that the fee waiver application has been denied (with a cross-reference to the item on the order in which the denial and the reasons for the denial are stated).
  - o There is a reference to proposed rule 3.52(d), which provides a general limit of three months' time to such deferrals. The Civil and Small Claims Advisory Committee intends this rule reference to be a reminder to the judicial officers as well as parties of the time limitation.
  - o The type of fees that may be paid over time is now limited to "initial" filing fees, rather than just "filing fees." This change is intended to reflect the amended rule that the order allowing payments over time does not extend to fees for filing motions.

- Item 4a. The other changes proposed to this form, not related to payments over time, are all in the first section of item 4, on the first page of the form, as follows:
  - o The current direction to "check one", which indicates that the form could be used only to rule on either a *Request to Waive Court Fees* or a *Request to Waive Additional Court Fees*, but not both, has been removed.
  - o Item 4a(1) has been amended to include a reference to the rule of court providing for waiver of fees on appeals, some of which occur in the superior court.
  - o The item for court reporter's fees has been amended in item 4(a)(1) and deleted from item 4(a)(2) to reflect proposed changes in rule 3.55 and 3.56.
  - o The two new items for fees proposed for addition to rule 3.55, relating to trial court fees for appellate records, are added to the list of waived fees and costs in item 4a(1), and the other item relating to appellate fees has been expanded to track the language of the rule more exactly in light of the additional space available on the revised form.
  - o Current item 4a(3), Fee Waiver for Appeal, has been deleted because the items listed were duplicative of those already listed in item 4a(1).

***Form FW-008.*** The *Order on Court Fee Waiver After Hearing (Superior Court)* would be revised in parallel with the changes described above in form FW-003, in that item 5a, listing the items included in a fee waiver, would be amended in all the ways item 4a on form FW-003 has been amended, and item 5b(2), regarding payments over time, would be amended to include the limitations of payments over time described above on form FW-003.

**Fees waived by initial fee waiver**

***Background.*** Last year, the Appellate Advisory Committee and the Court Executives Advisory Committee circulated for public comment a proposal to amend the California Rules of Court relating to reporter's transcripts in civil appeals. Among other things, that proposal recommended the establishment of a new $50 fee to be paid to the superior court by those litigants who deposit funds with the court to hold in trust to pay for a reporter's transcript on

appeal. Because this was a new fee, the committees anticipated that there would be questions about the potential waiver of this fee. The invitation to comment therefore also specifically solicited comments on whether this fee should be listed among the superior court fees that must be waived under rule 3.55 or may be waived under rule 3.56. All four commentators who responded to this question suggested that the new fee should be on the list of specific superior court fees and costs that must be waived as part of an initial fee waiver under rule 3.55.

As indicated above, the proposal to establish the new $50 fee was approved by the Judicial Council at its October 2013 meeting, and the new fee took effect on January 1, 2014. In the report to the Judicial Council, the committees indicated that, based on the public comments received, they would recommend that this fee be added to the list of superior court fees that must be waived under rule 3.55 as part of an initial fee waiver.

There is also another rule—rule 8.818, part of the appellate division rules—that currently includes a separate list of superior court fees that must be waived as part of an initial fee waiver in an appeal in a limited civil case. The list in rule 8.818 identifies several of the same fees as rule 3.55. However, it also includes one fee that is not currently identified in rule 3.55: the fee for transcribing or copying an official electronic recording. Because this fee is not currently listed in rule 3.55, there may be confusion about whether it must be waived as part of an initial fee waiver.

There has also been a recent change in the law regarding court reporting fees in trial courts that must be reflected in the fee waiver rules and forms. Government Code section 68086 on court reporter's fees was amended a year ago to include a $30 court reporter fee for hearings taking less than an hour, as well as pro rated daily fees for hearings taking less than half a day. That statute has recently been amended further to expressly require that court reporting services provided at the expense of the court must be waived for a person who has been granted a fee waiver under section 68631. (See § 68086(b).) This statutory amendment requires that rule 3.55(7) and rule 3.56(4) be amended not only so that the $30 fee is covered, but also so that the time distinction in the current rules, giving a court the discretion to waive the reporter fees for a hearing more than 60 days after the grant of the fee waiver, is eliminated. As the rules currently read, they are in conflict with statute.

***Proposal regarding rules on fees.*** The Appellate Advisory Committee recommends amending rule 3.55, which lists the superior court fees and costs that must be waived upon granting an application for an initial fee waiver, to add to this list the new $50 fee to be paid to the superior court by those litigants who deposit funds with the court to hold in trust to pay for a reporter's transcript on appeal. The proposed language of the amendment is based on language from rules 8.130 and 8.334 referring to the $50 fee as being for "the superior court to hold this deposit [for the reporter's transcript] in trust."

In the interest of ensuring that all of the fees that the superior court must waive upon granting an application for an initial fee waiver can easily be found in one place, the committee recommends further amending rule 3.55 to add the fee now listed in rule 8.818—for transcribing official electronic recordings—to the list of superior court fees in rule 3.55 that must be waived and

amending rule 8.818 to simply cross-reference to rule 3.55 for the list of fees that must be waived.

The Civil and Small Claims Advisory Committee recommends amending rule 3.55(7), which currently includes on the list of fees that must be waived only those court reporters fees for hearing held within 60 days of the issuance of the fee waiver order, to eliminate the time restriction in light of the new mandate in Government Code section 68086(b) that all court reporter's fees otherwise charged by a court are waived for a party who has received a fee waiver. For the same reason, the committee recommends that the item including reporter's fees for hearing held more than 60 days after the issuance of the fee waiver order be deleted from the list of fees the court has discretion to grant a waiver for in rule 3.56, since the waiver of such fees are no longer discretionary. An advisory committee comment has been added following rule 3.55 to clarify that the inclusion of such fees in the list of waived fees is in no way intended to mandate that reporters be provided by the court for all hearings or trials at which a fee waiver recipient appears.

***Trial court forms.*** Several trial court forms would be revised to reflect the amendments to rules 3.55 and 3.56.

- *Forms FW-001-INFO, FW-003, FW-008.* As noted above, form FW-001-INFO, the information sheet on waiver of superior court fees, and forms FW-003 and FW-008, the primary superior court fee waiver order forms, currently identify the superior court fees that must be waived upon granting an application for an initial fee waiver. As noted above, these forms would be revised to reflect the proposed amendments to rule 3.55 in addition to the changes relating to payments over time.

- *Form FW-002, Request to Waive Additional Court Fees (Superior Court).* This form is used by a party to request that a court exercise its discretion to waive one or more of the court fees that are not automatically included in a fee waiver. Item 5 of this form would be revised to delete the item for court reporters' fees for hearings 60 days after the fee waiver has been granted. Such fees are now automatically included in any fee waiver and so should not be included in this application for waiver of additional fees.

- *Form FW-005, Notice: Waiver of Court Fees (Superior Court).* This is the form issued by a court when a fee waiver is granted by operation of law when no court action is taken within five days of filing a request. The only change to this form is in item 4, where the item for court reporter's fees has been amended to include all such fees, and the two new appellate fees have been added.

- *Form FW-012, Order on Court Fee Waiver After Reconsideration Hearing (Superior Court).* The only change to this form is in item 6d(2), where the item for court reporter's fees has been amended to parallel that same item in the other orders. [9]

[9] These revisions and three of these forms, forms FW-002, FW-005, and FW-012, were not among those circulated for comment. The committee is recommending that the council approve the further changes without circulation, as "minor substantive change[s] that [are] unlikely to create controversy," under rule 10.22(d)(2). While the change to the law to waive all such fees may have been likely to create a controversy, the changes to the rule and forms now that the law is in effect are not, in that they are essentially mandated by the change in statute. Making the changes

***Appellate Court Forms.*** Two appellate court forms would also be revised.

*APP-015/FW-015-INFO, and APP-001.* The *Information Sheet on Waiver of Appellate Court Fees (Supreme Court, Court of Appeal, Appellate Division)* (form APP-015/FW-015-INFO) is the form that provides litigants with information about waiver of appellate court fees and *Information on Appeal Procedures for Unlimited Civil Cases* (form APP-001) provides general information about appeals to the Court of Appeal in civil cases, including information about fee waivers. Both of these forms currently identify the superior court fees related to appeals that must be waived upon granting an application for an initial fee waiver. These forms would be revised in the following places to reflect the proposed amendments to rule 3.55:

Because form APP-001 must be revised to reflect these changes in the fee waiver rules, the Appellate Advisory Committee is also recommending a number of other updates to form APP-001 to reflect recent changes in appellate fees, rules, and procedures, including:

- Updating the amount of the fee to file a notice of appeal (page 1, item 4);

- Adding information about new fees for respondents (page 1, item 4);

- Reflecting that there are permissible substitutes to depositing funds with the court for a reporter's transcript (page 2, item 5, Reporter's Transcript section, middle paragraph);

- Updating rule references and the procedures relating to designation of the record (pages 2 and 3, item 5, Clerk's Transcript or Appendix section);

- Updating the procedures for filing a *Civil Case Information Statement* (form APP-004) (page 3, item 8); and

- Updating information about required copies of briefs (page 4, item 10, Service and Filing of Briefs section).

## Comments, Alternatives Considered, and Policy Implications

### Summary of comments received

The proposal was circulated with an invitation to comment in spring 2014. Fourteen comments were received, some extensive, from 16 different commentators (3 public interest law organizations from Los Angeles submitted a joint comment). Comments were received from 5 courts (Los Angeles, Orange, Riverside, Sacramento, and San Diego), a judicial officer (from San Bernardino), a family law facilitator, 2 State Bar committees, 2 county bar associations, an individual lawyer, the Joint Rules Working Group of the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee (TCPJAC/CEAC), and the three public interest law organizations (Harriett Buhai Center for Family Law, Western Center on Law & Poverty, and Public Counsel).

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without circulation would allow all the changes to the fee waiver forms and rules to take place at the same time, rather than having some forms continue to be in non-compliance with the law until next July.

Of the 16 commentators:

- 2 *agree* with the proposal as circulated: Superior Court of Riverside County and the Committee on Administration of Justice (CAJ), with CAJ expressly agreeing that there should be a method to waive the advance hearing when the party agrees to payments over time.[10]
- 6 *agree* with the proposal *but propose it be modified:* the individual attorney, individual judge, family law facilitator, Orange County Bar Association, Superior Courts of Orange County and San Diego County (many of the modifications requested have been made, as described below);
- 6 *oppose* making the proposed changes relating to installment, payments: the three public interest law groups, Superior Court of Los Angeles County and Superior Court of Sacramento County, and the TCPJAC/CEAC Joint Rules Working Group; and
- 2 commented only on the appellate portion of the proposal: Appellate Courts Section of Los Angeles Bar and Committee on Appellate Courts of State Bar.

A chart listing all commentators and showing all the comments received and modifications requested is attached, at pages 41–71. In light of the variety of issues in this proposal, and the variety of concerns raised, the comments chart is organized by subject matter. The chart starts with a list of all commentators in alphabetical order, and a note of the position taken by the commentator. The comments are then organized by topics, so that it is easier to see comments on each topic all together.

The main points raised by the commentators and the committees' proposed responses are summarized below, by topic.

**Comments on payments of trial court fees over time**

***Opposition to proposal.*** As noted above, while the majority of commentators agree with the proposal generally, at least with some minor modifications, six commentators oppose the proposal. All six note that the proposal will encourage courts to make more orders for payments over time rather than either granting fee waiver applications or simply denying them outright—and conclude that this is not desirable. But the commentators have different reasons for why they view the expected outcome negatively.

The Superior Court of Los Angeles County and the TCPJAC/CEAC Joint Rules Working Group, in identical comments, expressed concern that the increased amount of orders allowing payments over time will increase the work of court staff, requiring substantial additional staff time for processing multiple payments, especially with older court computerized case systems and with the fact that cash will frequently be involved. The commentators are also concerned that

[10] The Family and Juvenile Law Advisory Committee and the Access and Fairness Advisory Committee also reviewed the proposal as circulated, and provided informal comments to staff. The large majority of members of both groups who reviewed the invitation to comment were in favor of going forward with the proposal to allow a party to waive a hearing before receiving permission to make payments over time in the event the fee waiver request was denied. The groups noted that procedures could be used to provide better access to the courts for lower-income parties who are not eligible for fee waivers generally. A few members of the Family and Juvenile Law Advisory Committee were opposed to the proposal, noting that payments over time are seldom completed by the parties and place a heavy administrative burden on the courts, and so should not be facilitated.

collections will be difficult and time consuming. The Superior Court of Sacramento County agrees that the proposed amendments would burden the courts more than benefit them, due to the increased time that would have to be spent on handling multiple payments and collections.

While the advisory committee agrees that payments over time are administratively burdensome, the majority concluded that the benefits of this proposal (eliminating some hearings) was a benefit to the court, particularly because the statute already provides that judicial officers should consider the alternative of payments over time at any eligibility hearing at which the court denies a fee waiver application. (See § 68634(c)(5), at last paragraph.) The proposal would not change or expand the law authorizing payments over time; it just attempts to ease the requirement for hearings before such payments are permitted. The advisory committee also notes that there is no mandate in the statute (or in the rules or forms) that courts authorize payments over time for all parties who are denied a fee waiver—this option is within a court's discretion.

The three public interest law groups oppose the proposal from a different viewpoint, from the harm they perceive it will cause to the parties. They have provided an extensive comment pointing out the flaws they perceive in the proposal. Their first stated concern is that the statute providing for payments over time rather than a fee waiver (Government Code section 68634(c)(5)) is itself contrary to law, citing a Supreme Court opinion to support this position:

> . . . *Earls v. Superior Court* (1971) 6 Cal.3d 109. The trial court there denied a fee waiver application because the court concluded the applicant could set aside a little money over a number of months to pay the fee. The Supreme Court rejected this approach, concluding, "We know of no authority permitting a court to deny an application to proceed in forma pauperis upon the ground that, although the applicant is currently indigent, he may, over a period of months, succeed in accumulating the amount necessary to defray his costs." (*Id.* at p. 117.)
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> "The right of an indigent civil litigant to proceed in forma pauperis is grounded in a common law right of access to the courts and constitutional principles of due process." (*Cruz v. Superior Court* (2004) 120 Cal.App.4th 175, 185, emphasis added.) Because of this, and because of the holding in *Earls*, the practice of ordering payment of fees over time, even though permitted by statute, is constitutionally suspect.

The fee waiver statute, however, which was enacted after the *Earls* decision, can be read as consistent with that decision, because it expressly authorizes a court to allow payments over time or a partial waiver only when a court has determined that a party is *not* indigent at the time of the application, and so is not eligible for a full fee waiver under the standards of the statute, and when the court provides a written statement of the reasons why not. (See § 68634(c)(5), last sentence.)

The commentators also expressed skepticism that courts can make the kind of fine distinction required to determine that a party cannot pay the full court fee while paying for the common necessities of life (the standard for a fee waiver under § 68632(c)), but can afford to pay for part

of the court fees, calling such a decision an "exercise in false precision," which, while theoretically possible, should not be encouraged. The majority of the committee disagreed that this type of decision-making was beyond the normal scope of judicial officer's work.

In addition to opposing the practice of installment payments altogether, the public interest group commentators also raise several objections concerning the specifics of this proposal, which can be read in their entirety in the comments chart, but are summarized here, along with the advisory committee's responses:

- A request for payments over time should not be on the application form because it is not a type of relief that may be requested, but only an option for a court as part of a denial of a fee waiver application.
  The advisory committee agrees that permission for payments over time is indeed an alternative to be considered only in the event that a fee waiver has been denied, and has modified the text of the form to more clearly express this. (See also § 68640, which authorizes the council to make rules of court to allow parties who are not eligible for a fee waiver to pay court fees in installments.)

- The application form is contradictory, because if someone wants all fees to be waived, they do not want to pay the initial fee over time.
  The form has been modified in light of this comment to reflect that the payments over time would only be considered as an alternative if the fee waiver request is denied.

- The application form should not include a prospective waiver, but instead, if payments over time to be made, the court should have the opportunity to make such an order as a tentative order, with a hearing date scheduled, and allow the party to either appear at a hearing or waive the hearing and accept the payments over time.
  The committee concluded that this alternative would be significantly more burdensome for the court, without a significant added benefit to the parties. As now modified, the form makes it clear that the party can request a hearing after the order has been issued, should the party wish to do so, and that there is a form which may be used for such a request.

- Order form FW-003 should not include a space to deny application for payments over time, because there should not be a separate request for such a thing to begin with for court to rule on.
  The committee agreed with this comment and has eliminated the item for denial of a request for payments over time. The committee is not recommending that the fee waiver forms be used for stand-alone requests for payments over time.

- Rules 3.50 and 3.51 should not be amended because there should not be any specific applications for installments of payment over time.
  The committee agreed that the forms should not be used for specifically requesting installment payments over time except as an alternative when a fee waiver application has been denied, and so is no longer recommending amendments to these rules.

- If the provisions on forms and rules are changed to include requests for installment payments, they should also include requests for partial waivers.
  The committee disagreed. It concluded that partial waivers are a more complex alternative and could only be granted after a hearing.

***Requests to modify proposal regarding payments over time.*** There were several requests for modifications to the forms, some to sections not related to the payment of fees over time (the committee also revised the financial information worksheet on the form). Those requests not directed to payments over time, but to other proposed changes to forms, can be found in the section of the chart entitled "Other Comments/Suggestions – Forms FW-001, FW-001-INFO, FW-003 and FW-008". Requests for modifications that relate to payments over time are included in the first topic section of the chart and summarized here.

*Restrictions on payments over time.* Several commentators (Judge Frangie from San Bernardino, Ms. Larsen (Family Law Facilitator from Shasta County), the Orange County Bar Association, and some of the judicial officers at Superior Court of Orange County) state that the three-month default period for payments over time included in the proposed rules and forms is too restrictive, and that a longer period of six months or a year would be preferable. On the other hand, some judicial officers at the Orange County court believed that three months was appropriate. The Civil and Small Claims Advisory committee concluded that, in light of administrative burdens on the court of handling payments over time, three months is an appropriate time frame, with each judicial officer retaining discretion to provide for a longer period where good cause is shown. This conclusion is in accordance with opinion of the Access and Fairness Advisory Committee and the majority of the members of the Family and Juvenile Law Advisory Committee. [11]

As to limiting the payments over time to the initial filing fee, a couple of comments were received, with a family law facilitator disagreeing with the limitation altogether, and proposing that all filing fees—including motion fees—should be covered by the payment plans. Superior Court of Orange County, however, questioned how the option of allowing payments of other fees over time would work. Would another fee waiver application be required? With another option for a full fee waiver hearing (if no waiver of advance hearing agreed to)? And would the new application be required each time a motion or other item triggering a filing fee is filed? The committee agrees that the idea of allowing payments over time for all kinds of filing fees is overly complex and would be too much of a burden on the courts.

*Specific request for payments over time.* Two commentators (Superior Court of Orange County and Orange County Bar) suggested changes to the item on the application form requesting payments over time (form FW-001 at 5c), suggesting that the request for such payments should only be applicable should a fee waiver be denied. The committee agreed and the form has been modified to reflect this suggestion.

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[11] The Access and Fairness Advisory Committee found the three-month period to be reasonable, as long as the court retained discretion to make it longer. The Family and Juvenile Law Advisory Committee members who reviewed the proposal split on this point, with a majority agreeing with the three-month period so long as the court has the discretion to make longer, and the rest opining that a six-month period would be preferable.

The Orange County Bar and Ms. Larsen also noted that there was no instruction or space provided on the form for a party to show good cause for getting a longer time for payments. The committee has now added instructions to the information sheet and to item 7 on the application form.

Superior Court of Orange County pointed out that forms FW-001 and FW-001-INFO are silent as to when fees are due if payment plan request is denied. The Civil and Small Claims Advisory Committee notes that the application form has never contained information as to when payment is due if the fee waiver request is denied; rather, such information has been included on the order forms, and may be found on forms FW-003 and FW-008.

*Text of waiver of hearing in advance.* Several commentators find the text of the waiver (form FW-001 at item 7) as circulated awkward and incomplete, and requested it be changed to more closely track the information sheet. (See comments of Ms. Larson, Orange County Bar Association, Superior Courts of Orange and San Diego Counties.) The Civil and Small Claims Advisory Committee agreed and has further modified the text of this item and paragraph 3 of the information sheet in light of the suggestions made by the commentators.

*Order re payments over time.* Orange County Bar Association objected that the order form, FW-003, does not provide for a statement of reasons for denial of installment payments at item 4b(3) although the law requires statement of reasons for denying a fee waiver request. As noted above, the committee has deleted the possibility of a separate request for payments over time, so the separate item for denial of such a request (which was on the circulated form) has been deleted from the form recommended here. Payments over time will only be considered in the event that the fee waiver request is denied, and the reasons for that denial must be included in form FW-003 at item 4b(2).

Family law facilitator Larson commented that there is no provision included in the order allowing for a party to request a hearing post-order. She notes that the proposed waiver is expressly for an advance hearing on the issue of a denial of fee waiver, but not a waiver of all hearing rights. The committee agrees and has modified the form to clarify that, even when payments over time are authorized, a party whose fee waiver has been denied must be provided with the opportunity to request a hearing. (See form FW-003, at item 4b(2). )

**Comments on chart on forms showing income eligibility dollar amounts and effective date**

As noted above, the fee waiver application, form FW-001, contains a chart showing the income amounts for fee waiver eligibility based on 125% of the current poverty guidelines.[12] Members of the council's Rules and Projects Committee suggested that this chart be removed from FW-001 on the grounds that such amounts (and hence the form) have to be revised almost every year.

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[12] Government Code section 68632(b) provides that a fee waiver should be given to any applicant "whose monthly income is 125 percent or less of the current poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services." Note that this chart also appears on the appellate information sheet regarding fee waivers (form APP-015/FW-015-INFO).

The suggestion was that the information could instead be maintained on the Judicial Council's website, where revisions would not automatically result in changes to the forms. To assist in assessing this suggestion, the invitation to comment asked for specific input on this issue.

Five commentators opposed removing the chart from the forms in spite of the annual revisions required: Committee on Administration of Justice of State Bar, family law facilitator Larsen, the Orange County Bar Association, and Superior Courts of Orange and Riverside Counties. The two courts noted that having the chart of the form was valuable to court staff and judicial officers as well as to fee waiver applicants.

Two commentators, Superior Court of Los Angeles County and TCPJAC/CEAC Joint Rules Working Group, made identical comments, noting the cost of having to revise the form yearly. They propose, instead, that form FW-001 could include a pointer to the website containing the information *and* that an optional form be created that would include both the information in the family size/income eligibility chart and explanations of the public benefits abbreviations (which they suggest be removed from the proposed INFO sheets). According to these commentators, courts could then choose to use that optional form if they wished, to hand out to all applicants or to post in clerk's office of self-help center.

Because FW-001 is used in both the superior court and Court of Appeal, removal of the chart from this form would impact both levels of court. For this reason, both the Civil and Small Claims Advisory Committee and the Appellate Advisory Committee considered this issue. In addition, informal comments on this issue were received from the Family and Juvenile Law Advisory Committee and the Access and Fairness Advisory Committee. All of these Judicial Council committees agree with the majority of the commentators that the chart should stay on the form, in order to assist both the applicants and the courts in determining eligibility.

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee particularly considered the fact that most applicants for fee waivers are indigent self-represented litigants, many without easy access to the Internet, and that they are asserting their eligibility under penalty of perjury. The committees also note that the chart was originally on the information sheet, rather than the application, but was moved to the application in 2009 at the recommendation of the Fee Waiver Working Group that developed the fee waiver legislation sponsored by the council back at that time. They proposed the move in order to make clearer to both the applicant and the court the factual basis for the applicant's assertion being made under penalty of perjury that he or she is eligible for a fee waiver under section 68632(b).
In addition, the committees noted that, since the amendments to reflect the change in eligibility amounts are regularly issued in late February of each year, courts can plan for the changes in stocking the fee waiver forms.

All the commentators who addressed the issue support delaying the effective date of all changes recommended here until March 1, 2015, so that any changes to the income charts in form FW-001 and form APP-015/FW-015 would be made at the same time as all the other changes. This would eliminate the need to have one version of those forms go into effect on January 1, 2015, only to have to amend them the following month. If the proposed revisions to the forms are

adopted by the council, and if, as expected, the federal poverty guidelines are changed in late January 2015, the Civil and Small Claims Advisory Committee will return to the council by circulating order in February 2015 to seek approval of revisions of the dollar figures on the income charts, so that the charts can be changed before the new forms go into effect.

### Comments on types of fees included in all initial fee waivers

***Appellate fees.*** Three commentators—the Appellate Courts Section of the Los Angeles County Bar, the State Bar's Committee on Appellate Courts of, and Superior Court of San Diego County—submitted comments on the proposal to amend rule 3.55 and related forms to add the two additional appellate fees that must be waived as part of an initial fee waiver. All agreed with the proposed amendments to the rule and the resulting changes to the forms to reflect the change.

The Superior Court of Los Angeles County and TCPJAC/CEAC Joint Rules Working Group raised a somewhat different issue relating to appellate fees, stating that appellate fees should not be referenced in the initial fee waiver forms (presumably meaning in the application form FW-001, which includes request for waiver of fees for appeals, and the two order forms, FW-003 and FW-008) because it was confusing to applicants to see information regarding appellate fees on forms at the start of the case. Removing this information from the fee waiver forms would be an important substantive change and thus is not the type of change that can be considered for implementation without public comment having been sought. When the current fee waiver forms were adopted in 2009 to implement changes in the fee waiver statutes, the committees specifically considered and sought public comment on whether to have a single fee waiver application or separate applications for the trial and appellate courts. Based on the public comments, the committees specifically recommended the adoption of a single fee waiver application form in 2009. Removing the appellate fee references from these forms requires the committees to reconsider that earlier policy decision. The committees will add this suggestion to the list of proposals for future consideration by the committees.

***Trial court fees.*** Several commentators also raised some points about some of trial court fees listed in rule 3.55, with particularly strong concerns raised by both the Superior Court of Orange County and Superior Court of San Diego County concerning the recent amendments to Government Code section 68086 regarding court reporter's fees that they believe should be reflected in modifications to current rule 3.55(7). As the commentators note, the Government Code section on court reporter's fees was amended this past year to expressly require that the fees for all court reporting services provided at the expense of the court—whether a daily fee or the new $30 fee for a short hearing—must be waived for a person who has been granted a fee waiver under section 68631. (See §68086(b).) The three public interest law groups that jointly commented on the circulated proposal also sent a separate joint proposal to the committee that that rules 3.55(7) and 3.56(4) should be changed, to reflect the current state of the law under section 68086 that the waiver of court reporter's fees is now unconditional and cannot be time-restricted by rule of court.

As discussed above, the Civil and Small Claims Advisory Committee agrees that, as the rules currently read, the two rules are in conflict with statute. The committee is recommending that

further modifications be made to rules 3.55 and 3.56, and to the forms that include the lists of items in those rules.

**Other alternatives considered**

In addition to the alternatives raised in the comments, the following alternatives were considered by the committees.

***No change.*** The Civil and Small Claims Advisory Committee initially considered the alternative of not amending the fee waiver rules and forms to address the issue of payments over time. The committee recognizes that these forms and the fee waiver procedures are both complex and very heavily used in the courts and that, as a result, any change will place a burden on the courts, requiring training of court clerks and judicial officers who deal with fee waivers. In addition, revising the forms to provide for installment payments on the order issued without a hearing (form FW-003) necessarily lengthens the form, which will become three-pages long—a length some courts may find burdensome. The goal of these changes, however, is to save parties and courts the time and expense of unnecessary court appearances. Because the change has been urged by sitting judicial officers who regularly handle fee waiver applications, and because the change was recommended by the Ad Hoc Advisory Committee on Trial Court Efficiencies, et al., the majority of the committee concluded that proposing amendments to effect the requested change is appropriate.[13]

The Appellate Advisory Committee similarly considered not proposing amendments to the fee waiver rules and forms. However, based on the comments received last year, the committee concluded that it was important to specifically provide that the new fee for holding deposits for reporters' transcripts in trust is among those superior court fees that must be waived when an initial fee waiver is granted. Given that changes to the fee waiver rules and forms were being considered by both the Civil and Small Claims Advisory Committee and the Appellate Advisory Committee, the committees also concluded that it would be most economical to consider all of the potential changes to these forms at the same time.

***Separate forms for payments over time.*** The Civil and Small Claims Advisory Committee considered the alternative of leaving the current fee waiver forms as they exist, and adding another set of forms (application and order) solely focused on requests for payments over time. This alternative had the advantage of leaving the fee waiver forms unchanged and so might result in a lesser training burden on the courts. However, the committee concluded that a second set of forms and procedures would not solve the current problem of courts and parties not wanting to have to appear for a hearing should a court denying a fee waiver permit a party to make payments over time. While such forms could be useful for the small number of individuals who are seeking only the relief of making payments over time, without requesting any waiver of their fees, they would not help relieve the burden of unnecessary hearings for parties who do apply for fee waivers. Those individuals who want a fee waiver if possible, but who are willing to settle

[13] One member of the committee voted to leave the forms and rules as they currently stand regarding payments over time.

for the payments over time as an alternative, would still be able to get such relief only following a hearing. The committee concluded that this alternative was not a useful one.

## Implementation Requirements, Costs, and Operational Impacts

The proposal regarding payments over time will impose a need for training of court clerks and judicial officers on the amended forms and new procedures for handling requests from parties willing to give up their right to an advanced hearing before such payments may be permitted. It will also impose a cost in producing or procuring new forms. Some of that cost, at least as to the application forms, could be minimized by making the effective date March 1, 2015 so that any changes to three of the forms because of a change in the federal poverty guidelines could be made at the same time. It is anticipated that costs will also be offset to some degree by courts being able to eliminate hearings in cases where parties have agreed to waivers.

Adding the new $50 fee for the court to hold in trust funds deposited to pay court reporters for a transcript to the list of fees that must be waived when an initial fee waiver is granted may result in a reduction in revenues to the trial court from this fee. It is anticipated that this reduction would be small, as indigent parties may already request that the court waive this fee under rule 3.56(6) ("Other fees or expenses as itemized in the application"). There may also be some off-setting reduction in costs, as the court will not have to consider separate requests to waive this fee.

## Attachments

1. Cal. Rules of Court, rules 3.52, 3.55, 3.56, and 8.818, at pages 20–22.
2. Forms FW-001, FW-002, FW-003, FW-005, FW-008, FW-012, APP-001, and APP-015-INFO, at pages 23–40
3. Chart of comments, at pages 41–71.

California Rules of Court, rules 3.52, 3.55, 3.56, and 8.818 would be amended, effective March 1, 2015, to read:

## Title 3. Civil Rules

## Division 2. Waiver of Fees and Costs

### Rule 3.52. Procedure for determining application

The procedure for determining an application is as follows:

(1) The trial court must consider and determine the application as required by Government Code sections 68634 and 68635.

(2) An order determining an application for an initial fee waiver without a hearing must be made on *Order on Court Fee Waiver (Superior Court)* (form FW-003), except as provided in ~~(6)~~ (7) below.

(3)–(5) ***

(6) On denial of a fee waiver application, any order allowing payment of initial filing fees over time should limit the time for payments to three months unless there is good cause for a longer time. The order may be issued on form FW-003 if the party has expressly waived a hearing.

(7) Until January 1, ~~2013~~ 2016, a court with a computerized case management system may produce electronically generated court fee waiver orders as long as:

- (A) The document is substantively identical to the mandatory Judicial Council form it is replacing;
- (B) Any electronically generated form is identical in both language and legally mandated elements, including all notices and advisements, to the mandatory Judicial Council form it is replacing; and
- (C) The order is an otherwise legally sufficient court order, as provided in rule 1.31(g), concerning orders not on Judicial Council mandatory forms.

### Rule 3.55. Court fees and costs included in all initial fee waivers

Court fees and costs that must be waived upon granting an application for an initial fee waiver include:

(1) Clerk's fees for filing papers;

(2) Clerk's fees for reasonably necessary certification and copying;

(3) Clerk's fees for issuance of process and certificates;

(4) Clerk's fees for transmittal of papers;

(5) Court-appointed interpreter's fees for parties in small claims actions;

(6) Sheriff's and marshal's fees under article 7 of chapter 2 of part 3 of division 2 of title 3 of the Government Code (commencing with section 26720);

(7) Reporter's ~~daily~~ fees for attendance at hearings and trials, if the reporter is provided by the court ~~held within 60 days of the date of the order granting the application~~;

(8) The court fee for a telephone appearance under Code of Civil Procedure section 367.5; ~~and~~

(9) Clerk's fees for preparing, copying, certifying, and transmitting the clerk's transcript on appeal to the reviewing court and the party. A party proceeding under an initial fee waiver must specify with particularity the documents to be included in the clerk's transcript on appeal~~.~~;

(10) The fee under rule 8.130(b) or rule 8.834(b) for the court to hold in trust the deposit for a reporter's transcript on appeal; and

(11) The clerk's fee for preparing a transcript of an official electronic recording under rule 8.835 or a copy of such an electronic recording.

**Advisory Committee Comment**

The inclusion of court reporter's fees in the fees waived upon granting an application for an initial fee waiver is not intended to mandate that a court reporter be provided for all fee waiver recipients. Rather, it is intended to include within a waiver all fees mandated under the Government Code for the cost of court reporting services provided by a court.

**Rule 3.56. Additional court fees and costs that may be included in initial fee waiver**

Necessary court fees and costs that may be waived upon granting an application for an initial fee waiver, either at the outset or upon later application, include:

(1) Jury fees and expenses;

(2) Court-appointed interpreter's fees for witnesses;

(3) Witness fees of peace officers whose attendance is reasonably necessary for prosecution or defense of the case;

~~(4) Reporter's fees for attendance at hearings and trials held more than 60 days after the date of the order granting the application;~~

(~~5~~4) Witness fees of court-appointed experts; and

(~~6~~5) Other fees or expenses as itemized in the application.

## Title 8. Appellate Rules

## Division 2. Rules Relating to the Superior Court Appellate Division

## Chapter 1. General Rules Applicable to Appellate Division Proceedings

**Rule 8.818. Waiver of fees and costs**

**(a)–(c) * * ***

**(d) Court fees and costs waived**

Court fees and costs that must be waived upon granting an application for initial waiver of court fees and costs ~~include:~~ are listed in rule 3.55. The court may waive other necessary court fees and costs itemized in the application upon granting the application, either at the outset or upon later application.

~~(1) The fee for filing the notice of appeal;~~

~~(2) The clerk's fees for preparing and certifying the clerk's transcript on appeal and for copying and transmitting a copy of this transcript to the applicant;~~

~~(3) The fee for preparing a transcript of an official electronic recording under rule 8.835 or a copy of such an electronic recording; and~~

~~(4) Any court fee for telephonic oral argument.~~

**(e)–(f) * * ***

# FW-001 Request to Waive Court Fees

**CONFIDENTIAL**

*Clerk stamps date here when form is filed.*

**DRAFT**
**08/20/14**
**NOT APPROVED BY THE JUDICIAL COUNCIL**

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number and name:*

**Case Number:**

**Case Name:**

If you are getting public benefits, are a low-income person, or do not have enough income to pay for your household's basic needs and your court fees, you may use this form to ask the court to waive your court fees. The court may order you to answer questions about your finances. If the court waives the fees, you may still have to pay later if:

- You cannot give the court proof of your eligibility,
- Your financial situation improves during this case, or
- You settle your civil case for **$10,000** or more. The trial court that waives your fees will have a lien on any such settlement in the amount of the waived fees and costs. The court may also charge you any collection costs.

**1 Your Information** *(person asking the court to waive the fees):*
Name: ______
Street or mailing address: ______
City: ______ State: ___ Zip: ______
Phone number: ______

**2 Your Job,** if you have one *(job title):* ______
Name of employer: ______
Employer's address: ______

**3 Your Lawyer,** if you have one *(name, firm or affiliation, address, phone number, and State Bar number):*
______
______

a. The lawyer has agreed to advance all or a portion of your fees or costs *(check one):* Yes ☐ No ☐

b. *(If yes, your lawyer must sign here)* Lawyer's signature: ______
*If your lawyer is not providing legal-aid type services based on your low income, you may have to go to a hearing to explain why you are asking the court to waive the fees.*

**4 What court's fees or costs are you asking to be waived?**
☐ Superior Court (See *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO).)
☐ Supreme Court, Court of Appeal, or Appellate Division of Superior Court (See *Information Sheet on Waiver of Appellate Court Fees* (form APP-015/FW-015-INFO).)

**5 Why are you asking the court to waive your court fees?**

a. ☐ I receive *(check all that apply; see form FW-001-INFO for definitions):* ☐ Food Stamps ☐ Supp. Sec. Inc. ☐ SSP ☐ Medi-Cal ☐ County Relief/Gen. Assist. ☐ IHSS ☐ CalWORKS or Tribal TANF ☐ CAPI

b. ☐ My gross monthly household income (before deductions for taxes) is less than the amount listed below. *(If you check 5b, you must fill out 8, 9, and 10 on page 2 of this form.)*

| Family Size | Family Income | Family Size | Family Income | Family Size | Family Income | *If more than 6 people at home, add $422.92 for each extra person.* |
|---|---|---|---|---|---|---|
| 1 | $1,215.63 | 3 | $2,061.46 | 5 | $2,907.30 | |
| 2 | $1,638.55 | 4 | $2,484.38 | 6 | $3,330.21 | |

c. ☐ I do not have enough income to pay for my household's basic needs *and* the court fees. I ask the court to: *(check all boxes that apply, and you* ***must*** *fill out page 2):*
(i) ☐ Waive all court fees and costs.
(ii) ☐ If the fee waiver is denied, let me pay my initial Superior Court filing fee over time *(see item 7 on page 2).*

**6** ☐ Check here if you asked the court to waive your court fees for this case in the last six months.
(*If your previous request is reasonably available, please attach it to this form and check here:*) ☐

**I declare under penalty of perjury under the laws of the State of California that the information I have provided on this form and all attachments is true and correct.**

Date: ______

______ ▶ ______
*Print your name here* *Sign here*

Your name: ______________________ | **Case Number:**

*If you checked 5a on page 1, do not fill out below. If you checked 5b, fill out questions 8, 9, and 10 only. If you checked 5c, you **must** fill out this entire page. If you need more space, attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top.*

**7 Waiver of Hearing With Payments Over Time**

If your fee waiver is denied, you may be allowed to pay your filing fee in Superior Court over time, generally over 3 months. State law sometimes requires that the court set a hearing for you to be able to speak with the court about the fee waiver request before the court denies it. If you are willing to give up that hearing ***now*** in the event that (1) the court denies your fee waiver and (2) the court permits you to make payments over time, then you should check item 7a below.

A court may allow up to 3 months for payment of the filing fee, unless you can show a really good reason for a longer time. *(Cal. Rules of Court, rule 3.52(6).)* If you have a good reason for needing more than 3 months, set out the reasons on form MC-025 and attach it to this form.

a. ☐ I waive any right to a hearing in advance of denial of my fee waiver request if the court allows payments over time.

b. ☐ I do not waive any right I have to a hearing at court before my request for a waiver is denied.

**8** ☐ Check here if your income changes a lot from month to month. If it does, complete the form based on your average income for the past 12 months.

**9 Your Gross Monthly Income**

a. List the source and amount of ***any*** income you get each month, including: wages or other income from work before deductions, spousal/child support, retirement, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest, trust income, annuities, net business or rental income, reimbursement for job-related expenses, gambling or lottery winnings, etc.

(1) ______________________ $__________
(2) ______________________ $__________
(3) ______________________ $__________
(4) ______________________ $__________

b. **Your total monthly income***:* $__________

**10 Household Income**

a. List the income of all other persons living in your home who depend in whole or in part on you for support, or on whom you depend in whole or in part for support.

| | Name | Age | Relationship | Gross Monthly Income |
|---|---|---|---|---|
| (1) | | | | $ |
| (2) | | | | $ |
| (3) | | | | $ |
| (4) | | | | $ |

b. **Total monthly income of persons above:** $__________

**Total monthly income *and* household income** *(9b plus 10b):* $__________

To list any other facts you want the court to know, such as unusual medical expenses, family emergencies, or why you need more than 3 months for payments over time, attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top.

*Check here if you attach another page.* ☐

***Important!* If your financial situation or ability to pay court fees improves, you must notify the court within five days on form FW-010.**

**11 Your Money and Property**

a. Cash $__________

b. All financial accounts *(List bank name and amount):*

(1) ______________________ $__________
(2) ______________________ $__________
(3) ______________________ $__________

c. Cars, boats, and other vehicles

| | Make / Year | Fair Market Value | How Much You Still Owe |
|---|---|---|---|
| (1) | | $ | $ |
| (2) | | $ | $ |
| (3) | | $ | $ |

d. Real estate

| | Address | Fair Market Value | How Much You Still Owe |
|---|---|---|---|
| (1) | | $ | $ |
| (2) | | $ | $ |

e. Other personal property (jewelry, furniture, furs, stocks, bonds, etc.):

| | Describe | Fair Market Value | How Much You Still Owe |
|---|---|---|---|
| (1) | | $ | $ |
| (2) | | $ | $ |

**12 Your Monthly Deductions and Expenses**

a. List any payroll deductions and the monthly amount below:

(1) ______________________ $__________
(2) ______________________ $__________
(3) ______________________ $__________
(4) ______________________ $__________

b. Rent or house payment & maintenance $__________
c. Food and household supplies $__________
d. Utilities and telephone $__________
e. Clothing $__________
f. Laundry and cleaning $__________
g. Medical and dental expenses $__________
h. Insurance (life, health, accident, etc.) $__________
i. School, child care $__________
j. Child, spousal support (another marriage) $__________
k. Transportation, gas, auto repair and insurance $__________
l. Installment payments *(list each below)*:
Paid to:
(1) ______________________ $__________
(2) ______________________ $__________
(3) ______________________ $__________

m. Wages/earnings withheld by court order $__________
n. Any other monthly expenses *(list each below)*. $__________
Paid to: How Much?
(1) ______________________ $__________
(2) ______________________ $__________
(3) ______________________ $__________

**Total monthly expenses** *(add 12a –12n above):* $__________

# INFORMATION SHEET ON WAIVER OF SUPERIOR COURT FEES AND COSTS

If you have been sued or if you wish to sue someone, or if you are filing or have received a family law petition, and if you cannot afford to pay court fees and costs, you may not have to pay them in order to go to court. If you are getting public benefits, are a low-income person, or do not have enough income to pay for your household's basic needs *and* your court fees, you may ask the court to waive all or part of your court fees.

1. To make a request to the court to waive your fees in superior court, complete the *Request to Waive Court Fees* (form FW-001). If you qualify, the court will waive all or part of its fees for the following:
   - Filing papers in superior court (other than for an appeal in a case with a value of over $25,000)
   - Making and certifying copies
   - Giving notice and certificates
   - Sheriff's fee to give notice
   - Sending papers to another court department
   - Court fee for telephone hearing
   - Having a court-appointed interpreter in small claims court
   - Reporter's fee for attendance at hearing or trial, if a reporter is provided by the court.
   - Preparing, certifying, copying, and sending the clerk's transcript on appeal.
   - Holding in trust the deposit for a reporter's transcript on appeal under rule 8.833 or 8.834
   - Making a transcript or copy of an official electronic recording under rule 8.835

2. You may ask the court to waive other court fees during your case in superior court as well. To do that, complete a *Request to Waive Additional Court Fees (Superior Court)* (form FW-002). The court will consider waiving fees for items such as the following, or other court services you need for your case:
   - Jury fees and expenses
   - Fees for a peace officer to testify in court
   - Fees for court-appointed experts
   - Court-appointed interpreter fees for a witness
   - Other necessary court fees

3. If your fee waiver is denied, you may be allowed to pay your filing fee in superior court over time, generally over three months. If your fee waiver is denied and if you want the court to consider allowing you to pay the filing fee over time, check box 5c(ii) on your *Request to Waive Court Fees*. State law sometimes requires that the court set a hearing for you to be able to speak about the fee waiver request before the court denies it. If you are willing to give up that hearing *now* in the event that (1) the court denies your fee waiver and (2) the court permits you to make payments over time, then you should check item 7a on the request form and fill out all the other sections of that form.

   A court may allow up to three months for payment of the filing fee, unless you can show a good reason for needing a longer time. See Cal. Rules of Court, rule 3.52(6). If you have a good reason for needing more than three months, you should set out the reasons on form MC-025 and attach it to your *Request to Waive Court Fees.*

4. If you want the Appellate Division of Superior Court or the Court of Appeal to review an order or judgment against you and you want the court fees waived, ask for and follow the instructions on *Information Sheet on Waiver of Appellate Court Fees (Supreme Court, Court of Appeal, Appellate Division)* (form APP-015/FW-015-INFO).

**IMPORTANT INFORMATION!**

- **You are signing your request under penalty of perjury. Answer truthfully, accurately, and completely.**
- **The court may ask you for information and evidence.** You may be ordered to go to court to answer questions about your ability to pay court fees and costs and to provide proof of eligibility. Any initial fee waiver you are granted may be ended if you do not go to court when asked. You may be ordered to repay amounts that were waived if the court finds you were not eligible for the fee waiver.
- **Public benefits programs listed on the application form.** In item 5 on the *Request to Waive Court Fees*, there is a list of programs from which you may be receiving benefits, listed by the abbreviations they are commonly known by. The full names of those programs can be found in Government Code section 68632(a), and are also listed here:
  - Medi-Cal
  - Food Stamps—California Food Assistance Program, CalFresh Program, or SNAP
  - Supp. Sec. Inc.—Supplemental Security Income (not Social Security)
  - SSP—State Supplemental Payment
  - County Relief/General Assistance—County Relief, General Relief (GR), or General Assistance (GA)
  - IHSS—In Home Supportive Services
  - CalWORKS—California Work Opportunity and Responsibility to Kids Act
  - Tribal TANF—Tribal Temporary Assistance for Needy Families
  - CAPI—Cash Assistance Program for Aged, Blind, or Disabled Legal Immigrants

• **If you receive a fee waiver, you must tell the court if there is a change in your finances.** You must tell the court within five days if your finances improve or if you become able to pay court fees or costs during this case. (File *Notice to Court of Improved Financial Situation or Settlement* (form FW-010) with the court.) You may be ordered to repay any amounts that were waived after your eligibility came to an end.

• **If you receive a judgment or support order in a family law matter:** You may be ordered to pay all or part of your waived fees and costs if the court finds your circumstances have changed so that you can afford to pay. You will have the opportunity to ask the court for a hearing if the court makes such a decision.

• **If you win your case in the trial court:** In most circumstances the other side will be ordered to pay your waived fees and costs to the court. The court will not enter a satisfaction of judgment until the court is paid. (This does not apply in unlawful detainer cases. Special rules apply in family law cases. (Government Code section 68637(d), (e).)

• **If you settle your civil case for $10,000 or more:** Any trial court–waived fees and costs must first be paid to the court out of the settlement. **The court will have a lien on the settlement in the amount of the waived fees and costs.** The court may refuse to dismiss the case until the lien is satisfied. A request to dismiss the case (use form CIV-110) must have a declaration under penalty of perjury that the waived fees and costs have been paid. Special rules apply to family law cases.

• **The court can collect fees and costs due to the court.** If waived fees and costs are ordered paid to the trial court, or if you fail to make the payments over time, the court can start collection proceedings and add a $25 fee plus any additional costs of collection to the other fees and costs owed to the court.

• **The fee waiver ends.** The fee waiver expires 60 days after the judgment, dismissal, or other final disposition of the case or earlier if a court finds that you are not eligible for a fee waiver.

• **If you are in jail or state prison:** Prisoners may be required to pay the full cost of the filing fee in the trial court but may be allowed to do so over time. See Government Code section 68635.

# FW-002 Request to Waive Additional Court Fees (Superior Court)

**CONFIDENTIAL**

*Clerk stamps date here when form is filed.*

DRAFT
7/14/14
Not approved by the Judicial Council

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number and name:*

**Case Number:**

**Case Name:**

This form asks the court to waive *additional* court fees that are not covered in a current order. If you have not already received an order that waived or reduced your court fees, you must complete and file a *Request to Waive Court Fees (Superior Court),* form FW-001, along with this form.

1. **Your Information** *(person asking the court to waive the fees):*
   Name: ______
   Street or mailing address: ______
   City: ______ State: ____ Zip: ______
   Phone number: ______

2. Your lawyer, if you have one *(name, firm or affiliation, address, phone number, and State Bar number):*
   ______
   ______
   ______
   a. The lawyer has agreed to advance all or a portion of your fees or costs *(check one)*: ☐ Yes ☐ No
   b. *(If yes, your lawyer must sign here):*
   Lawyer's signature: ______
   *If your lawyer is not providing legal-aid type services based on your low income, you may have to go to a hearing to explain why you are asking the court to waive the fees.*

3. Date your *last* court fee waiver order, if any, was granted: ______

4. Has your financial situation improved since your last *Request to Waive Court Fees?* ☐ No ☐ Yes
   *(If yes, you must fill out a new* Request to Waive Court Fees*, form FW-001, and attach it to this form.)*

5. What other fees do you want your court fee waiver order to cover? *(Check all that apply):*
   a. ☐ Jury fees and expenses
   b. ☐ Court-appointed interpreter fees for a witness
   c. ☐ Fees for a peace officer to testify in court
   d. ☐ Fees for court-appointed experts
   e. ☐ Other *(specify):* ______

6. Why do you need these other services? *(Explain):*
   ______
   ______

**Notice:** The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for **$10,000** or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

**I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.**

Date: ______

______ 
*Print your name here*

______
*Sign here*

# FW-003 Order on Court Fee Waiver (Superior Court)

Clerk stamps date here when form is filed.

**DRAFT**
**08/20/2014**
**NOT APPROVED**
**BY**
**THE JUDICIAL COUNCIL**

Fill in court name and street address:

**Superior Court of California, County of**

Fill in case number and name:

**Case Number:**

**Case Name:**

1. **Person who asked the court to waive court fees:**
   Name: ______
   Street or mailing address: ______
   City: ______ State: ______ Zip: ______

2. **Lawyer, if person in ① has one** *(name, address, phone number, e-mail, and State Bar number):* ______

3. A request to waive court fees was filed on *(date):* ______
   ☐ The court made a previous fee waiver order in this case on *(date):*

***Read this form carefully. All checked boxes ☑ are court orders.***

**Notice:** The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for **$10,000** or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

4. After reviewing your: ☐ *Request to Waive Court Fees* ☐ *Request to Waive Additional Court Fees*
   ***the court makes the following orders:***

   a. ☐ The court **grant**s your request, as follows:

   (1) ☐ **Fee Waiver.** The court grants your request and waives your court fees and costs listed below. *(Cal. Rules of Court, rules 3.55 and 8.818.)* You do not have to pay the court fees for the following:

   - Filing papers in Superior Court
   - Making copies and certifying copies
   - Sheriff 's fee to give notice
   - Court fee for phone hearing
   - Giving notice and certificates
   - Sending papers to another court department
   - Court-appointed interpreter in small claims court
   - Reporter's fee for attendance at hearing or trial, if reporter provided by the court
   - Preparing, certifying, copying, and sending the clerk's transcript on appeal
   - Holding in trust the deposit for a reporter's transcript on appeal under rule 8.130 or 8.834
   - Making a transcript or copy of an official electronic recording under rule 8.835

   (2) ☐ **Additional Fee Waiver.** The court grants your request and waives your additional superior court fees and costs that are checked below. *(Cal. Rules of Court, rule 3.56.)* You do not have to pay for the checked items.

   ☐ Jury fees and expenses
   ☐ Fees for court-appointed experts
   ☐ Other *(specify):* ______
   ☐ Fees for a peace officer to testify in court
   ☐ Court-appointed interpreter fees for a witness

Your name: ______________________ | **Case Number:**

b. ☐ The court **denies** your fee waiver request, as follows:

> **Warning!** If you miss the deadline below, the court cannot process your request for hearing or the court papers you filed with your original request. If the papers were a notice of appeal, the appeal may be dismissed.

(1) ☐ The court **denies** your request because it is incomplete. You have **10 days** after the clerk gives notice of this order (see date of service on next page) to:

- Pay your fees and costs, or
- File a new revised request that includes the items listed below *(specify incomplete items):*

______________________

(2) ☐ The court **denies** your request because the information you provided on the request shows that you are not eligible for the fee waiver you requested *(specify reasons):* ______________________

______________________

______________________

The court has enclosed a blank *Request for Hearing About Court Fee Waiver Order (Superior Court)*, form FW-006.You have **10 days** after the clerk gives notice of this order (see date of service on next page) to:

- Pay your fees and costs in full or the amount listed in c. below, or
- Ask for a hearing in order to show the court more information. *(Use form FW-006 to request hearing.)*

c. ☐ Having waived the right to a hearing, and the fee waiver having been denied *(see b(2) above)*, you may pay your initial filing fee over time. (See *Cal. Rules of Court, rule 3.52(6)*.) You must make monthly payments of at least $ ________ beginning *(date):* ______________ and then payable on the 1st of each month after that, until the fees are paid in full.

You must pay all other court fees and costs as they are due.

d. ☐ The court needs more information to decide whether to grant your request. You must go to court on the date below. The hearing will be about *(specify questions regarding eligibility):* ______________________

______________________

______________________

☐ Bring the following proof to support your request if reasonably available:

______________________

**Hearing Date** → Date: ____________ Time: ________

Dept.: ____________ Room: ________

Name and address of court if different from above:

______________________

______________________

______________________

______________________

> **Warning!** If item d is checked, and you do not go to court on your hearing date, the judge will deny your request to waive court fees, and you will have 10 days to pay your fees. If you miss that deadline, the court cannot process the court papers you filed with your request. If the papers were a notice of appeal, the appeal may be dismissed.

Date: ______________ ______________________

*Signature of (check one):* ☐ *Judicial Officer* ☐ *Clerk, Deputy*

**This is a Court Order.**

**Request for Accommodations.** Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation,* Form MC-410. (Civil Code, § 54.8.)

## Clerk's Certificate of Service

I certify that I am not involved in this case and *(check one):* ☐ A certificate of mailing is attached.

☐ I handed a copy of this order to the party and attorney, if any, listed in (1) and (2), at the court, on the date below.

☐ This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in (1) and (2), from *(city):* ____________________, California on the date below.

Date: ____________________ Clerk, by ____________________, Deputy

**This is a Court Order.**

**FW-005** | **Notice: Waiver of Court Fees (Superior Court)**

*Clerk stamps date here when form is filed.*

DRAFT 8/20/14
Not approved
by the
Judicial Council

*Fill in court name and street address:*

**Superior Court of California, County of**

*Court fills in case number when form is filed.*

**Case Number:**

**Case Name:**

① **Person who asked the court to waive court fees:**

Name: ______________________________

Mailing address: ______________________________

City: ______________ State: ________ Zip: ________

Phone number: ______________

② Lawyer, if person in ① has one: *(name, address, phone number, e-mail, and State Bar number):*

______________________________

③ Your *Request to Waive Court Fees* was filed on *(date):*

______________________________

④ Your request is **granted** by operation of law because no court action was taken within five days after it was filed. A fee waiver is granted for the following court fees and costs *(Cal. Rules of Court, rule 3.55):*

- Filing papers
- Giving notice and certificates
- Sending papers to another court department
- Making copies and certifying copies
- Sheriff's fee to give notice
- Court-appointed interpreter in small claims court
- Court fee for phone hearing
- Reporter's fee for attendance at hearing or trial, if reporter provided by the court
- Preparing, certifying, copying, and sending the clerk's transcript on appeal
- Holding in trust the deposit for a reporter's transcript on appeal under rules 8.130 or 8.834
- Making a transcript or copy of an official electronic recording under rule 8.835

Date: Clerk, by ______________________________, Deputy

**Notice:** The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for **$10,000** or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

## Clerk's Certificate of Service

I certify that I am not involved in this case and *(check one):* ☐ A certificate of mailing is attached.

☐ I handed a copy of this notice to the party and attorney, if any, listed in ① and ②, at the court, on the date below.

☐ This notice was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in ① and ②, from *(city)*: ______________________, California on the date below.

Date: ______________ Clerk, by ______________________________, Deputy

# FW-008 Order on Court Fee Waiver After Hearing (Superior Court)

Clerk stamps date here when form is filed.

**DRAFT**

**08/20/14**

**NOT APPROVED BY JUDICIAL COUNCIL**

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number and name:*

**Case Number:**

**Case Name:**

1. **Person who asked the court to waive court fees:**
   Name: ______________________
   Street or mailing address: ______________________
   City: ____________ State: ________ Zip: ____________

2. **Lawyer, if person in ① has one** *(name, address, phone number, e-mail, and State Bar number):*
   ______________________
   ______________________
   ______________________

3. A request to waive court fees was filed *(date):* ____________

4. There was a hearing on *(date):* ____________
   at *(time):* ________ in *(Department):* ____________
   The following people were at the hearing *(check all that apply):*
   ☐ Person in ① ☐ Lawyer in ②
   ☐ Others *(names):* ______________________
   ______________________

**Read this form carefully. All checked boxes ☒ are court orders.**

**Notice:** The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for **$10,000** or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

5. After reviewing your: ☐ Request to Waive Court Fees ☐ Request to Waive Additional Court Fees
   **the court makes the following order:**

   a. ☐ The court **grants** our request and waives your court fees and costs as follows:

   (1) ☐ **Fee Waiver.** The court **grants** your request and waives your court fees and costs listed below *(Cal. Rules of Court, rules 3.55 and 8.818.)* You do not have to pay the court fees for the following:
   - Filing papers in superior court
   - Making copies and certifying copies
   - Sheriff's fee to give notice
   - Giving notice and certificates
   - Sending papers to another court department
   - Court-appointed interpreter in small claims court
   - Reporter's fee for attendance at hearing or trial, if reporter provided by the court
   - Preparing and certifying the clerk's transcript on appeal
   - Court fees for phone hearing
   - Holding in trust the deposit for a reporter's transcript on appeal under rule 8.130 or 8.834
   - Making a transcript or copy of an official electronic recorder under rule 8.835

   (2) ☐ **Additional Fee Waiver.** The court **grants** your request and waives your additional superior court fees and costs that are checked below. *(Cal. Rules of Court, rule 3.56.)* You do not have to pay for the checked items.
   ☐ Jury fees and expenses
   ☐ Fees for court-appointed experts
   ☐ Fees for a peace officer to testify in court
   ☐ Court-appointed interpreter fees for a witness
   ☐ Other*: (specify):* ______________________

| Case Name: | Case Number: |
|---|---|
| | |

b. ☐ The court **denies** your request and **will not waive or reduce** your fees and costs.

(1) The reason for this denial is as follows:

(a) ☐ Your request is incomplete, and you did not provide the information that the court requested *(specify items missing):* ______________________

(b) ☐ You did not go to court on the hearing date to provide the information the court needed to make a decision.

(c) ☐ The information you provide shows that you are not eligible for the fee waiver you requested because *(check all that apply):*

i. ☐ Your income is too high.

ii. ☐ Other *(explain):* ______________________

(d) ☐ There is not enough evidence to support a fee waiver.

(e) ☐ Other *(state reasons)*: ______________________

______________________

(2) ☐ You may pay your initial filing fee over time. (See *Cal. Rules of Court, rule 3.52(6).)* You must make monthly payments of at least $ ________ beginning *(date):* ______________ and then payable on the 1st of each month after that, until the fee is paid in full.

You must pay all other court fees and costs as they are due.

c. ☐ The court **partially grants** your request so you can pay court fees without using money you need to pay for your household's basic needs. You are ordered to pay a portion of your fees, **as checked below.** The court only partially grants the request because *(state reasons for partial denial):*

______________________

______________________

(1) ☐ You must pay ________ % of your court fees.

(2) ☐ The court waives some fees. The fees checked below are waived. You must pay all other court fees.

- ☐ Filing papers at superior court
- ☐ Sheriff's fee to give notice
- ☐ Court-appointed interpreter
- ☐ Reporter's fee for attendance at trial or hearing if reporter provided by the court.
- ☐ Jury fees and expenses
- ☐ Court-appointed experts' fees
- ☐ Making certified copies
- ☐ Other *(specify):* ______________________
- ☐ Giving notice and certificates
- ☐ Sending papers to another court department
- ☐ Court-appointed interpreter fees for a witness
- ☐ Fees for a peace officer to testify in court
- ☐ Court fees for telephone hearings

(3) ☐ Other *(specify):* ______________________

**Warning! If b or c above are checked:** You have **10 days** after the clerk gives notice of this order (see date below) to pay your fees as ordered, unless there is a later date for beginning payments in item b(2). If you do not pay, your court papers will not be processed**.** If the papers are a notice of appeal, your appeal may be dismissed.

*Date:* ______________________ ______________________
*Signature of Judicial Officer*

## Clerk's Certificate of Service

I certify that I am not involved in this case and *(check one):* ☐ A certificate of mailing is attached.

☐ I handed a copy of this order to the party and attorney, if any, listed in (1) and (2), at the court, on the date below.

☐ This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in (1) and (2), from *(city)*: ______________, California on the date below.

Date: ______________ Clerk, by ______________, Deputy

# FW-012 Order on Court Fee Waiver After Reconsideration Hearing (Superior Court)

*Clerk stamps date here when form is filed.*

DRAFT
8/20/14
Not approved
by the
Judicial Council

*Fill in court name and street address:*

**Superior Court of California, County of**

*Court fills in case number when form is filed.*

**Case Number:**

**Case Name:**

1. Name of person who asked the court to waive court fees: ______

   Street or mailing address: ______

   City: ______ State: ______ Zip: ______

2. Lawyer, if person in (1) has one: *(name, address, phone number, e-mail, and State Bar number):*

   ______

3. The court made a previous fee waiver order in this case on *(date):* ______

4. The court sent you a notice to go to court about your fee waiver on *(date):* ______

**Read this form carefully. All checked ☑ boxes are court orders.**

5. There was a hearing on *(date):* ______
   at *(time):* ______ in *(Department):* ______
   The following people were at the hearing *(check all that apply):*
   ☐ Person in (1) ☐ Lawyer in (2)
   ☐ Others *(names):* ______

6. After considering the information provided at the hearing, **the court makes the following order:**

   a. ☐ No Change to Fee Waiver. The *Order on Court Fee Waiver* issued by this court on *(date):* ______ remains in effect. No change is made at this time.

   b. ☐ Fee Waiver Is Ended as of*: (date):* ______ . The court finds that beginning on that date you were no longer eligible for a fee waiver because: ______

      (1) ☐ You must pay all court fees in this case from the date of this order.

      (2) ☐ You must also pay the court $______ for fees that were initially waived after you were no longer eligible.

         (a) ☐ You must pay that amount within 10 days of this order.

         (b) ☐ You may pay that amount in monthly payments of $______ beginning *(date):* ______ and payable on the 1st of each month after that until paid in full.

   c. ☐ **Fee Waiver Is Retroactively Withdrawn.** The court finds that you were never entitled to a fee waiver in this case because: ______

      (1) You must pay all court fees in this case from the date of this order.

      (2) ☐ You must also pay the court $______ for fees that the court initially waived.

         (a) ☐ You must pay that amount within 10 days of this order.

         (b) ☐ You may pay that amount in monthly payments of $ ______ beginning *(date):* ______ and payable on the 1st of each month after that until paid in full.

6 d. ☐ Fee Waiver Is Modified. The court finds that you obtained the initial fee waiver in bad faith, for an improper purpose, or to needlessly increase the costs of litigation. The court places the following limitations on the fee waiver that was granted to you:

(1) ☐ You must pay all court fees in this case from the date of this order.

(2) ☐ From the date of this order, only the following court fees will be waived *(court to check all that apply).*

**You must pay for all court fees that are not checked below:**

☐ Filing papers at superior court ☐ Making certified copies ☐ Giving notice and certificates

☐ Sheriff's fee to give notice ☐ Sending papers to another court department

☐ Court-appointed interpreter ☐ Court-appointed interpreter fees for a witness

☐ Reporter's fee for attendance at hearing or trial, if reporter provided by court

☐ Jury fees and expenses ☐ Fees for a peace officer to testify in court

☐ Court-appointed expert's fees ☐ Court fees for telephone hearings

☐ Other *(specify):* ______________________

(3) ☐ Other modification: ______________________

e. ☐ Other Order: ______________________

Date: ______________________

*Signature of Judge or Judicial Officer*

## Clerk's Certificate of Service

I certify that I am not involved in this case and *(check one):* ☐ A certificate of mailing is attached.

☐ I handed a copy of this order to the party and attorney, if any, listed in 1 and 2, at the court, on the date below.

☐ This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in 1 and 2, from *(city):* ______________________, California on the date below.

Date: ______________________ Clerk, by ______________________, Deputy

# INFORMATION ON APPEAL PROCEDURES FOR UNLIMITED CIVIL CASES

The following is general information about the procedures for appeals of unlimited civil cases ("unlimited civil case" generally means a civil case in which the amount in controversy is more than $25,000; see Code of Civil Procedure sections 85 and 88). This information is not intended to be comprehensive, but to provide an overview to help guide you through the appeal process. **You should thoroughly read rules 8.100–8.276 of the California Rules of Court. If you have questions about the appellate process, you should consult an attorney of your own choosing.**

## 1. NATURE OF AN APPEAL

An appeal is a review of a court's decision by another court. A party may appeal an unfavorable judgment and certain orders in an unlimited civil case made in the superior court to the Court of Appeal for the district in which the superior court is located. Generally, the appeal must be based on an argument that a **legal error** was made by the superior court. An appeal is not a retrial. You will not be permitted to introduce new evidence, and the appellate court will not reassess conflicting evidence. You may not appeal on behalf of a friend, a spouse, a child, or other relative (unless you are a legally appointed guardian).

## 2. PARTIES

The party filing the appeal is called the APPELLANT. The party against whom the appeal is brought is called the RESPONDENT.

## *STEPS IN THE APPEAL PROCESS AT THE SUPERIOR COURT*

## 3. NOTICE OF APPEAL

To appeal from a superior court decision in an unlimited civil case, the appellant must file a notice of appeal **in the superior court** (Cal. Rules of Court, rule 8.100). A notice of appeal tells the other party or parties in the case and the superior court that you are appealing the decision of the superior court. You may use Judicial Council form APP-002, *Notice of Appeal/Cross-Appeal (Unlimited Civil Case),* to file a notice of appeal in an unlimited civil case.

The notice of appeal must be served on the other party or parties in the case and filed with the clerk of the superior court. Generally, this service and filing must be completed within **60 calendar days** after the clerk or a party serves either a notice of entry of judgment or a file-stamped copy of the judgment. If neither of these documents is served, the notice of appeal must be filed within **180 calendar days** after entry of judgment (generally the date the judgment is file-stamped). **If your notice of appeal is filed late, your appeal will be dismissed** (Cal. Rules of Court, rules 8.104 and 8.108).

If a notice of appeal has been filed in a case, any other party to the case may file its own appeal from the same judgment or order. This is called a cross-appeal. To cross-appeal, a party must file a notice of appeal within either the regular time for filing a notice of appeal or within 20 days after the clerk of the superior court mails notice of the first appeal, whichever is later (Cal. Rules of Court, rule 8.108). You may use Judicial Council form APP-002, *Notice of Appeal/Cross-Appeal (Unlimited Civil Case),* to file this notice in an unlimited civil case.

## 4. FEES ON APPEAL

The notice of appeal must be accompanied by a $775 filing fee (Gov. Code, §§ 68926 and 68926.1) made payable to "Clerk, Court of Appeal" and a $100 deposit (Gov. Code, § 68926.1) made payable to "Clerk of the Superior Court." Parties other than the appellant must pay a fee of $390 when they file their first document in the Court of Appeal. If you do not have the money for the fees, you may submit an application for waiver of court fees and costs on appeal under rules 8.26 and 3.50–3.63 of the California Rules of Court (Cal. Rules of Court, rule 8.100).

## 5. DESIGNATION OF RECORD

See rules 8.120–8.163 of the California Rules of Court, which govern the preparation of the record on appeal.

Since the appellate court was not present at the trial or other proceedings in the superior court, there must be an official record of the proceedings from the superior court for the appellate court to review in assessing the appeal. Within 10 days of filing the notice of appeal, the appellant must tell the superior court in writing ("designate") what documents and oral proceedings, if any, to include in the record that will be sent to the Court of Appeal. **You will need to designate all the parts of the record that the Court of Appeal will need to decide the issues you raise in the appeal.** You can use Judicial Council form APP-003, *Notice Designating Record on Appeal (Unlimited Civil Case)* to designate the record in an unlimited civil case.

**Reporter's Transcript**

A court reporter's transcript is a written record (often called the "verbatim" record) of the oral proceedings in the superior court. A reporter's transcript is not required but is usually necessary.

Within 10 days of filing the notice of appeal, the appellant must serve and file with the superior court clerk either a notice designating a reporter's transcript or a notice of intent to proceed without a reporter's transcript (Cal. Rules of Court, rule 8.121). You can use Judicial Council form APP-003, *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* to file this notice in an unlimited civil case.

If the appellant chooses to designate a reporter's transcript, among other things, the notice designating this transcript must specify the date of each proceeding to be included in the transcript and must be served on each known court reporter (Cal. Rules of Court, rule 8.130). The names of the court reporters who reported the proceedings are found in the superior court clerk's minute orders, which are prepared for each day of the proceedings and then placed in the superior court file.

With the notice designating the reporter's transcript, the appellant must deposit the approximate cost of transcribing the proceedings designated or one of the substitutions authorized by rule 8.130(b)(3) (Cal. Rules of Court, rule 8.130). The cost may be obtained from the reporter's written estimate or calculated at $650 per day (more than three hours of court time) or $325 per fraction of a day (less than three hours of court time) for proceedings that were not previously transcribed. For previously transcribed proceedings, the deposit is calculated at $160 per day (more than three hours of court time) or $80 per fraction of a day (less than three hours of court time). If the appellant deposits these funds with the court, the appellant must also pay the court a $50 fee for holding this deposit in trust, unless the trial court has waived the appellant's fees under rules 3.50–3.63 (Cal. Rules of Court, rule 8.130).

Within 10 days after service of the appellant's designation of the reporter's transcript, the respondent may serve and file a notice designating additional proceedings to be included in the reporter's transcript (Cal. Rules of Court, rule 8.130). Respondent must pay for the cost of transcribing any additional proceedings designated.

If the appellant chooses to proceed without a reporter's transcript, the respondent may not designate a reporter's transcript without first obtaining an order from the reviewing court (Cal. Rules of Court, rule 8.130).

**Clerk's Transcript or Appendix**

The clerk's transcript is a compilation of the documents filed in the superior court that is prepared by the clerk. An appendix is a compilation of these documents prepared by a party (Cal. Rules of Court, rule 8.124). Within 10 days of filing the notice of appeal, the appellant must serve and file with the superior court clerk a notice indicating what form of the record of the documents filed in the trial court the appellant wants to use. You can use Judicial Council form APP-003, *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* to file this notice in an unlimited civil case.

If the appellant chooses to designate a clerk's transcript, the appellant must identify (designate) the documents from the court file that the appellant wants the superior court to include in the clerk's transcript (Cal. Rules of Court, rule 8.122). Each document designated for inclusion in the clerk's transcript must be identified by its title and filing date. If the filing date is not known, the date the document was signed may be used instead (Cal. Rules of Court, rule 8.122).

Within 10 days after service of a notice designating the documents to be included in the clerk's transcript, respondent may serve and file a notice designating additional documents to be included in the clerk's transcript (Cal. Rules of Court, rule 8.122).

The superior court clerk will send the appellant a bill for the cost of preparing an original and one copy of the transcript (Cal. Rules of Court, rule 8.122). Unless the trial court has waived the appellant's fees and costs under rules 3.50–3.63, this bill must be paid within 10 days or the appeal may be dismissed by the Court of Appeal.

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

## 6. FILING OF CLERK'S AND REPORTER'S TRANSCRIPTS (IF ANY)

If the appellant chooses to designate a clerk's transcript, after all the fees have been paid, the superior court clerk will compile the requested documents into a transcript format and forward the original clerk's transcript, together with the original reporter's transcript, if any, to the Court of Appeal for filing. A copy of the transcript(s) will be sent to the appellant. If the respondent has purchased a copy, the clerk's transcript will also be mailed to the respondent (Cal. Rules of Court, rules 8.122, 8.130, and 8.150).

## 7. ABANDONMENT OF APPEAL

If the appellant decides not to proceed with the appeal and the record has not yet been filed in the Court of Appeal, the appellant must file an abandonment of appeal in the superior court (Cal. Rules of Court, rule 8.244). You can use Judicial Council form APP-005, *Abandonment of Appeal (Unlimited Civil Case)*, for this purpose.

## *STEPS IN THE APPEAL PROCESS AT THE COURT OF APPEAL*

## 8. CIVIL CASE INFORMATION STATEMENT

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

## 9. SERVING AND FILING APPENDIX IN LIEU OF CLERK'S TRANSCRIPT

If a party chooses to prepare an appendix of the documents filed in the superior court under rule 8.124 rather than designating a clerk's transcript, the party preparing the appendix must serve the appendix on each other party (unless the parties have agreed or the Court of Appeal has ordered otherwise) and file the appendix in the Court of Appeal. A joint appendix or an appellant's appendix must be served and filed with the appellant's opening brief. A respondent's appendix, if any, must be served and filed with the respondent's brief. An appellant's reply appendix, if any, must be served and filed with the appellant's reply brief (Cal. Rules of Court, rule 8.124).

## 10. BRIEFS

A brief is a party's written description of the facts in the case, the relevant law, and the party's argument. The preparation and filing of briefs is governed by rules 8.200–8.224 of the California Rules of Court. Parties are encouraged to read these rules thoroughly and comply accordingly.

### Contents and Format of Briefs

See rule 8.204 of the California Rules of Court.

The brief must clearly explain, using references to the clerk's and reporter's transcripts (or other form of the record being used), the claimed legal errors in the superior court proceedings. Each brief must be no longer than 14,000 words if produced on a computer (you can rely on the word count provided by your computer in meeting this requirement) or up to 50 pages if produced on a typewriter. The brief must contain a table of contents and a table of authorities.

### Service and Filing of Briefs

The appellant's opening brief must be served and filed within 40 days after the record is filed in the Court of Appeal or 70 days from the date the appellant elects to proceed under rule 8.124 with no reporter's

transcript. The cover of the appellant's opening brief must be green (Cal. Rules of Court, rules 8.212 and rule 8.40).

The respondent's brief must be served and filed within 30 days after the appellant's opening brief is filed. If this brief is the first document you have filed in the Court of Appeal in this case, you may have to pay a filing fee with the brief. The cover of the respondent's brief must be yellow.

The appellant's reply brief, if any, must be served and filed within 20 days after the respondent's brief is filed. The cover of the appellant's reply brief must be tan.

Generally, an original and four paper copies of each brief, along with proof of service, must be filed with the Court of Appeal. However, the court may provide by local rule that an electronic copy of the brief substitutes for one or more of the paper copies. If a brief is not filed electronically under rules 8.70−8.79, one electronic copy must be submitted to the Court of Appeal or, if it would cause undue hardship for the party filing the brief to submit an electronic copy to the Court of Appeal, the party may instead serve four paper copies on the California Supreme Court (Cal. Rules of Court, rule 8.212). The addresses of the California Supreme Court, Courts of Appeal, and superior courts can be found on the Internet at *www.courts.ca.gov/courts.htm.*

A copy of each brief must be served on all counsel and self-represented parties and on the superior court clerk for delivery to the trial judge. In some instances a copy of each brief must also be served on the Attorney General or the local district attorney. See rule 8.29 of the California Rules of Court and the *Civil Case Information Statement* (form APP-004).

| | |
|---|---|
| Cover: | Appellant's opening brief—green<br>Respondent's brief—yellow<br>Appellant's reply brief—tan |
| File: | Original plus 4 paper copies along with proof of service in the Court of Appeal, unless court has local rule substituting electronic copy for one or more paper copies |
| Submit: | 1 electronic copy to the Court of Appeal (or, if this is a hardship, serve 4 paper copies on the California Supreme Court) |
| Serve: | Superior court—1 copy<br>All counsel<br>All self-represented parties |

**Extension of Time to File Brief**

If the time to file a brief has not already been extended by the court on application of a party, the parties may extend the time to file a brief for up to 60 days by filing a stipulation (agreement) in the Court of Appeal (Cal. Rules of Court, rule 8.212).

An application for extension of time must be filed with the Court of Appeal before the brief is due when:

- The parties cannot agree to a stipulation; or
- The parties have stipulated to the maximum automatic extension permitted under rule 8.212 of the California Rules of Court, and the applicant seeks a further extension.

Judicial Council form APP-006, *Application for Extension of Time to File Brief (Civil Case),* can be used to apply to the Court of Appeal for an extension of time to file a brief.

## 11. DISMISSAL OF APPEAL

If the appellant decides not to proceed with the appeal after the record has been filed in the Court of Appeal, the appellant must file a request for dismissal in the Court of Appeal (Cal. Rules of Court, rule 8.244). You can use Judicial Council form APP-007, *Request for Dismissal of Appeal (Civil Case)* for this purpose (Cal. Rules of Court, rule 8.244).

# INFORMATION SHEET ON WAIVER OF APPELLATE COURT FEES (SUPREME COURT, COURT OF APPEAL, APPELLATE DIVISION)

If you file an appeal, a petition for a writ, or a petition for review in a civil case, such as a family law case or a case in which you sued someone or someone sued you, you must generally pay a filing fee to the court. If you are a party other than the party who filed the appeal or the petition, you must also generally pay a fee when you file your first document in a case in the Court of Appeal or Supreme Court. You and the other parties in the case may also have to pay other court fees in these proceedings, such as fees to prepare or get a copy of a clerk's transcript in an appeal. However, if you cannot afford to pay these court fees and costs, you may ask the court to issue an order saying you do not have to pay these fees (this is called "waiving" these fees).

## 1. Who can get their court fees waived?

The court will waive your court fees and costs if:

- **You are getting public assistance**, such as Medi-Cal, Food Stamps, Supplemental Security Income (not Social Security), State Supplemental Payment, County Relief/General Assistance, In-Home Supportive Services, CalWORKS, Tribal Temporary Assistance for Needy Families, or Cash Assistance Program for Aged, Blind, and Disabled.
- **You have a low income level**. Under the law you are considered a low-income person if the gross monthly income (before deductions for taxes) of your household is less than the amount listed below:

| Family Size | Family Income | Family Size | Family Income | Family Size | Family Income |
|---|---|---|---|---|---|
| 1 | $1,215.63 | 3 | $2,061.46 | 5 | $2,907.30 |
| 2 | $1,638.55 | 4 | $2,484.38 | 6 | $3,330.21 |

*If more than 6 people at home, add $422.92 for each extra person.*

- **You do not have enough income to pay for your household's basic needs *and* your court fees** .

## 2. What fees and costs will the court waive?

If you qualify for a fee waiver, the Supreme Court, Court of Appeal, or Appellate Division will waive the filing fee for the notice of appeal, a petition for a writ, a petition for review, or the first document filed by a party other than the party who filed the appeal or petition, and any court fee for participating in oral argument by telephone. The trial court will also waive costs related to the clerk's transcript on appeal, the fee for the court to hold in trust the deposit for a reporter's transcript on appeal under rule 8.130(b) or rule 8.834(b) of the California Rules of Court, and the fees for making a transcript or copy of an official electronic recording under rule 8.835. If you are the appellant (the person who is appealing the trial court decision), the fees waived include the deposit required under Government Code section 68926.1 and the costs for preparing and certifying the clerk's transcript and sending the original to the reviewing court and one copy to you. If you are the respondent (a party other than the appellant in a case that is being appealed), the fees waived include the costs for sending you a copy of the clerk's transcript. You can also ask the trial court to waive other necessary court fees and costs.

The court **cannot** waive the fees for preparing a reporter's transcript in a civil case. A special fund, called the Transcript Reimbursement Fund, may help pay for the transcript. (See http://www.courtreportersboard.ca.gov/ consumers/index.shtml#trf and Business and Professions Code sections 8030.2 and following for more information about this fund.) If you are unable to pay the cost of a reporter's transcript, a record of the oral proceedings can be prepared in other ways, by preparing an agreed statement or, in some circumstances, a statement on appeal or settled statement.

## 3. How do I ask the court to waive my fees?

- **Appeal in Limited Civil Case (civil case in which the amount of money claimed is $25,000 or less).** In a limited civil case, if the trial court already issued an order waiving your court fees *and that fee waiver has not ended* (fee waivers automatically end 60 days after the judgment), the fees and costs identified in item 2 above are already waived; just give the court a copy of your current fee waiver. If you do not already have an order waiving your fees or you had a fee waiver but it has ended, you must complete and file a *Request to Waive Court Fees* (form FW-001). If you are the appellant (the party who is appealing), you should check both boxes in item 4 on FW-001 and file the completed form with your notice of appeal. If you are the respondent (a party other than the appellant in a case that is being appealed), the completed form should be filed in the court when the fees you are requesting to be waived, such as the fee for the clerk's transcript or telephonic oral argument, are due.

- **Writ Proceeding in Limited Civil Case (civil case in which the amount of money claimed is $25,000 or less).** If you want the Superior Court to waive the fees in a writ proceeding in a limited civil case, you must complete a *Request to Waive Court Fees* (form FW-001). In item 4 on FW-001, check the second box. The completed form should be filed with your petition for a writ.

- **Appeal in Other Civil Cases.** If you want the court to waive fees and costs in an appeal in a civil case other than a limited civil case, such as a family law case or an unlimited civil case (a civil case in which the amount of money claimed is more than $25,000), you must complete a *Request to Waive Court Fees* (form FW-001). In item 4 on FW-001, check the second box to ask the Court of Appeal to waive the fee for filing the notice of appeal or, if you are a respondent (a party other than the one who filed the appeal), the fee for the first document you file in the Court of Appeal. Check both boxes if you also want the trial court to waive your costs for the clerk's transcript (if the trial court already issued an order waiving your fees *and that fee waiver has not ended,* you do not need to check the first box; the fees and costs identified in item 2 above are already waived, just give the court a copy of your current fee waiver). If you are the appellant, the completed form should be submitted with your notice of appeal (if you check both boxes in item 4, the court may ask for two signed copies of this form). If you are the respondent, the completed form should be submitted at the time the fee you are asking the court to waive is due. For example, file the form in the trial court with your request for a copy of the clerk's transcript if you are asking the court to waive the transcript fee or file the form in the Court of Appeal with the first document you file in that court if you are asking the court to waive the fee for filing that document. To request waiver of a court fee for telephonic oral argument, you should file the completed form in the Court of Appeal when the fee for telephonic oral argument is due.

- **Writ Proceeding in Other Civil Cases.** If you want the Supreme Court or Court of Appeal to waive the fees and costs in a writ proceeding in a civil case other than a limited civil case, such as a family law case or an unlimited civil case (a civil case in which the amount of money claimed is more than $25,000), you must complete a *Request to Waive Court Fees* (form FW-001). If you are the petitioner (the party filing the petition), the completed form should be submitted with your petition for a writ in the Supreme Court or Court of Appeal clerk's office. If you are a party other than the petitioner, the completed form should be filed with first document you file in the Supreme Court or Court of Appeal.

- **Petition for Review.** If you want to request that the Supreme Court waive the fees in a petition for review proceeding, you must complete a *Request to Waive Court Fees* (form FW-001). If you are the petitioner, you should submit the completed form with your petition for review. If you are a party other than the petitioner, the completed form should be filed with first document you file in the Supreme Court.

## IMPORTANT INFORMATION!

- **Fill out your request completely and truthfully.** When you sign your request for a fee waiver, you are declaring under penalty of perjury that the information you have provided is true and correct.

- **The court may ask you for information and evidence.** You may be ordered to go to court to answer questions about your ability to pay court fees and costs and to provide proof of eligibility. Any initial fee waiver you are granted may be ended if you do not go to court when asked. You may be ordered to repay amounts that were waived if the court finds you were not eligible for the fee waiver.

- **If you receive a fee waiver, you must tell the court if there is a change in your finances.** You must tell the court immediately if your finances improve or if you become able to pay court fees or costs during this case (file form FW-010 with the court). You may be ordered to repay any amounts that were waived after your eligibility ended. If the trial court waived your fees and costs and you settle your case for $10,000 or more, the trial court will have a lien on the settlement in the amount of the waived fees.

- **The fee waiver ends.** The fee waiver expires 60 days after the judgment, dismissal, or other final disposition of the case or when the court finds that you are not eligible for a fee waiver.

**SPR14-05**
Fee Waivers: Payments Over Time and Fees Included in Initial Fee Waiver
Amend Cal. Rules of Court, rules 3.50, 3.51, 3.52, 3.55, and 8.818; and revise forms FW-001, FW-001-INFO, FW-003, FW-008, APP-001, and APP-015/FW-015-INFO
All comments are verbatim unless indicated by an asterisk (*).

| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
|---|---|---|---|---|
| | **Commentator** | **Position** | **Comment** | **Committee Response** |
| 1. | Appellate Courts Section<br>Los Angeles County Bar Association<br>By: John A. Taylor, Jr. | AM | See comments on specific provisions below. | |
| 2. | Committee on Administration of Justice<br>State Bar of California<br>By: Saul Bercovitch, Staff Attorney | A | As a whole, CAJ agrees with the proposed amendments and supports the amendments as proposed to the Rules of Court and the Forms.<br><br>See comments on specific provisions below. | |
| 3. | Committee on Appellate Courts<br>State Bar of California<br>By: Saul Bercovitch, Staff Attorney | A | See comments on specific provisions below. | |
| 4. | Magda Conant<br>Oceanside, California | AM | See comments on specific provisions below. | |
| 5. | Hon. Janet M. Frangie<br>Superior Court of San Bernardino County | AM | See comments on specific provisions below. | |
| 6. | *[joint comment by three legal aid organizations in Los Angeles area]*<br>-Harriett Buhai Center for Family Law<br>By: Betty Norwind, Executive Director and David S. Ettinger, Member Board of Directors<br>-Western Center on Law & Poverty<br>By: Richard A. Rothschild, Director of Litigation | N | On behalf of the Harriett Buhai Center for Family Law, Western Center on Law & Poverty, and Public Counsel, we write concerning SPR 14-05, which proposes various changes to rules and forms concerning waivers of court fees and costs for indigent litigants. We appreciate the opportunity to comment. (Last month, we separately submitted our own proposal to make other changes to the fee | |

**SPR14-05**
Fee Waivers: Payments Over Time and Fees Included in Initial Fee Waiver
Amend Cal. Rules of Court, rules 3.50, 3.51, 3.52, 3.55, and 8.818; and revise forms FW-001, FW-001-INFO, FW-003, FW-008, APP-001, and APP-015/FW-015-INFO
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| List of All Commentators, Overall Positions on the Proposal, and General Comments | | | | |
|---|---|---|---|---|
| | **Commentator** | **Position** | **Comment** | **Committee Response** |
| | -Public Counsel<br>By: Lisa R. Jaskol<br>Directing Attorney - Appellate Law | | waiver rules and forms.)<br>See comments on specific provisions below. | |
| 7. | Stacy Larsen<br>Family Law Facilitator<br>Superior Court of Shasta County | AM | See comments on specific provisions below. | |
| 8. | Orange County Bar Association<br>By: Thomas Bienert, Jr., President | AM | See comments on specific provisions below. | |
| 9. | Superior Court of Los Angeles County<br>(no name provided) | N | See comments on specific provisions below. | |
| 10. | Superior Court of Orange County<br>By: Paul Alberga, Administrative Analyst/Officer II | AM | See comments on specific provisions below. | |
| 11. | Superior Court of Riverside County<br>By: Daniel Wolfe, Managing Attorney | A | See comments on specific provisions below. | |
| 12. | Superior Court of Sacramento County<br>By: Elaine Flores | N | See comments on specific provisions below. | |
| 13. | Superior Court of San Diego County<br>By: Michael Roddy, Executive Officer | AM | See comments on specific provisions below. | |
| 14. | TCPJAC/CEAC Joint Rules Working Group | N | See comments on specific provisions below. | |

**SPR14-05**
Fee Waivers: Payments Over Time and Fees Included in Initial Fee Waiver
Amend Cal. Rules of Court, rules 3.50, 3.51, 3.52, 3.55, and 8.818; and revise forms FW-001, FW-001-INFO, FW-003, FW-008, APP-001, and APP-015/FW-015-INFO
All comments are verbatim unless indicated by an asterisk (*).

| **Payments of Trial Court Fees Over Time – Rules 3.50, 3.51 and 3.52 and forms FW-001, FW-001-INFO, FW-003, and FW-008** | | |
|---|---|---|
| **Commentator** | **Comment** | **Committee Response** |
| Committee on Administration of Justice<br>State Barof California<br>By: Saul Bercovitch, Staff Attorney | It will be much more efficient to have both fee waivers and payment plans for those denied a full fee waiver addressed within the Rules of Court and on the same forms. We agree that there should be a method to waive the hearing when a payment plan is agreed to. We also agree that having a separate set of forms set up for payment plans is not efficient, especially when these issues are generally addressed together.<br><br>We are also in favor of limiting the payment period time to three (3) months or less, absent good cause, and allowing for those litigants who agree to a payment plan to waive the court appearance. | The committee agrees.<br><br>The committee agrees. |
| Hon. Janet M. Frangie<br>Superior Court of San Bernardino County | I believe the length of time for installment payments should be for up to six months instead of three months. For the court to find good cause there may be a hearing required in any event if the applicant fails to provide good cause for a longer period. In my experience the applicant may miss that he/she will have to establish "good cause" up front when submitting the fee waiver and unless I missed it I did not see a place for the applicant to list the reasons a longer period is needed. The fees can be in excess of $400 and a longer period may be needed. | The committee has concluded that three months is appropriate as the default time frame in light of the administrative burden payments over time places on the court. The form has been further modified to include instructions for attaching a separate sheet when a party wants to show good cause for additional time. |
| *[joint comment by three legal aid organizations]*<br>-Harriett Buhai Center for Family Law<br>By: Betty Norwind, Executive Director and David S. Ettinger, Member Board of Directors | SPR 14-05's primary focus concerns the trial court's authority to deny a fee waiver application under Government Code section 68632, subdivision (c), and instead require the fee waiver applicant to pay court fees over a period of time. For several reasons, we are opposed to most of the changes in this regard. | |

# SPR14-05

Fee Waivers: Payments Over Time and Fees Included in Initial Fee Waiver
Amend Cal. Rules of Court, rules 3.50, 3.51, 3.52, 3.55, and 8.818; and revise forms FW-001, FW-001-INFO, FW-003, FW-008, APP-001, and APP-015/FW-015-INFO
All comments are verbatim unless indicated by an asterisk (*).

| **Payments of Trial Court Fees Over Time – Rules 3.50, 3.51 and 3.52 and forms FW-001, FW-001-INFO, FW-003, and FW-008** | | |
|---|---|---|
| **Commentator** | **Comment** | **Committee Response** |
| -Western Center on Law & Poverty<br>By: Richard A. Rothschild, Director of Litigation<br>-Public Counsel<br>By: Lisa R. Jaskol<br>Directing Attorney - Appellate Law | To begin with, although section 68632, subdivision (c), allows a court to require certain fee waiver applicants to pay fees over time, that is contrary to the Supreme Court's landmark opinion in Earls v. Superior Court (1971) 6 Cal.3d 109. The trial court there denied a fee waiver application because the court concluded the applicant could set aside a little money over a number of months to pay the fee. The Supreme Court rejected this approach, concluding, "We know of no authority permitting a court to deny an application to proceed in forma pauperis upon the ground that, although the applicant is currently indigent, he may, over a period of months, succeed in accumulating the amount necessary to defray his costs." (Id. at p. 117.)<br><br>"The right of an indigent civil litigant to proceed in forma pauperis is grounded in a common law right of access to the courts and constitutional principles of due process." (Cruz v. Superior Court (2004) 120 Cal.App.4th 175, 185, emphasis added.) Because of this, and because of the holding in Earls, the practice of ordering payment of fees over time, even though permitted by statute, is constitutionally suspect. | The committee appreciates the thoughtful comments, but disagrees with this analysis. The fee waiver statute, however, which was enacted after the *Earl* decision, can be read as consistent with that decision, because it expressly authorizes a court to allow payments over time or a partial waiver only when a court has determined that a party is <u>not</u> indigent at the time of the application, and so is not eligible for a full fee waiver under the standards of the statute, and when the court provides a written statement of the reasons why not. See § 68634(c)(5). |
| | Additionally, we have always been skeptical that courts can make such a fine distinction as the payment-over-time option requires. At what point is an indigent litigant able to "afford" to pay a court fee over time, but would be sacrificing "the common necessaries of life" (§ 68632, subd. (c)) if ordered to pay the entire court fee at once? Although possible in theory, such a determination in | The committee disagrees that this type of decision making was outside the normal scope of judicial officer's work. |

**SPR14-05**
Fee Waivers: Payments Over Time and Fees Included in Initial Fee Waiver
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| Payments of Trial Court Fees Over Time – Rules 3.50, 3.51 and 3.52 and forms FW-001, FW-001-INFO, FW-003, and FW-008 | | |
|---|---|---|
| **Commentator** | **Comment** | **Committee Response** |
| | practice is an exercise in false precision.<br><br>Payment of fees over time is thus at the least an option that should not be encouraged. But encouraging the practice is what SPR 14-05's proposed changes do. The following proposals are particularly objectionable: | |
| | 1. The possibility of paying fees over time should not be mentioned at all on the fee waiver request form (FW-001). The fee waiver statutes do not state that payment over time is a type of relief that an applicant may request. (See §§ 68632, subd. (c), 68633, subd. (c).) Rather, it is an option — albeit a questionable one — given to the trial court in ruling on a fee waiver application if an applicant claims that she or he "cannot pay court fees without using moneys that normally would pay for the common necessaries of life for the applicant and the applicant's family." (§ 68632, subd. (c).) Moreover, there is unlikely to be any person who would apply only to pay court fees over time instead of seeking to have fees waived entirely. Therefore, including a payment-over-time option on a fee waiver request form is confusing for litigants, who are typically unrepresented. | 1. The committee agrees that permission for payments over time is indeed an alternative to be considered only in the event that a fee waiver has been denied, and has modified the text of the form to more clearly express this. See also § 68640, which authorizes the council to make rules of court to allow parties who are not eligible for a fee waiver to pay court fees in installments. |
| | 2. The proposed form FW-001 is contradictory in instructing the applicant that she or he can ask the court to both "waive all court fees and costs" and let her or him pay the "initial Superior Court filing fees over time." If the applicant wants all fees waived, he or she does not want to pay fees over time. | 2. The form has been modified in light of this comment to reflect that the payments over time would only be considered as an alternative if the fee waiver request is denied |

| **Payments of Trial Court Fees Over Time – Rules 3.50, 3.51 and 3.52 and forms FW-001, FW-001-INFO, FW-003, and FW-008** | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | 3. The proposed form FW-001 should not include an item allowing the applicant to waive a hearing if the court orders payment of fees over time. There should be no prospective waiver of a right to a hearing. Instead, the court order form (FW-003) should be revised to allow the court to deny the fee waiver application and to indicate that it will permit the applicant to pay fees over time without a hearing, and to then give the applicant the option of either appearing at a scheduled hearing or agreeing to pay fees over time without a hearing. The form should also state that foregoing a hearing does not waive the applicant's right to seek appellate review of the court's order.<br><br>4. The proposed form FW-003 should not include an option for the court to state that it "denies your request for payments over time." As explained, it is confusing to include on the fee waiver application form (FW-001) a place to ask to pay fees over time, so there should be no such requests for the court to rule on.<br><br>5. The proposed amendments of rules 3.50(a) and 3.51 should not be made. As explained, there should be no applications for leave to pay filing fees over time.<br><br>6. The proposed changes concerning paying fees over time should not be adopted, but are incomplete in any event. The "partial initial fee waiver" permitted by section 68632, subdivision (c), and section 68643, subdivision (e)(5), includes the possibility of paying "a portion of court fees" | 3. The committee concluded that this alternative would be significantly more burdensome for the court, without a significant added benefit to the parties. As now modified, the order form makes it clear that the party can request a hearing after the fee waiver request has been denied should the party wish to do so, and will be provided with a form on which to make such a request.. This applies whether or not payments over time have been authorized.<br><br>4, The committee has removed the separate item for the denial of a request for payments over time from the form. The committee is not recommending that the forms be used for stand-alone requests for payments over time.<br><br>The committee agrees that the forms should not be used for specifically applying for installment payments over time, other than in the instance in which a fee waiver application has been denied, and so is no longer recommending amendments to rules 3.50 and 3.51.<br><br>6. The committee disagrees, having concluded that partial waivers are a more complex alternative and are not appropriately considered or ordered without a hearing. |

| **Payments of Trial Court Fees Over Time – Rules 3.50, 3.51 and 3.52 and forms FW-001, FW-001-INFO, FW-003, and FW-008** | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | in addition to the option of paying fees over time. However, the proposed changes to rules 3.50(a) and 3.51 and to forms FW-001 and FW-003 do not mention the partial payment option. If changes are to be made, the partial payment option should be included along with the payment over time option. | |
| Stacy Larsen<br>Family Law Facilitator<br>Superior Court of Shasta County | I agree that providing an option for litigants to voluntarily waive their right to a hearing in circumstances where their fee waiver is denied but the court is willing to allow them payments over time will likely eliminate unnecessary hearings. However, if the Court approves a payment schedule or amount that is not financially possible for the litigants, and they have already waived their right to a hearing on this issue, will they have the ability to request a hearing on these issues?<br><br>Limiting payments over time, generally, to three months and payments over time to first-appearance fees creates a general rule that limits access to the courts for our most financially needy, disenfranchised, and challenged litigants. Courts already have discretion to set the monthly payment amount and to limit payments to three months or less if appropriate. My concern is that the possible result in creating this rule is an automatic setting the monthly payment at $145 per month for a period of three months rather than carefully considering each case on its facts. While those of us with steady incomes may believe that this amount is do-able for all Californians, this is not the case. When marriages or relationships fail, the financially weaker person in the relationship may be forced to remain in the | The committee notes the commentator's agreement with the proposal in general. As now modified, the order form makes it clear that the party can request a hearing after the fee waiver request has been denied should the party wish to do so, and will be provided with a form on which to make such a request.. This applies whether or not payments over time have been authorized.<br><br>The committee has concluded that three months is appropriate as the default time frame in light of the administrative burden payments over time places on the court. |

| Payments of Trial Court Fees Over Time – Rules 3.50, 3.51 and 3.52 and forms FW-001, FW-001-INFO, FW-003, and FW-008 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | home with the primary breadwinner whose income makes the household members ineligible for a fee waiver. This individual is often the primary caretaker of the couple's children, and his/her primary concern is opening a dissolution case to obtain emergency temporary custody/visitation orders due to threats that the children will be taken away. The Court would have discretion to grant a fee waiver under subsection (c) but may choose not to do so given the gross income of the household members, instead ordering payments. This proposed revision allows the Court to make a finding of "good cause" to make payments smaller than the minimum $145 and the payment schedule to stretch beyond the three months, but the Court already has that discretion. Creating a "rule of thumb" of three months creates a "default" order for litigants allowed to make payments and given the volume of fee waivers requested in each court everyday reduces the likelihood that each litigant's financial position will be carefully considered on its merits. If the party requesting the fee waiver and/or option to make payments checked the new box to waive hearing if the Court allows him/her to make payments, it is not clear how he/she would obtain a court hearing to request different payment arrangements than the court ordered. | The application form and information sheet have been further modified to include instructions for attaching a separate sheet when a party wants to show good cause for additional time. |
| | CRC 3.50(a): As discussed above, I do not agree that the option of payments over time should be limited to first-appearance fees only. However, if this proposal is adopted, it should be made clear in CRC 3.50(a) that "leave to pay filing fees over time" is only an option when paying the $435 first-appearance fee and that payments over time are | The committee disagrees, in light of the complexity and burden that would occur if multiple fees throughout a case could be paid over time. The committee has further modified the rule in light of this comment to clarify the limitation. |

| **Payments of Trial Court Fees Over Time – Rules 3.50, 3.51 and 3.52 and forms FW-001, FW-001-INFO, FW-003, and FW-008** | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | not an option when paying the subsequent $85 Request for Orders to Modify Custody/Parenting Time, etc. A possible revision would be as follows: "The rules in this division govern applications in the trial court for an initial waiver of court fees and costs or for leave to pay first-appearance filing fees over time . . ." This is particularly necessary as subdivision (b) defines "initial fee waiver" to mean the first time someone obtains a fee waiver, regardless of whether it's at the time of first-appearance ($435) or "at any stage of the proceedings." For the layperson, it may not be clear that "initial fee waivers" apply to waivers of fee only and not to payments over time. | |
| | CRC 3.51: As discussed above, I do not agree that the option of payments over time should be limited to first-appearance fees only. However, if this proposal is adopted, it should be made clear in CRC 3.51that "leave to pay filing fees over time" is only an option when paying the $435 first-appearance fee and that payments over time are not an option when paying the subsequent $85 Request for Orders to Modify Custody/Parenting Time, etc. A possible revision would be as follows: "An application for initial fee waiver under rule 3.55 or for leave to pay first-appearance filing fees over time . . ." | The originally proposed amendment to this rule is no longer recommended, so no modification is required. |
| | CRC 3.52(6): If the request/order to make payments is only applicable to first-appearance fees, this should be made clear in this provision. A possible revision is as follows: "Any order allowing "payment of first-appearance fees over time should limit the time for payments . . ." | The recommended amendment of this rule has been modified in light of this comment. |

| **Payments of Trial Court Fees Over Time – Rules 3.50, 3.51 and 3.52 and forms FW-001, FW-001-INFO, FW-003, and FW-008** | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | FW-001, first paragraph: If the request/order to make payments is only applicable to first-appearance fees, this should be made clear in this provision. A possible revision is as follows: ". . . waive your court fees or allow payment of your first-appearance fee over time." | Because the recommendation no longer includes a specific request to make payments over time, other than as alternative to be considered upon the denial of a fee waiver , this section of the form is not being amended. |
| | FW-001, Item 7: If the request/order to make payments is only applicable to first-appearance fees, this should be made clear in this provision. The paragraph reads awkwardly and is a bit confusing. It's definitely not an easy rule to word clearly and concisely, but here is a possible revision: "You may request that the Court allow you to make payments instead of, or in addition to, requesting that the Court waive your first-appearance fee. If the Court denies your request for a fee waiver, you have the right to a hearing on that issue before the Court decides whether you qualify to make payments over time. You may waive this hearing in advance if you wish the Court to make a ruling on your request to make payments over time without a hearing on the denial of your fee-waiver request. Do you waive your right to come to court for a hearing before the court rules on your application to make payments toward your first-appearance fee over time?" In the alternative, the wording on FW-001-INFO, Item (3), is helpful and could be integrated in modified form here. | Item 7 has been modified in light of this and other comments. |
| | FW-001-INFO, Item (3): If the request/order to make payments is only applicable to first-appearance fees, this should be made clear in this provision. A possible revision is as follows: "You may ask to pay your first-appearance filing fee . . ." | Paragraph 3 of the information sheet has been modified in light of this and other comments |

| **Payments of Trial Court Fees Over Time – Rules 3.50, 3.51 and 3.52 and forms FW-001, FW-001-INFO, FW-003, and FW-008** | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | FW-003, page 2, Item (d): If the individual waives his right to a denial-of-fee-waiver hearing in advance and the Court sets the payments at an amount or on a payment schedule that is not financially possible, how does the litigant request a hearing on this issue?<br><br>FW-003, page 2, Item (d): If the request/order to make payments is only applicable to first-appearance fees, this should be made clear in this provision. A possible revision is as follows: “Having waived . . . you may pay your first-appearance fee over time.” It is not clear what the “other” box would be for under this proposal if payments over time would be limited to first-appearance fees. | See item 2(b) on the form. Any applicant whose fee waiver is denied, whether or not authorized to make payments over time, will be provided with a form on which the party can request a hearing after issuance of the order.<br><br>This item has been modified in light of this and other comments. |
| Orange County Bar Association<br>By: Thomas Bienert, Jr., President | Comments: The fee waiver statutes and rules are complex and over-lapping with the Legislative findings for implementation set forth at Govt. Code §68630. With these findings in mind, we believe the proposal needs modification in the following areas:<br><br>(1) a limit on installment payments to 3 months is too restrictive and does not allow for consideration of other factors—the justification for such limit is not sound;<br><br>(2) Govt. Code §68634(e) requires the court to give a written statement of reasons if an application is denied in whole or part but this proposal does not advise applicants of this right nor provide a statement of reasons at all for a | (1) The committee has concluded that three months is appropriate as the default time frame in light of the administrative burden payments over time places on the court. The court will have the the discretion to increase the time period for good cause.<br><br>(2) The committee has eliminated from the proposal the possibility of a separate request for installment payments, so the separate item for denial of such a request has been deleted from the proposed form. |

## SPR14-05

Fee Waivers: Payments Over Time and Fees Included in Initial Fee Waiver
Amend Cal. Rules of Court, rules 3.50, 3.51, 3.52, 3.55, and 8.818; and revise forms FW-001, FW-001-INFO, FW-003, FW-008, APP-001, and APP-015/FW-015-INFO
All comments are verbatim unless indicated by an asterisk (*).

| Payments of Trial Court Fees Over Time – Rules 3.50, 3.51 and 3.52 and forms FW-001, FW-001-INFO, FW-003, and FW-008 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | denial of installment payments under FW-003; | Payments over time will only be considered in the event that the fee waiver request is denied, and the reasons for that denial must be included in form FW-003 at item 4.b(2). |
| | (3) FW-001was inexplicably modified to delete in total a request for partial waiver of some but not all fees which request appears authorized by statute; | (3) The committee concluded that both payments over time and partial waivers are not appropriate as stand-alone requests, but instead are alternatives to be considered by the court only in the event that the court denies a fee waiver. The committee further concluded that partial waivers are a more complex alternative that payments over time and are not appropriately considered or ordered without a hearing. The order form to be used after a hearing, form FW-008, still includes provisions for such an order. |
| | (4) the proposal and specifically FW-001 asks the applicant to “waive” in advance any and all hearings without any explanation of the entitlements to an “in camera” hearing required by statute prior to any denial under Govt. Code §68633 and §68641; | (4) The waiver and the information sheet have been revised in light of this and other comments. However no discussion of the hearings being “in camera” has been added as the committee concluded it was unnecessary. |
| | (5) FW-001—INFO adds new instructions at paragraph 3 that the court will allow only up to 3 months for installment payments “unless you can show a really good reason for a longer time”, but that language is not instructive nor helpful to the applicant; . . . | (5) Paragraph 3 has been amended in light of this and other comments. |
| | If the stated purpose is solely to allow parties to waive rights to a hearing in exchange for installment payments then the proposal is defective as outlined above. | For the reasons set forth above, the committee disagrees. |

| **Payments of Trial Court Fees Over Time – Rules 3.50, 3.51 and 3.52 and forms FW-001, FW-001-INFO, FW-003, and FW-008** | | |
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| **Commentator** | **Comment** | **Committee Response** |
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| Superior Court of Los Angeles County | Making the proposed changes in the fee waiver forms has the potential to increase the number of requests for an order permitting payment over time. Staff time for processing multiple payments over time is substantial, especially with the antiquated case management systems that many courts currently have. Moreover, collections from fee waiver applicants can be very difficult and time consuming for staff, particularly when multiple payments are involved. Many low-income individuals pay by cash rather than credit card. | While the committee agrees that payments over time are administratively burdensome, the majority concluded that the benefits of this proposal (eliminating some hearings) was a benefit to the courts, especially since the statute already provides that judicial officers should consider the alternative of such payments at any eligibility hearing at which the court denies a fee waiver application. See § 68634(c)(5) , at last paragraph. The proposal does not change or expand the law authorizing payments over time; it just attempts to ease the requirement for hearings before such payments are permitted. The committee also notes that there is no mandate that courts authorize payments over time for all parties who are denied a fee waiver—this option is within a court's discretion. |
| Superior Court of Orange County<br>By: Paul Alberga, Administrative Analyst/Officer II | • There were opposing viewpoints when soliciting comments by the Orange County Superior Court related to the proposed three month time frame for a payment plan. From one end of the spectrum, the opinion was that three months seemed to be too short of a time period for a person to pay in excess of $100 each month for the filing fee. Judicial Officers in Family Law matters typically order payments of less than $50 per month. One recommendation was to propose a one year payment plan. Another suggestion was to have a six-month time frame because it would coincide with the time frame for finalization of status in a dissolution, and provides a logical nexus to finalization time frames in family law matters. But at the other end of the | The committee has concluded that three months is appropriate as the default time frame in light of the administrative burden payments over time places on the court. The court continues to have discretion to extend that time when appropriate. |

| Payments of Trial Court Fees Over Time – Rules 3.50, 3.51 and 3.52 and forms FW-001, FW-001-INFO, FW-003, and FW-008 | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | spectrum, the opinion was that three months was a lenient time frame in which to pay fees on a payment plan when the party did not qualify for a fee waiver. | |
| | • For Civil Unlawful Detainer and Small Claims actions that conclude within three months (parties being unwilling to pay remaining fees due), Staff proposes maintaining the three-month timeframe with a discretionary allowance for a judicial officer to assign an altered timeframe. | The committee agrees, although does not limit its conclusion to only these types of cases. |
| | ▪ FW-001 and FW-001-INFO are silent as to when fees are due if a payment plan is denied. We suggest adding clarifying language on the forms for when a payment plan is denied. | Form FW-003, the order form, addresses this point, stating that when a fee waiver is denied, payments must be made within 10 days unless a hearing is requested or another date has been set in the item authorizing payments over time. |
| | • What is the penalty for non-payment of payment plan fees? Do petitions get voided?<br>• | There has been no change recommended to the law on this point. The committee is not aware of any statutory authority which would authorize a court to void a petition on this ground. |
| | • What if a hearing document is filed after the initial fee waiver is granted?<br>o Is a new fee waiver required for the additional fees?<br>o What if a new payment plan is ordered?<br>o Please clarify how subsequently filed documents that trigger filing fees are included or considered if there is already a payment plan | In light of the many complexities and administrative burden demonstrated by these questions, the committee has modified the proposal to limit payments over time to initial filing fees only, not to fees for later filings in an action. |

| **Payments of Trial Court Fees Over Time – Rules 3.50, 3.51 and 3.52 and forms FW-001, FW-001-INFO, FW-003, and FW-008** | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | in place.<br>• Under section 5c suggest adding wording to clarify that a party may choose both boxes with the payment plan being considered if the waiver is denied: "…waive all court fees and costs OR, if waiver is denied, let me pay my initial Superior Court filing fees over time."<br><br>• Under Section 7 the wording "in advance" is not clear to a person unfamiliar with the process (in advance of what?)<br>o Suggest changing text in form to read: "…you may have the right to a hearing on your request in advance which means you will need to come to court…<br>o Suggest changing the first check box to read: "Yes, I waive the right to a hearing in advance, and request that the court make its decision based on this written request."<br><br>• FW-003: Order on Court Fee Waiver, Page 2, number 4b(3): The denial of the request for time payments seems out of place in the section that addresses the denial of the fee waiver. Item 4b(3) would only be used if the application did not contain a request for a fee waiver. | This item has been modified in light of this and other comments.<br><br>This item has been modified in light of this and other comments.<br><br>Item 4.b(3) was intended to only be used if the application did not contain a request for fee waiver. Because the committee has eliminated such a request from the proposal, the item is no longer on the proposed form. |
| Superior Court of Riverside County<br>By: Daniel Wolfe, Managing Attorney | This proposal will eliminate unnecessary hearings where the fee waiver applicant is willing to provide installment payments and does not want to attend a hearing in order to | The committee agrees. |

| **Payments of Trial Court Fees Over Time – Rules 3.50, 3.51 and 3.52 and forms FW-001, FW-001-INFO, FW-003, and FW-008** | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | receive authorization to do so. | |
| Superior Court of Sacramento County<br>By: Elaine Flores | 6466 fee waivers filed<br>4121 granted w/out hearing<br>345 denied w/out hearing<br>51 granted after hearing<br>56 denied after hearing<br><br>In a year and 4 months, we've had 107 fee waiver hearings which is an average of just over 1 per week…not the biggest workload. If all of the denials without hearing were allowed to make payments, the court would have to implement account monitoring for 345 people over that same period of time. Questions regarding procedure for failure to make payments timely/failure to pay would need to be answered. Our current case management system is not developed to accommodate collections so this would need to be done outside of the CMS and manually updated until modifications to the system could be made. This expense and workload doesn't seem to outweigh the expense and workload for conducting fee waiver hearings. | Different courts have different experience without the number of fee waivers requested, and the number of hearings required. In all, when a fee waiver is denied following an eligibility hearing, the court is to consider the alternatives of payments over time or a partial waiver. The proposal is not intended to expand the number of instances when payments over time will be permitted, but to make the process easier for the parties and the courts in some of those cases. |
| Superior Court of San Diego County<br>By: Michael Roddy, Exexutive Officer | FW001, number 7 on the second page [re the waiver of a hearing], does not read well at all. I would suggest using the wording in #3 on FW-001-INFO as a template for number 7 on FW-001. | The item has been modified in light of this and other comments. |
| TCPJAC/CEAC Joint Rules Working Group | Although the proposal is purportedly intended to save time with respect to fee waiver adjudications, the TCPJAC/CEAC Joint Rules Working Group believes that | While the committee agrees that payments over time are administratively burdensome, the majority concluded that the benefits of this proposal (eliminating some |

| **Payments of Trial Court Fees Over Time – Rules 3.50, 3.51 and 3.52 and forms FW-001, FW-001-INFO, FW-003, and FW-008** | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | in operation, the proposal would significantly increase burdens on staff.<br><br>General comments<br><br>While the proposed changes may eliminate the need for some fee waiver hearings, these changes are likely to increase the number of partial payment requests and the number of partial payments that court staff must process. More applicants may be attracted to requesting installment payment plans if a hearing before a bench officer is not required, and if the forms are changed as proposed.<br><br>Staff time for processing multiple payments over time is substantial, especially with the antiquated case management systems that many courts currently have. Moreover, collections from fee waiver applicants can be very difficult and time consuming for staff, particularly when multiple payments are involved. Many low- income individuals pay by cash rather than credit card, and therefore court staff must monitor compliance with progress payments. In addition, there is concern that litigants with credit cards may elect installment payments over time in lieu of single credit card payment transaction. This would result in further unnecessary court expenditure of resources used to establish, process, and follow up on payment arrangements. Unlike in criminal and minor offense cases, courts have little leverage to enforce collection efforts. | hearings) was a benefit to the courts, especially since the statute already provides that judicial officers should consider the alternative of such payments at any eligibility hearing at which the court denies a fee waiver application. See § 68634(c)(5) , at last paragraph. The proposal does not change or expand the law authorizing payments over time; it just attempts to ease the requirement for hearings before such payments are permitted. The committee also notes that there is no mandate that courts authorize payments over time for all parties who are denied a fee waiver—this option is within a court's discretion. |

**SPR14-05**
Fee Waivers: Payments Over Time and Fees Included in Initial Fee Waiver
Amend Cal. Rules of Court, rules 3.50, 3.51, 3.52, 3.55, and 8.818; and revise forms FW-001, FW-001-INFO, FW-003, FW-008, APP-001, and APP-015/FW-015-INFO
All comments are verbatim unless indicated by an asterisk (*).

| **Chart on Form FW-001 Showing Income Eligibility Dollar Amounts and Effective Date** | | |
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| **Commentator** | **Comment** | **Committee Response** |
| Committee on Administration of Justice<br>State Barof California<br>By: Saul Bercovitch, Staff Attorney | 2. Should the chart of income amounts for eligibility under Government Code section 68632(b) be removed from the application (form FW-001) and placed on the judicial branch's website, so that yearly changes to those amounts would not require changes to the form? Would the resulting savings to the courts offset the added burden to the parties and judicial officers in finding that information? CAJ supports the inclusion of the chart on the application at this time. While there is a concern regarding the costs to update these forms each year, CAJ supports having the chart readily accessible on the applications for the benefit of the applicants and the Court. CAJ questions whether the costs to revise these forms each year would be drastically different than the costs to update the website to show the updated income amounts each year and the costs to have a conspicuously posted form at the clerk locations available for those applicants without internet access. In fact, the ability and/or costs to monitor the availability of this chart in each of the clerk's offices may not be efficient. Accordingly, the savings of the form costs incurred would not appear to offset the added burden to the parties and judicial officers in finding the income amount information.<br><br>3. In light of the fact that one item on form FW-001 (the figures in the eligibility chart in item 5b) is likely to have to be revised in late February 2015, would it be helpful to make the effective date of the proposed amendments to all the rules and forms March 1, to coincide with changes to the amounts in the eligibility chart? CAJ recommends that in an effort to be as cost effective as possible, the proposed amendments to all the rules and forms should coincide with the late February 2015 date. Inasmuch as there will be necessary costs to update and | 2. Based on the public comments received, the committees recommend retaining the income eligibility chart on FW-001.<br><br>3. The committees agree and are recommending a March 1 effective date. |

| Chart on Form FW-001 Showing Income Eligibility Dollar Amounts and Effective Date | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | change the forms regardless, CAJ believes it makes economic sense to make all changes at the same time to avoid duplicative costs. | |
| Stacy Larsen<br>Family Law Facilitator<br>Shasta County Superior Court | I agree that maintaining the chart showing the cut-offs for incomes above 125 percent of the current poverty guidelines on the FW-001 is a good idea. In its current location, litigants can more easily determine whether they are eligible, and the majority of self-represented litigants would find it overly burdensome, confusing, and overwhelming to access the chart online. My understanding is that fee waivers are designed to ensure equal access to the courts for our indigent litigants, many of whom have limited education, literacy skills, and resources. Litigants frequently do not file responses, erroneously allowing default to be entered against them, because they do not understand the availability of or eligibility criteria for fee waivers. Removing the chart places one more obstacle in their path to obtaining access to the courts.<br><br>I support the alternative to make the changes to the fee-waiver forms/rules go into effect on March 1, 2015, rather than January 1, 2015. Two changes so close together leads to confusion and waste of paper. The court already has discretion to limit payments over time, etc., and the disadvantages of this brief delay are outweighed (at least in my opinion) by the benefits. | Based on the public comments received, the committees recommend retaining the income eligibility chart on FW-001.<br><br>The committees agree and are recommending a March 1 effective date. |
| Orange County Bar Association<br>By: Thomas Bienert, Jr., President | The chart of income amounts for eligibility should not be removed from Form FW-001 and placed on a website since applicants, court personnel, and others need that information readily available. Whether the proposed amendments are | Based on the public comments received, the committees recommend retaining the income eligibility chart on FW-001.<br>The committees believe a March 1 effective date will |

| Chart on Form FW-001 Showing Income Eligibility Dollar Amounts and Effective Date | | |
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| **Commentator** | **Comment** | **Committee Response** |
| | effective January 1 or March 1 depends on the amount of associated costs savings (if any). | achieve cost savings in eliminating a second amendment to the same form within a two month period.. |
| Superior Court, County of Los Angeles<br>(no name provided) | If, however, this proposal is adopted, every effort should be taken to (1) make the forms as short as possible, and (2) to draft the forms in such a way that they do not need regular revision. For this reason the chart in 5b of FW-001 should be eliminated. In addition to directing applicants to the website, as suggested, there should be an optional form that explains both the public benefits abbreviations (which should be removed from the information sheet) and the 5b family size/income charts. Courts can decide to hand the optional form to all applicants, to post the optional form as information in the clerk's office or self-help center, or to use the form in some other way that would supplement information available on the website. | The committees agree with generally trying to keep the forms as short as possible, but not at the cost of leaving off information useful to the parties or the court. The committees do not agree that the income eligibility chart should be removed from the fee waiver request form. The chart should stay on the form in order to assist both the applicants and the courts in determining eligibility. The committees particularly considered the fact that most applicants for fee waivers are indigent self-represented litigants, without easy ongoing access to the internet, and that they are asserting their eligibility based on the federal poverty guidelines under penalty of perjury. |
| Superior Court, County of Orange<br>By: Paul Alberga, Administrative Analyst/Officer II | 2. Should the chart of income amounts for eligibility under Government Code section 68632(b) be removed from the application (form FW-001) and placed on the judicial branch's website, so that yearly changes to those amounts would not require changes to the form?<br>• We would not recommend removing the chart that shows the Family Size to Family Income from page 1 of the FW-001. This chart has proved to be valuable for the clerk as well as the applicant when explaining, completing and evaluating if the fee waiver can be granted under this provision.<br>3. Would the resulting savings to the courts [by removing income form from chart] offset the added burden to the parties and judicial officers in finding that information? (See discussion under Alternatives Considered, at page 12) | Based on the public comments received, the committees recommend retaining the income eligibility chart on FW-001. |

| Chart on Form FW-001 Showing Income Eligibility Dollar Amounts and Effective Date | | |
|---|---|---|
| **Commentator** | **Comment** | **Committee Response** |
| | • See number 5 below; no cost savings identified<br><br>4. In light of the fact that one item on form FW-001 (the figures in the eligibility chart in item 5b) is likely to have to be revised in late February 2015, would it be helpful to make the effective date of the proposed amendments to all the rules and forms March 1, to coincide with changes to the amounts in the eligibility chart? (See discussion under Alternatives Considered, at page 13)<br>• Yes, the March 1st date would be an effective timeframe. | The committees appreciate the response.<br><br>The committee agrees. |
| Superior Court of Riverside<br>By: Daniel Wolfe, Managing Attorney | The chart of income amounts for eligibility should not be removed from the application (FW-001). If it was removed it would make it more difficult for judicial officers and clerks to process the fee waivers effectively if the chart was removed. | Based on the public comments received, the committees recommend retaining the income eligibility chart on FW-001. |
| TCPJAC/CEOC Joint Rules Working Group | If, however, this proposal is adopted, every effort should be taken to (1) make the forms as short as possible, and (2) to draft the forms in such a way that they do not need regular and costly revision. For this reason the chart in 5b of FW-0010 should be eliminated. In addition to directing applicants to the website, as suggested, there should be an optional form that explains both the public benefits abbreviations (which should be removed from the information sheet) and the 5b family size/income charts. Courts can decide to hand the optional form to all applicants, to post the optional form as information in the clerk's office or self-help center, or to use the form in some other way that would supplement information available on the website. | The committees agree with generally trying to keep the forms as short as possible, but not at the cost of leaving off information useful to the parties or the court. The committees do not agree that the income eligibility chart should be removed from the fee waiver request form. The chart should stay on the form in order to assist both the applicants and the courts in determining eligibility. The committees particularly considered the fact that most applicants for fee waivers are indigent self-represented litigants, without easy ongoing access to the internet, and that they are asserting their eligibility based on the federal poverty guidelines under penalty of perjury. |

## SPR14-05

Fee Waivers: Payments Over Time and Fees Included in Initial Fee Waiver
Amend Cal. Rules of Court, rules 3.50, 3.51, 3.52, 3.55, and 8.818; and revise forms FW-001, FW-001-INFO, FW-003, FW-008, APP-001, and APP-015/FW-015-INFO
All comments are verbatim unless indicated by an asterisk (*).

| **Fees Included in All Initial Fee Waiver - Rules 3.55, and 8.818 and forms FW-001, FW-001-INFO, FW-003, FW-008, APP-001, and APP-015/FW-015-INFO** | | |
|---|---|---|
| **Commentator** | **Comment** | **Committee Response** |
| Appellate Courts Section<br>Los Angeles County Bar Association<br>By: John A. Taylor, Jr. | The Appellate Courts Section of the Los Angeles County Bar Association has reviewed SPR14-05 insofar as it affects appellate courts and practitioners, and supports the proposal with one suggested modification to account more clearly for a recent rule change regarding payment for appellate transcripts. | The committees note the commentator's support for the proposal. |
| Committee on Appellate Courts<br>State Barof California<br>By: Saul Bercovitch, Staff Attorney | The Committee on Appellate Courts limited its review to issues relating to the recommendations of the Appellate Advisory Committee, and agrees with those recommendations. | The committees note the commentator's support for the proposal. |
| Stacy Larsen<br>Family Law Facilitator<br>Shasta County Superior Court | CRC 3.55(3): A recent question has arisen regarding whether waiver of "clerks fees for reasonably necessary certification and copying" includes post-judgment copies. Since post-judgment copies are often necessary to prepare pleadings to modify or enforce judgments, it would seem these fees are covered in this provision. A secondary issue that has arisen is whether this provision waives fees for copying paperwork originally submitted by the litigant who is now requesting copies. Specifically, family-law cases continue long past judgment due to ongoing child support, custody, visitation, and spousal support issues. The family-law litigants are frequently the most financially challenged litigants in our courthouses, and their issues are often urgent. This population is the most impacted when there is significant "wiggle room" in fee waiver statutes. These sorts of issues will continue to arise as our budgetary constraints increase, and it would be helpful if some uniformity was obtained through guidance from the Committee. Interpretation of "reasonably necessary copying" easily varies | The committee notes that the cost of post-judgment copies would be covered for parties with a fee waiver in place. As to the issue of amending item 3.55(3) regarding making reasonably necessary copies in order to assure consistent application throughout the state, that issue is beyond the scope of the current proposal. The committee will consider it in the future as time and resources permit. |

**Fees Included in All Initial Fee Waiver - Rules 3.55, and 8.818 and forms FW-001, FW-001-INFO, FW-003, FW-008, APP-001, and APP-015/FW-015-INFO**

| Commentator | Comment | Committee Response |
|---|---|---|
| | between individuals and courts, and it is not fair for one court to implement a blanket prohibition of waiving post-judgment copy fees or fees to copy pleadings prepared/filed by the litigants when the same fees are waived in another court. Guidance is appreciated given our ongoing struggle to balance fiscal demands of maintaining a court with ensuring indigent litigants meaningful access to justice.<br><br>FW-001-INFO, Item 1, "making and certifying copies": please see comment above requesting clarity for uniformity's sake on this issue.<br><br>FW-003 Item (4) "making and certifying copies": please see comment above requesting clarity for uniformity's sake on this issue.<br><br>FW-008, Item (5) "making and certifying copies": please see comment above requesting clarity for uniformity's sake on this issue. | |
| Superior Court, County of Los Angeles<br>(no name provided) | With respect to fees related to appeal to the appellate division of the Superior Court, these fees should not be referenced on the initial fee waiver forms but rather should be explained in the context of other information with respect to appeal on the "Information Sheet on Waiver of Appellate Court Fees." It is simply confusing to applicants to be presented to information with respect to appeal when they are applying for a fee waiver at the outset of litigation. | Removing this information from the fee waiver forms would be an important substantive change and thus is not the type of change that can be considered for implementation without public comment having been sought. When the current fee waiver forms were adopted in 2009 to implement changes in the fee waiver statutes, the committees specifically considered and sought public comment on whether to have a single fee waiver application or separate applications for the trial and appellate courts. Based on the public comments, the |

**Fees Included in All Initial Fee Waiver - Rules 3.55, and 8.818 and forms FW-001, FW-001-INFO, FW-003, FW-008, APP-001, and APP-015/FW-015-INFO**

| Commentator | Comment | Committee Response |
|---|---|---|
| | | committees specifically recommended the adoption of a single fee waiver application form in 2009. The committees will add this suggestion to reconsider that earlier policy decision to the list of suggestions for future consideration by the committees. |
| Superior Court of Orange County<br>By: Paul Alberga, Administrative Analyst/Officer II | Rule 3.55(7) speaks to reporter's daily fees for attendance at hearings and trials held within 60 days of the date of the order granting the applications. However, there is no reference to the reporter fee (currently $30.00, Gov. Code 68086(a)(1)(A)) for hearings lasting less than 1 hour).<br>• Suggest revising rule by striking the word "daily," and recommend removing the 60 day reference.<br>• Suggest referencing the same period of time for all fee waivers related to court reporter fees. | The committees agree with this comment, and are recommending amendment of rule 3.55 and 3.56 to reflect the change in law, along with recommending amendments to the items in forms FW-001-NFO, FW-002, FW-003, FW-005, FW-008, and FW-012 which set out the items included in those rules.- |
| Superior Court of San Diego County<br>By: Michael Roddy, Executive Officer | Additional suggested question/revisions are as follows:<br>1. Should we add the new Government Code sect. 68086 Court Reporter Fee of $30 to FW-001? | The committees agrees with this suggestion, and are recommending amendment of rule 3.55 and 3.56 to reflect the change in law, along with recommending amendments to the items in forms FW-001-NFO, FW-002, FW-003, FW-005, FW-008, and FW-012 which set out the items included in those rules.- |
| TCPJAC/CEAC Joint Rules Working Group | With respect to fees related to appeal to the appellate division of the Superior Court, these fees should not be referenced on the initial fee waiver forms but rather should be explained in the context of other information with respect to appeal on the "Information Sheet on Waiver of Appellate Court Fees." It is simply confusing to applicants to be presented to information with respect to appeal when they are applying for a fee waiver at the outset of litigation. | Removing this information from the fee waiver forms would be an important substantive change and thus is not the type of change that can be considered for implementation without public comment having been sought. When the current fee waiver forms were adopted in 2009 to implement changes in the fee waiver statutes, the committees specifically considered and sought public comment on whether to have a single fee waiver |

**Fees Included in All Initial Fee Waiver - Rules 3.55, and 8.818 and forms FW-001, FW-001-INFO, FW-003, FW-008, APP-001, and APP-015/FW-015-INFO**

| Commentator | Comment | Committee Response |
|---|---|---|
| | | application or separate applications for the trial and appellate courts. Based on the public comments, the committees specifically recommended the adoption of a single fee waiver application form in 2009. The committees will add this suggestion to reconsider that earlier policy decision to the list of suggestions for future consideration by the committees. |

**Other Comments/Suggestions – Forms FW-001, FW-001-INFO, FW-003 and FW-008**

| Commentator | Comment | Committee Response |
|---|---|---|
| Stacy Larsen<br>Family Law Facilitator<br>Shasta County Superior Court | FW-001, first paragraph, second line: There seems to be a word ("your") missing before "household's basic needs" in both this and the current version. | The committee has modified the form in light of this comment. |
| | FW-001, subsection (5)(c): It seems redundant to direct the litigant that he/she "must fill out page 2" in the first checkbox item and then tell him/her to "complete item 7 on page 2, along with all other items on that page" in the second checkbox item. Perhaps the first checkbox item on (c) should state that they must "fill out page 2 with the exception of item 7" and the second should remain as is (?). | The committee has modified the form in light of this comment. |
| | FW-001, page 2, Directions: If the litigant checked 5c, he/she needs to complete only all of page 2 except Item 7. If he/she is requesting payments, he/she must complete Item 7. Can this be clarified? | The committee has modified the form in light of this comment. |
| | FW-001, page 2, Item (8): The wording "fill out below" is a bit awkward. A possible revision is as follows: "Fill out the remainder of this page based on your . . ." | The committee has modified the form in light of this comment. |

# SPR14-05

Fee Waivers: Payments Over Time and Fees Included in Initial Fee Waiver
Amend Cal. Rules of Court, rules 3.50, 3.51, 3.52, 3.55, and 8.818; and revise forms FW-001, FW-001-INFO, FW-003, FW-008, APP-001, and APP-015/FW-015-INFO
All comments are verbatim unless indicated by an asterisk (*).

| **Other Comments/Suggestions – Forms FW-001, FW-001-INFO, FW-003 and FW-008** | | |
|---|---|---|
| **Commentator** | **Comment** | **Committee Response** |
| | FW-001, page 2, Item (9): It's a great idea to group all income in one category and one side of the page, and then all deductions/expenses in another category on the other side of the page. This will help litigants to fill out the page more correctly.<br><br>FW-002, page 2, box at bottom of page: It reads awkwardly to start the second sentence with the conjunction "Or." It could be combined with the first sentence (with a comma before the "or"), or it could be made into two sentences separated by a period or semicolon, starting the second sentence with "In the alternative, attach a sheet of paper . . ."<br><br>FW-003, Item (1): In this, and the current, version of this form, the litigant must provide his/her name and address but is not required to provide his/her telephone number. Is this an omission?<br><br>FW-008, Item (1): In this, and the current, version of this form, the litigant must provide his/her name and address but is not required to provide his/her telephone number. Is this an omission? | The committee agrees.<br><br>The committee has modified the form in light of this comment.<br><br>This form is an order, and the information regarding party's name and address is to identify who the order applies to, not to provided contact information.<br><br>See above. |
| Orange County Bar Association<br>By: Thomas Bienert, Jr., President | . (6) FW-003 at paragraph 4.a(3) and generally at App-001 have deleted all references to the waiver of appellate fees without explanation and contrary to Govt. Code §68634.5. | As explained in the Invitation to Comments, current item 4a(3), Fee Waiver for Appeal, has been deleted, because the items listed were duplicative of those already listed in item 4a(1). |
| Superior Court, County of Orange<br>By: Paul Alberga, Administrative Analyst/Officer II | Form FW-001: Request to Waive Court Fees<br>• Under Section 9, the first sentence is confusing: "List the source and amount of any other income you get each | The committee has modified the form in light of this comment. |

**Other Comments/Suggestions – Forms FW-001, FW-001-INFO, FW-003 and FW-008**

| Commentator | Comment | Committee Response |
| --- | --- | --- |
| | month;" Other than what income? At this point the party has not listed any income. Suggest rewording as follows: "List the source and amount of all income you get each month. | |
| | • Under Section 10 the first sentence is confusing: "List all other persons living in your home and their income; include only your spouse and all individuals who depend…" The party is first asked to list ALL other persons and then to include ONLY a select group of persons. The sentence seems to be contradictory. Suggest changing text to read as follows: "List your spouse and all individuals who live in your home and depend in whole or in part on you for support,…" | The committee has modified the form in light of this comment. |
| | FW-001-INFO: Information Sheet on Waiver of Superior Court Fees and Costs<br>• Recommend aligning all bullet points with the left margin throughout the form.<br>• Under the first bullet under "IMPORTANT INFORMATION": Suggest the word "Please" be removed. To answer "truthfully, accurately, and completely" should not be a request. | |
| | FW-003: Order on Court Fee Waiver<br>• Page 3, ‚Clerk's Certificate of Service should include language to allow for electronic service. | The fee waiver application, generally filed by self-represented parties, does not have a space for a party to include information regarding electronic addresses or to agree to electronic service. Amending the forms to allow for such information and such service will be considered in the future. |

| **Other Comments/Suggestions – Form APP-001** | | |
|---|---|---|
| **Commentator** | **Comment** | **Committee Response** |
| Appellate Courts Section<br>Los Angeles County Bar Association<br>By: John A. Taylor, Jr. | SPR14-05 includes certain proposed revisions to Judicial Council appellate form APP-001, which provides general information regarding appellate procedures in unlimited civil cases. Page 2 of that form contains information about the designation of the reporter's transcript, stating that "the appellant must deposit the approximate cost of transcribing the proceedings designated," which may be "calculated at $650 per day (more than three hours of court time) or $325 per fraction of a day (less than three hours of court time)." SPR14-05 would add "for proceedings that were not previously transcribed" to this description of the statutory deposit amounts.<br><br>This new language hints at a recent addition to rule 8.130 of the California Rules of Court that provides for a lesser deposit "[f]or proceedings that have previously been transcribed: $80 per fraction of the day's proceedings that did not exceed three hours, or $160 per day or fraction that exceeded three hours." (Cal. Rules of Court, rule 8.130(b)(1)(B)(ii).) However, the new language proposed by SPR14-05 does not go far enough, because it obscures the fact that a lesser deposit is required for proceedings that were previously transcribed, and it does not state what those lesser amounts are. A practitioner not already familiar with rule 8.130 would not be alerted to the availability of a lesser deposit amount from the new language that is proposed by SPR14-05.<br><br>To make APP-001 more helpful to practitioners, the Appellate Courts Section suggests that after the new proposed language "for proceedings that were not previously transcribed," the following sentence be inserted: "For previously transcribed | The committee has revised its proposal to include the sentence suggested by the commentator in the proposed revisions to form APP-001. |

| **Other Comments/Suggestions – Form APP-001** | | |
|---|---|---|
| **Commentator** | **Comment** | **Committee Response** |
| | proceedings, the cost is calculated at $160 per day (more than three hours of court time) or $80 per fraction of a day (less than three hours of court time)." | |

| **Other Comments/Suggestions – General** | | |
|---|---|---|
| **Commentator** | **Comment** | **Committee Response** |
| Committee on Administration of Justice<br>State Barof California<br>By: Saul Bercovitch, Staff Attorney | Our comments in response to specific questions that are asked are as follows:<br><br>1. Does the proposal appropriately address the stated purpose? Yes, the proposal is an appropriate response to address the stated purpose. The forms will adequately address the concerns and with the amendments will efficiently allow a waived hearing for payment plans and will also effectively include the new $50 court reporter fee deposit. | The committee agrees. |
| Magda Conant<br>Oceanside, California | Why not also allow the Judge discretion to decide whether a “reduced” fee be allowed in lieu of waiving the entire amount, based upon review of the income of the applicant?<br><br>Perhaps a matriculation of reduced fees would be available to the court/applicant for a clear determination of the reduced amount they qualify to pay based on the amount of applicant's income.<br><br>This coincides with the suggested “payment plan” which affords the courts some income as opposed to waiving the fee entirely. | That discretion to grant a partial fee waiver is already provided for in Government Code section 68634(c)(5), which allows a court to grant a partial waiver if a full waiver has been denied. See also form FW-008, order after hearing on fee waiver application. |
| Stacy Larsen<br>Family Law Facilitator<br>Shasta County Superior Court | Although beyond the scope of this “Invitation to Comment” cycle, it would be helpful to provide guidance on these forms regarding how litigants can prepare/submit an amended fee-waiver request for use when they are granted payments over time but then their financial situation dramatically changes such that they wish to request that the remaining unpaid fees be waived. | If a party’s financial circumstances change after a fee waiver has been denied, he or she may apply again for a waiver. The only additional requirement is to inform the court if a prior request had been made within 6 months and to attach the previous request. See form FW-001, item 6. |

# SPR14-05

Fee Waivers: Payments Over Time and Fees Included in Initial Fee Waiver
Amend Cal. Rules of Court, rules 3.50, 3.51, 3.52, 3.55, and 8.818; and revise forms FW-001, FW-001-INFO, FW-003, FW-008, APP-001, and APP-015/FW-015-INFO
All comments are verbatim unless indicated by an asterisk (*).

| **Other Comments/Suggestions – General** | | |
|---|---|---|
| **Commentator** | **Comment** | **Committee Response** |
| Superior Court, County of Orange<br>By: Paul Alberga, Administrative Analyst/Officer II | SPR 14-05: Request for Specific Comments<br>1.Does the proposal appropriately address the stated purpose?<br>• Yes<br>[¶¶]<br><br>5. Would the proposal provide cost savings? If so, please quantify.<br>• No<br><br>6. What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.<br>• Brief staff training sessions and procedural updates; no case management system updates.<br><br>7. Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?<br>• Yes | The committee appreciates the responses to the specific questions asked. |

# RUPRO ACTION REQUEST FORM

**RUPRO Meeting:** September 8, 2014

RUPRO action requested:

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

| Title: Appellate Procedure: Confidential Records | Rules: Amend the advisory committee comments to Cal. Rules of Court, rules 8.45, 8.47, 8.320, 8.336, 8.380, 8.384, 8.385, and 8.610<br><br>Standards:<br><br>Forms: |
|---|---|
| Committee or other entity submitting the proposal:<br>Appellate Advisory Committee<br>Hon. Raymond J. Ikola, Chair | Staff contact:<br>Heather Anderson, 415-865-7691<br>heather.anderson@jud.ca.gov |

**If requesting July 1 or out of cycle, explain:**

**Additional Information for RUPRO:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary, including any substantial argument in opposition and any expected individual or organization likely to support or oppose the proposal.)

# JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

**Title**
Appellate Procedure: Confidential Records

**Rules, Forms, Standards, or Statutes Affected**
Amend the advisory committee comments to Cal. Rules of Court, rules 8.45, 8.47, 8.320, 8.336, 8.380, 8.384, 8.385, and 8.610

**Recommended by**
Appellate Advisory Committee
Justice Raymond J. Ikola, Chair

**Agenda Item Type**
Action Required

**Effective Date**
January 1, 2015

**Date of Report**
August 13, 2014

**Contact**
Heather Anderson, Senior Attorney, 415-865-7691, heather.anderson@jud.ca.gov

## Executive Summary

The Appellate Advisory Committee recommends amending the advisory committee comments accompanying the rules regarding confidential records to: (1) highlight that many laws establish specific requirements regarding the confidentiality of particular records, and those laws supersede the rules of court; (2) note that, under case law, much of the contents of probation reports is not confidential; and (3) remove probation reports as one of the examples of confidential records cited in these advisory committee comments. This change is intended to address concerns raised about the application of the general rule regarding references to confidential records in appellate filings to information contained in probation reports.

## Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2015:

1. Amend the advisory committee comment to rule 8.45 to:

- Highlight that many laws establish specific requirements regarding the confidentiality of particular records, and those laws supersede the rules of court; and

- Note that this rule limits to whom a copy of a probation report is transmitted based on the provisions of Penal Code section 1203.05;

2. Similarly amend the advisory committee comment to rule 8.47 to:

   - Highlight that many laws establish specific requirements regarding the confidentiality of particular records, and those laws supersede the rules of court; and

   - Note that that, under case law, much of the contents of probation reports is not confidential; and;

3. Further amend the advisory committee comment to rule 8.45 and amend the advisory committee comments to rules 8.320, 8.336, 8.380, 8.384, 8.385, and 8.610 to remove probation reports as one of the examples of confidential records cited in these advisory committee comments

The text of the amended advisory committee comments is attached at pages 5–10.

## Previous Council Action

Effective January 1, 2014, on the recommendation of the Appellate Advisory Committee, the Judicial Council adopted new appellate rules and rule amendments relating to sealed and confidential records. New rule 8.47, among other things, established procedures applicable when a party wants to keep the contents of confidential records from being revealed in the reviewing court's proceedings.

## Rationale for Recommendation

Rule 8.47 requires that, unless otherwise provided by law, a party seeking to prevent disclosure of a confidential record must file an application or motion allowing the party to file the brief, petition, or other filing that discusses the confidential record under seal. The advisory committee comments accompanying rule 8.45 and several other rules include some examples of confidential records. Probation reports were included among these examples because Penal Code section 1203.05 specifically provides that, after 60 days following the date judgment is pronounced, a probation report may be inspected or copied only by specified persons and is not open to the general public, unless the court "upon its own motion orders that a report or reports shall be open or that the contents of the report or reports shall be disclosed." However, under case law, much of the information in probation reports is not confidential and is routinely cited in both appellate briefs and appellate opinions (see *People v. Connor* (2004) 115 Cal.App.4th 669).

After the Judicial Council adopted the new appellate rules and rule amendments relating to sealed and confidential records, concerns were raised about whether rule 8.47, together with the references to probation reports in the advisory committee comments, could be interpreted as generally restricting appointed counsel's and the Office of the Attorney General's ability to refer to information contained in probation reports without first seeking permission to file redacted and unredacted briefs or other filings. Based on these concerns, the Second, Third, Fourth, and Fifth Appellate Districts of the Court of Appeal, adopted miscellaneous orders or other provisions intended to permit the citation to information from probation reports without seeking leave to use redacted and unredacted filings.[1]

To address these same concerns at a statewide level, the committee recommends making the following changes to the advisory committee comments accompanying the rules regarding confidential records:

- ***Highlighting governance of specific laws.*** The advisory committee comments accompanying rules 8.45 and 8.47 would be amended to highlight that many laws establish specific requirements regarding the confidentiality of particular records and that those laws supersede the rules of court. Probation reports are one example of a record that is subject to particular law regarding what is confidential and to whom particular information may be disclosed, but there are many, many other such laws. As indicated in rule 8.45(a), such laws supersede the provisions of rules 8.45–8.47. The recommended revision to the advisory committee comments to rules 8.45 and 8.47 is intended to further emphasize the importance of identifying any such law applicable to a particular record.

- ***Noting case law establishing that much of the information in probation reports is not confidential.*** The advisory committee comment to rule 8.47 would be amended to specifically note that, under existing case law, much of the information contained in probation reports is not confidential. In *People v. Connor*, *supra,* 115 Cal.App.4th at p. 669, the court held that the factual summary of an offense; the evaluations, analyses, calculations, and recommendations of the probation officer; and other nonpersonal information in a probation report are not confidential under Penal Code section 1203.05. Because the provisions of rule 8.47 apply only to confidential records, they would not apply to this nonconfidential material in a probation report. The recommended revision to the advisory committee comment accompanying rule 8.47 is intended to clarify this point.

- ***Removing probation reports as an example of a confidential record.*** The advisory committee comments accompanying rules 8.45, 8.320, 8.336, 8.380, 8.384, 8.385, and 8.610 would all be amended to delete probation reports as an example of a confidential record. As discussed above, although access to probation reports is restricted by statute, much of the

[1] See, for example, *www.courts.ca.gov/documents/2DCA-Misc-Order-13-1.pdf* (Second District); *www.courts.ca.gov/2974.htm* (Third District); and *www.courts.ca.gov/documents/4DCA-011314-Exception-to-Rule-8-47-c-1.pdf* (Fourth District).

information contained in these reports is not confidential, making probation reports an atypical example of a confidential record.

The committee also recommends three nonsubstantive changes to the advisory committee comment to rule 8.45(c) and (d): correcting a cross-reference, deleting a duplicated word, and, to be consistent with the language used throughout title 8, eliminating references to the "minor" in juvenile proceedings."

## Comments, Alternatives Considered, and Policy Implications

### Comments

This proposal was circulated from April 18 to June 18, 2014, in the regular spring 2014 comment cycle. Seven individuals or organizations submitted comments on this proposal. Six commentators agreed with the proposal, and one did not indicate a position. A chart with the full text of the comments received and the committee's responses is attached at pages 11–12. Based on these comments, the committee recommends adopting this proposal as circulated.

### Alternatives

The committee considered not recommending these amendments to the advisory committee comments on the basis that several Court of Appeal districts have already addressed the concerns that have been raised regarding probation reports through the adoption of local orders. However, the committee concluded that addressing these concerns in the statewide rules as well would be helpful.

## Implementation Requirements, Costs, and Operational Impacts

This proposal should impose no implementation requirements or costs on the courts.

## Attachments and Links

1. Advisory committee comments to Cal. Rules of Court, rules 8.45, 8.47, 8.320, 8.336, 8.380, 8.384, 8.385, and 8.610, at pages 5–10
2. Chart of comments, at pages 11–12

The advisory committee comments accompanying rules 8.45, 8.47, 8.320, 8.336, 8.380, 8.384, 8.385, and 8.610 of the California Rules of Court are amended, effective January 1, 2015, to read:

1 **Title 8. Appellate Rules**
2
3 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**
4
5 **Chapter 1. General Provisions**
6
7 **Article 3. Sealed and Confidential Records**
8
9 **Rule 8.45. General provisions**
10
11 **(a) Application**
12
13 The rules in this article establish general requirements regarding sealed and confidential
14 records in appeals and original proceedings in the Supreme Court and Courts of Appeal.
15 Where other laws establish specific requirements for particular types of sealed or
16 confidential records that differ from the requirements in this article, those specific
17 requirements supersede the requirements in this article.
18
19 **(b) Definitions**
20
21 As used in this article:
22
23 (1)–(4) * * *
24
25 (5) A "confidential" record is a record that, in court proceedings, is required by statute,
26 rule of court, or other authority except a court order under rules 2.550–2.551 or rule
27 8.46 to be closed to inspection by the public or a party.
28
29 (6)–(7) * * *
30
31 **(c)** * * *
32
33 **(d) Transmission of and access to sealed and confidential records**
34
35 (1)–(3) * * *
36
37 (4) A probation report must be transmitted only to the reviewing court and to appellate
38 counsel for the People and the defendant who was the subject of the report.
39

**Advisory Committee Comment**

**Subdivision (a).** Many laws address sealed and confidential records. These laws differ from each other in a variety of respects, including what information is closed to inspection, from whom it is closed, under what circumstances it is closed, and what procedures apply to closing or opening it to inspection. It is very important to determine if any such law applies with respect to a particular record because where other laws establish specific requirements that differ from the requirements in this article, those specific requirements supersede the requirements in this article.

**Subdivision (b)(5).** Examples of confidential records are records in juvenile proceedings (Welf. & Inst. Code, § 827 and California Rules of Court, rule 8.401), records of the family conciliation court (Fam. Code, § 1818(b)), fee waiver applications (Gov. Code, § 68633(f)), ~~probation reports (Penal Code, § 1203.05),~~ and court-ordered diagnostic reports (Penal Code, § 1203.03). This term also encompasses records closed to inspection by a court order other than an order under rules 2.550–2.551 or 8.46, such as situations in which case law, statute, or rule has established a category of records that must be closed to inspection and a court has found that a particular record falls within that category and has ordered that it be closed to inspection. Examples include discovery material subject to a protective order under Code of Civil Procedure sections ~~section~~ 2030.090, 2032.060, or 2033.080 and records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. For more examples of confidential records, please see appendix 1 of the *Trial Court Records Manual* at *www.courts.ca.gov/documents/trial-court-records-manual.pdf*.

**Subdivisions (c) and (d).** The requirements in this rule for format and transmission of and access to sealed and confidential records apply only unless otherwise provided by law. Special requirements that govern transmission of and/or access to particular types of records may supersede the requirements in this rule. For example, rules 8.619(g) and 8.622(e) require copies of reporters' transcripts in capital cases to be sent to the Habeas Corpus Resource Center and the California Appellate Project in San Francisco, and under rules 8.336(d) and 8.409~~(d)~~(e), in non-capital felony appeals, if the defendant—or in juvenile appeals, if the appellant~~,~~ or the respondent~~, or the minor~~—is not represented by appellate counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project.

**Subdivision (c)(1)(C).** For example, for juvenile records, this mark could state "Confidential—Welf. & Inst. Code, § 827" or "Confidential—Juvenile Case File"; for a fee waiver application, this mark could state "Confidential—Gov. Code, § 68633(f)" or "Confidential—Fee Waiver Application"; ~~for a probation report, this mark could say "Confidential—Pen. Code, § 1203.05" or "Confidential—Probation Report";~~ and for a transcript of an in-camera hearing under *People v. Marsden* (1970) 2 Cal.3d 118, this mark could say "Confidential—*Marsden* Hearing."

**Subdivision (c)(2).** * * *

**Subdivision (c)(3).** * * *

**Subdivision (d).** See rule 8.47(b) for special requirements concerning access to certain confidential records.

**Subdivision (d)(4).** This rule limits to whom a copy of a probation report is transmitted based on the provisions of Penal Code section 1203.05, which limit who may inspect or copy probation reports.

**Rule 8.47. Confidential records**

**(a) Application**

This rule applies to confidential records but does not apply to records sealed by court order under rules 2.550–2.551 or rule 8.46 or to conditionally sealed records under rule 8.46. Unless otherwise provided by this rule or other law, rule 8.45 governs the form and transmission of and access to confidential records.

**(b)** * * *

**(c) Other confidential records**

Except as otherwise provided by law or order of the reviewing court:

(1) Nothing filed publicly in the reviewing court—including any application, brief, petition, or memorandum—may disclose material contained in a confidential record, including a record that, by law, a party may choose be kept confidential in reviewing court proceedings and that the party has chosen to keep confidential.

(2) To maintain the confidentiality of material contained in a confidential record, if it is necessary to disclose such material in a filing in the reviewing court, a party may serve and file a motion or application in the reviewing court requesting permission for the filing to be under seal.

(A)–(D) * * *

**Advisory Committee Comment**

**Subdivisions (a) and (c).** Note that there are many laws that address the confidentiality of various records. These laws differ from each other in a variety of respects, including what information is closed to inspection, from whom it is closed, under what circumstances it is closed, and what procedures apply to closing or opening it to inspection. It is very important to determine if any such law applies with respect to a particular record because this rule applies only to confidential records as defined in rule 8.45, and the procedures in this rule apply only "unless otherwise provided by law." Thus, where other laws establish specific requirements that differ from the requirements in this rule, those specific requirements ~~may be special requirements that govern particular types of confidential records that~~ supersede the requirements in this rule. For example, although Penal Code section 1203.05 limits who may inspect or copy probation reports, much of the material contained in such reports—such as the factual summary of the offense(s); the evaluations, analyses, calculations, and recommendations of the probation officer; and other nonpersonal information—is not considered confidential under that statute and is routinely discussed in openly filed appellate briefs (see *People v. Connor* (2004) 115 Cal.App.4th 669, 695–696). In addition, this rule does not alter any existing authority for a court to open a confidential record to inspection by the public or another party to a proceeding.

**Subdivision (c)(1).** * * *

**Subdivision (c)(2).** * * *

## Chapter 3. Criminal Appeals

## Article 2. Record on Appeal

### Rule 8.320. Normal record; exhibits

**(a)–(f)** * * *

**Advisory Committee Comment**

Rules 8.45–8.46 address the appropriate handling of sealed and confidential records that must be included in the record on appeal. Examples of confidential records include ~~probation reports,~~ Penal Code section 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).

**Subdivision (d)(1)(E).** * * *

### Rule 8.336. Preparing, certifying, and sending the record

**(a)–(h)** * * *

**Advisory Committee Comment**

**Subdivision (a).** * * *

**Subdivision (d).** * * *

**Subdivision (f).** Examples of confidential records include ~~probation reports,~~ Penal Code section 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).

## Chapter 4. Habeas Corpus Appeals and Writs

### Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an attorney

**(a)–(c)** * * *

**Advisory Committee Comment**

**Subdivision (b).** Examples of confidential records include ~~probation reports,~~ Penal Code section 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d

118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).

## Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party

**(a)–(d)** * * *

**Advisory Committee Comment**

**Subdivision (b)(4).** Examples of confidential records include ~~probation reports,~~ Penal Code section 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).

## Rule 8.385. Proceedings after the petition is filed

**(a)–(f)** * * *

**Advisory Committee Comment**

**Subdivision (a).** Examples of confidential records include ~~probation reports,~~ Penal Code section 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).

**Subdivision (c).** * * *

**Subdivision (d).** * * *

# Chapter 10. Appeals From Judgments of Death

## Article 2. Record on Appeal

## Rule 8.610. Contents and form of the record

**(a)–(d)** * * *

**Advisory Committee Comment**

**Subdivision (a).** * * *

**Subdivision (b).** Examples of confidential records include ~~probation reports,~~ Penal Code section 1203.03 diagnostic reports, records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 or *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in-camera proceedings on a confidential informant, and defense expert funding requests (Pen. Code, § 987.9; *Keenan v. Superior Court* (1982) 31 Cal.3d 424, 430).

## SPR14-01

**Appellate Procedure: Confidential Records:** Amend the advisory committee comments to Cal. Rules of Court, rules 8.45, 8.47, 8.320, 8.336, 8.380, 8.384, 8.385 and 8.610
All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| 1. | Committee on Appellate Courts<br>State Bar of California<br>Saul Bercovitch | A | The Committee on Appellate Courts supports this proposal. | The committee notes the commentator's support for the proposal; no response required. |
| 2. | Court of Appeal, Second Appellate District<br>Thomas Kallay<br>Managing Attorney | A | 1. We agree with this proposal. As noted in the proposal, not all the information in probation reports is confidential. As also noted, Pen, Code, § 1203.05 governs access to and the copying of probation reports.<br><br>2. We agree that this proposal entails no implementation costs or requirements for the courts. | The committee notes the commentator's support for the proposal; no response required. |
| 3. | Orange County Bar Association<br>Orange County Bar Association | A | | The committee notes the commentator's support for the proposal; no response required. |
| 4. | Superior Court of Los Angeles County | A | We would agree with the proposed changes to remove the language concerning probation reports as an example of a confidential record and the addition of the language added to 8.47 (a) & (c) from the advisory committee comments. The latter should specifically alleviate the problem. Although several Court of Appeal districts have already adopted a local Order to address this issue, the addition of this language clarifies and supports the application of the rule uniformly.<br><br>While the proposed changes may be helpful to attorneys preparing appellate briefs, they do not impact the manner in which our appeal units prepare appeal records, i.e., probation reports will still be placed in confidential | The committee notes the commentator's support for the proposal; no response required. |


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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | envelopes within the appeal records delivered to the parties and the reviewing court because of the requirement under PC 1203.05. Also, petitions to unseal portions of any appeal record for briefing purposes (or any purpose) have no effect on appeal units if granted. The reviewing court and the parties treat the sealed portions of the record already delivered to them as unsealed. We are not required to re-issue a new record. | |
| 5. | Superior Court of Riverside County | NI | No comment | No response required. |
| 6. | Superior Court of San Diego County<br>Michael M. Roddy<br>Executive Officer | A | It appears that the proposal mirrors the 4th DCA's blanket Order and may be beneficial for them: *www.courts.ca.gov/documents/4DCA-011314-Exception-to-Rule-8-47-c-1.pdf*. | The committee notes the commentator's support for the proposal; no response required. |
| 7. | TCPJAC/CEAC Joint Rules Subcommittee | A | The proposal is intended to provide significant cost savings and efficiencies.<br><br>The proposed changes incorporate ideas that would improve the cost effectiveness of the appellate process without being overly burdensome on the Courts and parties that are part of the appeals process. The proposal would streamline the appeals procedures, resulting in anticipated savings in staff time for processing and operational costs. | The committee notes the commentator's support for the proposal; no response required. |

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

# RUPRO ACTION REQUEST FORM

**RUPRO Meeting:** September 8, 2014

| RUPRO action requested: |
|---|
| **Recommend JC approval (has circulated for comment)** |

| Title: Appellate Procedure: Extensions of Time to File Briefs | **Rules:** Amend California Rules of Court, rule 8.212<br><br>Standards:<br><br>Forms: revise *Application for Extension of Time to File Brief (Civil Case) (Appellate)* (form APP-006), and adopt new forms *Application for Extension of Time to File Brief (Criminal Case) (Appellate)* (form CR-126); *Application for Extension of Time to File Brief (Juvenile Delinquency Case) (Appellate)* (form JV-816); *Application for Extension of Time to File Brief (Juvenile Dependency Case) (Appellate)* (form JV-817); *Stipulation for Extension of Time to File Brief (Civil Case) (Appellate)* (form APP-012); and *Attached Declaration (Court of Appeal)* (form APP-031) |
|---|---|
| Committee or other entity submitting the proposal:<br>Appellate Advisory Committee<br>Hon. Raymond J. Ikola, Chair | Staff contact:<br>Heather Anderson, 415-865-7691<br>heather.anderson@jud.ca.gov |

| **If requesting July 1 or out of cycle, explain:** |
|---|
| |

| **Additional Information for RUPRO:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary, including any substantial argument in opposition and any expected individual or organization likely to support or oppose the proposal.) |
|---|
| |

JUDICIAL COUNCIL OF CALIFORNIA

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

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 28, 2014

**Title**
Appellate Procedure: Extensions of Time to File Briefs

**Rules, Forms, Standards, or Statutes Affected**
Amend Cal. Rules of Court, rule 8.212; revise form APP-006; and approve new optional forms CR-126, JV-816, JV-817, APP-012, and APP-031

**Recommended by**
Appellate Advisory Committee
Justice Raymond J. Ikola, Chair

**Agenda Item Type**
Action Required

**Effective Date**
January 1, 2015

**Date of Report**
August 18, 2014

**Contact**
Heather Anderson, Senior Attorney
415-865-7691
heather.anderson@jud.ca.gov

## Executive Summary

The Appellate Advisory Committee recommends (1) amending the rule governing stipulations for extensions of time to file a brief in a civil appeal to clarify that such stipulations are not available if the time to file the brief has already been extended by the court on application of the party and to reflect the recent amendments to the rules on sealed records; (2) revising the existing form for applying to the Court of Appeal for extensions of time to file briefs in civil appeals to, among other things, give form users the option of specifying the reasons for an extension on the form or on an attached declaration; (3) adopting new optional forms for applying to the Court of Appeal for extensions of time to file briefs in criminal and juvenile cases; and (4) adopting a new optional form for stipulations to extend briefing time in civil appeals. These changes are intended to reduce courts' costs associated with the preparation of individualized applications for extensions of time by appointed counsel and the review of applications and stipulations for extensions of time that are in a wide variety of formats.

## Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2015:

1. Amend rule 8.212 to:

   - Clarify that stipulations to extend the time to file a brief are unavailable if the time to file the brief has already been extended by the court on application of the party; and

   - Reflect the recent amendments to the rules on sealed records;

2. Revise *Application for Extension of Time to File Brief (Civil Case) (Appellate)* (form APP-006) to:

   - Add more space for form users to specify the reasons warranting the extension, and give them the option of attaching a separate declaration specifying these reasons;

   - Eliminate the integrated proof of service;

   - Provide space for the presiding justice to make his or her order on the application form or to indicate that there is a separate order concerning the application; and

   - Make other minor changes;

3. Approve new optional form *Attached Declaration (Court of Appeal)* (form APP-031(A)), which parties may use to specify the reasons warranting the extension of time;

4. Approve new optional form *Stipulation for Extension of Time to File Brief (Civil Case) (Appellate)* (form APP-012): and

5. Approve new optional forms *Application for Extension of Time to File Brief (Criminal Case) (Appellate)* (form CR-126); *Application for Extension of Time to File Brief (Juvenile Delinquency Case) (Appellate)* (form JV-816); and *Application for Extension of Time to File Brief (Juvenile Dependency Case) (Appellate)* (form JV-817).

The text of the amended rule and the forms is attached at pages 8–20.

## Previous Council Action

The predecessor to rule 8.212, regarding the time to file briefs, was adopted by the Judicial Council as part of the original Rules for the Supreme Court and District Courts of Appeal, effective September 1, 1928. Since its adoption, the rule has provided that parties in civil appeals in the Court of Appeal can stipulate to extend the time to file their briefs and that, for good

cause, the presiding justice may also extend the time for filing a brief. The original 1928 rule had separate sentences that articulated the parties' authority to stipulate to an extension and the presiding justice's authority to grant an extension, without any provisions addressing the relationship between the two. As part of an overall revision of the appellate rules, effective July 1, 1943, the Judicial Council adopted a new rule on the time to file briefs in civil appeals. Similar to the 1928 rule, this 1943 rule provided that the parties could stipulate to extend the time to file a brief. However, it further provided that "thereafter the time may be extended only by the ... Presiding Justice, for good cause shown." This language remained unchanged until January 1 2002, when the council adopted a new rule on the time to file briefs as part of another comprehensive revision of the appellate rules. The 2002 rule specifically provided that an application to the presiding justice for an extension of time to file a brief must show not only good cause for the extension, but also either that the applicant was unable to obtain—or it would have been futile to seek—the extension by stipulation or that the parties had already stipulated to the 60-day maximum. Although this rule has been renumbered and amended in other ways, this provision has remained substantively unchanged since 2002.

Effective January 1, 2014, on the recommendation of the Appellate Advisory Committee, the Judicial Council adopted new appellate rules and rule amendments relating to sealed and confidential records, including new provisions regarding the labeling of sealed and conditionally sealed filings.

## Rationale for Recommendation

### Stipulations and applications for extensions of briefing time in civil appeals

***Rule 8.212.*** California Rules of Court, rule 8.212, addresses service and filing of briefs in civil appeals. Among other things, this rule provides that except as otherwise provided by statute, the parties may extend the briefing period for each brief by up to 60 days by filing one or more stipulations in the reviewing court before the brief is due. Rule 8.212 also provides that if a party is unable to stipulate to an extension, the party may apply to the presiding justice for an extension of briefing time before the brief is due. Rule 8.220 also addresses applications for extension of time, providing that when the clerk has notified a party that its brief was not timely filed and must be filed within 15 days, within that 15-day period the party may apply to the presiding justice for an extension of briefing time.

The general understanding is that once the court has granted a party's application for an extension of time to file a brief, the parties may not stipulate to further extend that briefing time. Based on the suggestion of a Court of Appeal staff attorney, the committee recommends that rule 8.212(b) be amended to more clearly reflect this understanding by providing that stipulations for extensions of time to file a brief in a civil appeal are not available if the time to file a brief has already been extended by the court on application of the party.

Rule 8.212 also addresses service of briefs, including briefs that are filed conditionally under seal. Effective January 1, 2014, the rules relating to the sealed records, including the rules

specifying what information needs to be included on the cover of conditionally sealed filings, were amended. Rule 8.212 does not currently reflect these amendments. The committee recommends that rule 8.212 also be amended to reflect these recent amendments to the rules on sealed records.

***Application for Extension of Time to File Brief (Civil Case) (Form APP-006).*** *Application for Extension of Time to File Brief (Civil Case) (Appellate)* (form APP-006) is an optional Judicial Council form that a party may use to seek an extension of time from the court in a civil appeal. The form currently provides only a very small space for a party to specify the reasons that warrant the requested extension of time. As a result, applicants for extensions of time must often include an attachment specifying these reasons. To make the form more user-friendly, the committee recommends enlarging the space available for applicants to specify the reasons for a requested extension. In addition, the committee recommends making clear on this form that the party may attach a separate declaration specifying those reasons if additional space is needed. To facilitate using such attachments when necessary, the committee also recommends the approval of a new optional declaration form—*Attached Declaration (Court of Appeal)* (form APP-031(A))—that can be attached to an extension application.

The second page of form APP-006 is currently entirely taken up by an optional proof of service form. Although proofs of service integrated into individual forms may be helpful, timely updating them can be difficult. Keeping a single, stand-alone proof of service form updated is much easier. The committee therefore recommends that the proof of service provisions be deleted from form APP-006 and replaced with a note that *Proof of Service (Court of Appeal)* (form APP-009) may be used for this purpose. Deleting the integrated proof of service also provides the additional space needed to expand the area for the reasons warranting the extension while keeping the total length of the form at two pages, or both sides of one sheet of paper.

Form APP-006 currently includes space for the presiding justice to make his or her order granting or denying the extension request on the form itself. Some appellate districts are moving toward electronic filing of extension requests. Depending on the format of the document filed and the e-filing system, producing and delivering a separate order may be easier than adding the presiding justice's signature to the document filed by a party and then sending that signed document to the parties. To facilitate electronic filing and service of these applications and associated orders, the committee recommends revising form APP-006 to include check boxes that the court may use to indicate that it is making its order either on the same form as the application or in a separate document. The proposed revisions will maintain the convenience of an integrated application and order for those districts that want and can use this format while allowing other courts to use the application form but issue a separate order.

The committee also recommends several minor changes to form APP-006, including:

- Updating the header to:

    - Specify that the e-mail address and fax number of the filer must be provided (if available), as required by rule 8.40(c); and
    - Establish separate fields for each element of the filer's contact information to facilitate electronic filing;
- Adding separate spaces for parties to request extension of combined briefs under rule 8.216 when there is a cross-appeal; and
- Adding a space for the applicant to indicate if the court marked any previous extension "no further."

***Proposed new Stipulation for Extension of Time to File Brief (Civil Case) (Appellate) (form APP-012).*** Although stipulations to extend the time to file a brief in a civil appeal are among the most common filings in the Court of Appeal, no Judicial Council form currently exists for such stipulations. Because these stipulations must be individually prepared, they are not in a uniform format, making it difficult for clerks to easily find important information about the new due dates of briefs. To encourage uniformity in stipulation format and thereby facilitate review of such stipulations by appellate court clerks, the committee recommends approval of new optional *Stipulation for Extension of Time to File Brief (Civil Case) (Appellate)* (form APP-012).

### Applications for extensions of briefing time in felony and juvenile appeals

Like rule 8.212, rule 8.360, relating to briefs in felony appeals, and rules 8.412 and 8.416, which address briefs in juvenile appeals, permit parties to apply to the Court of Appeal for an extension of time to file a brief. Although several Court of Appeal districts have local forms for this purpose, currently no Judicial Council forms exist for filing applications for extensions of briefing time in felony and juvenile appeals.

To help reduce costs associated with preparation of these applications by appointed counsel and with review of these applications by the court, the committee recommends approval of three new optional Judicial Council forms:

- *Application for Extension of Time to File Brief (Criminal Case) (Appellate)* (form CR-126);
- *Application for Extension of Time to File Brief (Juvenile Delinquency Case) (Appellate)* (form JV-816); and
- *Application for Extension of Time to File Brief (Juvenile Dependency Case) (Appellate)* (form JV-817).

These recommended forms are modeled on a combination of the current Judicial Council *Application for Extension of Time to File Brief (Civil Case) (Appellate)* (form APP-006) and the local forms adopted by several Court of Appeal districts.

## Comments, Alternatives Considered, and Policy Implications

### Comments

This proposal was circulated from April 18 to June 18, 2014, in the regular spring 2014 comment cycle. Seven individuals or organizations submitted comments on this proposal. Four

commentators agreed with the proposal, two agreed with the proposal if modified, and one did not agree with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 21–25.

As circulated for public comment, all of the application-for-extension forms—APP-006, CR-126, JV-816, and JV-817—would have included a note at the top of the form indicating that parties are expected to use the "grace period" allowed by the rules of court for late briefs rather than filing an application for an extension of time, if the brief can be filed within the time allowed by those rules. This language was modeled on language in a footnote in the local application form of one of the Court of Appeal districts. Two commentators, including a Court of Appeal, raised concerns about this language. Based on these comments, the committee revised its proposal to remove this language from the application forms.

One commentator, also a Court of Appeal, suggested that, consistent with the proposed amendment to rule 8.212, the proposed new stipulation form should more clearly indicate that a stipulation cannot be used if an extension of the time to file the brief has already been granted by the presiding justice. Based on this comment, the committee revised proposed new form APP-012 to include this caution in the note at the top of the form.

### Alternatives

In addition to the alternatives considered as a result of the public comments, the committee considered a variety of alternative language and provisions in developing the proposed amendments to rule 8.212, proposed revisions to form APP-006, and proposed new forms CR-126, JV-816, JV-817, APP-012, and APP-031. Options considered, but ultimately not recommended by the committee, included:

- Adding the text of the requirements regarding labeling of sealed and conditionally sealed filings in the proposed amendments to rule 8.212, rather than cross-referencing to rule 8.47. Although this added text would make it easier for users of rule 8.212 to find these labeling requirements, the committee concluded that this benefit was outweighed by the costs associated with duplicating all of these requirements and ensuring that multiple rules are appropriately updated.

- Proposing a stipulation form that could be used to extend the time for filing multiple briefs at the same time. Although this form would be convenient for some applicants, the committee concluded that such a form was likely to make it more difficult for clerks to easily identify the due dates of briefs. Further, the committee's view was that if parties wished to extend the due dates of multiple briefs at the same time, they could simply file separate stipulation forms for each brief.

The committee also considered not proposing these rule amendments and form changes. However, the committee concluded that clarifying the rule and creating standardized stipulation and application forms would assist both counsel and the courts, resulting in reduced court costs

associated with the time for appointed counsel to prepare individualized application forms and for the courts to review applications and stipulations that are in a wide variety of formats. Given these potential costs savings, the committee concluded that it should recommend these rule amendments and forms at this time.

## Implementation Requirements, Costs, and Operational Impacts

This proposal should result in no implementation costs for the courts and, as noted above, should reduce costs for the courts associated with the time for appointed counsel to prepare individualized application forms and for the courts to review applications and stipulations that are in a wide variety of formats.

## Attachments

1. Cal. Rules of Court, rule 8.212, at pages 8–9
2. Forms APP-006, APP-012, APP-031, CR-126, JV-817, and JV-817, at pages 10–20
3. Chart of comments, at pages 21–25

Rule 8.212 of the California Rules of Court is amended, effective January 1, 2015, to read:

**Rule 8.212. Service and filing of briefs**

**(a)** * * *

**(b) Extensions of time**

(1) Except as otherwise provided by statute or when the time to file the brief has previously been extended under (3) or rule 8.220(d), the parties may extend each period under (a) by up to 60 days by filing one or more stipulations in the reviewing court before the brief is due. Stipulations must be signed by and served on all parties.

(2) A stipulation under (1) is effective on filing. The reviewing court may not shorten a stipulated extension.

(3) Before the brief is due, a party may apply to the presiding justice for an extension of each period under (a), or under rule 8.200(c)(6) or (7), on a showing that there is good cause and that:

(A) The applicant was unable to obtain—or it would have been futile to seek—the extension by stipulation; or

(B) The parties have stipulated to the maximum extension permitted under (1) and the applicant seeks a further extension.

(4) A party need not apply for an extension or relief from default if it can file its brief within the time prescribed by rule 8.220(a). The clerk must file a brief submitted within that time if it otherwise complies with these rules.

**(c) Service**

(1) * * *

(2) If a brief is not filed electronically under rules 8.70–8.79, one electronic copy of each brief must be submitted to the Court of Appeal. For purposes of this requirement, the term "brief" does not include a petition for rehearing or an answer thereto.

(A) * * *

(B) If ~~the Court of Appeal has ordered~~ the brief discloses material contained in a sealed or conditionally sealed record, the party serving the brief must comply with rule 8.46(f) and include as the first page in the PDF document a cover

sheet that contains the information required by rule 8.204(b)(10). ~~and labels the contents as "CONDITIONALLY UNDER SEAL."~~ ~~The Court of Appeal clerk must promptly notify the Supreme Court of any court order unsealing the brief. In the absence of such notice, the Supreme Court clerk must keep all copies of the brief under seal.~~

(C) If it would cause undue hardship for the party filing the brief to submit an electronic copy of the brief to the Court of Appeal, the party may instead serve four paper copies of the brief on the Supreme Court. If ~~the Court of Appeal has ordered~~ the brief discloses material contained in a sealed or conditionally sealed record, the party serving the brief must comply with rule 8.46(f) ~~place all four copies of the brief in a sealed envelope~~ and attach a cover sheet that contains the information required by rule 8.204(b)(10). ~~and labels the contents as "CONDITIONALLY UNDER SEAL."~~ The Court of Appeal clerk must promptly notify the Supreme Court of any court order unsealing the brief. In the absence of such notice, the Supreme Court clerk must keep all copies of the unredacted brief under seal.

(3) * * *

TO BE FILED IN THE COURT OF APPEAL **APP-006**

| COURT OF APPEAL APPELLATE DISTRICT, DIVISION | COURT OF APPEAL CASE NUMBER: |
|---|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:<br>NAME:<br>FIRM NAME:<br>STREET ADDRESS:<br>CITY: STATE: ZIP CODE:<br>TELEPHONE NO.: FAX NO. *(if available)*:<br>E-MAIL ADDRESS *(if available)*:<br>ATTORNEY FOR *(name)*: | SUPERIOR COURT CASE NUMBER: |
| APPELLANT:<br><br>RESPONDENT: | |
| **APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)** | |

**Notice: Please read Judicial Council form APP-001 before completing this form.**

1. I *(name)*: request that the time to file *(check one)*:
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
   - ☐ appellant's reply brief (ARB)

   now due on *(date)*: be extended to *(date)*:

2. I ☐ have ☐ have not received a rule 8.220 notice.

3. I have received:
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

     *(number of extensions)*: extensions by stipulation totaling *(total number of days)*:

     *(number of extensions)*: extensions from the court totaling *(total number of days)*:

     Did the court mark any previous extension "no further?" ☐ Yes ☐ No

4. I am unable to file a stipulation to an extension because
   - ☐ the other party is unwilling to stipulate to an extension.
   - ☐ other reason *(please specify)*:

5. The last brief filed by any party was: ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB
   filed on *(date)*:

6. The record in this case is:

| | Volumes (#) | Pages (#) | Date filed |
|---|---|---|---|
| Appendix/Clerk's Transcript: | | | |
| Reporter's Transcript: | | | |
| Augmentation/Other: | | | |

7. ☐ The trial court has ordered the proceedings in this case stayed until this appeal is decided.

| APPELLANT:<br>RESPONDENT: | COURT OF APPEAL CASE NUMBER: |
|---|---|

8. The reasons that I need an extension to file this brief are stated
   - [ ] below
   - [ ] on a separate declaration
     You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

   *(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions):*

9. For attorneys filing application on behalf of client, I certify that I have delivered a copy of this application to my client (Cal. Rules of Court, rule 8.60).
10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.50). You may use *Proof of Service (Court of Appeal)* (form APP-009) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: ______________________________

______________________________ (TYPE OR PRINT NAME)

______________________________ (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is [ ] below [ ] on a separate document

## ORDER

EXTENSION OF TIME IS:

- [ ] Granted to *(date)*: ______________________
- [ ] Denied

Date: ______________________________

______________________________ (SIGNATURE OF PRESIDING JUSTICE)

| COURT OF APPEAL APPELLATE DISTRICT, DIVISION | COURT OF APPEAL CASE NUMBER: |
|---|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:<br>NAME:<br>FIRM NAME:<br>STREET ADDRESS:<br>CITY: STATE: ZIP CODE:<br>TELEPHONE NO.: FAX NO. *(if available)*:<br>E-MAIL ADDRESS *(if available)*:<br>ATTORNEY FOR *(name)*: | SUPERIOR COURT CASE NUMBER: |
| APPELLANT:<br><br>RESPONDENT: | |
| **STIPULATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)** | |

**Notice: Please read Judicial Council form APP-001 before completing this form. Before a brief is due, parties may extend the time to file the brief *up to a maximum of 60 days* by filing one or more stipulations. However, parties may not stipulate to extend the time to file a brief if the court has previously granted an application to extend the time to file the brief. See California Rules of Court, rule 8.212(b).**

1. All parties to this appeal stipulate to extend the time under Cal. Rules of Court, rule 8.212(a), to file the following brief *(check one)*:
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
   - ☐ appellant's reply brief (ARB)
2. This brief is now due on *(date)*:
3. The parties agree to extend the due date by *(number)*: days, so that the new date is *(date)*:
4. The time to file this brief *(check one)*:
   - ☐ has not been extended by stipulations previously.
   - ☐ has been extended previously by one or more stipulations totaling *(number)* days.

   The combined extensions to file this brief by this stipulation and any previous stipulation do not exceed 60 days. (See rule 1.10 regarding the computation of time.)
5. For attorneys filing on behalf of a client, I certify that I have delivered a copy of this stipulation to my client. (See rule 8.60.)
6. A proof of service of this stipulation on all parties is attached (see rule 8.50). You may use *Proof of Service (Court of Appeal)* (form APP-009) for this purpose.

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

(IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)



Form Approved for Optional Use
Judicial Council of California
APP-012 [New January 1, 2015]



Cal. Rules of Court, rules 8.50, 8.60, 8.63, 8.412
*www.courts.ca.gov*

| APPELLANT:<br>RESPONDENT: | COURT OF APPEAL CASE NUMBER: |
|---|---|

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PARTY OR ATTORNEY)

(IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PARTY OR ATTORNEY)

(IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PARTY OR ATTORNEY)

(IF SIGNED BY AN ATTORNEY, NAME OF PARTY REPRESENTED)

APP-031A

| APPELLANT:<br>RESPONDENT: | COURT OF APPEAL CASE NUMBER:<br>SUPERIOR COURT CASE NUMBER: |
| --- | --- |

**ATTACHED DECLARATION (COURT OF APPEAL)**

*(This form must be attached to another form or court paper before it can be filed in court.)*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

☐ Attorney for ☐ Appellant ☐ Respondent

☐ Other *(specify)*:



Form Approved for Optional Use
Judicial Council of California
APP-031 [New January 1, 2015]

| COURT OF APPEAL APPELLATE DISTRICT, DIVISION | COURT OF APPEAL CASE NUMBER: |
|---|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:<br>NAME:<br>FIRM NAME:<br>STREET ADDRESS:<br>CITY: STATE: ZIP CODE:<br>TELEPHONE NO.: FAX NO. *(if available)*:<br>E-MAIL ADDRESS *(if available)*:<br>ATTORNEY FOR *(name)*: | SUPERIOR COURT CASE NUMBER: |
| APPELLANT:<br><br>RESPONDENT: | |
| **APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CRIMINAL CASE)** | |

1. I *(name)*: request that the time to file *(check one)*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
   - ☐ appellant's reply brief (ARB)

   now due on *(date)*: be extended to *(date)*:

2. I ☐ have ☐ have not received a rule 8.360(c)(5) notice.

3. I have received
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

     *(number of extensions)*: extensions from the court totaling *(total number of days)*:

     Did the court mark any previous extension "no further?" ☐ Yes ☐ No

4. The last brief filed by any party was: ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB
   filed on *(date)*:

5. The record in this case is:

| | Volumes (#) | Pages (#) | Date filed |
|---|---|---|---|
| Clerk's Transcript: | | | |
| Reporter's Transcript: | | | |
| Augmentation/Other: | | | |

6. Defendant was convicted of *(specify)*:

7. The conviction is based on a *(check one)*:
   - ☐ jury verdict
   - ☐ plea of guilty or no contest

| APPELLANT:<br>RESPONDENT | COURT OF APPEAL CASE NUMBER: |
|---|---|

8. The court imposed the following punishment:

9. The defendant ☐ is ☐ is not on bail pending appeal.

10. The reasons that I need an extension to file this brief are stated
    ☐ below.
    ☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

    *(Please specify; see rule 8.63 for factors used in determining whether to grant extensions):*

11. A proof of service of this application on all those entitled to receive a copy of the brief under rule 8.360(d)(1), (2), and (3) is attached (see rule 8.360(d)). You may use *Proof of Service (Court of Appeal)* (form APP-009) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

## ORDER

EXTENSION OF TIME IS:

☐ Granted to *(date)*: ____________________
☐ Denied

Date: ____________________

(SIGNATURE OF PRESIDING JUSTICE)

| COURT OF APPEAL APPELLATE DISTRICT, DIVISION | COURT OF APPEAL CASE NUMBER: |
|---|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:<br>NAME:<br>FIRM NAME:<br>STREET ADDRESS:<br>CITY: STATE: ZIP CODE:<br>TELEPHONE NO.: FAX NO. *(if available)*:<br>E-MAIL ADDRESS *(if available)*:<br>ATTORNEY FOR *(name)*: | SUPERIOR COURT CASE NUMBER(S): |
| Case Name: In re , person(s), coming under the juvenile court law | |
| APPELLANT:<br>RESPONDENT: | |
| **APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (JUVENILE DELINQUENCY CASE)** | |

1. I *(name)*: request that the time to file *(check one)*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
   - ☐ appellant's reply brief (ARB)

   now due on *(date)*: be extended to *(date)*:

2. I ☐ have ☐ have not received a rule 8.412(d)(1) notice.

3. I have received
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

     *(number of extensions)*: extensions from the court totaling *(total number of days)*:

     Did the court mark any previous extension "no further?" ☐ Yes ☐ No

4. The last brief filed by any party was: ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB
   filed on *(date)*:

5. The record in this case is:

| | Volumes (#) | Pages (#) | Date filed |
|---|---|---|---|
| Clerk's Transcript: | | | |
| Reporter's Transcript: | | | |
| Augmentation/Other: | | | |

6. The juvenile was adjudicated a ward of the court based on commission of the following offense(s):

7. The disposition followed *(check one)*:
   - ☐ a contested hearing
   - ☐ an admission



Form Approved for Optional Use
Judicial Council of California
JV-816 [New January 1, 2015]



Cal. Rules of Court, rules 8.50, 8.60, 8.63, 8.412
*www.courts.ca.gov*

| APPELLANT:<br>RESPONDENT: | COURT OF APPEAL CASE NUMBER: |
|---|---|

8. The court imposed the following disposition:

9. The reasons that I need an extension to file this brief are stated

   ☐ below.

   ☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

   *(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions):*

10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.412(e)). You may use *Proof of Service (Court of Appeal)* (form APP-009) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

## ORDER

EXTENSION OF TIME IS:

☐ Granted to *(date)*: ____________________
☐ Denied

Date: ____________________

(SIGNATURE OF PRESIDING JUSTICE)

| COURT OF APPEAL APPELLATE DISTRICT, DIVISION | COURT OF APPEAL CASE NUMBER: |
|---|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:<br>NAME:<br>FIRM NAME:<br>STREET ADDRESS:<br>CITY: STATE: ZIP CODE:<br>TELEPHONE NO.: FAX NO. *(if available)*:<br>E-MAIL ADDRESS *(if available)*:<br>ATTORNEY FOR *(name)*: | SUPERIOR COURT CASE NUMBER(S): |
| Case Name: In re , person(s), coming under the juvenile court law | |
| APPELLANT:<br>RESPONDENT: | |
| **APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (JUVENILE DEPENDENCY CASE)** | |

1. I *(name)*: request that the time to file *(check one)*
   - ☐ appellant's opening brief (AOB)
   - ☐ respondent's brief (RB)
   - ☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
   - ☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
   - ☐ appellant's reply brief (ARB)

   now due on *(date)*: be extended to *(date)*:

2. I ☐ have ☐ have not received a rule 8.412(d)(1) notice.

3. I have received
   - ☐ no previous extensions to file this brief.
   - ☐ the following previous extensions:

   *(number of extensions)*: extensions from the court totaling *(total number of days)*:

   Did the court mark any previous extension "no further?" ☐ Yes ☐ No

4. The last brief filed by any party was: ☐ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB
   filed on *(date)*:

5. The record in this case is:

| | Volumes (#) | Pages (#) | Date filed |
|---|---|---|---|
| Clerk's Transcript: | | | |
| Reporter's Transcript: | | | |
| Augmentation/Other: | | | |

6. The order appealed from was made under Welfare and Institutions Code *(check all that apply)*:
   a. ☐ section 360 (declaration of dependency) ☐ Removal of custody from parent or guardian ☐ Other orders
      ☐ with review of section 300 jurisdictional findings
   b. ☐ section 366.26
      ☐ Termination of parental rights ☐ Appointment of guardian ☐ Planned permanent living arrangement

| APPELLANT: RESPONDENT: | COURT OF APPEAL CASE NUMBER: |
| --- | --- |

6. c. ☐ Section 366.28
   d. ☐ Other appealable orders relating to dependency *(specify):*

7. The reasons that I need an extension to file this brief are stated:
   ☐ below.
   ☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

   *(Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions. Note that an exceptional showing of good cause is required in cases subject to rule 8.416.)*

8. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.412(e)). You may use *Proof of Service (Court of Appeal)* (form APP-009) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☐ below ☐ on a separate document

## ORDER

EXTENSION OF TIME IS:

☐ Granted to *(date)*: ______________________

☐ Denied

Date: ______________________

(SIGNATURE OF PRESIDING JUSTICE)

**SPR14-02**
Appellate Procedure: Extensions of Time to File briefs; Amend Cal. Rules of Court, rule 8.212
Revise form APP-006; and approve new optional forms CR-126, JV-816, APP-012, and APP -031
All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| 1. | Court of Appeal, Second Appellate District<br>Thomas Kallay<br>Managing Attorney | A | 1. We support this proposal. It is already the general practice of this court.<br><br>2. We agree that there will be no implementation costs for the courts.<br><br>3. We support the new optional Judicial Council forms for extensions of time. We agree that these forms will save time for counsel and will facilitate the review of applications for extensions of time.<br><br>4. The form (SPR14-02) should state specifically that a stipulation is precluded if an extension of time has already been granted by the presiding justice.<br><br>5. Two months is sufficient time to implement this proposal. | The committee notes the commentator's support for the proposal.<br><br>Based on this comment, the committee has revised the notice box on proposed new form APP-012 to more directly state that a stipulation is not available if the court has previously extended the time to file a brief on application of a party. |
| 2. | Court of Appeal, Third Appellate District<br>Collette M. Bruggman<br>Assistant Clerk/Administrator | AM | APP-006 contains a "Notice" box which states: "Notice: Please read Judicial Council form APP-001 before completing this form. Parties are expected to use the time allowed by California Rules of Court, rule 8.220(a), rather than filing an application for an extension of time, if the brief can be filed within the time allowed by that rule."<br><br>The language "Parties are expected to use the time allowed by California Rules of Court, rule 8.220(a), rather than filing an application for an | Based on this and other comments, the committee has revised its proposal to remove this sentence from the notice box. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | extension of time, if the brief can be filed within the time allowed by that rule," of the notice creates problems because rule 8.220(a) requires the Clerk's Office to give notice if a brief hasn't been timely filed and allow 15 additional days to file. According to the Notice on APP-006, the Clerk's Office would have to give notice of default in every case before a party could file a request for extension of time, and every attorney needing an extension of time would be issued a default notice first.<br><br>Currently, a party can request an extension of time at any time prior to the filing of the brief without the Clerk's Office having to issue a notice of default. The Notice in the new form creates a lot of extra work and changes the entire operation of the Clerk's Office regarding extensions of time, or this Court would have to issue a Miscellaneous Order setting forth that we will not use the JC Form. Overall, we support the use of standardized forms, but cannot support the language in this "Notice" box. I would recommend removing the language "Parties are expected to use the time allowed by California Rules of Court, rule 8.220(a), rather than filing an application for an extension of time, if the brief can be filed within the time allowed by that rule."<br><br>Form CR-136 has the same "Notice" box, citing rule 8.360(c)(5) and will cause the same problems, only in criminal cases. This would | |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | also result in default notices to court-appointed panel attorneys. An unintended consequence of this provision is that the number of default notices a panel attorney receives may influence a decision about whether that attorney may stay on the panel of court-appointed attorneys; this is why court-appointed attorneys prefer to request extensions of time rather than receive default notices. Same recommendation to remove language from the "Notice" box here.<br><br>Forms JV-816 and JV-817 have the same "Notice" box, citing rules 8.412(d) and 8.416(g) and will case the same problems as stated for criminal cases. Same recommendation to remove language from the "Notice" box here. | |
| 3. | Los Angeles County Counsel<br>Dawyn Harrison<br>Assistant County Counsel | AM | I wanted to comment that the proposed new admonishment on the juvenile extension form—that "Parties are expected to use the time allowed by California Rules of Court, rules 8.412(d) or 8.416(g) rather than filing an application for an extension of time, if the brief can be filed within the time allowed by that rule"—is confusing. One way of reading that admonition is that the court is telling attorneys that even if they are going to be late filing their brief, if they can get it filed less than 30 days late, they should just let the default issue rather than apply for an extension. But, the invitation to comment states "The notice box at the top of the form includes a statement that parties, when notified that a brief is late, are expected to use | Based on this and other comments, the committee has revised its proposal to remove this sentence from the notice box. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | the "grace period" provided by the rules to file the brief, if possible." If that rational is true, then the court is just dissuading requests for extensions after the default notice has issued.<br><br>Under what circumstances is the Court discouraging requests for extension of time? Is it only after the default notice issues as the invitation to comment suggests, or is it also under circumstances where the default notice has not issued yet, but counsel believes they can file their brief within the soon-to-begin thirty day default period? If the rational provided in the invitation to comment is correct, maybe that language should appear on the form since it is more clear. | |
| 4. | Orange County Bar Association | A | In response to the "Request for Specific Comment" asking "whether the proposal appropriately addresses the stated purpose", we state:<br><br>The primary stated purpose of the proposal is to amend rule 8.212 to make it clearer that a stipulation to extend briefing deadlines is not allowed in civil matters once an application for extension has been filed; the proposed amendment does accomplish that primary stated purpose. A further stated purpose is for revision and creation of standardized forms to assist counsel and the courts (versus their having to prepare or review and consider individualized forms that are in a wide variety of formats); we | The committee notes the commentator's support for the proposal; no response required. |

# SPR14-02

Appellate Procedure: Extensions of Time to File briefs; Amend Cal. Rules of Court, rule 8.212
Revise form APP-006; and approve new optional forms CR-126, JV-816, APP-012, and APP -031
All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | believe the revised and new forms would achieve this stated purpose as well. | |
| 5. | Superior Court of Los Angeles County | A | The amendments and forms will bring clarity to the confusion surrounding stipulations and applications for continuances. The lack of clarity exists in the rules governing appeals to the Appellate Division. The proposed changes do not, however, amend the companion Rules of Court that apply to appeals to the Appellate Division. | The committee notes the commentator's support for the proposal. The committee is in the process of forming an Appellate Division subcommittee and will refer this comment to that subcommittee. |
| 6. | Superior Court of San Diego County<br>Michael M. Roddy<br>Executive Officer | A | No specific comments | The committee notes the commentator's support for the proposal; no response required. |
| 7. | Ed Wigdahl<br>Director<br>Neighborhood Nation<br>Escondido, CA | N | Time restrictions are fair for those who practice law. But unrepresented litigants should be able to request an extension due to the complicated laws that rule appeals. | The committee respectfully disagrees. Unrepresented litigants are generally required to comply with the same procedural requirements as those that are represented. |

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

# RUPRO ACTION REQUEST FORM

**RUPRO Meeting:** September 8, 2014

| RUPRO action requested: |
|---|
| **Recommend JC approval (has circulated for comment)** |

| Title: Appellate Procedure: Judicial Notice Requests | **Rules:** Amend California Rules of Court, rules 8.252 and 8.809<br><br>Standards:<br><br>Forms: |
|---|---|
| Committee or other entity submitting the proposal:<br>Appellate Advisory Committee<br>Hon. Raymond J. Ikola, Chair | Staff contact:<br>Heather Anderson, 415-865-7691<br>heather.anderson@jud.ca.gov |

| **If requesting July 1 or out of cycle, explain:** |
|---|
| |

| **Additional Information for RUPRO:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary, including any substantial argument in opposition and any expected individual or organization likely to support or oppose the proposal.) |
|---|
| |

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 28, 2014

**Title**
Appellate Procedure: Judicial Notice Requests

**Rules, Forms, Standards, or Statutes Affected**
Amend Cal. Rules of Court, rules 8.252 and 8.809

**Recommended by**
Appellate Advisory Committee
Justice Raymond J. Ikola, Chair

**Agenda Item Type**
Action Required

**Effective Date**
January 1, 2015

**Date of Report**
August 13, 2014

**Contact**
Heather Anderson, Senior Attorney
415-865-7691
heather.anderson@jud.ca.gov

## Executive Summary

The Appellate Advisory Committee recommends amending the rules relating to motions for judicial notice to require that the pages of documents submitted with the motion be consecutively paginated. This change will facilitate more accurate citation by parties and make it easier for the court to locate cited material.

## Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2015, amend California Rules of Court, rules 8.252 and 8.809, to require that the pages of documents submitted with a motion for judicial notice be consecutively paginated.

The text of the amended rules is attached at page 4.

## Previous Council Action

The predecessor to rule 8.252(a), rule 14.5, regarding taking judicial notice in Court of Appeal proceedings, was adopted by the Judicial Council effective July 1, 2000. This rule was subsequently renumbered several times and, effective January 1, 2007, became rule 8.252(a). Rule 8.809, which was modeled on rule 8.252(a), was adopted by the Judicial Council effective January 1, 2011. The Judicial Council amended both rule 8.252(a) and rule 8.809, effective January 1, 2013, to specifically require that if judicial notice of a matter was not taken by the trial court, the motion must state why the matter is subject to judicial notice under the Evidence Code.

## Rationale for Recommendation

Rule 8.252 addresses motions for judicial notice in the Court of Appeal and the Supreme Court.[1] Rule 8.809 similarly addresses motions for judicial notice in the superior court appellate division. Rules 8.825(a)(3) and 8.809(b) require that, if the matter to be noticed is not in the record, the party must serve and file a copy with the motion. These rules currently contain no requirements with respect to the format of a document or documents submitted with a motion for judicial notice. In contrast, rules 8.155(a)(1) and 8.841(a), which address motions for augmentation of the record in the Court of Appeal and the superior court appellate division, respectively, require that the pages of documents attached to such a motion be consecutively numbered.

The committee recommends that rules 8.252 and 8.809 be amended to require that, similar to attachments to motions to augment, the pages of copies of material submitted with a motion for judicial notice be consecutively paginated. This pagination will makes it easier for parties to accurately cite to this material and for the court to locate cited material in these copies.

## Comments, Alternatives Considered, and Policy Implications

### Comments

A proposal to amend rule 8.252 was circulated from April 18 to June 18, 2014, in the regular spring 2014 comment cycle. Seven organizations submitted comments on this proposal. Six commentators agreed with the proposal, and one did not indicate a position. One of the commentators that agreed with the proposal also suggested that the parallel rule on motions for judicial notice in the superior court appellate division—rule 8.809—be similarly amended. A chart with the full text of the comments received and the committees' responses is attached at page 5.

Based on these comments, the committee recommends adopting the amendment to rule 8.252 as it was circulated and adopting the same amendment to rule 8.809.

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[1] Rule 8.520(g) provides that, to obtain judicial notice by the Supreme Court, a party must comply with rule 8.252(a), and rules 8.366 and 8.470 provide that rule 8.252, which is part of the rules on civil appeals, also generally applies in criminal and juvenile proceedings, respectively, in the Court of Appeal.

### Alternatives

In addition to the alternative considered in response to the public comments, the committee also considered requiring that additional formatting requirements, such as binding and indexing, be applied to material submitted with both motions for judicial notice and motions to augment the record. The committee concluded, however, that given the small number of documents typically submitted with such motions, these additional formatting requirements would generally not be necessary.

In addition, the committee considered not proposing these rule amendments at all. However, the committee concluded that a pagination requirement should be proposed because it would facilitate more accurate citation by parties and make it easier for the court to locate cited material.

## Implementation Requirements, Costs, and Operational Impacts

This proposal should impose no implementation requirements or costs on the courts.

## Attachments and Links

1. Cal. Rules of Court, rules 8.252 and 8.809, at page 4
2. Chart of comments, at page 5

Rules 8.252 and 8.809 of the California Rules of Court are amended, effective January 1, 2015, to read:

1 **Title 8. Appellate Rules**
2
3 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**
4
5 **Chapter 2. Civil Appeals**
6
7 **Article 4. Hearing and Decision in the Court of Appeal**
8
9 **Rule 8.252. Judicial notice; findings and evidence on appeal**
10
11 **(a) Judicial notice**
12
13 (1)–(2) * * *
14
15 (3) If the matter to be noticed is not in the record, the party must serve and file a copy
16 with the motion or explain why it is not practicable to do so. <u>The pages of the copy</u>
17 <u>of the matter or matters to be judicially noticed must be consecutively numbered,</u>
18 <u>beginning with the number 1.</u>
19
20 **(b)–(c)** * * *
21
22
23 **Division 2. Rules Relating to the Superior Court Appellate Division**
24
25 **Chapter 1. General Rules Applicable to Appellate Division Proceedings**
26
27 **Rule 8.809. Judicial notice**
28
29 **(a)** * * *
30
31 **(b) Copy of matter to be judicially noticed**
32
33 If the matter to be noticed is not in the record, the party must serve and file a copy with the
34 motion or explain why it is not practicable to do so. <u>The pages of the copy of the matter or</u>
35 <u>matters to be judicially noticed must be consecutively numbered, beginning with the</u>
36 <u>number 1.</u>
37

## SPR14-03

Appellate Procedure: Judicial Notice Requests
Amend Cal. Rules of Court, rule 8.252
All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| 1. | Committee on Appellate Courts<br>State Bar of California<br>Saul Bercovitch | A | The Committee on Appellate Courts supports this proposal. | The committee notes the commentator's support for the proposal; no response required. |
| 2. | Court of Appeal, Second Appellate District<br>Thomas Kallay<br>Managing Attorney | A | 1. We agree with this proposal.<br><br>2. We agree that there will be no court implementation costs or requirements. | The committee notes the commentator's support for the proposal; no response required. |
| 3. | Los Angeles County Counsel<br>Dawyn Harrison<br>Assistant County Counsel | A | No additional comments | The committee notes the commentator's support for the proposal; no response required. |
| 4. | Orange County Bar Association | A | No additional comments | The committee notes the commentator's support for the proposal; no response required. |
| 5. | Superior Court of Los Angeles County | A | No additional comments | The committee notes the commentator's support for the proposal; no response required. |
| 6. | Superior Court of Riverside County | NI | No specific comment | No response required. |
| 7. | Superior Court of San Diego County<br>Michael Roddy<br>Executive Officer | A | Our court notes that if Rule 8.252 (a)(3) is amended to require the numbering of the pages in requests for judicial notice of materials not contained in the record as proposed, Rule 8.809(b) (which governs requests for judicial notice in the Appellate Division and currently mirrors the language in 8.252(a)(3)) should be similarly amended for consistency. | The committee notes the commentator's support for the proposal. Based on this comment, the committee revised its proposal to include a similar amendment to rule 8.809(b). |

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

# RUPRO ACTION REQUEST FORM

**RUPRO Meeting:** September 8, 2014

RUPRO action requested:

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

| Title: Appellate Procedure: Record in Juvenile Appeals | **Rules:** Amend California Rules of Court, rules 5.661, 8.409, 8.410, and 8.416<br><br>Standards:<br><br>Forms: |
|---|---|
| Committee or other entity submitting the proposal:<br>Appellate Advisory Committee<br>Hon. Raymond J. Ikola, Chair | Staff contact:<br>Heather Anderson, 415-865-7691<br>heather.anderson@jud.ca.gov |

**If requesting July 1 or out of cycle, explain:**

**Additional Information for RUPRO:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary, including any substantial argument in opposition and any expected individual or organization likely to support or oppose the proposal.)

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

**Title**
Appellate Procedure: Record in Juvenile Appeals

**Rules, Forms, Standards, or Statutes Affected**
Amend Cal. Rules of Court, rules 5.661, 8.409, 8.410, and 8.416

**Recommended by**
Appellate Advisory Committee
Justice Raymond J. Ikola, Committee Chair

**Agenda Item Type**
Action Required

**Effective Date**
January 1, 2015

**Date of Report**
August 13, 2014

**Contact**
Heather Anderson, Senior Attorney, 415-865-7691, heather.anderson@jud.ca.gov

## Executive Summary

The Appellate Advisory Committee recommends that the rules relating to the record on appeal in juvenile dependency cases be amended to (1) provide that a copy of the record will only be provided to a child who is not the appellant if either the child is represented by counsel or a recommendation for appointment of counsel for the child is pending; (2) require that a copy of the record be provided to an Indian tribe that has intervened in either a case concerning termination of parental rights or other dependency proceedings in certain counties; and (3) make other nonsubstantive changes. These changes are primarily intended to reduce costs by eliminating the preparation of unnecessary copies of the record in juvenile cases.

## Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2015:

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1. Amend rule 5.661 to provide that if a child's trial counsel or guardian ad litem in a juvenile dependency case recommends appointment of appellate counsel for the child, he or she must serve a copy of that recommendation on the trial court.

2. Amend rules 8.409 and 8.416 to:

   - Independently specify the number of copies of the record that must be prepared in juvenile dependency appeals, rather than using a cross-reference to another rule provision for this purpose;

   - Provide that a copy of the record must be prepared for a child who is not the appellant only if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

   - Make other nonsubstantive changes.

3. Amend rule 8.410 to update a cross-reference; and

4. Further amend rule 8.416 to:

   - Require that a copy of the record be provided to an Indian tribe that has intervened in a case subject to this rule; and

   - Eliminate some cross-references to other rules by replacing them with the relevant content of the cross-referenced provisions.

The text of the amended rules is attached at pages 8–12.

## Previous Council Action

The Judicial Council adopted a general rule on appellate proceedings in juvenile cases, rule 39, effective July 1, 1977. That rule did not specifically address sending the record to parties, but generally provided that the rules regarding felony appeals applied to appeals in juvenile proceedings. Effective January 1, 1994, the Judicial Council adopted a special rule, rule 39.1A, regarding appeals from orders or judgments terminating parental rights or freeing children from parental custody and control. That rule specifically required the clerk to transmit copies of the appellate record in these appeals "to the attorneys for appellant, respondent, the child, and the appointed counsel administrator for the district appellate project."

On January 1, 2005, all of the rules relating to juvenile appeals were repealed and replaced with new rules. Rule 37.2 adopted at that time generally addressed preparing and sending the record in juvenile appeals and specifically required that a copy of the appellate record be sent "to the

appellate counsel for the appellant, the respondent, and the minor." This rule also included a new provision, which the report indicated was reflective of practice at that time, requiring that if appellate counsel had not yet been retained or appointed when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project. This rule was subsequently amended and renumbered several times. Effective January 1, 2013, this rule, now numbered 8.409, was amended to require that a copy of the record be prepared for and sent to the child's Indian tribe if the tribe has intervened in the case.

## Rationale for Recommendation

### Copy of record for child who is not appealing the decision

Rule 8.409 generally addresses the preparation of the record on appeal in juvenile dependency cases. Rule 8.416 addresses appeals in juvenile dependency cases involving the termination of parental rights and other dependency appeals in certain counties. Subdivisions (b)–(d) of rule 8.416 address preparation of the record on appeal in these cases. Currently, these rules require that, in all cases, a copy of the record be prepared for a child, even when the child is not appealing the trial court decision or responding to an appeal filed by another party.[1] In many of these cases, the copy of the record for the child, which is prepared at public expense, is not used.

In juvenile dependency cases, it is often a parent or guardian, rather than the child, who appeals the trial court's decision. In many such cases, the child's interests are aligned with either the appellant or respondent so the child does not need to file any separate appeal or brief in the case; the child's interests are adequately articulated and protected by the filings of the party with which the child's interests are aligned. To protect against the possibility of the child's interests not being adequately protected in such an appeal, under rule 5.661, in any juvenile dependency proceeding in which a party other than the child files a notice of appeal, if the child's trial counsel or guardian ad litem concludes that, for purposes of the appeal, the child's best interests cannot be protected without the appointment of separate counsel on appeal, the child's trial counsel or guardian ad litem must file a recommendation in the Court of Appeal requesting appointment of separate counsel. That appointed counsel can then determine whether to file a brief or take other action to protect the child's interests.

When a child appeals the trial court decision or when separate appellate counsel is appointed for the child, the child needs a copy of the record in order to participate in the appellate process. The committee's view, however, is that a child who does not appeal the decision and whose rights can be adequately protected without appointment of separate counsel derives no benefit from receiving a copy of the record. It is the committee's understanding that, in these circumstances, the child's copy of the record is simply being discarded.

[1] These rules require that copies of the record be prepared for and sent to appellate counsel for the child (see 8.409(c)(1) and (e)(1)(B) and 8.416(c)(1) and (2)), but that if counsel has not yet been retained or appointed, that the child's copy of the record be sent to the district appellate project (see 8.409(e)(2) and 8.416(c)(3)).

To save public resources, this proposal is designed to eliminate the preparation of copies of the record for the child in those cases in which such a copy will not be used. This proposal would amend both rule 8.409 and rule 8.416 to replace the current requirement that a copy of the record on appeal be prepared for a child who is not the appellant in all cases with a requirement that a copy of the record be prepared for a child who is not the appellant only if the child is represented by counsel on appeal or a recommendation has been made to the Court of Appeal for appointment of counsel for the child and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed. In both rules, the current requirement that a copy of the record be prepared for the appellant would be maintained, so any child that appealed the trial court decision would also still receive a copy of the record. Because the records in these proceedings are prepared very quickly, the proposal would require preparation of a copy of the record not only where the child already has appellate counsel, but also where the appointment of counsel has been recommended. This should minimize the cases in which an additional copy of the record must be prepared later during the appeal, which might delay the appellate proceedings and create an additional administrative burden for the trial court. These proposed amendments are intended to ensure that a copy of the record is prepared for a child whenever such a record is needed, but to eliminate the preparation of a copy of the record when it will not be needed.

### Copy of record for Indian tribe that has intervened in case

As noted above, effective January 1, 2013, rule 8.409, the general rule on records on appeal in juvenile cases, was amended to require that a copy of the record be prepared for and sent to the child's Indian tribe if the tribe has intervened in the case.[2] Rule 8.416, which addresses appeals in juvenile dependency cases involving the termination of parental rights and other dependency appeals in certain counties, was not similarly amended at that time.

The committee recommends amending rule 8.416 to require that a copy of the record be prepared for and sent to an Indian tribe that has intervened in the proceeding. This amendment would ensure that a tribe that has become party to a case subject to rule 8.416 through intervention receives a copy of the record, as do other parties, and bring this rule into conformity with the general rule governing preparation of the record on appeal in juvenile cases. It is the advisory committee's understanding that very few tribes intervene in these cases and therefore providing transcripts to these tribes will not impose substantial new costs on the courts. It is also the committee's understanding that currently both courts and tribes incur additional costs, beyond the cost of providing the appellate record, if tribes that intervene and wish to participate in the appellate proceedings have to prepare, and the courts have to consider, requests that they receive the appellate record. This amendment will eliminate these additional costs for courts and tribes.

[2] Under state statutes, an Indian child's tribe has the right to intervene at any point in a custody proceeding involving that Indian child (Welf. & Inst. Code, § 224.4). This right is part of state and federal laws designed to protect the essential tribal relations and best interests of Indian children (see Welf. & Inst. Code, § 224 et seq., and the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.)).

### Nonsubstantive amendments

This proposal would also make several nonsubstantive changes to rules 8.409, 8.410, and 8.416 designed to make the rules easier to follow and understand:

- Adding language that independently specifies the number of copies of the record that must be prepared, rather than using a cross-reference to another subdivision or another rule for this purpose;
- Eliminating other cross-references by replacing them with the relevant content of the cross-referenced provision;
- Replacing references to the "minor" in rule 8.409 with references to the "child." This will bring rule 8.409 into conformity with the language used in the remainder of the rules relating to appellate proceedings in juvenile cases; and
- Updating cross-references to reflect the other proposed amendments to rules 8.409 and 8.416.

## Comments, Alternatives Considered, and Policy Implications

### Comments

This proposal was circulated from April 18 to June 18, 2014, in the regular spring 2014 comment cycle. Ten individuals or organizations submitted comments on this proposal. Six commentators agreed with the proposal, three agreed with the proposal if modified, and one did not indicate a position. A chart with the full text of the comments received and the committee's responses is attached at pages 13–28.

### Recommendations for appointment of counsel for the child

As circulated for public comment, the proposed amendments to rules 8.409 and 8.416 would have required preparation of the record on appeal for a child who is not the appellant only when a recommendation for appointment of counsel for the child under rule 5.661 was pending. Two of the district appellate projects that assist the Court of Appeal with appointment of appellate counsel submitted a joint comment expressing concern that the wording of these proposed amendments might be read as implying that only the child's trial counsel or guardian ad litem could make a recommendation to the Court of Appeal for appointment of counsel. These commentators expressed the view that Court of Appeal's power to entertain appointment recommendations is not limited to recommendations under rule 5.661.

The committee agreed with the commentators that the Court of Appeal has the power under rule 8.403 to appoint appellate counsel for the child not only on the recommendation of child's trial counsel or guardian ad litem under rule 5.661, but in other circumstances as well, including where counsel may be recommended by the district appellate project. To eliminate the potential that the proposed amendment might be read as limiting the Court of Appeal's appointment authority, the committee revised the proposal to replace the reference to recommendations under rule 5.661 for appointment of counsel with a reference to recommendations for appointment of counsel under rule 8.403.

### Notice of recommendation

Two commentators expressed concerns about how the superior court would know when there was a pending recommendation for appointment of counsel that would trigger the need to prepare an additional copy of the record.

The proposal includes an amendment to rule 5.661 requiring a child's trial counsel or guardian at litem who makes a recommendation for the appointment of counsel for the child under that rule to send a copy of that recommendation to the trial court. If this proposed amendment is approved, the trial court will know if any recommnedation for appointment of counsel has been made under rule 5.661. The proposal does not include any provision requiring notice of any recommendation for appointment of counsel made by someone other than the child's trial counsel or guardian at litem. However, it is also the committee's understanding that it is current Court of Appeal practice to send the trial court a copy of any order appointing counsel, so the trial court knows when appointment of appellate counsel for the child has been ordered, regardless of the source of the recommendtion to make that appoinment. The committee view is that the proposed rule and this current practice would ensure notice to the trial court in almost all circumstances and that, if there are unusual circumstances that are not covered, it is preferable for the Court of Appeal and trial courts to determine how best to ensure timely preparation of a record in those circumstances, rather than trying to address these rare circumstances in the rules of court.

### Alternatives

In addition to the alternatives considered as a result of the public comments, the committee considered a variety of alternative language in developing the proposed amendments to rules 8.409 and 8.416. Among other things, the committee considered recommending that a child who is not the appellant only receive a copy of the record if the child is represented by appellate counsel. To minimize the number of cases in which a copy of the record has to be prepared later in the appeals process when appellate counsel is appointed, however, the committee ultimately decided to recommend that a copy of the record be prepared not only when appellate counsel has been appointed for the child, but also if a recommendation for such appointment is pending.

The committee also considered not proposing these rule amendments. However, the committee concluded that eliminating the requirement to prepare copies of the record on appeal that are not used would save superior court resources and that clarifying that intervening Indian tribes must receive a copy of the record would also reduce costs associated with the tribe having to make, and the court having to consider, motions to obtain a copy of the record. Given these potential costs savings, the committee concluded that it should propose these rule amendments at this time.

## Implementation Requirements, Costs, and Operational Impacts

This proposal should reduce costs for superior courts associated with preparing unnecessary records for children who are not appellants in juvenile appeals. In those courts that do not currently routinely provide copies of these records to Indian tribes that have intervened in juvenile cases under rule 8.416, there are likely to be some additional costs associated with providing copies of these records in a small number of cases, but this proposed amendment should also reduce costs associated with the tribe having to make, and the court having to consider, motions to obtain a copy of the record.

## Attachments and Links

1. Cal. Rules of Court, rules 5.661, 8.409, 8.410, and 8.416, at pages 8–12
2. Chart of comments, at pages 13–28

Rules 5.661, 8.409, 8.410, and 8.416 of the California Rules of Court are amended, effective January 1, 2015, to read:

**Rule 5.661. Representation of the child on appeal**

**(a)–(d)** * * *

**(e) Service of recommendation**

The child's trial counsel or guardian ad litem must serve a copy of the recommendation filed in the Court of Appeal on the district appellate project and the trial court.

**(f)–(g)** * * *

**Rule 8.409. Preparing and sending the record**

**(a) Application**

~~Except as provided in 8.416(c)(1), ~~This rule ~~does not apply to~~ applies to appeals in juvenile cases except cases ~~under~~ governed by rule 8.416.

**(b) Form of record**

The clerk's and reporter's transcripts must comply with rules 8.45–8.4~~6~~7, relating to sealed and confidential records, and~~, except in cases governed by rule 8.416(b),~~ with rule 8.144.

**(c) Preparing and certifying the transcripts**

Within 20 days after the notice of appeal is filed:

(1) The clerk must prepare and certify as correct an original of the clerk's transcript and ~~sufficient copies to comply with (d)~~ one copy each for the appellant, the respondent, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(2) * * *

**(d)** * * *

**(e) Sending the record**

(1) When the transcripts are certified as correct, the ~~superior~~ court clerk must immediately send:

(A) The original transcripts to the reviewing court, noting the sending date on each original; and

(B) One copy of each transcript to the appellate counsel for <u>the following, if they have appellate counsel:</u>

<u>(i)</u> <u>T</u>he appellant~~,~~<u>;</u>

<u>(ii)</u> <u>T</u>he respondent~~,~~<u>;</u>

<u>(iii)</u> <u>T</u>he ~~minor, and the minor's~~ <u>child's</u> Indian tribe if the tribe has intervened~~.~~<u>; and</u>

<u>(iv)</u> <u>The child.</u>

(2) If appellate counsel has not yet been retained or appointed for the appellant~~,~~ <u>or</u> the respondent, or ~~the minor~~ <u>if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed,</u> when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project. If a tribe that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the tribe.

(3) The clerk must not send a copy of the transcripts to the Attorney General or the district attorney unless that office represents a party.

**Advisory Committee Comment**

**Subdivision (a).** Subdivision (a) calls litigants' attention to the fact that a different rule (rule 8.416) governs ~~*sending*~~ the record in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties. ~~Rule 8.408(b) governs *preparing and certifying* the record in those appeals. (See rule 8.416(c)(1) ["The record must be prepared and certified as provided in rule 8.409(b)"].)~~

**Subdivision (b).** Examples <u>of</u> confidential records include records closed to inspection by court order under *People v. Marsden* (1970) 2 Cal.3d 118 and in-camera proceedings on a confidential informant.

**Subdivision (c)(2).** * * *

**Subdivision (e)**. Subsection (1)(B) clarifies that when a ~~minor's~~ child's Indian tribe has intervened in the proceedings, the tribe is a party who must receive a copy of the appellate record. The statutes that require notices to be sent to a tribe by registered or certified mail return receipt requested and generally be addressed to the tribal chairperson (25 U.S.C. § 1912 (a), 25 C.F.R. § 23.11, and Welf. & Inst. Code, § 224.2) do not apply to the sending of the appellate record.

## Rule 8.410. Augmenting and correcting the record in the reviewing court

### (a) Omissions

If, after the record is certified, the superior court clerk or the reporter learns that the record omits a document or transcript that any rule or order requires to be included, without the need for a motion or court order, the clerk must promptly copy and certify the document or the reporter must promptly prepare and certify the transcript and the clerk must promptly send the document or transcript—as an augmentation of the record—to all those who are listed under 8.409~~(d)~~(e).

### (b) Augmentation or correction by the reviewing court

(1) On motion of a party or on its own motion, the reviewing court may order the record augmented or corrected as provided in rule 8.155(a) and (c).

(2) If, after the record is certified, the trial court amends or recalls the judgment or makes any other order in the case, the trial court clerk must notify each entity and person to whom the record is sent under rule 8.409~~(d)~~(e).

## Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule

### (a) Application

(1) This rule governs:

(A) Appeals from judgments or appealable orders of all superior courts terminating parental rights under Welfare and Institutions Code section 366.26 or freeing a child from parental custody and control under Family Code section 7800 et seq.; and

(B) Appeals from judgments or appealable orders in all juvenile dependency cases of:

(i) The Superior Courts of Orange, Imperial, and San Diego Counties; and

(ii) Other superior courts when the superior court and the District Court of Appeal with jurisdiction to hear appeals from that superior court have

agreed and have adopted local rules providing that this rule will govern appeals from that superior court.

(2) In all respects not provided for in this rule, rules 8.403–8.412 apply.

**(b) ~~Cover~~ Form of record**

(1) The clerk's and reporter's transcripts must comply with rules 8.45–8.4~~6~~7, relating to sealed and confidential records, and, except as provided in (2) and (3), with rule 8.144.

~~(1)~~(2) In appeals under (a)(1)(A), the cover of the record must prominently display the title "Appeal From [Judgment or Order] Terminating Parental Rights Under [Welfare and Institutions Code Section 366.26 or Family Code Section 7800 et seq.]," whichever is appropriate.

~~(2)~~(3) In appeals under (a)(1)(B), the cover of the record must prominently display the title "Appeal From [Judgment or Order] Under [Welfare and Institutions Code Section 300 et seq. or Family Code Section 7800 et seq.]," whichever is appropriate.

**(c) Preparing, certifying, and sending the record**

(1) ~~The record must be prepared and certified as provided in rule 8.409(b).~~ Within 20 days after the notice of appeal is filed:

(A) The clerk must prepare and certify as correct an original of the clerk's transcript and one copy each for the appellant, the respondent, the district appellate project, the child's Indian tribe if the tribe has intervened, and the child if the child is represented by counsel on appeal or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed; and

(B) The reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (A) requires of the clerk's transcript. On request, and unless the trial court orders otherwise, the reporter must provide the Court of Appeal and any party with a copy of the reporter's transcript in computer-readable format. Each computer-readable copy must comply with the format, labeling, content, and numbering requirements of Code of Civil Procedure section 271(b).

(2) When the clerk's and reporter's transcripts are certified as correct, the clerk must immediately send:

(A) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original; and

(B) One copy of each transcript to the district appellate project and to the ~~attorneys of record~~ appellate counsel for ~~the appellant, the respondent, and the child, and to the district appellate project,~~ the following, if they have appellate counsel, by any method as fast as United States Postal Service express mail~~.~~:

(i) The appellant;

(ii) The respondent;

(iii) The child's Indian tribe if the tribe has intervened; and

(iv) The child.

(3) If appellate counsel has not yet been retained or appointed for the appellant or the respondent or if a recommendation has been made to the Court of Appeal for appointment of counsel for the child under rule 8.403(b)(2) and that recommendation is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed, when the transcripts are certified as correct, the clerk must send that counsel's copies of the transcripts to the district appellate project. If a tribe that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the tribe.

**(d)–(h)** * * *

# SPR14-04

Appellate Procedure: Record in Juvenile Appeals
Amend Cal. Rules of Court, rules 5.661, 8.409, 8.410 and 8.416
All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| 1. | Appellate Defenders, Inc. and the First District Appellate Project.<br>By: Jonathan Soglin<br>Executive Director First District Appellate Project | AM | These comments on the proposed rule change regarding the record on appeal in juvenile appeals are submitted on behalf of Appellate Defenders, Inc. and the First District Appellate Project.<br><br>Introduction<br><br>We strongly support the proposal, as we share the goal of eliminating the preparation of a copy of the record when it will not be needed. We do suggest a slight modification.<br><br>The proposal provides that the clerk must prepare and send a copy of the record for a non-appealing minor if the minor either has appellate counsel or if a recommendation for appointment of counsel for the child has been made under rule 5.661(c). (Proposed Rule 8.409(c)(1) and (e)(2).) As drafted, the amendment could give the incorrect impression that recommendations for appointment of counsel for the child can only be made under rule 5.661(c), which provides for recommendations made by minor's trial counsel. We recommend that the amendment not limit its application to recommendations for appointment under 5.661(c).<br><br>Discussion<br><br>Subdivision (b)(2) of rule 8.403 states that "[t]he reviewing court may appoint counsel to | The committee notes the commentator's support for the proposal.<br><br>The committee agrees with the commentator that the Court of Appeal's authority to appoint counsel for a child who is not appealing the trial court decision is not limited to circumstances in which a recommendation is made by trial counsel under rule 5.661; the court has authority to consider recommendations from others as well. To reflect this, the committee has revised its proposed amendments to the relevant portions of rules 8.409 and 8.416 to refer to recommendations to the Court of Appeal for appointment of counsel for the child under rule 8.403. |

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

## SPR14-04

Appellate Procedure: Record in Juvenile Appeals
Amend Cal. Rules of Court, rules 5.661, 8.409, 8.410 and 8.416
All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
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| | | | represent an indigent child, parent, or guardian." The rule puts no limit on that authority and does not require that the appointment be made only upon a recommendation by the minor's trial counsel. Subdivision (b)(3) of rule 8.403 then states that "Rule 5.661 governs the responsibilities of trial counsel in Welfare and Institutions Code section 300 proceedings with regard to appellate representation of the child." (Emphasis added.) The Judicial Council understood rule 5.66 —and, implicitly, it's authorizing statute (Welf. & Inst. Code section 395)—to place obligations on trial counsel, nothing more. Rule 5.661, thus, does not define the sole circumstances under which the Court of Appeal can exercise its authority (inherent and under rule 8.403(b)(2)) to appoint counsel on appeal for a non-appealing minor.<br><br>The history of Rule 5.661 shows that it was designed to guide trial counsel, without limiting the authority of the Court of Appeal to appoint counsel in the absence of recommendation from trial counsel.<br><br>In December 2006, the Family and Juvenile Law Advisory Committee (the "committee") circulated a proposed rule change for comment in December 2006. The rule change was initially targeted not at the juvenile rules but at the appellate rules. Proposed new appellate rule 8.402 would have provided, in subdivision (a), that appointment be mandatory when the minor | |

| | Commentator | Position | Comment | Committee Response |
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| | | | was an appellant or "[i]f the child is not an appellant and the Court of Appeal determines upon its own motion or pursuant to the recommendation by the child's trial counsel or guardian ad litem . . . that appointment of counsel would benefit the child …." (Invitations to Comment—Winter 2007 Proposals for Changes to Cal. Rules of Court and Jud. Council Forms to Became Eff. July 1, 2007 (Dec. 18, 2006) at p. 4.) The 2006 proposal also described, in subdivision (b), circumstances under which trial counsel would be required to make a recommendation for appointment of counsel. (Ibid.) Other subdivisions of proposed rule 8.402 governed the timing, the criteria, and the form of the recommendation. (Ibid.)<br><br>After the comment period, the committee recommended to the Judicial Council that the rule be moved to the juvenile rules, because it guided trial counsel. (Rept. to Jud. Coun. from Family and Juv. Law Advisory Comm., Juv. Law: Proc. Re Appointments of Appellate Attorneys for Children in Juv. Dependency Appeals, Apr. 11, 2007 at p. 6.) The Judicial Council agreed and placed the rule in Title 5. During the comment cycle that preceded the committee's decision to move the new provision, Gary Seiser, Senior Deputy County Counsel in San Diego and co-author of Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2013) "recommend[ed] adding a provision stating court of appeal may appoint if | |

| | Commentator | Position | Comment | Committee Response |
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| | | | the court finds the child would benefit or such appointment is otherwise in the child's best interest." To this, the committee responded, "[g]iven the move of the rule to section five, language directed to the court of appeal is no longer necessary." (Id. at 28.) The committee further reported in the body of its report to the Judicial Council that, "One commentator recommended amending this subdivision to reflect that the recommendation can also come from any party or amicus curiae." (Report at p. 12.) "The committee considered adding 'any party' or 'the child' to be consistent with existing law. Because this rule is directed at child's trial counsel and CAPTA GAL, the committee did not believe it was necessary." (Ibid.; see also Report at p. 31) Indeed, the comment and response chart portion of the report to the Judicial Council notes that several commenters recommended modifications to reflect that the recommendation could come from someone other than minor's trial counsel. To each of these comments, the committee responded, "The rule is intended only to implement AB 2480 by directing trial counsel or a child's CAPTA GAL." (Report at pp. 29-31, 33, 37, 40.) The history of rule 5.661 shows the Judicial Council intended it to guide trial counsel, without precluding a recommendation from others. Indeed, a recent Court of Appeal decision acknowledged that not all appointments of appellate counsel for non-appealing minors are made upon a rule 5.661 | |

| | Commentator | Position | Comment | Committee Response |
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| | | | recommendation. (In re Felicity S. (2014) 225 Cal.App.4th 1389, 1402-1403.)<br><br>Recommendation<br>Accordingly, we respectfully suggest that the amendment not limit its application to recommendations for appointment under 5.661(c). This could be done with two changes. In 8.403(c)(1), the phrase "or appointment of counsel for the child has been recommended under rule 5.661(c)" could be replaced with "or appointment of counsel for the child has been recommended by trial counsel under rule 5.661(c) or by another interested individual or entity under rule 8.403(b)(2)." (Suggested additions to proposal in bold.) In 8.403(e)(2), the phrase "or if a recommendation for appointment of counsel for the child has been made under rule 5.661(c)" could be replaced with "or if a recommendation for appointment of counsel for the child has been made by trial counsel under rule 5.661(c) or by another interested individual or entity under rule 8.403(b)(2)." (Suggested additions to proposal in bold.) | |
| 2. | Court of Appeal, Second Appellate District<br>Thomas Kallay<br>Managing Attorney | A | 1. We support this proposal.<br><br>2. One of the positive effects of this procedure would be to eliminate the preparation of the record for a child who will not participate in the appeal. | The committee notes the commentator's support for the proposal; no response required. |

| | Commentator | Position | Comment | Committee Response |
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| 3. | Family Law Section<br>State Bar of California<br>Saul Bercovitch, Legislative Counsel | A | The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal. | The committee notes the commentator's support for the proposal; no response required. |
| 4. | Los Angeles County Counsel<br>Dawyn Harrison<br>Assistant County Counsel | A | No additional comments | The committee notes the commentator's support for the proposal; no response required. |
| 5. | Superior Court of Orange County<br>Paul Aberga<br>Administrative Analyst | AM | The proposal states that courts are to provide copies of transcripts when there is a recommendation for a child to be represented by counsel.<br>• How will Trial Courts know that an appellate attorney is pending appointment?<br>o We suggest clarifying the rule to show how trial courts will be notified of a pending appellate appointment for a child. | The proposal includes an amendment to rule 5.661 requiring trial counsel or guardians ad litem who make a recommendation for the appointment of appellate counsel for the child under that rule to send a copy of that recommendation to the trial court. Thus the court will receive notice of all these recommendations. It is rare for the Court of Appeal to recive a recommendation for appointment of counsel for a child from anyone other than trial counsel or the child's guardian ad litem. In addition, it is the committee's understanding that the Court of Appeal acts quickly on all recommendations for the appointment of counsel for children in these proceedings and that it is current Court of Appeal practice to send the trial court a copy of any order appointing appellate counsel. Thus the trial court will know when appointment of appellate counsel for the child has been ordered, regardless of the source of the recommendtion. The committee's view is that if there are unusual circumstances not covered by the proposed rule or current practice, it is preferable for the Court of Appeal and trial courts to determine how best to ensure timely preparation of a record in those circumstances, |

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

| | Commentator | Position | Comment | Committee Response |
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| | | | | rather than trying to address these rare circumstances in the rules. |
| | | | While it is understood that copies of appellate records will only be provided to children who have representation, we are concerned about the inconsistency of treatment for children without representation. We suggest adding language to the rule that discusses why unrepresented children will not have a transcript copy requirement in appellate matters. | The committee will make clear in its report to the Judicial Council that, under this proposal, the child will receive a copy of the record in all cases in which the child needs such a copy. This proposal does not alter the rule that a copy of the record on appeal is prepared and sent to the appellant. Thus the child will still receive a copy of the record if the child is appealing the trial court's decision. In addition, under this proposal, a copy of the record will also be prepared for the child even if the child is not appealing the decision if, for purposes of the appeal, the child's best interests cannot be protected without the appointment of separate counsel on appeal. In these circumstances, the child's trial counsel or guardian ad litem is obligated under rule 5.661 to make a recommendation for appointment of appellate counsel for the child. This proposal, in turn, would require preparation of a record for the child where such a recommendation is pending or counsel has been appointed. The committee's view is that a child who does not appeal the decision and whose rights can be protected without appointment of separate counsel would derive no benefit from the preparation of a copy of the record. It is only in these circumstances, therefore, that, under this proposal, no separate copy of the record would be prepared for the child. |

| | Commentator | Position | Comment | Committee Response |
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| 6. | Orange County Bar Association | A | No additional comments | The committee notes the commentator's support for the proposal; no response required. |
| 7. | Superior Court of Riverside County | NI | No specific comment | No response required. |
| 8. | Superior Court of San Diego County<br>Michael M. Roddy<br>Executive Officer | AM | Our court recommends the following changes:<br><br>**Rule 5.661. Representation of the child on appeal**<br><br>**(e) Service of recommendation**<br><br>~~C~~The child's trial counsel or guardian ad litem must serve a copy of the recommendation filed in the Court of Appeal on the district appellate project and the trial court.<br><br>**Rule 8.409. Preparing and sending the record**<br><br>**(a) Application**<br><br>~~Except as provided in 8.416(c)(1), ~~This rule applies to appeals in juvenile cases except ~~does not apply to~~ cases ~~under~~ governed by rule 8.416. See, e.g., rule 8.412(c).<br><br>**(b) Form of record**<br><br>The clerk's and reporter's transcripts must comply with rules 8.45–8.4~~6~~7, relating to sealed and confidential records, and~~, except in cases governed by rule 8.416(b),~~ with rule 8.144. | The committee has revised the proposal to include this suggested change.<br><br>The committee has revised the proposal to include this suggested change.<br><br>The committee has revised the proposal to include this suggested change. |

| | Commentator | Position | Comment | Committee Response |
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| | | | **Advisory Committee Comment** | |
| | | | **Subdivision (b).** Examples of confidential records include records closed to inspection by court order under *People* v. *Marsden* (1970) 2 Cal.3d 118 and in-camera proceedings on a confidential informant. | The committee has revised the proposal to include this suggested change. |
| | | | **Subdivision (e)**. Subsection (1)(B) clarifies that when a ~~minor's~~ child's Indian tribe has intervened in the proceedings, the tribe is a party who must receive a copy of the appellate record. The statutes that require notices to be sent to a tribe by registered or certified mail return receipt requested and generally be addressed to the tribal chairperson (25 U.S.C. § 1912 (a), 25 C.F.R. § 23.11, and Welf. & Inst. Code, § 224.2) do not apply to the sending of the appellate record. | The committee has revised the proposal to include this suggested change. |
| | | | **Rule 8.416. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties and in other counties by local rule** | |
| | | | **(b) ~~Cover~~ Form of record** | |
| | | | (1) The clerk's and reporter's transcripts must comply with rules 8.45–8.4~~6~~7, relating to sealed and confidential records, and, except as provided in (2) and (3), with rule 8.144. | The committee has revised the proposal to include this suggested change. |
| | | | **(c) Preparing, certifying, and sending the** | |

| | Commentator | Position | Comment | Committee Response |
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| | | | **record**<br><br>(3) If appellate counsel has not yet been retained or appointed for the appellant or the respondent or if a recommendation for appointment of counsel for the child under rule 5.661(c) is either pending with or has been approved by the Court of Appeal but counsel has not yet been appointed ~~to the district appellate project~~, when the transcripts are certified as correct, the clerk must send that counsel's copies of the transcripts to the district appellate project. If a tribe that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the tribe.<br>----------------------------------------------------------<br>---------------------------------------------------------- | The committee has revised the proposal to include this suggested change. |
| | | | Further revision is requested for CRC rules **8.450(*i*)** and **8454(*i*)**. The proposed revisions below are the result of a recent discussion with AOC CFCC attorney Marymichael Miatovich about the difference in clerk's duties as set forth in rules 8.416(c)(2)(B) and 8.450(*i*)(2). That discussion resulted from inquiries by our court's appeals clerk when sending the record for writ proceedings under the following circumstances:<br><br>1. The unrepresented party was not related to the child who was the subject of the writ petition and there were factual circumstances stated in the record of a particularly sensitive | The committee appreciates this suggestion. However, it is beyond the scope of the current proposal. The committee, in conjunction with the Family and Juvenile Law Advisory Committee, will consider this suggestion during a later rules cycle. |

| | Commentator | Position | Comment | Committee Response |
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| | | | nature (i.e., regarding allegations of sexual abuse).<br><br>2. The unrepresented party had never been actively involved in the case and had never shown any interest in participating in the proceedings.<br><br>The purpose of the proposed revisions below is consistent with one of the reasons stated for SPR 14-04, i.e., "to eliminate the preparation of a copy of the record when it will not be needed."<br><br>**Rule 8.450**<br><br>**(i) Sending the record**<br><br>When the transcripts are certified as correct, the superior court clerk must immediately send:<br><br>(1) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original, ~~and~~<br><br>(2) One copy of each transcript to each counsel of record ~~and any unrepresented party~~ by any means as fast as United States Postal Service express mail~~.~~, and | |

| | Commentator | Position | Comment | Committee Response |
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| | | | (3) One copy of each transcript to each unrepresented party by any means as fast as United States Postal Service express mail unless:<br><br>(A) the superior court has no address for that person;<br><br>(B) parentage was never established for that person;<br><br>(C) the subject of the writ proceeding is not that person's child; or<br><br>(D) there is a clear statement in the record that the person does not wish to participate in the case.<br><br>**Rule 8.454**<br><br>**(i) Sending the record**<br><br>When the transcripts are certified as correct, the superior court clerk must immediately send:<br><br>(1) The original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original, ~~and~~<br><br>(2) One copy of each transcript to each counsel of record and any | |

| | Commentator | Position | Comment | Committee Response |
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| | | | ~~unrepresented party and~~ unrepresented custodian of the dependent child by any means as fast as United States Postal Service express mail~~.~~, and<br><br>(3) One copy of each transcript to each unrepresented party by any means as fast as United States Postal Service express mail unless:<br><br>(A) the superior court has no address for that person;<br><br>(B) parentage was never established for that person;<br><br>(C) the subject of the writ proceeding is not that person's child; or<br><br>(D) there is a clear statement in the record that the person does not wish to participate in the case. | |
| 9. | TCPJAC/CEAC Joint Rules Subcommittee | A | The proposal provides significant cost saving or efficiencies.<br><br>General comments<br>There should be significant cost savings by reducing the cost for records for children not appealing, which, to a small degree, will be impacted by providing records to Indian tribes involved in an appeal. Superior court resources | The committee notes the commentator's support for the proposal; no response required. |

| | Commentator | Position | Comment | Committee Response |
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| | | | would be saved by eliminating the need for Indian tribes to make and the court to rule on, motions to obtain copies of the record.<br><br>**The following is a response to the proposal's Request for Specific Comments:**<br><br>Would the proposal provide cost savings? ***Yes*** If so please quantify. ***One mid-size court (16-47 judges) estimates that they would realize cost savings associated with a total of 900 pages averaged over a 3-year period.***<br><br>What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. ***It would only require revising processes and procedures. These revised procedures would clearly indicate the number of copies and distribution courts would need to provide. The JRWG recommends that trial courts arrange a staff meeting in advance of the proposal's implementation date, to inform their Appeals Unit of the changes and requirements. This is an easy change and the proposal is in precise clear language.***<br><br>Would 2 months from Judicial Council approval of this proposal until its effective date provide | |

| | Commentator | Position | Comment | Committee Response |
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| | | | sufficient time for implementation? ***Yes***<br><br>How well would this proposal work in courts of different sizes? ***It would be a significant cost savings and reduce resources.*** | |
| 10. | Cynthia Wojan<br>Juvenile Court Coordinator<br>Superior Court of Solano County | A | We appreciate the cost savings of not having to prepare unneeded/unused copies of the clerk's transcript. A significant piece of our division budget goes to paper for appeals, and this cost savings can be directed toward other items for divisional use.<br><br>This will not create additional workload or extra training for staff. It will require an adjustment to our current written procedures regarding the number of copies to produce but we will not need to modify any docketing codes or entries in our case management system.<br><br>However, will the Superior Court be responsible for monitoring the appellate website regarding appointment of appellate counsel as the notifications of appellate counsel are often received after we have sent the record? | The committee notes the commentator's support for the proposal.<br><br>This proposal does not place an obligation on the trial court to monitor the Court of Appeal website to determine if counsel has been appointed. It is the committee's understanding that it is current Court of Appeal practice to send the trial court a copy of any order appointing appellate counsel. This rule proposal is not intended to alter that practice. It is possible, however, that under the existing rules, such an order will be made after the trial court has already sent the record. Rule 5.661 specifically provides that recommendations for appointment of appellate counsel can be filed with the Court of Appeal by the child's trial counsel or |

| | Commentator | Position | Comment | Committee Response |
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| | | | | guardian ad litem anytime from the fiing of the notice of appeal until 20 calendar days after the filing of the last appellant's opening brief. If a recommendation is not made until the outer limit of this deadline, the Court of Appeal order appointing counsel based on the recommendation will come to the trial court after the record has been sent. |

# RUPRO ACTION REQUEST FORM

**RUPRO Meeting:** September 8, 2014

RUPRO action requested:

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

| Title: Criminal Justice Realignment: Petitions for Revocation of Supervision | Rules:<br><br>Standards:<br><br>Forms: CR-300 |
| --- | --- |
| Committee or other entity submitting the proposal:<br>Criminal Law Advisory Committee | Staff contact:<br>Arturo Castro, 415-865-7702<br>arturo.castro@jud.ca.gov<br><br>Kimberly DaSilva, 415-865-4534<br>kimberly.dasilva@jud.ca.gov |

**If requesting July 1 or out of cycle, explain:**

**Additional Information for RUPRO:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary, including any substantial argument in opposition and any expected individual or organization likely to support or oppose the proposal.)

No substantial arguments or opposition is expected.

JUDICIAL COUNCIL OF CALIFORNIA

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

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

**Title**
Criminal Justice Realignment: Petitions for Revocation of Supervision

**Rules, Forms, Standards, or Statutes Affected**
Revise form CR-300

**Recommended by**
Criminal Law Advisory Committee
Hon. Tricia A. Bigelow, Chair

**Agenda Item Type**
Action Required

**Effective Date**
January 1, 2015

**Date of Report**
August 20, 2014

**Contact**
Kimberly DaSilva, 415-865-4534
kimberly.dasilva@jud.ca.gov

## Executive Summary

The Criminal Law Advisory Committee recommends revising the *Petition for Revocation* (form CR-300) to apply the form to proceedings to revoke probation or mandatory supervision under Penal Code section 1170(h)(5)(B) in response to recent legislation that applied long-standing probation revocation procedures to all categories of supervision engendered by criminal justice realignment. This proposal was developed at the request of courts to promote uniform revocation procedures.

## Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2015, revise the *Petition for Revocation* (form CR-300) to:

1. Add check boxes to the caption of the form for supervising agencies to note that the petition also applies to revocations of probation or mandatory supervision;

2. Replace the data field for the supervisee's "CDCR Number" with one for the supervisee's "Supervising Agency Number"; and

3. Add the following phrase to the conviction information section in item 3, which was inadvertently deleted during a past revision: "and sentenced to *(specify sentence)*."

The revised form is attached at page 5.

## Previous Council Action

After criminal justice realignment legislation was enacted in 2011, the Judicial Council adopted the *Petition for Revocation* (form CR-300) for use by supervising agencies to initiate revocations of postrelease community supervision (PRCS) under Penal Code section 3455. The form was then amended in 2012 to apply to parole revocations and revised from mandatory to optional.[1]

## Rationale for Recommendation

Criminal justice realignment created two new categories of supervision and transferred parole revocation responsibilities to the courts. As a result, courts became responsible for hearing all categories of supervision revocation proceedings.

Recent legislation amended Penal Code section 1203.2 to apply long-standing probation revocation procedures to all postrealignment categories of supervision, including parole, PRCS, and mandatory supervision under section 1170(h)(5)(B).[2] This recommendation was developed in response to this legislation at the request of courts to promote uniform revocation procedures for all supervision categories.

To apply the form to all supervision categories governed by Penal Code section 1203.2, the committee recommends adding check boxes to the caption of the form for supervising agencies to note that the petition applies to revocations of probation or mandatory supervision.

The committee further recommends replacing the data field for the supervisee's "CDCR Number" with the supervisee's "Supervising Agency Number" to encompass all supervising agencies.

In addition, the committee recommends adding the following phrase to the conviction information section in item 3, which was inadvertently deleted during a past revision: "and sentenced to *(specify sentence)*."

[1] In 2013, the Criminal Law Advisory Committee circulated proposed revisions to the form that, among other things, would have returned to the form a previously deleted data field for courts to note certain probable cause findings. The committee, however, ultimately declined to recommend those proposed revisions to the Judicial Council because the findings are not expressly required by statute.
[2] Senate Bill 76 (Comm. on Budget & Review; Stats. 2013, ch. 32).

## Comments, Alternatives Considered, and Policy Implications

The proposed revisions circulated for public comment in spring 2014. The comment period ended on June 18th. A total of seven comments were received. Of those, four commentators agreed with the proposal and three agreed with the proposal if modified. A chart providing all of the comments received and committee recommendations is attached at pages 6-13.

### Notable comments

Notable comments and committee responses include:

- **Additional types of petitions to revoke:** Both the Superior Court of Los Angeles County and the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group suggested revising the form to apply to additional categories of revocation, including misdemeanor probation revocations in lieu of new filings, deferred entry of judgment, post-filing diversion under Penal Code section 1001, and applications to reentry court under Penal Code section 3015. The committee declined the suggestion because the other categories of revocation and application to reentry courts are not conducted under the revocation procedures prescribed by Penal Code section 1203.2.

- **Request for warrant:** The same two commentators also suggested adding a data field to enable supervising agencies to request a warrant in conjunction with a petition to revoke. The committee declined the suggestion because, as of July 1, 2013, Judicial Council form CR-301, *Warrant Request and Order,* has been available for use by supervising agencies to request warrants for violations of parole and PRCS. The committee, however, will consider revising form CR-301 to apply to probation and mandatory supervision at a future meeting.

- **Title change:** One commentator suggested changing the case title in the header of the form from "IN THE MATTER OF (*name of supervised person*)" to "PEOPLE v. (*name of defendant*)" because in cases involving probation and mandatory supervision, the alleged violation is part of the underlying file. Thus, "PEOPLE v. (*name of defendant*)" would be more appropriate in those cases. The committee declined this suggestion as unnecessary because the current title allows for the supervising agency to incorporate the name of the underlying file.

### Alternatives

The committee alternatively considered not revising the form to apply to probation and mandatory supervision. The committee, however, decided to recommend the revisions to promote uniform revocation procedures for all supervision categories.

## Implementation Requirements, Costs, and Operational Impacts

Expected costs are limited to training and the production of new forms. No other implementation requirements, costs, or operational impacts for courts are expected.

## Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed revisions support the policy underlying Goal III, Modernization of Management and Administration, in the Operational Plan for California's Judicial Branch. Specifically, these revisions support Goal III, Part B, objective 5, to "[d]evelop and implement effective trial…. management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases" through "improved forms."

## Attachments and Links

1. Form CR-300, at page 5
2. Chart of comments, at pages 6–13

SUPERVISING AGENCY *(Name and address):*

TELEPHONE NO.: FAX NO. *(Optional):*
E-MAIL ADDRESS *(Optional):*

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

IN THE MATTER OF *(name of supervised person)*:
Date of birth:

***FOR COURT USE ONLY***

**DRAFT**
**Not Approved by the Judicial Council**

SUPERVISING AGENCY NUMBER:

COURT/CASE NUMBER:

## PETITION FOR REVOCATION

- [ ] **PAROLE (Pen. Code, §§ 3000.08, 1203.2)**
- [ ] **PRCS (Pen. Code, §§ 3455, 1203.2)**
- [ ] **PROBATION (Pen. Code, § 1203.2)**
- [ ] **MANDATORY SUPERVISION (Pen. Code, §§ 1170(h)(5)(B), 1203.2)**

## INSTRUCTIONS

- *Before filing this form, petitioner should consult local rules and court staff to schedule the hearing in item 1.*
- *Petitioner must note whether the petition applies to a parole (beginning July 1, 2013), postrelease community supervision, probation, or mandatory supervision matter by marking the appropriate check box above.*

1. **HEARING INFORMATION:** A hearing on this petition for revocation has been scheduled as follows:

Date: Time: Dept.:
Location *(if different than court address above):*

If an interpreter is needed, please specify the language:

2. **CUSTODY STATUS *(Select one):*** ☐ not in custody ☐ in custody *(specify location):*
Booking number *(if any):*

3. **CONVICTION INFORMATION:**
The supervised person was originally convicted of the following offenses:

on *(date):* in case numbers *(specify):*
in county of *(specify):* and sentenced to *(specify sentence):*

4. **SUPERVISION INFORMATION:** The supervised person was released on supervision on *(specify date):*
Name of current supervising agent or officer:
Supervision is scheduled to expire on (i.e., the controlling discharge date is) *(date):*

5. **SPECIFIC TERMS AND CONDITIONS:** Petitioner alleges that the supervised person has violated the following terms and conditions of supervision *(if more space is needed, please use* Attachment to Judicial Council Form *(MC-025)):*

6. **SUMMARY:** The supervising agency established probable cause for the alleged violation on *(date):*
The circumstances of the alleged violation are *(if more space is needed, please use* Attachment to Judicial Council Form *(MC-025)):*

7. **SPECIAL PAROLE STATUS** *(check this box **only if** the supervised person is subject to parole under Penal Code section 3000.1):*
☐ The supervised person is on parole under Penal Code section 3000.1. If the court determines that the person has violated parole, the court is required to remand the person to the custody of CDCR for future parole consideration. (Pen. Code, § 3000.08(h).)

I declare under penalty of perjury and to the best of my information and belief that the foregoing is true and correct.

Date:

____________________ By ____________________
NAME AND TITLE OF PETITIONER SIGNATURE OF PETITIONER



Form Approved for Optional Use
Judicial Council of California
CR-300 [Rev. January 1, 2015]

**SPR14–07**
**Criminal Justice Realignment: Petitions for Revocation of Supervision** *(revise form CR-300)*
All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| 1. | California Judges Association<br>Lexi~~s~~ Howard<br>Legislative Director | A | The California Judges Association supports the Criminal Law Advisory Committee proposed revision to the *Petition for Revocation,* Form CR-300, to apply the form to proceedings to revoke probation and mandatory supervision under Penal Code section 1170(h)(5)(B).<br><br>This proposal promotes uniform revocation procedures in response to recent legislation that applied longstanding probation revocation procedures to all categories of supervision enacted by criminal justice realignment. The revisions are appropriate and needed.<br><br>Thank you for the opportunity to comment on these matters. …. | No response required. |
| 2. | Orange County Bar Association<br>Thomas Bienert, Jr.<br>President | AM | For probation violations, the number of prior revocations, reinstatements and any custody time served on any prior violation(s) should be included on the face of the petition, perhaps under 4, Supervision Information. | The committee declines this suggestion because information about prior revocations is not always available or necessary during the initial processing of petitions to revoke. |
| 3. | State Bar's Standing Committee on the Delivery of Legal Services<br>Maria Livingston<br>Vice Chair | A | Agree with proposal in its entirety<br><br>The proposal promotes uniform revocation procedures by eliminating the need for courts and supervising agencies to develop and employ distinct forms for different categories of supervision. The revision also makes it easier to understand the basis for the alleged violations, and would help ensure access to the court system by mandating the use of one form.<br><br>**<u>Disclaimer</u>**<br>**This position is only that of the State Bar of** | No response required. |



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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | **California's Standing Committee on the Delivery of Legal Services. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.** | |
| 4. | Superior Court of Los Angeles County | AM | This form was originally designed to provide supervising county agencies a uniform means to petition the court to revoke, modify or terminate Postrelease community supervision (PRCS) per PC§1203.2. It later was modified to incorporate petitions to revoke or modify supervision by DAPO.<br><br>• The current revision, to incorporate petitions to revoke, modify or terminate mandatory supervision and probation is not inclusive of all petitions the court may receive.<br><br>Specifically, it does not incorporate petitions filed by the jurisdictional prosecutor for misdemeanor to revoke probation in lieu of a new filing, or petitions to violate varying forms of diversion and deferred entry of judgment beginning at PC§1000 et. or applications to the court under PC§3015 for Reentry.<br><br>Suggested modifications to the proposed CR-300 are: | • The Committee considered each of the suggestions regarding additional types of petitions to revoke. However, this proposal was designed to promote uniformity among supervising agencies filing petitions to revoke supervision under Penal Code section 1203.2. Thus, the committee declines the suggestions because the other categories of revocation and application to reentry courts are not conducted under the revocation procedures prescribed by Penal Code section 1203.2. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | (Remove the instructions box in the header caption.)<br><br>Expand the box "Petition for Revocation" to use the space formerly occupied by the instructions box and add (a) misdemeanor revoke probation in lieu of a new filing, (b) deferred entry of judgment, (c) post filing diversion per PC§1000, and (d) consider further expanding use of this form to include applications to the court under PC§3015 (i.e., Reentry).<br><br>• Understanding requests for warrants may be made when the only alleged violation is absconding, made to the court using the CR- 301, the submitting agency should also have the option to request a warrant with the petition to revoke. A check box with language to request an absconder/arrest/bench warrant should be present. The CR-301 is more DAPO exclusive and is likely not representative of how warrants are requested for petitions under 1203.2, 1000 et seq. by supervising county agencies and jurisdictional prosecutors.<br><br>• Modify the language in item #3 (Conviction Information) to provide that open charges may be pending (e.g., "The supervised person has been "*charged with*" " *convicted of*" the following offenses"). | • The committee declines the suggestion to add a request for warrant to form CR-300 because the Judicial Council has adopted CR-301, *Request for Warrant,* for use by supervising agencies to request warrants for the arrest of supervised persons.<br><br>The committee, however, will consider revising form CR-301 to apply to probation and mandatory supervision at a future meeting.<br><br>• The committee declines the suggestion regarding conviction information as unnecessary and not always available during the initial processing of a petition revoke. |



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

**SPR14–07**
**Criminal Justice Realignment: Petitions for Revocation of Supervision** *(revise form CR-300)*
All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| 5. | Superior Court of Riverside County<br>Daniel Wolfe<br>Managing Attorney | A | Agree with proposal.<br><br>The proposed modification of form CR-300 should change the title of the action from "IN THE MATTER OF (*name of supervised person*):" to "PEOPLE v. (*name of defendant*)". In cases involving mandatory supervision and probation, the alleged violation is part of the existing case and thus the "IN THE MATTER OF" title is incorrect. | <br><br>The committee declines this suggestion as unnecessary because the current case title could be used for all types of supervision, including writing "PEOPLE v. (*name of defendant*)" in the space currently provided. |
| 6. | Superior Court of San Diego County<br>Mike Roddy<br>Executive Officer | A | No additional comments. | No response required. |
| 7. | Trial Court Presiding Judges Advisory Committee / Court Executives Advisory Committee Joint Rules Working Group | AM | The revised form will provide efficiencies particularly if modified as suggested to work as an effective tool for AB 109 workload data collection.<br><br><u>Suggested modifications</u><br>The [Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee] TCPJAC/CEAC Joint Rules Working Group has suggestions to improve the effectiveness in capturing the necessary data on form CR-300 for AB 109 cases. This form was originally designed to provide supervising county agencies with a means to petition the court to revoke, modify or terminate supervision per PC§1203.2. It later was modified to incorporate petitions to revoke or modify supervision by DAPO. The current revision, to incorporate petitions to revoke, modify or terminate mandatory supervision and probation is not inclusive of all petitions the court may | <br><br><br><br><br>Please see response to Comment 4 above. |



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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | receive. Specifically, it does not incorporate petitions filed by the jurisdictional prosecutor for misdemeanor probation, or petitions to violate varying forms of diversion and deferred entry of judgment as specified, beginning at PC§1000 et. seq.<br><br>Suggested modifications to CR-300 are:<br><br>• Remove the instructions box in the header caption;<br>• Use the space formerly occupied by the instructions box and add (a) misdemeanor probation, (b) deferred entry of judgment, (c) post filing diversion per PC§1000;<br>• Consider further expanding use of this form to include applications to the court under PC§3015 (i.e., Reentry); and<br>• Understanding requests for warrants may be made to the court using CR-301, the submitting agency should have the option to request a warrant with the petition to revoke. A check box with language to request an absconder/arrest/bench warrant should be present. The CR-301 is more DAPO exclusive and is likely not representative of how warrants are requested for petitions under 1203.2, 1000 et seq. by supervising county agencies and jurisdictional prosecutors.<br><br>**The following are responses to the proposal's Request for Specific Comments:** | |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | Does the proposal appropriately address the stated purpose? ***The proposal appropriately addresses the needed changes for the form CR-300 but could be improved with the enhancements suggested above.***<br><br>Would the proposal provide cost savings? If so please quantify. ***It is not anticipated that the unmodified form as proposed will have a significant impact on the cost savings or operational requirements for data entry.***<br><br>Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? ***The implementation time frame of two months is sufficient, as currently modified, but the recommended enhancements as provided above, could necessitate an extension of time needed to implement the more comprehensive form.*** | |

# RUPRO ACTION REQUEST FORM

**RUPRO Meeting:** September 8, 2014

RUPRO action requested:

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

| Title: Criminal Justice Realignment: Petition and Order for Dismissal | Rules:<br><br>Standards:<br><br>Forms: CR-180 and CR-181 |
|---|---|
| Committee or other entity submitting the proposal:<br>Criminal Law Advisory Committee | Staff contact:<br>Eve Hershcopf, 415-865-7961<br>eve.hershcopf@jud.ca.gov |

**If requesting July 1 or out of cycle, explain:**

**Additional Information for RUPRO:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary, including any substantial argument in opposition and any expected individual or organization likely to support or oppose the proposal.)

No substantial arguments or opposition are expected.

Judicial Council of California · Administrative Office of the Courts

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

www.courts.ca.gov

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 28, 2014

**Title**
Criminal Justice Realignment: Petition and Order for Dismissal

**Rules, Forms, Standards, or Statutes Affected**
Revise forms CR-180 and CR-181

**Recommended by**
Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

**Agenda Item Type**
Action Required

**Effective Date**
January 1, 2015

**Date of Report**
August 1, 2014

**Contact**
Eve Hershcopf, 415-865-7961
eve.hershcopf@jud.ca.gov

## Executive Summary

In response to criminal justice realignment legislation that provides a new statutory basis for dismissals, the Criminal Law Advisory Committee recommends revising the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) to add data fields to facilitate dismissals under Penal Code section 1203.41 for cases in which the petitioner received a felony county jail sentence under Penal Code section 1170(h)(5). The committee recommends revising forms CR-180 and CR-181 to assist courts in specifying the granting or denial of a dismissal request under Penal Code sections 1203.4, 1203.4a, or 1203.41 for each conviction in a case, and to confirm which convictions, if any, are reduced from felonies to misdemeanors under Penal Code section 17(b). The committee also recommends related revisions to the format, advisements, and instructions on both forms.

## Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2015, revise the *Petition for Dismissal* (form CR-180) and the *Order for Dismissal* (form CR-181) to:

1. Add references to Penal Code section 1203.41 to items 3 and 4 and to the advisements in items 5, 6, and 7 on form CR-181 to incorporate an additional statutory basis for dismissal;

2. Add check boxes and related instructions to new item 4 on form CR-180 to facilitate requests for dismissal under Penal Code section 1203.41;

3. Add check boxes to items 3 and 4 on form CR-181 to clarify whether the court is granting or denying the request for dismissal relief, under which Penal Code section the court is providing the requested relief, and whether the court's decision to grant or deny the requested relief is for all or only selected convictions in the case;

4. Convert item 1 on form CR-180 into a table format that provides space for the petitioner to list each conviction in the case separately, and to specify whether each conviction is a felony eligible for reduction to a misdemeanor under Penal Code section 17(b);

5. Revise items 1 and 2 on form CR-181to clarify whether the court is granting or denying the request for reduction of a felony to a misdemeanor under Penal Code section 17(b), and whether the court's decision to grant or deny the requested relief is for all or only selected convictions in the case;

6. Revise item 6 on form CR-181 to include an advisement about the effect of a dismissal on a subsequent prosecution; and

7. Revise the format, advisements, and instructions on both forms by (a) adding a reference to Penal Code section 1203.41 to the caption of both forms; (b) using the term "petitioner" in place of "defendant" on both forms; (c) expanding the instructions on providing information to support a request for dismissal in the interests of justice; and (d) adding an advisement that in any subsequent prosecution the prior conviction may be pleaded and proved and have the same effect as if the accusation or information had not been dismissed.

The proposed revised forms are attached at pages 5–8.

## Previous Council Action

Revisions to both forms were previously approved by the Judicial Council on October 25, 2013, with an effective date of January 1, 2014, in response to legislation that amended Penal Code section 1203.4a to extend dismissal relief to certain infractions and clarified that petitioners are not relieved of any prohibition against holding public office, and also amended Penal Code section 1203.4 to authorize courts to grant dismissal relief "in the interests of justice."

## Rationale for Recommendation

The *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) are optional forms used by petitioners and courts to facilitate the dismissal procedures authorized by Penal Code sections 1203.4 and 1203.4a. In 2013, criminal justice realignment legislation added section 1203.41 to authorize courts to issue orders for dismissal in cases in which the defendant received a felony county jail sentence under Penal Code section 1170(h)(5).[1] In response, the committee recommends adding the new statutory basis for relief to the petition and order for dismissal forms.

On June 30, 2014, the Court of Appeal, First Appellate District, Division One, issued a decision in *People v. Smith*[2] that indicated that courts should evaluate each conviction in a case individually to determine whether the requested dismissal relief should be granted or denied for all or only selected convictions, citing *People v. Mgebrov.*[3] In response, the committee recommends revisions to the forms to facilitate the listing of each conviction for which dismissal relief is requested, the court's grant or denial of dismissal relief for each conviction, and the court's decision on which convictions, if any, are reduced from felonies to misdemeanors under Penal Code section 17(b).

To reduce confusion and update and enhance the information on the forms, the committee also recommends revising the format, advisements, and instructions on both forms.

## Comments, Alternatives Considered, and Policy Implications

The attached forms circulated for public comment from April 18, 2014, to June 18, 2014. A total of seven comments were received; of those, four agreed with the proposal, and three agreed if modified. No commentators opposed the proposal. A chart with all comments received and the committee's responses is attached at pages 9–14.

During the public comment period, one commentator noted that forms CR-180 and CR-181 are used to request and order a dismissal of convictions *and* to request and order a reduction of a felony conviction to a misdemeanor under Penal Code section 17(b), and observed that the current forms did not clearly distinguish between those two separate determinations. In response, the committee recommends revisions to the forms that assist the petitioner to clearly request a reduction from a felony to a misdemeanor for each conviction and the court in confirming whether it is granting or denying section 17(b) reduction relief for each conviction. Following

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[1] Assembly Bill 651 (Bradford; Stats. 2013; ch. 787).

[2] 227 Cal.App.4th 717, 726, 174 Cal.Rptr.3d 103 (2014) (First Appellate District, Division One) ["We conclude the motion for expungement was sufficient to apprise the court it should evaluate each of defendant's four convictions individually under section 1203.4."].

[3] 166 Cal.App.4th 579, 595, 82 Cal.Rptr.3d 778 (2008) (First Appellate District, Division Two) ["the plain and commonsense meaning of the text of section 1203.4 indicates trial courts may set aside guilty verdicts on individual counts in an information and dismiss the counts pursuant to section 1203.4, subdivision (a)."].

the comment period, the committee added recommendations in response to the *Smith* and *Mgebrov* cases noted above.

### Notable comments

One commentator noted that "some judges will not check both numbers 2 and 4 when granting only PC §§ 1203.4/1203.4a/1203.41 relief but denying a § 17(b) petition. The order should reflect that the judge may be considering two independent motions." The committee agreed with the comment and revised the form to more clearly reflect the petitioner's request for consideration of a Penal Code section 17(b) reduction for eligible felony offenses in addition to petitioner's request for the court to grant dismissals for each conviction in the identified case. The committee revised the petition to enable the petitioner to list multiple convictions in a particular case, some of which may be eligible for dismissal and others ineligible, and for the court to clearly indicate on the order its determination to grant or deny the requested relief for each offense.

### Alternatives considered

The committee considered postponing or declining to recommend any form revisions in light of the severe economic circumstances faced by courts. The committee, however, decided to recommend the revisions in response to recent legislation and case law. The committee believes the revisions would not impose any significant change in court practices; rather, the recommended revisions are designed to improve dismissal procedures and Penal Code section 17(b) felony reduction procedures by enhancing the information on the forms.

## Implementation Requirements, Costs, and Operational Impacts

Expected costs and implementation requirements are limited to training and the production of new forms.  No other implementation requirements or operational impacts are expected.

## Attachments

1. Forms CR-180 and CR-181, at pages 5–8
2. Comment chart, at pages 9–14

| ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* | *FOR COURT USE ONLY* |
|---|---|
| TELEPHONE NO.: FAX NO.:<br>E-MAIL ADDRESS:<br>ATTORNEY FOR (*Name*): | **DRAFT**<br>**Not Approved by the Judicial Council** |
| PEOPLE OF THE STATE OF CALIFORNIA<br>v.<br>DEFENDANT: DATE OF BIRTH: | |
| **PETITION FOR DISMISSAL**<br>**(Pen. Code, §§ 17(b), 1203.4, 1203.4a, 1203.41)** | CASE NUMBER: |
| | *FOR COURT USE ONLY*<br>Date:<br>Time:<br>Department: |

1. On *(date):* ______________, the petitioner *(the defendant in the above-entitled criminal action)* was convicted of a violation of the following:

| **Offense** *(Specify each offense in the case noted above.)* | **Code** | **Section** | **Type of offense:** *(Felony; Misdemeanor; Infraction)* | **Eligible for reduction to misdemeanor under Penal Code § 17(b)** *(Yes or No)* |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

If additional space is needed for listing offenses, use *Attachment to Judicial Council Form* (Form MC-025).

2. ☐ **Felony or misdemeanor with probation granted *(Pen. Code, § 1203.4)***
   Probation was granted on the terms and conditions set forth in the docket of the above-entitled court; the petitioner is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime, and the petitioner (*check all that apply*):
   a. ☐ has fulfilled the conditions of probation for the entire period thereof;
   b. ☐ has been discharged from probation prior to the termination of the period thereof;
   c. ☐ should be granted relief in the interests of justice. *(Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents.)*

3. ☐ **Misdemeanor or infraction with sentence other than probation *(Pen. Code, § 1203.4a)***
   Probation was not granted; more than one year has elapsed since the date of pronouncement of judgment. The petitioner has complied with the sentence of the court and is not serving a sentence for any offense or under charge of commission of any crime; and the petitioner *(select one)*:
   a. ☐ has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land; ***or***
   b. ☐ should be granted relief in the interests of justice. *(Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents.)*

**Continued**

| PETITIONER: | CASE NUMBER: |
|---|---|
| | |

4. ☐ **Felony county jail sentence under Penal Code section 1170(h)(5)** ***(Pen. Code, § 1203.41)***
The petitioner is not under supervision under Penal Code section 1170(h)(5)(B) and is not serving a sentence for, on probation for, or charged with the commission of any offense, should be granted relief in the interests of justice, and *(select one:)*
   a. ☐ more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); *or*
   b. ☐ more than two years have elapsed since petitioner completed the felony county jail sentence **without** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A);

   (*Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents.)*

Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b).

Petitioner requests that he/she be permitted to withdraw the plea of guilty, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under section ☐ 1203.4, ☐ 1203.4a , or ☐ 1203.41 of the Penal Code.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: ______________________ ▶ ______________________

(DATE) (SIGNATURE OF PETITIONER OR ATTORNEY)

(ADDRESS, PETITIONER) (CITY) (STATE) (ZIP CODE)

| ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* | FOR COURT USE ONLY |
|---|---|
| TELEPHONE NO.: FAX NO.:<br>E-MAIL ADDRESS:<br>ATTORNEY FOR (*Name*): | **DRAFT**<br>**Not Approved by the Judicial Council** |
| PEOPLE OF THE STATE OF CALIFORNIA<br>v.<br>DEFENDANT: DATE OF BIRTH: | |
| **ORDER FOR DISMISSAL**<br>**(Pen. Code, §§ 17(b), 1203.4, 1203.4a, 1203.41)** | CASE NUMBER: |

The court finds from the records on file in this case, and from the foregoing petition, that the petitioner *(the defendant in the above-entitled criminal action)* is eligible for the following requested relief:

1. The court **GRANTS** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and reduces the following felony convictions to misdemeanors:
   - [ ] ALL FELONY CONVICTIONS in the above-entitled action; or
   - [ ] Only for the following felony convictions in the above-entitled action *(specify charges and date of conviction)*:

2. The court **DENIES** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) for the following convictions:
   - [ ] ALL FELONY CONVICTIONS in the above-entitled action; or
   - [ ] Only for the following felony convictions in the above-entitled action *(specify charges and date of conviction)*:

3. The court **GRANTS** the petition for dismissal regarding the following convictions under Penal Code [ ] § 1203.4, or [ ] § 1203.4a, or [ ] § 1203.41, and it is ordered that the pleas, verdicts, or findings of guilt be set aside and vacated and a plea of not guilty be entered and that the complaint be, and is hereby, dismissed:
   - [ ] ALL CONVICTIONS in the above-entitled action; or
   - [ ] Only for the following convictions in the above-entitled action *(specify charges and date of conviction)*:

4. The court **DENIES** the petition for dismissal regarding the following convictions under Penal Code [ ] § 1203.4, or [ ] § 1203.4a, or [ ] § 1203.41:
   - [ ] ALL CONVICTIONS in the above-entitled action; or
   - [ ] Only for the following convictions in the above-entitled action *(specify charges and date of conviction)*:

5. If this order is granted under the provisions of Penal Code section 1203.4 or 1203.41:
   a. The petitioner is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency, or for contracting with the California State Lottery Commission.
   b. Dismissal of the conviction does not *automatically* relieve petitioner from the requirement to register as a sex offender. (See, e.g., Penal Code section 290.5.)
   c. The petitioner may also be eligible to obtain a certificate of rehabilitation and pardon under the procedure set forth in Penal Code section 4852.01 et seq.

| PETITIONER: | CASE NUMBER: |
|---|---|
| | |

6. If the order is granted under the provisions of either Penal Code section 1203.4, 1203.4a, or 1203.41, the petitioner is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections 29800 and 29900 (formerly sections 12021 and 12021.1) and Vehicle Code section 13555. In any subsequent prosecution of the petitioner for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The dismissal does not permit a person to own, possess, or have in his or her control a firearm if prevented by Penal Code sections 29800 or 29900 (formerly sections 12021 and 12021.1). Dismissal of a conviction does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

7. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17(b), 1203.4, 1203.4a, or 1203.41 does *not* release petitioner from the separate administrative duty to provide specimens, samples, or print impressions under the DNA and Forensic Identification Database and Data Bank Act (Pen. Code, § 295 et seq.) if petitioner was found guilty by a trier of fact, not guilty by reason of insanity, or pled no contest to a qualifying offense as defined in Penal Code section 296(a).

***FOR COURT USE ONLY***

Date:

________________________________________
(JUDICIAL OFFICER)

# SPR14–08

**Criminal Justice Realignment: Petition and Order for Dismissal** *(revise forms CR-180 and CR-181)*

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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| 1. | East Bay Community Law Center<br>Eliza Hersh, Director<br>Clean Slate Practice | AM | • RE CR 180<br>Sections 3(c), 4(b), and 5(b) on the current form include the following advisement: *"Please note: You must explain why granting a dismissal would be in the interests of justice by completing and attaching the Attached Declaration (form MC-031)."*<br><br>We request a change to this sentence to reflect that (1) there is no statutory requirement that a petitioner file a MC-031 form or any other documents with a petition for dismissal pursuant to Penal Code § 1203.4; (2) many litigants, especially those represented by counsel, file documents in support of their petitions—including letters of support and sworn declarations—that do not conform to the format of MC-031, and make that form extraneous; and (3) in many counties it is not the current practice of court clerks to inform *pro per* litigants about, or provide with, the MC-031 form.<br><br>A proposed alternative might be: "You may explain why granting a dismissal would be in the interests of justice by completing and attaching the Attached Declaration (form MC-031) or submitting other documents relevant to this issue."<br><br>• RE CR 181<br>We request reformatting of the top section of the order (Numbers 1 to 4) to address the | • To ensure that courts receive sufficient information when considering what constitutes "in the interests of justice" for granting a dismissal, including any documents offered in support of the petition, the committee revised items 2(c), 3(b), and 4 on form CR-180 to read:<br><br>(*Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the optional* Attached Declaration (*form MC-031*) *or submit other relevant documents*.)<br><br>• The committee agrees that the forms should more clearly reflect that the court is responding to two separate motions: a felony |



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

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | instances when a judge grants/denies the petition in part. Specifically, we have noted that some judges will not check both numbers 2 and 4 when granting only PC §§ 1203.4/1203.4a/1203.4 relief but denying a § 17(b) petition. The order should reflect that the judge may be considering two independent motions.<br><br>We also have noted that some judges forget or overlook the need to check both box 2 and box 4. We have heard from representatives from some licensing agencies that those orders, with only box 2 checked, are deemed defective.<br><br>A possible revision is:<br><br>1. ☐ The court grants the petition for ☐ § 1203.4 ☐ § 1203.4a ☐ § 1203.41 and it is ordered that the plea, verdict, or finding of guilt regarding the following conviction in the above-entitled action be set aside and vacated and a plea of not guilty be entered and that the complaint be, and is hereby, dismissed (specify charges and dates of convictions): ☐<br><br>2. ☐ The court denies the petition for ☐ § 1203.4 ☐ § 1203.4a ☐ § 1203.41 | reduction motion under Penal Code section 17(b) and a dismissal motion under section 1203.4, 1203.4a, or 1203.41.<br><br>The committee revised items 1, 2, 3, and 4 on form CR-181 to aid the court in clearly indicating its determination whether to grant or deny the requested section 17(b) reduction relief *and/or* the requested dismissal relief for each conviction.<br><br>Because varying collateral consequences are associated with each type of dismissal, the committee revised form CR-181 for the court to indicate whether the dismissal is granted under Penal Code section 1203.4, 1203.4a, or 1203.41.<br><br>To enable the petitioner to list multiple convictions in a case, and to clearly request both a section 17(b) reduction and dismissal relief *for each eligible conviction*, the committee revised item 1 on form CR-180 into a table format. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | 3. ☐ The court reduces the felony offense to a misdemeanor.<br><br>4. ☐ The court denies the petition to reduce the felony to a misdemeanor. | |
| 2. | Orange County Bar Association<br>Thomas Bienert, Jr., President | AM | For Penal Code section 1203.41 dismissals, may consider adding subdivision (b)(1) language on order (CR-181) that dismissal does not bar use of conviction as prior in subsequent prosecution. | The committee agrees. Item 6 on form CR-181 has been revised to add the following advisement, which conforms with the statutory language and applies to all dismissals:<br><br>*"In any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed."* |
| 3. | State Bar Standing Committee on the Delivery of Legal Services (SCDLS)<br>Maria Livingston, Vice Chair | A | Agree with proposal in its entirety<br><br>These forms are frequently used by self-represented parties, and the proposed improvements benefit those without means to pay for a lawyer because they add references to the statutes, meaning that individuals can more easily research the law, and add an additional checkbox to each form to allow individuals to request expungement.<br><br>**Disclaimer**<br>**This position is only that of the State Bar of California's Standing Committee on the Delivery of Legal Services. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of** | No response required. |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | **the State Bar of California. Committee activities relating to this position are funded from voluntary sources.** | |
| 4. | Superior Court of Los Angeles County | A | | No response required. |
| 5. | Superior Court of Riverside County<br>Daniel Wolfe, Managing Attorney | A | Agree with proposal.<br><br>This is a welcome modification of the forms CR-180 and CR-181 in light of the enactment of Penal Code section 1203.41 and will be very helpful to the court. | No response required. |
| 6. | Superior Court of San Diego County<br>Mike Roddy, Executive Officer | A | Our court already has its own court forms for this process, therefore, this one will not have any effect on us. | No response required. |
| 7. | Yolo County Public Defender's Office<br>Hannah Labaree, Record Mitigation Attorney | AM | I write with proposed modifications to the new CR180 forms. I handle all of the 1203.4, 17(b) and 1203.41 matters for the Yolo County Public Defender's office. My goal when recommending these modifications is for the form to be both accurate and clear, to the degree that is possible.<br><br>• First, I think the form should use one term consistently to refer to the individual filing the form - i.e., use "petitioner" instead of both "petitioner" and "defendant." (I believe petitioner is more appropriate in this context, given that the individual is petitioning the court for relief).<br><br>• Second, I don't see that it's necessary to repeat the following language in each of #3- | • The committee agrees. To more accurately reflect the status of the person seeking relief, the committee has revised forms CR-180 and CR-181 to consistently use the term "petitioner" throughout the forms.<br><br>• The committee declines the suggestion because the language specifying the eligibility |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | 5: "the defendant is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime," or in the case of #5, to delineate that the petitioner is not currently "under supervision under Penal Code section 1170(h)(5)(B )." Instead, I think it would be sufficient to add that language in at the end, just before the "under penalty of perjury" statement:<br><br>"the defendant is not serving a sentence for any offense, nor on probation for any offense or under supervision under Penal Code section 1170(h)(5)(B ), nor under charge of commission of any crime."<br><br>In this way, the petitioner is being alerted to the fact that he is attesting, under penalty of perjury, that he meets the threshold eligibility requirements.<br><br>• Third, I think that #5 is unnecessarily confusing. As above, I don't believe it is necessary to specify that the petitioner is not currently serving a sentence, etc., and so that language should be eliminated and placed later in the form. I propose the following (or similar) modifications to #5, to maximize clarity and accuracy:<br><br>Felony county jail sentence under PC section 1170(h)(5) (Pen. Code § 1203.41) | requirements for a dismissal differs in each of the three Penal Code sections (1203.4, 1203.4a, and 1203.41), and it is critical to set forth the specific requirements accurately on form CR-180.<br><br>• To reduce confusion and more clearly explain the bases for relief, the committee revised item 4 on form CR-180 by reversing the order of items 4a and 4b and bolding essential wording to highlight the difference between the two statutory requirements.<br><br>"a.☐ more than one year has elapsed since defendant completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); **or** |

| | Commentator | Position | Comment | Committee Response |
|---|---|---|---|---|
| | | | Please check one of the following:<br>a. Received county jail sentence WITHOUT a period of supervision, and two years have passed since the date of completion of jail time:<br><br>b. Received county jail sentence WITH a period of supervision,<br>and one year has passed since the date of completion of supervision.<br><br>• Fourth, and last, I believe it would be useful to reinstate a portion of the previous CR181, which leaves room for the petitioner to provide not only their Date of Birth (which still exists on current form), but also their CII, Cal. Driver's License, and last four of their SS#. In my opinion, this only really matters with the CR181, as it makes the official Order from the court that much more useful given that it has very specific identifying information on it.<br><br>Thank you. | b. ☐ more than two years have elapsed since defendant completed the felony county jail sentence **without** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A)."<br><br>• To protect personal information in a public record when that information is not needed for identifying the petitioner or the case, the committee declines the suggestion to reinstate requests for the petitioner's personal information on form CR-181. |

Judicial Council of California · Administrative Office of the Courts

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

www.courts.ca.gov

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 28, 2014

**Title**

Rules and Forms: Miscellaneous Technical Changes

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

Amend Cal. Rules of Court, rules 1.31, 1.35, 3.20, 5.225, 5.610, 8.108, 10.952 and 10.960; repeal rules 7.551, 7.552, 7.553, and 10.107; revise forms CR-111/JV-791, DAL-015, DE-226, DE-265/GC-065, DE-305, DE-315, FL-192, FL-410, FL-480, GC-150, GC-350, JV-401, POS-040, POS-050/EFS-050, SV-130, and WV-130

**Recommended by**

Judicial Council staff
Susan R. McMullan, Senior Attorney
Legal Services

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2015

**Date of Report**

August 27, 2014

**Contact**

Susan R. McMullan, 415-865-7990
susan.mcmullan@jud.ca.gov

## Executive Summary

Various Judicial Council advisory committee members, court personnel, members of the public, and Judicial Council staff have identified errors in rules and forms resulting from inadvertent omissions, typographical errors, and changes resulting from legislation. The staff to the Judicial Council recommends making the necessary corrections to avoid confusing court users, clerks, and judicial officers.

## Recommendation

The staff to the Judicial Council recommends that the council, effective January 1, 2015:

1. Amend rules 1.31(b) and 1.35(b) to change the reference to the branch website from "*www.courtinfo.ca.gov*" to "*www.courts.ca.gov*";

2. Amend rule 3.20(b)(1) to correct a reference, changing it from "3.112(f)" to "3.1112(f)";

3. Amend rule 5.225(c)(2)(A) to correct an internal reference, changing it from subdivision (i) to subdivision (j). Without this change, courts and persons seeking appointment as a child custody evaluator could misinterpret rule 5.225(c)(2)(A) as permitting an unlicensed court-connected child custody evaluator to be appointed to a case, even though he or she does not meet the experience requirements of the rule and is not supervised by another evaluator who meets all the requirements of the rule;

4. Amend rule 5.610(g)(1) to clarify that the council, and not the Administrative Office of the Courts, can approve modifications to the intercounty juvenile transfer form, *Juvenile Court Transfer Orders* (form JV-550);

5. Repeal rules 7.551, 7.552, and 7.553 because the underlying authority has been repealed or found to be unconstitutional. The requirement of Revenue and Taxation Code section 19513 for a tax clearance certificate from the Franchise Tax Board for the estates described in rule 7.551(a) has been eliminated by section 2 of Assembly Bill 672 (Stats. 2013, ch. 239), which repealed section 19513 effective January 1, 2014. The graduated filing fee in 7.552 and 7.553 was determined to be unconstitutional by *Estate of Claeyssens* (2008) 161 Cal.App.4th 465;

6. Amend rule 8.108(d)(2) to correct an internal reference from (e)(2) to (g)(2);

7. Repeal rule 10.107, which was made redundant following the adoption of rule 10.64 for the Trial Court Budget Advisory Committee, effective February 20, 2014;

8. Revise rule 10.952 to reflect the reorganization within the executive branch following the passage of AB 109, eliminating the California Department of Alcohol and Drug Programs. As this rule's current language is creating confusion and since the statewide department no longer exists, a technical adjustment to rule 10.952 is needed so that it states that the "….county director of alcohol and drug programs or his or her designee…" be included in meetings discussing the criminal court system. This revision is a technical adjustment that reflects the current status of county departments of Alcohol and Drug Programs and eliminates possible confusion involving a state agency that has been eliminated.

9. Revise rule 10.960 to reflect the retirement of the name Administrative Office of the Courts and to include the name of the document that was initially created in response to the rule to make it clear that the guidelines that, under the existing rule, were to be done by March 1, 2008, were indeed completed. The Advisory Committee on Providing Access and Fairness

is responsible for monitoring developments in the field and making recommendations for modifications to those guidelines, as well as developing additional resources for the courts;

10. Revise form DAL-015 to correct a reference in the caption from "Code of Civil Procedure" to "Civil Code";

11. Revise forms CR-111/JV-791, DE-226, DE-265/GC-065, DE-305, DE-315, FL-480, GC-150, and GC-350 to increase the size of the recorder's box to conform exactly to the requirements of Government Code section 27361.6, to change "*www.courtinfo.ca.gov*" to "*www.courts.ca.gov*," and to make minor formatting updates;

12. Revise form FL-192 to update the names of Judicial Council forms used to request modification of a child support order and to update the hyperlink in the form to include the current Judicial Council web page that shows the court holiday schedule;

13. Revise form FL-410 to reflect the correct service requirements of Code of Civil Procedure section 1005(b). Specifically, the reference to "21 calendar days before the court hearing" will be replaced with "16 court days before the hearing." In addition, "Other Parent" will be replaced with "Other Parent/Party" throughout the form, and the title of page 3 will be corrected to read "Information Sheet for Order to Show Cause and Affidavit for Contempt";

14. Revise form JV-401, items 3 and 5, to correct internal cross-references;

15. Revise forms POS-040 and POS-050/EFS-050, item 1, to reflect Code of Civil Procedure section 1010.6(1)(A) and delete "and not a party to this action";

16. Revise forms SV-130 and WV-130, item 13.a, to change "petitioner" to "respondent";

The text of the amended rules is attached at pages 5–14; copies of the revised forms are attached at pages 15–52.

## Previous Council Action

Although the Judicial Council has acted on these rules and forms previously, this proposal recommends only minor corrections unrelated to any prior action.

## Rationale for Recommendation

The changes to these rules are technical in nature and necessary to correct inadvertent omissions and incorrect references.

## Comments, Alternatives Considered, and Policy Implications

These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

## Implementation Requirements, Costs, and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are technical corrections, case management systems are unlikely to need updating to implement them.

## Attachments and Links

1. Cal. Rules of Court, rules 1.31, 1.35, 3.20, 5.225, 5.610, 7.551, 7.552, 7.553, 8.108, 10.107, 10.952 and 10.960, at pages 5–14
2. Forms CR-111/JV-791, DAL-015, DE-226, DE-265, DE-305, DE-315, FL-192, FL-410, FL-480, GC-150, GC-350, JV-401, POS-040, POS-050/EFS-050, SV-130, and WV-130, at pages 15–52

Rules 1.31, 1.35, 3.20, 5.225, 5.610, 8.108, 10.952, and 10.960 of the California Rules of Court are amended and rules 7.551, 7.552, 7.553, and 10.107 are repealed, effective January 1, 2015, to read:

**Rule 1.31. Mandatory forms**

**(a)** * * *

**(b) List of mandatory forms**

Each mandatory Judicial Council form is identified as mandatory by an asterisk (*) on the list of Judicial Council forms in Appendix A to the California Rules of Court. The list is available on the California Courts web-site at *www.courts~~info~~.ca.gov/forms*.

**(c)–(g)** * * *

**Rule 1.35. Optional forms**

**(a)** * * *

**(b) List of optional forms**

Each optional Judicial Council form appears without an asterisk (*) on the list of Judicial Council forms in Appendix A to the California Rules of Court. The list is available on the California Courts Web site at *www.courts~~info~~.ca.gov/forms*.

**(c)–(f)** * * *

**Rule 3.20. Preemption of local rules**

**(a)** * * *

**(b) Application**

This rule applies to all matters identified in (a) except:

(1) Trial and post-trial proceedings including but not limited to motions in limine (see rule 3.1112(f));

(2)–(4) * * *

**Rule 5.225. Appointment requirements for child custody evaluators**

**(a)–(b)** * * *

**(c) Licensing requirements**

A person appointed as a child custody evaluator meets the licensing criteria established by Family Code section 3110.5(c)(1)–(5), if:

(1) * * *

(2) A person may be appointed as an evaluator even if he or she does not have a license as described in (c)(1) if:

(A) The court certifies that the person is a court-connected evaluator who meets all the qualifications specified in (~~i~~j); or

(B) * * *

**(d)–(o)** * * *

**Rule 5.610. Transfer-out hearing**

**(a)–(f)** * * *

**(g) Modification of form JV-550**

~~Juvenile Court Transfer Orders~~ *Juvenile Court Transfer Orders* (form JV-550) may be modified as follows:

(1) Notwithstanding the mandatory use of form JV-550, the form may be modified for use by a formalized regional collaboration of courts to facilitate the efficient processing of transfer cases among those courts if the modification has been approved by the Judicial Council of California~~, Administrative Office of the Courts~~.

(2) * * *

**(h)–(i)** * * *

~~**Rule 7.551. Final accounts or reports in estates with nonresident beneficiaries**~~

~~**(a) Final account**~~

~~Under Revenue and Taxation Code section 19513 and the regulations of the Franchise Tax Board, the court must not approve a final account in an estate that has a total appraised value greater than $1,000,000 and from which more than $250,000 in the aggregate has been distributed or is distributable to beneficiaries who are not residents of California, until the executor or administrator has filed the Franchise Tax Board's state income tax certificate showing that all state personal income taxes, additions to tax, penalties, and interest imposed on the estate or the decedent have been paid or that payment has been secured.~~

~~**(b) Final report**~~

~~If a final account is waived under Probate Code section 10954 in an estate described in (a), the court must not approve the final report required by section 10954(c)(1) until the executor or administrator has filed the Franchise Tax Board's state income tax certificate showing that all state personal income taxes, additions to tax, penalties, and interest imposed on the estate or the decedent have been paid or that payment has been secured.~~

~~**(c) Expiration date of certificate**~~

~~If the certificate described in (a) or (b) is issued on the condition that the final account or report must be approved before a date specified in the certificate, the court must not approve the final account or report after that date unless the executor or administrator first files a new or revised certificate.~~

~~**Rule 7.552. Graduated filing fee adjustments for estates commenced on or after August 18, 2003, and before January 1, 2008**~~

~~This rule applies to decedents' estate proceedings commenced on or after August 18, 2003, and before January 1, 2008. Rule 7.553 applies to decedents' estate proceedings commenced on or after January 1, 2008.~~

~~**(a) Separate schedule for graduated fee information**~~

~~The final account or report filed in every decedent's estate proceeding commenced on or after August 18, 2003, and before January 1, 2008, must include a separate schedule showing the following information:~~

~~(1) The name of each petitioner on the first-filed *Petition for Probate* (form DE-111) in the proceeding;~~

~~(2) The date the first-filed *Petition for Probate* was filed in the proceeding;~~

~~(3) The estimated value of the estate shown in item 3, "estimated value of the estate for filing fee purposes," of the first-filed *Petition for Probate* in the proceeding;~~

~~(4) The filing fee paid by or for the petitioner on the first-filed *Petition for Probate* in the proceeding; and~~

~~(5) The following information from the inventories filed in the proceeding:~~

~~(A) The date each partial, supplemental, final, or corrected *Inventory and Appraisal* (form DE-160/GC-040) was filed;~~

~~(B) The total appraised value of the assets of the estate shown in each filed partial, supplemental, or final *Inventory and Appraisal;*~~

~~(C) Changes in the appraised value of the assets of the estate shown in each filed corrected *Inventory and Appraisal;* and~~

~~(D) The combined total appraised value of the estate shown in all filed partial, supplemental, final, and corrected inventories.~~

~~(6) A statement of the amount of filing fee that would have been payable under Government Code section 70650, as amended effective on the date the first-filed *Petition for Probate* was filed in the proceeding, if the total actual appraised value of the estate had been used as the estimated value for filing fee purposes (the "corrected filing fee");~~

~~(7) Calculation of the difference between the estimated filing fee paid under Government Code section 70650 on filing the first *Petition for Probate* in the proceeding (the "estimated filing fee") and the "corrected filing fee," as determined under (6) and subdivision (e) of this rule; and~~

~~(8) The following information concerning filing fee reimbursement payments made by a personal representative in the proceeding under rule 7.151:~~

~~(A) The amount of each payment;~~

~~(B) The date each payment was made; and~~

~~(C) The name, address, and telephone number of the payee and of any attorney of record for the payee in the proceeding.~~

~~**(b) If estimated filing fee less than corrected filing fee**~~

~~If the estimated filing fee is less than the corrected filing fee, as determined under (a) and (e), the petition filed with the final account or report must allege that the difference between them has been paid to the clerk of the court. A copy of the clerk's receipt for the payment, and, if applicable, a receipt or other evidence satisfactory to the court of payment of the reimbursement required under rule 7.151, must be attached as an exhibit to the account or report.~~

~~**(c) If estimated filing fee more than corrected filing fee**~~

~~(1) Subject to the provisions of rule 7.151, if the estimated filing fee is more than the corrected filing fee, as determined under (a) and (e), the personal representative of the decedent's estate is eligible under this subdivision to receive a refund of the difference between them, without interest.~~

~~(2) The personal representative must apply to the court for the refund, in accordance with the court's local rules and practices for such payments.~~

~~(3) Unless authorized to retain a reserve against closing expenses that expressly is to include the court's refund payment after the personal representative's discharge, the personal representative must not apply for a discharge while an application for refund of filing fee under this subdivision is pending and before the court's refund payment is received.~~

~~**(d) Refund on voluntarily dismissed *Petition for Probate***~~

~~(1) A petitioner that files a *Petition for Probate* on or after August 18, 2003, and voluntarily dismisses the petition at any time within 90 days after it is filed and before an order granting or denying the petition is filed, is eligible under this subdivision to receive a refund, without interest, of all filing fees paid in excess of the filing fees that would have been payable on the original filing date for a *Petition for Probate* of an estate valued at less than $250,000.~~

~~(2) The petitioner on a dismissed *Petition for Probate* under (1) must apply to the court for the refund, in accordance with the court's local rules and practices for such payments.~~

~~**(e) Additional adjustment in corrected filing fee in insolvent estates**~~

1 If the property of the estate is insufficient to pay the expenses of administration in
2 full, the court may approve a determination of the corrected filing fee that reflects
3 the proportionate reduction of those expenses under Probate Code section 11420.
4 The corrected filing fee may not be reduced below the minimum fee required by
5 Government Code section 70650 on the date the estimated fee was paid.
6
7 **(f) Sample schedule of graduated fee information**
8
9 The schedule of graduated fee information required under (a) may be substantially
10 as follows:
11
12 SCHEDULE __
13
14 Graduated Filing Fee Information
15
16 1. The first-filed *Petition for Probate* in this proceeding was filed on [Date]
17 by [name of each petitioner].
18
19 2. The estimated value of the estate for filing fee purposes shown on the
20 first-filed *Petition for Probate* in this proceeding is $______________.
21
22 3. The filing fee paid by or for the petitioners on the first-filed *Petition for Probate* in
23 this proceeding was $_________.
24
25 4. The following inventories have been filed in this proceeding:
26

| **Type** | **Date Filed** | **Appraised Value** |
|---|---|---|
| [Partial no. __] | [09/30/09] | $ |
| [Partial no. __] | | $ |
| Final | | $ |
| [Supplemental] | | $ |
| [Correcting] | | $ (or $)__________ |
| Total appraised value of estate: | | $ _______________ |

27
28 5. Corrected Filing Fee:
29

Total appraised value of estate: $

30

Filing fee as of the date in 1 above, based on total
appraised value of estate: $

31

Adjustment to reflect proportional reduction of

~~expenses of administration for insolvent estate under Cal. Rules of Court, rule 7.552(e):~~ ~~($ ______________)~~

~~Corrected Filing Fee:~~ ~~$ ______________~~

~~6. Difference between estimated and corrected filing fee:~~

~~Estimated filing fee from 3 above:~~ ~~$~~

~~Corrected filing fee from 5 above:~~ ~~($ ______________)~~

~~Difference:~~ ~~$ (or $) __________~~

~~7. Filing fee reimbursements under rule 7.151:~~

| ~~**Payee(s)**~~ | ~~**Date Paid**~~ | ~~**Amount**~~ |
|---|---|---|
| ~~[Name, address, and telephone number of each payee and attorney of record in the proceeding]~~ | ~~[10/25/09]~~ | ~~$~~ |

## ~~Rule 7.553. Graduated filing fee statements for decedents' estates commenced on or after January 1, 2008~~

~~This rule applies to decedents' estates commenced on or after January 1, 2008.~~

~~**(a) Separate schedule for graduated fee information**~~

~~The final account or report or petition for final distribution filed in every decedent's estate proceeding commenced on or after January 1, 2008, must include a separate schedule showing the following information:~~

~~(1) The date the first-filed *Petition for Probate* (form DE-111) was filed in the proceeding; and~~

~~(2) The following information from the inventories filed in the proceeding:~~

~~(A) The date each partial, supplemental, final, or corrected *Inventory and Appraisal* (form DE-160/GC-040) was filed;~~

~~(B) The total appraised value of the assets of the estate shown in each filed partial, supplemental, or final *Inventory and Appraisal;*~~

~~(C) Changes in the appraised value of the assets of the estate shown in each filed corrected *Inventory and Appraisal;* and~~

~~(D) The combined total appraised value of the estate shown in all filed partial, supplemental, final, and corrected inventories.~~

**~~(b) Adjustment in corrected filing fee in insolvent estates~~**

~~If the property of the estate is insufficient to pay expenses of administration in full, the court may approve a determination of the corrected filing fee under this rule that reflects the proportionate reduction of those expenses under Probate Code section 11420. The corrected filing fee may not be reduced below the minimum fee required by Government Code section 70650 on the date the estate was commenced.~~

**~~(c) Sample schedule of filing fee information~~**

~~The schedule of graduated fee information required under (a) may be substantially as follows:~~

~~SCHEDULE __~~

~~Graduated Filing Fee Information~~

~~1. The first-filed *Petition for Probate* in this proceeding was filed on [Date] by [name of each petitioner].~~

~~2. The following inventories have been filed in this proceeding:~~

| **~~Type~~** | **~~Date Filed~~** | **~~Appraised Value~~** |
|---|---|---|
| ~~[Partial no. __]~~ | ~~[09/30/09]~~ | ~~$~~ |
| ~~[Partial no. __]~~ | | ~~$~~ |
| ~~Final~~ | | ~~$~~ |
| ~~[Supplemental]~~ | | ~~$~~ |
| ~~[Correcting]~~ | | ~~$ (or $)__________~~ |
| ~~Total appraised value of estate:~~ | | ~~$_______________~~ |

~~3. Graduated Filing Fee:~~

~~Total appraised value of estate:~~ ~~$~~

~~Filing fee as of the date in 1 above, based on total appraised value of estate:~~ ~~$~~

~~Adjustment to reflect proportional reduction of expenses of administration for insolvent estate under Cal. Rules of Court, rule 7.553(b):~~ ~~($ _______________)~~

~~Corrected Filing Fee:~~ ~~$~~ _______________

**Rule 8.108. Extending the time to appeal**

**(a)–(c)** * * *

**(d) Motion for judgment notwithstanding the verdict**

(1) * * *

(2) Unless extended by (~~e~~g)(2), the time to appeal from an order denying a motion for judgment notwithstanding the verdict is governed by rule 8.104.

**(e)–(h)** * * *

~~**Rule 10.107. Trial Court Budget Working Group**~~

~~The Administrative Director of the Courts must appoint annually a Trial Court Budget Working Group to advise the director on trial court budget issues. The working group must include trial court judicial officers and trial court executive officers reflecting the diversity of state trial courts, including location, size, and adequacy of funding. The working group may also include others selected by the Administrative Director of the Courts.~~

**Rule 10.952. Meetings concerning the criminal court system**

The supervising judge or, if none, the presiding judge must designate judges of the court to attend regular meetings to be held with the district attorney; public defender; representatives of the local bar, probation department, parole office, sheriff department, police departments, and Forensic Conditional Release Program (CONREP); county mental health director or his or her designee; county ~~director of the California Department of Alcohol and Drug Programs~~ alcohol and drug programs director or his or her designee; court personnel; and other interested persons to identify and eliminate problems in the criminal court system and to discuss other problems of mutual concern.

**Rule 10.960. Court self-help centers**

**(a)–(d)** * * *

**(e) Guidelines and procedures**

The ~~Administrative Office of the Courts~~ Advisory Committee on Providing Access and Fairness must recommend to the council updates to the *Guidelines for the Operation of Self-Help Centers in California Trial Courts* as needed. It should, in collaboration with judges, court executives, attorneys, and other parties with demonstrated interest in services to self-represented litigants, ~~must~~ develop and disseminate guidelines, ~~and~~ procedures and best practices for the operation of court self-help centers ~~to the trial courts by March 1, 2008~~. The guidelines and procedures must address the following topics:

(1)–(10) * * *

~~The Advisory Committee on Providing Access and Fairness in the Courts must recommend to the council updated guidelines and procedures for court self-help centers, as needed.~~

**(f)** * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, address, and State Bar number)*:
After recording, return to:

TEL NO.: FAX NO. (optional):
E-MAIL ADDRESS *(Optional)*:
☐ ATTORNEY FOR ☐ JUDGMENT CREDITOR ☐ ASSIGNEE OF RECORD

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

*FOR RECORDER'S USE ONLY*

CASE NAME:

CASE NUMBER:

**ABSTRACT OF JUDGMENT—RESTITUTION** ☐ Amended

***FOR COURT USE ONLY***

1. The ☐ judgment creditor ☐ assignee of record ☐ other *(specify)*:

applies for an abstract of judgment and represents the following:

a. Judgment debtor's

Name and last known address

b. ☐ Driver's license no. [last 4 digits] and state: ☐ Unknown
c. ☐ Social security no. [last 4 digits]: ☐ Unknown
d. ☐ Date of birth: ☐ Unknown

Date:

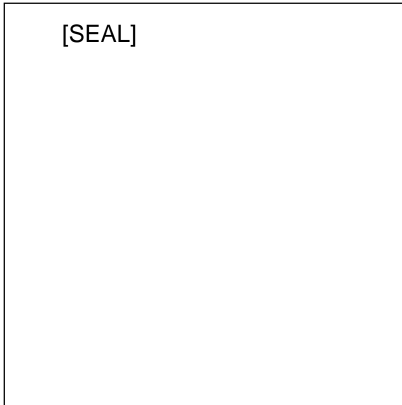
(TYPE OR PRINT NAME)

(SIGNATURE OF APPLICANT OR ATTORNEY)

☐ ON INFORMATION AND BELIEF

| CASE NAME: | CASE NUMBER: |
|---|---|
| | |

**CERTIFICATION**


[SEAL]

2. I certify that the following is a true and correct judgment entered in this action.

3. Judgment creditor *(name):*
   ☐ whose address or whose attorney's address appears on this form above the court's name.

4. Judgment debtor *(full name as it appears in judgment):*

5. Judgment entered on *(date):*

6. Total amount of judgment as entered or last renewed: $

7. ☐ A stay of enforcement was ordered on: and is effective until:
   ☐ A stay of enforcement was not ordered.

This abstract of judgment was issued on *(date):*

Clerk, by , Deputy

| ATTORNEY *(Name, State Bar number, and address):* STATE BAR NO: | |
|---|---|
| NAME: | |
| FIRM NAME: | |
| STREET ADDRESS: | |
| CITY: STATE: ZIP CODE: | |
| TELEPHONE NO.: FAX NO. : | |
| E-MAIL ADDRESS: | |
| ATTORNEY FOR (*Name*): | |
| **SUPERIOR COURT OF CALIFORNIA, COUNTY OF** | |
| STREET ADDRESS: | |
| MAILING ADDRESS: | |
| CITY AND ZIP CODE: | |
| BRANCH NAME: | |
| Plaintiff: | |
| Defendant: | |
| **Application for Mandatory Evaluation Conference Under Civil Code section 55.545** | CASE NUMBER: |

*(Information about this application and the filing instructions may be obtained at www.courts.ca.gov/selfhelp)*

1. ☐ Plaintiff ☐ Defendant (name): requests a Mandatory Evaluation Conference under Civil Code section 55.545.

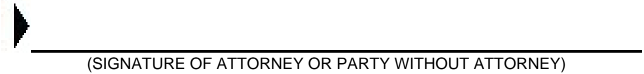
2. The complaint in this case alleges a construction-related accessibility claim.

3. The applicant is ineligible for, or is choosing not to seek, a stay under Civil Code section 55.54. *(To seek such a stay, defendant must use form DAL-005.)*

4. The applicant is requesting the court to:
   a. Schedule a Mandatory Evaluation Conference under Civil Code section 55.545(c);
   b. Order plaintiff to file with the court and serve on defendants the statement required by Civil Code section 55.545(c)(2) at least 30 days before the date of the Mandatory Evaluation Conference; and
   c. Order defendant to file with the court and serve on plaintiff the statement required by Civil Code section 55.545(c)(3) at least 30 days before the date of the Mandatory Evaluation Conference.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)



Form Adopted for Mandatory Use
Judicial Council of California
DAL-015 [Rev. January 1, 2015]

**APPLICATION FOR MANDATORY EVALUATION CONFERENCE**
**(Disability Access Litigation)**

Civil Code, § 55.545
*www.courts.ca.gov*

ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, address, and State Bar number):*
After recording, return to:

TEL NO.: FAX NO. (optional):
E-MAIL ADDRESS *(optional):*
ATTORNEY FOR (name):

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

*FOR RECORDER'S USE ONLY*

ESTATE OF *(Name):*

DECEDENT

CASE NUMBER:

☐ **SPOUSAL** ☐ **DOMESTIC PARTNER** **PROPERTY ORDER**

***FOR COURT USE ONLY***

1. Date of hearing: Time:
   Dept.: Room:

**THE COURT FINDS**

2. All notices required by law have been given.
3. Decedent died on *(date):*
   a. ☐ a resident of the California county named above.
   b. ☐ a nonresident of California and left an estate in the county named above.
   c. ☐ intestate. ☐ testate.
4. Decedent's ☐ surviving spouse ☐ surviving registered domestic partner
   is *(name):*

**THE COURT FURTHER FINDS AND ORDERS**

5. a. ☐ The property described in Attachment 5a is property passing to the surviving spouse or surviving registered domestic partner named in item 4, and no administration of it is necessary.
   b. ☐ See Attachment 5b for further order(s) respecting transfer of the property to the surviving spouse or surviving registered domestic partner named in item 4.
6. ☐ To protect the interests of the creditors of (business name): ,
   an unincorporated trade or business, a list of all its known creditors and the amount owed each is on file.
   a. ☐ Within *(specify):* days from this date, the surviving spouse or surviving registered domestic partner named in item 4 shall file an undertaking in the amount of $
   b. ☐ See Attachment 6b for further order(s) protecting the interests of creditors of the business.
7. a. ☐ The property described in Attachment 7a is property that belonged to the surviving spouse or surviving registered domestic partner under Family Code section 297.5 and Probate Code sections 100 and 101, and the surviving spouse's or surviving domestic partner's ownership upon decedent's death is confirmed.
   b. ☐ See Attachment 7b for further order(s) respecting transfer of the property to the surviving spouse or surviving domestic partner.
8. ☐ All property described in the *Spousal or Domestic Partner Property Petition* that is not determined to be property passing to the surviving spouse or surviving registered domestic partner under Probate Code section 13500, or confirmed as belonging to the surviving spouse or surviving registered domestic partner under Probate Code sections 100 and 101, shall be subject to administration in the estate of decedent. ☐ All of such property is described in Attachment 8.
9. ☐ Other *(specify):*

   ☐ Continued in Attachment 9.
10. Number of pages attached:

Date:

JUDICIAL OFFICER
☐ SIGNATURE FOLLOWS LAST ATTACHMENT



Form Adopted for Mandatory Use
Judicial Council of California
DE-226 [Rev. January 1, 2015]

**SPOUSAL OR DOMESTIC PARTNER PROPERTY ORDER**
**(Probate—Decedents Estates)**

Family Code, § 297.5;
Probate Code, § 13656
*www.courts.ca.gov*

ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, address, and State Bar number):*
After recording return to:

TEL NO.: FAX NO. *(optional):*
E-MAIL ADDRESS *(optional):*
ATTORNEY FOR *(name):*

NAME OF COURT:
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

*FOR RECORDER'S USE ONLY*

☐ ESTATE OF
☐ CONSERVATORSHIP OF *(name):*
☐ GUARDIANSHIP OF

☐ DECEDENT ☐ CONSERVATEE ☐ MINOR

**ORDER CONFIRMING SALE OF REAL PROPERTY**
**☐ and Confirming Sale of Other Property as a Unit**

CASE NUMBER:

***FOR COURT USE ONLY***

1. Hearing date: Time: Dept.: Rm.:

**THE COURT FINDS**

2. All notices required by law were given and, if required, proof of notice of sale was made.
3. a. ☐ Sale was authorized or directed by the will
   b. ☐ Good reason existed for the sale
   of the property commonly described as *(street address or location):*
4. The sale was legally made and fairly conducted.
5. The confirmed sale price is not disproportionate to the value of the property.
6. ☐ Private sale: The amount bid is 90% or more of the appraised value of the property as appraised within one year of the date of the hearing.
7. An offer exceeding the amount bid by the statutory percentages ☐ cannot be obtained ☐ was obtained in open court. The offer complies with all applicable law.
8. The ☐ personal representative ☐ conservator ☐ guardian of the estate of the decedent, conservatee, or minor has made reasonable efforts to obtain the highest and best price reasonably attainable for the property.

**THE COURT ORDERS**

9. The sale of the real property legally described ☐ in item 15 on page 2 ☐ on Attachment 9
   ☐ and other property sold as a unit described ☐ in item 15 on page 2 ☐ on Attachment 9 is confirmed to *(name):*

   *(manner of vesting title):*
   for the sale price of: $ on the following terms *(use item 15 on page 2 or Attachment 9 if necessary):*

   ☐ Continued in item 15 on page 2. ☐ Continued on Attachment 9.
10. The ☐ personal representative ☐ conservator ☐ guardian of the estate of the decedent, conservatee, or minor
    *(name):*
    is directed to execute and deliver a conveyance of the estate's interest in the real property described in item 9
    ☐ and other property described in item 9 sold as a unit upon receipt of the consideration for the sale.

| ☐ ESTATE OF ☐ CONSERVATORSHIP OF ☐ GUARDIANSHIP OF (*name*): | CASE NUMBER: |
|---|---|

11. a. ☐ No additional bond is required.
    b. ☐ Additional bond is required in the amount of: $ , surety, or otherwise, as provided by law.
    c. ☐ Net sale proceeds must be deposited by escrow holder in a blocked account to be withdrawn only on court order. Receipts must be filed. *(Specify institution and location):*

12. a. ☐ No commission is payable.
    b. ☐ A commission from the proceeds of the sale is approved in the amount of: $ to be paid as follows *(specify):*

13. Other *(specify, use Attachment 13 if necessary):*

14. Number of pages attached:

Date:

JUDICIAL OFFICER

☐ Signature follows last attachment.

15. ☐ (Check all that apply): ☐ Legal description of the ☐ real property ☐ personal property in item 9:
    ☐ Additional terms of sale from item 9:

[SEAL]

## CLERK'S CERTIFICATE

I certify that the foregoing *Order Confirming Sale of Real Property,* including any attached description of real or personal property, is a true and correct copy of the original on file in my office.

Date: CLERK, by ______________________, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, address, and State Bar number):*
After recording return to:

TEL NO.: FAX NO. *(optional):*
E-MAIL ADDRESS *(optional):*
ATTORNEY FOR *(name):*

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

*FOR RECORDER'S USE ONLY*

MATTER OF *(name):*

DECEDENT

CASE NUMBER:

*FOR COURT USE ONLY*

## AFFIDAVIT RE REAL PROPERTY OF SMALL VALUE
**($50,000 or Less)**

1. Decedent *(name):*
   died on *(date):*
2. Decedent died at *(city, state):*
3. At least **six months** have elapsed since the date of death of decedent as shown in the certified copy of decedent's death certificate attached to this affidavit. *(Attach a certified copy of decedent's death certificate.)*
4. a. ☐ Decedent was domiciled in this county at the time of death.
   b. ☐ Decedent was **not** domiciled in California at the time of death. Decedent died owning real property in this county.
5. a. The **legal description** and the Assessor's Parcel Number (APN) of decedent's real property claimed by the declarant(s) are provided on an attached page labeled Attachment 5a, "Legal Description." *(Copy legal description* ***exactly*** *from deed or other legal instrument.)*
   b. Decedent's interest in this real property is as follows *(specify):*
6. Each declarant is a successor of decedent (as defined in Probate Code section 13006) and a successor to decedent's interest in the real property described in item 5a, or signs this declaration on behalf of an entity that is a successor of decedent and to decedent's interest in the real property, and no other person or entity has a superior right, because each declarant or entity is:
   a. ☐ (*will*) a beneficiary that succeeded to the property under decedent's will. *(Attach a copy of the will.)*
   b. ☐ (*no will*) a person who succeeded to the property under Probate Code sections 6401 and 6402.
7. Names and addresses of each guardian or conservator of decedent's estate at date of death: ☐ none ☐ are as follows:*

   Names | Addresses

   *(*You must mail [or serve, per Prob. Code, § 1216] a copy of this affidavit and all attachments to each guardian or conservator listed above. You may use Judicial Council form POS-030 for a proof of mailing or form POS-020 for a proof of personal service.)*
8. The **gross value** of decedent's interest in all real property located in California as shown by the attached *Inventory and Appraisal*—excluding the real property described in Probate Code section 13050 (property held in joint tenancy or as a life estate or other interest terminable upon decedent's death, property passing to decedent's spouse, property in a trust revocable by the decedent, etc.)—did not exceed $50,000 as of the date of decedent's death.

| MATTER OF *(Name):* DECEDENT | CASE NUMBER: |
|---|---|

9. An *Inventory and Appraisal* of all of decedent's interests in **real property** in California is attached. The appraisal was made by a probate referee appointed for the county in which the property is located. *(You must prepare the Inventory on Judicial Council forms DE-160 and DE-161. You may select any probate referee appointed for the county for the appraisal. The California State Controller's Office has a list of all probate referees, shown by county on its website, and each court has a list of probate referees appointed for its county. Check with the probate referee you select or consult an attorney for help in preparing the Inventory.)*
10. No proceeding is now being or has been conducted in California for administration of decedent's estate.
11. Funeral expenses, expenses of last illness, and all known unsecured debts of the decedent have been paid. *(NOTE: You may be personally liable for decedent's unsecured debts up to the fair market value of the real property and any income you receive from it.)*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)* ▶ (SIGNATURE OF DECLARANT)

Date:

(TYPE OR PRINT NAME)* ▶ (SIGNATURE OF DECLARANT)

Date:

(TYPE OR PRINT NAME)* ▶ (SIGNATURE OF DECLARANT)

☐ SIGNATURE OF ADDITIONAL DECLARANTS ATTACHED

* **A declarant claiming on behalf of a trust or other entity should also state the name of the entity that is a beneficiary under the decedent's will, and declarant's capacity to sign on behalf of the entity (e.g., trustee, Chief Executive Officer, etc.).**

**NOTARY ACKNOWLEDGMENT** *(NOTE: No notary acknowledgment may be affixed as a rider (small strip) to this page. If additional notary acknowledgments are required, they must be attached as 8-1/2-by-11-inch pages.)*

STATE OF CALIFORNIA, COUNTY OF *(specify):*

On *(date):* , before me *(name and title):*

personally appeared *(name(s)):*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the instrument in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(SIGNATURE OF NOTARY PUBLIC)

(NOTARY SEAL)

(SEAL)

## CLERK'S CERTIFICATE

I certify that the foregoing, including any attached notary acknowledgments and any attached legal description of the property (but excluding other attachments), is a true and correct copy of the original affidavit on file in my office. *(Certified copies of this affidavit do not include the (1) death certificate, (2) will, or (3) inventory and appraisal. See Probate Code section 13202.)*

Date: Clerk, by ____________________, Deputy

**DE-315**

ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, address, and State Bar number):*
After recording, return to:

TEL NO.: FAX NO. *(optional):*
E-MAIL ADDRESS *(optional):*
ATTORNEY FOR *(name):*

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

*FOR RECORDER'S USE ONLY*

MATTER OF *(name):*

DECEDENT

CASE NUMBER:

**ORDER DETERMINING SUCCESSION TO REAL PROPERTY**
☐ **And Personal Property**
**(Estates of $150,000 or Less)**

***FOR COURT USE ONLY***

1. Date of hearing: Time:
   Dept./Room:
   Judicial Officer *(name):*

**THE COURT FINDS**

2. All notices required by law have been given.
3. Decedent died on *(date):*
   a. ☐ a resident of the California county named above.
   b. ☐ a nonresident of California and owned property in the county named above.
   c. ☐ intestate. ☐ testate.
4. At least 40 days have elapsed since the date of decedent's death.
5. a. ☐ No proceeding for the administration of decedent's estate is being conducted or has been conducted in California.
   b. ☐ Decedent's personal representative has filed a consent to use the procedure provided in Probate Code section 13150 et seq.
6. The gross value of decedent's real and personal property in California, excluding property described in Probate Code section 13050, did not exceed $150,000 as of the date of decedent's death.
7. Each petitioner is a successor of decedent (as defined in Probate Code section 13006) and a successor to decedent's interest in the real ☐ and personal property described in item 9a because each petitioner is:
   a. ☐ **(will)** a beneficiary who succeeded to the property under decedent's will.
   b. ☐ **(no will)** a person who succeeded to the property under Probate Code sections 6401 and 6402.

**THE COURT FURTHER FINDS AND ORDERS**

8. No administration of decedent's estate is necessary in California.
9. a. The real ☐ and personal property ☐ described in Attachment 9a ☐ described as follows is property of decedent passing to each petitioner *(give **legal description** of real property).*

   b. Each petitioner's **name** and specific property interest ☐ is stated in Attachment 9b. ☐ is as follows *(specify):*

10. ☐ Other orders are stated in Attachment 10.
11. Number of pages attached:

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT



Form Adopted for Mandatory Use
Judicial Council of California
DE-315 [Rev. January 1, 2015]

**ORDER DETERMINING SUCCESSION TO REAL PROPERTY**
**(Estates of $150,000 or Less)**
**(Probate—Decedents' Estates)**

Probate Code, § 13154
*www.courts.ca.gov*

# NOTICE OF RIGHTS AND RESPONSIBILITIES
## Health-Care Costs and Reimbursement Procedures

## IF YOU HAVE A CHILD SUPPORT ORDER THAT INCLUDES A PROVISION FOR THE REIMBURSEMENT OF A PORTION OF THE CHILD'S OR CHILDREN'S HEALTH-CARE COSTS AND THOSE COSTS ARE NOT PAID BY INSURANCE, THE LAW SAYS:

1. **Notice.** You must give the other parent an itemized statement of the charges that have been billed for any health-care costs not paid by insurance. You must give this statement to the other parent within a reasonable time, but no more than 30 days after those costs were given to you.

2. **Proof of full payment.** If you have already paid all of the uninsured costs, you must (1) give the other parent proof that you paid them and (2) ask for reimbursement for the other parent's court-ordered share of those costs.

3. **Proof of partial payment.** If you have paid only your share of the uninsured costs, you must (1) give the other parent proof that you paid your share, (2) ask that the other parent pay his or her share of the costs directly to the health-care provider, and (3) give the other parent the information necessary for that parent to be able to pay the bill.

4. **Payment by notified parent.** If you receive notice from a parent that an uninsured health-care cost has been incurred, you must pay your share of that cost within the time the court orders; or if the court has not specified a period of time, you must make payment (1) within 30 days from the time you were given notice of the amount due, (2) according to any payment schedule set by the health-care provider, (3) according to a schedule agreed to in writing by you and the other parent, or (4) according to a schedule adopted by the court.

5. **Disputed charges.** If you dispute a charge, you may file a motion in court to resolve the dispute, but only if you pay that charge before filing your motion. If you claim that the other party has failed to reimburse you for a payment, or the other party has failed to make a payment to the provider after proper notice has been given, you may file a motion in court to resolve the dispute. The court will presume that if uninsured costs have been paid, those costs were reasonable. The court may award attorney fees and costs against a party who has been unreasonable.

6. **Court-ordered insurance coverage.** If a parent provides health-care insurance as ordered by the court, that insurance must be used at all times to the extent that it is available for health-care costs.

   a. **Burden to prove.** The party claiming that the coverage is inadequate to meet the child's needs has the burden of proving that to the court.

   b. **Cost of additional coverage.** If a parent purchases health-care insurance in addition to that ordered by the court, that parent must pay all the costs of the additional coverage. In addition, if a parent uses alternative coverage that costs more than the coverage provided by court order, that parent must pay the difference.

7. **Preferred health providers.** If the court-ordered coverage designates a preferred health-care provider, that provider must be used at all times consistent with the terms of the health insurance policy. When any party uses a health-care provider other than the preferred provider, any health-care costs that would have been paid by the preferred health provider if that provider had been used must be the sole responsibility of the party incurring those costs.

# INFORMATION SHEET ON CHANGING A CHILD SUPPORT ORDER

**General Information**

The court has just made a child support order in your case. This order will remain the same unless a party to the action requests that the support be changed (modified). An order for child support can be modified only by filing a motion to change child support and serving each party involved in your case. If both parents and the local child support agency (if it is involved) agree on a new child support amount, you can complete, have all parties sign, and file with the court a *Stipulation to Establish or Modify Child Support and Order* (form FL-350) or *Stipulation and Order (Governmental)* (form FL-625).

**When a Child Support Order May Be Modified**

The court takes several things into account when ordering the payment of child support. First, the number of children is considered. Next, the net incomes of both parents are determined, along with the percentage of time each parent has physical custody of the children. The court considers both parties' tax filing status and may consider hardships, such as a child of another relationship. An existing order for child support may be modified when the net income of one of the parents changes significantly, the parenting schedule changes significantly, or a new child is born.

**Examples**

- You have been ordered to pay $500 per month in child support. You lose your job. You will continue to owe $500 per month, plus 10 percent interest on any unpaid support, unless you file a motion to modify your child support to a lower amount and the court orders a reduction.
- You are currently receiving $300 per month in child support from the other parent, whose net income has just increased substantially. You will continue to receive $300 per month unless you file a motion to modify your child support to a higher amount and the court orders an increase.
- You are paying child support based upon having physical custody of your children 30 percent of the time. After several months it turns out that you actually have physical custody of the children 50 percent of the time. You may file a motion to modify child support to a lower amount.

**How to Change a Child Support Order**

To change a child support order, you must file papers with the court. *Remember:* You must follow the order you have now.

**What forms do I need?**

If you are asking to change a child support order open with the local child support agency, you must fill out one of these forms:

- FL-680, *Notice of Motion (Governmental)* ***or*** FL-683 *Order to Show Cause (Governmental)* ***and***
- FL-684, *Request for Order and Supporting Declaration (Governmental)*

If you are asking to change a child support order that is **not** open with the local child support agency, you must fill out one of these forms:

- FL-300, *Request for Order* ***or***
- FL-390, *Notice of Motion and Motion for Simplified Modification of Order for Child, Spousal, or Family Support*

You must also fill out one of these forms:

- FL-150, *Income and Expense Declaration* ***or*** FL-155, *Financial Statement (Simplified)*

**What if I am not sure which forms to fill out?**

Talk to the family law facilitator at your court.

**After you fill out the forms,** file them with the court clerk and ask for a hearing date. Write the hearing date on the form.

The clerk will ask you to pay a filing fee. If you cannot afford the fee, fill out these forms, too:

- Form FW-001, *Request to Waive Court Fees*
- Form FW-003, *Order on Court Fee Waiver (Superior Court)*

**You must serve the other parent.** If the local child support agency is involved, serve it too.

This means someone 18 or over—**not you—**must serve the other parent copies of your filed court forms at least **16 court days** before the hearing. Add **5 calendar days** if you serve by mail within California (see Code of Civil Procedure section 1005 for other situations). **Court days** are weekdays when the court is open for business (Monday through Friday except court holidays). **Calendar days** include all days of the month, including weekends and holidays. To find court holidays, go to *www.courts.ca.gov/holidays.htm.*

The server must also serve blank copies of these forms:

- FL-320, *Responsive Declaration to Request for Order* ***and*** FL-150, *Income and Expense Declaration,* ***or***
- FL-155, *Financial Statement (Simplified)*

Then the server fills out and signs a *Proof of Service* (form FL-330 or FL-335). Take this form to the clerk and file it.

**Go to your hearing and ask the judge to change the support.** Bring your tax returns from the last two years and your last two months' pay stubs. The judge will look at your information, listen to both parents, and make an order. After the hearing, fill out:

- FL-340, *Findings and Order After Hearing* ***and***
- FL-342, *Child Support Information and Order Attachment*

**Need help?**

Contact the family law facilitator in your county or call your county's bar association and ask for an experienced family lawyer.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, State Bar number, and address):*

TELEPHONE NO.: FAX NO. *(optional):*
E-MAIL ADDRESS *(optional):*
ATTORNEY FOR *(name):*

FOR COURT USE ONLY

DRAFT not approved by Judicial Council

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

PETITIONER/PLAINTIFF:
RESPONDENT/DEFENDANT:
OTHER PARTY/PARENT:

**ORDER TO SHOW CAUSE AND AFFIDAVIT FOR CONTEMPT**

CASE NUMBER:

**NOTICE!**

**A contempt proceeding is criminal in nature. If the court finds you in contempt, the possible penalties include jail sentence, community service, and fine.**

**You are entitled to the services of an attorney, who should be consulted promptly in order to assist you. If you cannot afford an attorney, the court may appoint an attorney to represent you.**

**¡AVISO!**

**Un proceso judicial por desacato es de índole criminal. Si la corte le declara a usted en desacato, las sanciones posibles incluyen penas de prisión y de servicio a la comunidad, y multas.**

**Usted tiene derecho a los servicios de un abogado, a quien debe consultar sin demora para obtener ayuda. Si no puede pagar a un abogado, la corte podrá nombrar a un abogado para que le represente.**

1. TO CITEE *(name of person you allege has violated the orders):*

2. YOU ARE ORDERED TO APPEAR IN THIS COURT AS FOLLOWS, TO GIVE ANY LEGAL REASON WHY THIS COURT SHOULD NOT FIND YOU GUILTY OF CONTEMPT, PUNISH YOU FOR WILLFULLY DISOBEYING ITS ORDERS AS SET FORTH IN THE AFFIDAVIT BELOW AND ANY ATTACHED *AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT;* AND REQUIRE YOU TO PAY, FOR THE BENEFIT OF THE MOVING PARTY, THE ATTORNEY FEES AND COSTS OF THIS PROCEEDING.

a. Date: Time: Dept.: Rm.:

b. Address of court: ☐ same as noted above ☐ other *(specify):*

Date:

JUDICIAL OFFICER

**AFFIDAVIT SUPPORTING ORDER TO SHOW CAUSE FOR CONTEMPT**

3. ☐ An *Affidavit of Facts Constituting Contempt* (form FL-411 or FL-412) is attached.
4. Citee has willfully disobeyed certain orders of this court as set forth in this affidavit and any attached affidavits.
5. a. Citee had knowledge of the order in that
   (1) ☐ citee was present in court at the time the order was made.
   (2) ☐ citee was served with a copy of the order.
   (3) ☐ citee signed a stipulation upon which the order was based.
   (4) ☐ other *(specify):*

   ☐ Continued on Attachment 5a(4).

   b. Citee was able to comply with each order when it was disobeyed.
6. Based on the instances of disobedience described in this affidavit
   a. ☐ I have not previously filed a request with the court that the citee be held in contempt.
   b. ☐ I have previously filed a request with the court that the citee be held in contempt *(specify date filed and results):*

   ☐ Continued on Attachment 6b.

| PETITIONER/PLAINTIFF:<br>RESPONDENT/DEFENDANT:<br>OTHER PARTY/PARENT: | CASE NUMBER: |
|---|---|

7. ☐ Citee has previously been found in contempt of a court order *(specify case, court, date):*

☐ Continued on Attachment 7.

8. ☐ Each order disobeyed and each instance of disobedience is described as follows:
   a. ☐ Orders for child support, spousal support, family support, attorney fees, and court or other litigation costs (see attached *Affidavit of Facts Constituting Contempt* (form FL-411))
   b. ☐ Domestic violence restraining orders and child custody and visitation orders (see attached *Affidavit of Facts Constituting Contempt* (form FL-412))
   c. ☐ Injunctive or other order *(specify which order was violated, how the order was violated, and when the order was violated):*

   ☐ Continued on Attachment 8c.
   d. ☐ Other material facts, including facts indicating that the violation of the orders was without justification or excuse *(specify):*

   ☐ Continued on Attachment 8d.
   e. ☐ I am requesting that attorney fees and costs be awarded to me for the costs of pursuing this contempt action. (A copy of my *Income and Expense Declaration* (form FL-150) is attached.)

**WARNING: IF YOU PURSUE THIS CONTEMPT ACTION, IT MAY AFFECT THE ABILITY OF THE DISTRICT ATTORNEY TO PROSECUTE THE CITEE CRIMINALLY FOR THE SAME VIOLATIONS.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) (SIGNATURE)

# INFORMATION SHEET FOR ORDER TO SHOW CAUSE AND AFFIDAVIT FOR CONTEMPT

**(Do NOT deliver this Information Sheet to the court clerk.)**

Please follow these instructions to complete the *Order to Show Cause and Affidavit for Contempt* (form FL-410) if you do not have an attorney to represent you. Your attorney, if you have one, should complete this form, as well as the *Affidavit of Facts Constituting Contempt* (form FL-411 or form FL-412). You may wish to consult an attorney for assistance. Contempt actions are very difficult to prove. An attorney may be appointed for the citee.

**INSTRUCTIONS FOR COMPLETING THE ORDER TO SHOW CAUSE AND AFFIDAVIT FOR CONTEMPT (TYPE OR PRINT FORM IN INK):**

If the top section of the form has already been filled out, skip down to number 1 below. If the top section of the form is blank, you must provide this information.

Front page, first box, top of form, left side: Print your name, address, telephone number, and fax number, if any, in this box. If you have a restraining order and wish to keep your address confidential, you may use any address where you can receive mail. **You can be legally served court papers at this address.**

Front page, second box, left side: Print the name of the county where the court is located and insert the address and any branch name of the court building where you are seeking to obtain a contempt order. You may get this information from the court clerk. This should be the same court in which the original order was issued.

Front page, third box, left side: Print the names of the Petitioner, Respondent, and Other Party/Parent (if any) in this box. Use the same names as appear on the most recent court order disobeyed.

Front page, first box, top of form, right side: Leave this box blank for the court's use.

Front page, second box, right side: Print the court case number in this box. This number is also shown on the most recent court order disobeyed.

Item 1: Insert the name of the party who disobeyed the order ("the citee").

Item 2: The court clerk will provide the hearing date and location.

Item 3: Either check the box in item 3 and attach an *Affidavit of Facts Constituting Contempt* (form FL-411 for financial orders or form FL-412 for domestic violence, or custody and visitation orders), or leave the box in item 3 blank but check and complete item 8.

Item 5: Check the box that describes how the citee knew about the order that has been disobeyed.

Item 6: a. Check this box if you have not previously applied for a contempt order.

b. Check this box if you have previously applied for a contempt order and briefly explain when you requested the order and results of your request. If you need more space, check the box that says "continued on Attachment 6b" and attach a separate sheet to this order to show cause.

Item 7: Check this box if the citee has previously been found in contempt by a court of law. Briefly explain when the citee was found in contempt and for what. If there is not enough space to write all the facts, check the box that says "continued on Attachment 7" and attach a separate sheet to this order to show cause.

Item 8: a. Check this box if the citee has disobeyed orders for child support, custody, visitation, spousal support, family support, attorney fees, and court or litigation costs. Refer to item 1a on *Affidavit of Facts Constituting Contempt* (form FL-411).

b. Check this box if the citee has disobeyed domestic violence orders or child custody and visitation orders. Refer to *Affidavit of Facts Constituting Contempt* (form FL-412).

**Information Sheet *(continued)***

Item 8: c. If you are completing this item, use facts personally known to you or known to the best of your knowledge. State the facts in detail. if there is not enough space to write all the facts, check the box that says "continued on Attachment 8c" and attach a separate sheet to this order to show cause, including facts indicating that the violation of the orders was without justification or excuse.

d. Use this item to write other facts that are important to this order. If you are completing this item, insert facts personally known to you, or known to the best of your knowledge. State facts in detail. If there is not enough space to write all the facts, check the box that says "Continued on Attachment 8d" and attach a separate sheet to the order to show cause.

e. If you request attorney fees and/or costs for pursuing this contempt action, check this box. Attach a copy of your *Income and Expense Declaration* (form FL-150).

Type or print and sign your name at the bottom of page 2.

If you checked the boxes in item 3 and item 8a or 8b, complete the appropriate *Affidavit of Facts Constituting Contempt* (form FL-411), following the instructions for the affidavit above.

Make at least three copies of the *Order to Show Cause and Affidavit for Contempt* (form FL-410) and any supporting *Affidavit of Facts Constituting Contempt* (form FL-411 or FL-412) and the *Income and Expense Declaration* (form FL-150) for the court clerk, the citee, and yourself. If the district attorney or local child support agency is involved in your case, you must provide a copy to the district attorney or local child support agency.

Take the completed form(s) to the court clerk's office. The clerk will provide hearing date and location in item 2, obtain the judicial officer's signature, file the originals, and return the copies to you.

Have someone who is at least 18 years of age, who is not a party, serve the order and any attached papers on the disobedient party. For example, a process server or someone you know may serve the papers. **You may not serve the papers yourself. Service must be personal; service by mail is insufficient.** The papers must be served at least 16 court days before the hearing. The person serving papers must complete a *Proof of Personal Service* (form FL-330) and give the original to you. Keep a copy for yourself and file the original *Proof of Personal Service* (form FL-330) with the court.

*If you need assistance with these forms, contact an attorney or the Family Law Facilitator in your county.*

FL-480

ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, address, and State Bar number):*
After recording, return to:

TEL NO.: FAX NO. *(optional):*
E-MAIL ADDRESS *(optional):*
☐ ATTORNEY FOR ☐ JUDGMENT CREDITOR ☐ ASSIGNEE OF RECORD

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

*FOR RECORDER'S USE ONLY*

PETITIONER/PLAINTIFF:
RESPONDENT/DEFENDANT:

CASE NUMBER:

*FOR COURT USE ONLY*

## ABSTRACT OF SUPPORT JUDGMENT

1. The ☐ original judgment creditor ☐ assignee of record applies for an abstract of a support judgment and represents the following:
   a. Judgment debtor's
      name and last known address
   b. Driver's license no. and state: ☐ Unknown
   c. Social security number [last four digits]: ☐ Unknown
   d. Birth date: ☐ Unknown

   Date:

(TYPE OR PRINT NAME) (SIGNATURE OF APPLICANT OR ATTORNEY)

2. I CERTIFY that the judgment entered in this action contains an order for payment of spousal, family, or child support.
3. Judgment creditor *(name):*

   whose address appears on this form above the court's name.
4. ☐ The support is ordered to be paid to the following county officer *(name and address):*
5. Judgment debtor *(full name as it appears in judgment):*
6. a. A judgment was entered on *(date):*
   b. Renewal was entered on *(date):*
   c. Renewal was entered on *(date):*
7. ☐ An execution lien is endorsed on the judgment as follows:
   a. Amount: $
   b. In favor of *(name and address):*

[SEAL]

This abstract issued on *(date):*

8. A stay of enforcement has
   a. ☐ not been ordered by the court.
   b. ☐ been ordered by the court effective until *(date):*
9. ☐ This is an installment judgment.

Clerk, by ______________________________, Deputy



Form Adopted for Mandatory Use
Judicial Council of California
FL-480 [Rev. January 1, 2015]

**ABSTRACT OF SUPPORT JUDGMENT**

Code of Civil Procedure, §§ 488.480, 674, 697.320, 700.190
*www.courts.ca.gov*

ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, address, and State Bar number):*
After recording, return to:

TEL NO.: FAX NO. *(optional):*
E-MAIL ADDRESS *(optional):*
ATTORNEY FOR *(name):*

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

*FOR RECORDER'S USE ONLY*

TEMPORARY ☐ GUARDIANSHIP ☐ CONSERVATORSHIP
OF *(name):*
☐ MINOR ☐ CONSERVATEE

CASE NUMBER:

**LETTERS OF TEMPORARY ☐ GUARDIANSHIP ☐ CONSERVATORSHIP**
**☐ Person ☐ Estate**

***FOR COURT USE ONLY***

## LETTERS

1. *(Name):*
   is appointed temporary ☐ guardian ☐ conservator of the ☐ person
   ☐ estate of *(name):*

2. ☐ Other powers that have been granted or restrictions imposed on the temporary
   ☐ guardian ☐ conservator are ☐ specified in Attachment 2.
   ☐ specified below:

3. These Letters shall expire
   a. ☐ on *(date):* or upon earlier issuance of Letters to a general guardian or conservator.
   b. ☐ on other date *(specify):*

4. ☐ The temporary ☐ guardian ☐ conservator is not authorized to take possession of money or any other property without a specific court order.

5. Number of pages attached:

WITNESS, clerk of the court, with seal of the court affixed.

(SEAL)

Date:

Clerk, by ________________________________________, Deputy



**This form may be recorded as notice of the establishment of a temporary conservatorship of the estate as provided in Probate Code section 1875.**

Form Adopted for Mandatory Use
Judicial Council of California
GC-150 [Rev. January 1, 2015]

**LETTERS OF TEMPORARY GUARDIANSHIP OR CONSERVATORSHIP**
**(Probate—Guardianships and Conservatorships)**

Probate Code, §§ 2250 et seq., 2890–2893;
Code of Civil Procedure, § 2015.6
*www.courts.ca.gov*

| TEMPORARY ☐ GUARDIANSHIP ☐ CONSERVATORSHIP OF *(name)*: ☐ MINOR ☐ CONSERVATEE | CASE NUMBER: |
|---|---|

## NOTICE TO INSTITUTIONS AND FINANCIAL INSTITUTIONS

**(Probate Code sections 2890–2893)**

When these *Letters of Temporary Guardianship* or *Letters of Temporary Conservatorship* (Letters) are delivered to you as an employee or other representative of an *institution* or *financial institution* (described below) in order for the temporary guardian or temporary conservator of the estate (1) to take possession or control of an asset of the minor or conservatee named above held by your institution (including changing title, withdrawing all or any portion of the asset, or transferring all or any portion of the asset) or (2) to open or change the name of an account or a safe-deposit box in your financial institution to reflect the guardianship or conservatorship, you must fill out Judicial Council form GC-050 (for an institution) or form GC-051 (for a financial institution). An officer authorized by your institution or financial institution must date and sign the form, and you must file the completed form with the court.

There is no filing fee for filing the form. You may either arrange for personal delivery of the form or mail it to the court for filing at the address given for the court on page 1 of these Letters.

The temporary guardian or temporary conservator should deliver a blank copy of the appropriate form to you with these Letters, but it is your institution's or financial institution's responsibility to complete the correct form, have an authorized officer sign it, and file the completed form with the court. If the correct form is not delivered with these Letters or is unavailable for any other reason, blank copies of the forms may be obtained from the court. The forms may also be accessed from the judicial branch's public Web site free of charge. The Internet address (URL) is *www.courts.ca.gov/forms/.* Select the form group *Probate—Guardianships and Conservatorships* and scroll down to form GC-050 for an institution or form GC-051 for a financial institution. The forms may be printed out as blank forms and filled in by typewriter, or may be filled out online and printed out ready for signature and filing.

An *institution* under California Probate Code section 2890(c) is an insurance company, insurance broker, insurance agent, investment company, investment bank, securities broker-dealer, investment advisor, financial planner, financial advisor, or any other person who takes, holds, or controls an asset subject to a conservatorship or guardianship other than a financial institution. Institutions must file a *Notice of Taking Possession or Control of an Asset of Minor or Conservatee* (form GC-050) for an asset of the minor or conservatee held by the institution. A single form may be filed for all affected assets held by the institution.

A *financial institution* under California Probate Code section 2892(b) is a bank, trust (including a Totten trust account but excluding other trust arrangements described in Probate Code section 82(b)), savings and loan association, savings bank, industrial bank, or credit union. Financial institutions must file a *Notice of Opening or Changing a Guardianship or Conservatorship Account or Safe-Deposit Box* (form GC-051) for an account or a safe deposit box held by the financial institution. A single form may be filed for all affected accounts or safe deposit boxes held by the financial institution.

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## LETTERS OF TEMPORARY ☐ GUARDIANSHIP ☐ CONSERVATORSHIP

### AFFIRMATION

I solemnly affirm that I will perform according to law the duties of temporary ☐ guardian. ☐ conservator.

Executed on *(date)*: , at *(place)*:

________________________________ ▶ ________________________________

(TYPE OR PRINT NAME) (SIGNATURE OF APPOINTEE)

### CERTIFICATION

I certify that this document, including any attachments, is a correct copy of the original on file in my office and that the Letters issued to the person appointed above have not been revoked, annulled, or set aside and are still in full force and effect.

(SEAL)

Date:

Clerk, by ________________________________________, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, address, and State Bar number)*:
After recording return to:

TEL NO.: FAX NO. *(optional)*:
E-MAIL ADDRESS *(optional)*:
ATTORNEY FOR *(name)*:

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

*FOR RECORDER'S USE ONLY*

CONSERVATORSHIP OF *(name)*:

CONSERVATEE

CASE NUMBER:

*FOR COURT USE ONLY*

**LETTERS OF CONSERVATORSHIP**
☐ **Person** ☐ **Estate** ☐ **Limited Conservatorship**

1. ☐ *(Name)*: is the appointed ☐ conservator ☐ limited conservator of the ☐ person ☐ estate of *(name)*:
2. ☐ *(For conservatorship that was on December 31, 1980, a guardianship of an adult or of the person of a married minor)* *(Name)*:
   was appointed the guardian of the ☐ person ☐ estate by order dated *(specify)*: and is now the conservator of the ☐ person ☐ estate of *(name)*:
3. ☐ Other powers have been granted or conditions imposed as follows:
   a. ☐ Exclusive authority to give consent for and to require the conservatee to receive medical treatment that the conservator in good faith based on medical advice determines to be necessary even if the conservatee objects, subject to the limitations stated in Probate Code section 2356.
      (1) ☐ This treatment shall be performed by an accredited practitioner of the religion whose tenets and practices call for reliance on prayer alone for healing of which the conservatee was an adherent prior to the establishment of the conservatorship.
      (2) ☐ *(If court order limits duration)* This medical authority terminates on *(date)*: .
   b. ☐ Authority to place the conservatee in a care or nursing facility described in Probate Code section 2356.5(b).
   c. ☐ Authority to authorize the administration of medications appropriate for the care and treatment of dementia described in Probate Code section 2356.5(c).
   d. ☐ Powers to be exercised independently under Probate Code section 2590 are specified in Attachment 3d *(specify powers, restrictions, conditions, and limitations).*
   e. ☐ Conditions relating to the care and custody of property under Probate Code section 2402 are specified in Attachment 3e.
   f. ☐ Conditions relating to the care, treatment, education, and welfare of the conservatee under Probate Code section 2358 are specified in Attachment 3f.
   g. ☐ *(For limited conservatorship only)* Powers of the limited conservator of the person under Probate Code section 2351.5 are specified in Attachment 3g.
   h. ☐ *(For limited conservatorship only)* Powers of the limited conservator of the estate under Probate Code section 1830(b) are specified in Attachment 3h.
   i. ☐ Other powers granted or conditions imposed are specified in Attachment 3i.

(SEAL)

4. ☐ The conservator is **not** authorized to take possession of money or any other property without a specific court order.
5. Number of pages attached:

WITNESS, clerk of the court, with seal of the court affixed.
Date:

Clerk, by ______________________________, Deputy



**This form may be recorded as notice of the establishment of a conservatorship of the estate as provided in Probate Code § 1875.**

| CONSERVATORSHIP OF *(name):* CONSERVATEE | CASE NUMBER: |
|---|---|

## NOTICE TO INSTITUTIONS AND FINANCIAL INSTITUTIONS
**(Probate Code sections 2890–2893)**

When these *Letters of Conservatorship* (Letters) are delivered to you as an employee or other representative of an *institution* or *financial institution* (described below) in order for the conservator of the estate (1) to take possession or control of an asset of the conservatee named above held by your institution (including changing title, withdrawing all or any portion of the asset, or transferring all or any portion of the asset) or (2) to open or change the name of an account or a safe-deposit box in your financial institution to reflect the conservatorship, you must fill out Judicial Council form GC-050 (for an institution) or form GC-051 (for a financial institution). An officer authorized by your institution or financial institution must date and sign the form, and you must file the completed form with the court.

There is no filing fee for filing the form. You may either arrange for personal delivery of the form or mail it to the court for filing at the address given for the court on page 1 of these Letters.

The conservator should deliver a blank copy of the appropriate form to you with these Letters, but it is your institution's or financial institution's responsibility to complete the correct form, have an authorized officer sign it, and file the completed form with the court. If the correct form is not delivered with these Letters or is unavailable for any other reason, blank copies of the forms may be obtained from the court. The forms may also be accessed from the judicial branch's public Web site free of charge. The Internet address (URL) is *www.courts.ca.gov/forms/.* Select the form group *Probate—Guardianships and Conservatorships* and scroll down to form GC-050 for an institution or form GC-051 for a financial institution. The forms may be printed out as blank forms and filled in by typewriter or may be filled out online and printed out ready for signature and filing.

An *institution* under California Probate Code section 2890(c) is an insurance company, agent, or broker; an investment company; an investment bank; a securities broker-dealer; an investment advisor; a financial planner; a financial advisor; or any other person who takes, holds, or controls an asset subject to a guardianship other than a financial institution. Institutions must file a *Notice of Taking Possession or Control of an Asset of Minor or Conservatee* (form GC-050) for an asset of the conservatee held by the institution. A single form may be filed for all affected assets held by the institution.

A *financial institution* under California Probate Code section 2892(b) is a bank, a trust, a savings and loan association, a savings bank, an industrial bank, or a credit union. Financial institutions must file a *Notice of Opening or Changing a Guardianship or Conservatorship Account or Safe-Deposit Box* (form GC-051) for an account or a safe-deposit box held by the financial institution. A single form may be filed for all affected accounts or safe-deposit boxes held by the financial institution.

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## LETTERS OF CONSERVATORSHIP

### AFFIRMATION

I solemnly affirm that I will perform according to law the duties of ☐ conservator ☐ limited conservator.

Executed on *(date):* , at *(place):*

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF APPOINTEE)

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### CERTIFICATION

I certify that this document, including any attachments, is a correct copy of the original on file in my office, and that the Letters issued to the person appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.

(SEAL)

Date:

Clerk, by ______________________________ , Deputy

| CHILD'S NAME: | CASE NUMBER: |
|---|---|

## VISITATION ATTACHMENT: SIBLING

1. ☐ Anyone who appears to be under the influence of alcohol or any controlled substance will not be allowed to participate in a scheduled visit with the child. The visitation supervisor may terminate the visit if this order is violated.

2. ☐ Matters relating to the allegations of the petition or issues related to the child's placement are not to be discussed with the child during visits except under the guidance of a counselor in a therapeutic setting. The visitation supervisor may terminate the visit if this order is violated.

3. ☐ The prior order of the court suspending
   a. ☐ in-person contact b. ☐ written communication c. ☐ telephone contact
   (1) ☐ continues to be necessary and remains in full force and effect for the following reasons *(specify)*:

   (2) ☐ is modified as set forth in ☐ item 4. ☐ item 5.

4. ☐ **Contact between the child and the child's sibling *(name):***
   a. ☐ **In-person visitation**
   (1) ☐ Unsupervised
   (2) ☐ Supervised by the
   (a) ☐ county agency (c) ☐ foster family agency
   (b) ☐ other *(specify):*
   (3) Frequency and duration
   (a) ☐ times per week for a total of hours per week
   (b) ☐ times per month for a total of hours per month
   (c) ☐ An overnight visit ☐ every week ☐ every other week
   (d) ☐ Other *(specify):*
   (4) Location
   (a) ☐ Agency visitation facility (c) ☐ Foster family agency facility
   (b) ☐ Other *(specify):*
   (5) Transportation of the child to and from the visits will be provided by the
   (a) ☐ county agency. (c) ☐ foster family agency.
   (b) ☐ other *(specify):*
   (6) Transportation of the child's sibling to and from the visits will be provided by the
   (a) ☐ county agency. (c) ☐ foster family agency.
   (b) ☐ other *(specify):*
   (7) ☐ Other orders concerning in-person visitation *(specify):*

   b. ☐ **Other types of contact permitted** *(specify):*

   c. ☐ **Contact restrictions**
   (1) For the reasons set forth below in item (2), the following contact between the child and the child's sibling named above *in item 4* is not to occur until further order of this court as the court finds, by clear and convincing evidence, that at this time such contact is contrary to the safety or well-being of the
   ☐ child. ☐ child's sibling.
   (a) ☐ In-person contact
   (b) ☐ Written communication
   (c) ☐ Telephone contact
   (2) Reasons *(specify)*:



Form Approved for Optional Use
Judicial Council of California
JV-401 [Rev. January 1, 2015]



Welfare and Institutions Code, § 362.1
Cal. Rules of Court, rule 5.670
*www.courts.ca.gov*

| CHILD'S NAME: | CASE NUMBER: |
|---|---|

5. ☐ **Contact between the child and the child's sibling *(name):***
   a. ☐ **In-person visitation**
      (1) ☐ Unsupervised
      (2) ☐ Supervised by the
         (a) ☐ county agency (c) ☐ foster family agency
         (b) ☐ other *(specify):*
      (3) Frequency and duration
         (a) ☐ times per week for a total of hours per week
         (b) ☐ times per month for a total of hours per month
         (c) ☐ An overnight visit ☐ every week ☐ every other week
         (d) ☐ Other *(specify):*
      (4) Location
         (a) ☐ Agency visitation facility (c) ☐ Foster family agency facility
         (b) ☐ other *(specify):*
      (5) Transportation of the child to and from the visits will be provided by the
         (a) ☐ county agency. (c) ☐ foster family agency.
         (b) ☐ other *(specify):*
      (6) Transportation of the child's sibling to and from the visits will be provided by the
         (a) ☐ county agency. (c) ☐ foster family agency.
         (b) ☐ other *(specify):*
      (7) ☐ Other orders concerning in-person visitation *(specify):*

   b. ☐ **Other types of contact permitted** *(specify):*

   c. ☐ **Contact restrictions**
      (1) For the reasons set forth below in item (2), the following contact between the child and the child's sibling named above *in item 5* is not to occur until further order of this court as the court finds, by clear and convincing evidence, that at this time such contact is contrary to the safety or well-being of the
         ☐ child. ☐ child's sibling.
         (a) ☐ In-person contact
         (b) ☐ Written communication
         (c) ☐ Telephone contact
      (2) Reasons *(specify)*:

6. ☐ Other *(specify):*

| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: | FOR COURT USE ONLY |
|---|---|
| NAME: | |
| FIRM NAME: | |
| STREET ADDRESS: | |
| CITY: STATE: ZIP CODE: | |
| TELEPHONE NO.: FAX NO. : | |
| E-MAIL ADDRESS: | |
| ATTORNEY FOR (*name*): | |
| **SUPERIOR COURT OF CALIFORNIA, COUNTY OF** | |
| STREET ADDRESS: | |
| MAILING ADDRESS: | |
| CITY AND ZIP CODE: | |
| BRANCH NAME: | |
| Plaintiff/Petitioner: | CASE NUMBER: |
| Defendant/Respondent: | |
| | JUDICIAL OFFICER: |
| **PROOF OF SERVICE—CIVIL** | |
| **Check method of service *(only one)*:** | |
| ☐ By Personal Service ☐ By Mail ☐ By Overnight Delivery | DEPARTMENT: |
| ☐ By Messenger Service ☐ By Fax ☐ By Electronic Service | |

***(Do not use this proof of service to show service of a Summons and complaint.)***

1. At the time of service I was over 18 years of age.
2. My residence or business address is:

3. ☐ The fax number or electronic service address from which I served the documents is *(complete if service was by fax or electronic service):*

4. On *(date):* I served the following **documents** *(specify):*

   ☐ The documents are listed in the *Attachment to Proof of Service–Civil (Documents Served)* (form POS-040(D)).

5. I served the documents on the **person or persons** below, as follows:
   a. Name of person served:
   b. ☐ *(Complete if service was by personal service, mail, overnight delivery, or messenger service.)*
   Business or residential address where person was served:

   c. ☐ *(Complete if service was by fax or electronic service.)*
   (1) Fax number or electronic service address where person was served:

   (2) Time of service:

   ☐ The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)).

6. The documents were served by the following means *(specify):*
   a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

| CASE NAME: | CASE NUMBER: |
|---|---|
| | |

6. b. ☐ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and *(specify one)*:

   (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

   (2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

   I am a resident or employed in the county where the mailing occurred and am not a party to the action. The envelope or package was placed in the mail at *(city and state):*

c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by thmessenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*

e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

f. ☐ **By electronic service.** Based on a rule, a court order, or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in item 5.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT) ▶ (SIGNATURE OF DECLARANT)

*(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)*

**DECLARATION OF MESSENGER**

☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on *(date):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(NAME OF DECLARANT) ▶ (SIGNATURE OF DECLARANT)

# INFORMATION SHEET FOR PROOF OF SERVICE—CIVIL

*(This information sheet is not part of the official proof of service form and does not need to be copied, served, or filed.)*

## USE OF THIS FORM

Note: This proof of service form should **not** be used to show proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

This form is designed to be used to show proof of service of documents by (1) personal service, (2) mail, (3) overnight delivery, (4) messenger service, (5) fax, or (6) electronic transmission.

Certain documents must be personally served. For example, an order to show cause and temporary restraining order generally must be served by personal delivery. You must determine whether a document must be personally delivered or can be served by mail or another method.

## GENERAL INSTRUCTIONS

A person must be over 18 years of age to serve the documents. The person who served the documents must complete the Proof of Service. **A party to the action cannot serve the documents.**

The Proof of Service should be typed orprinted. If you have Internet access, a fillable version of this proof of service form is available at *www.courts.ca.gov/forms.htm.*

*Complete the top section of the proof of service form as follows:*

First box, left side: In this box print the name, address, and telephone number of the person *for* whom you served the documents.

Second box, left side: Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as the address on the documents that you served.

Third box, left side: Print the names of the plaintiff/petitioner and defendant/respondent in this box. Use the same names as are on the documents that you served.

Fourth box, left side: Check the method of service that was used. You should check only one method of service and should show proof of only one method on the form. If you served a party by several methods, use a separate form to show each method of service.

First box, top of form, right side: Leave this box blank for the court's use.

Second box, right side : Print the case number in this box. The case number should be the same as the case number on the documents that you served.

Third box, right side: State the judge and department assigned to the case, if known.

*Complete items 1–6:*

1. You are stating that you are over the age of 18 and that you are not a party to this action.
2. Print your home or business address.
3. If service was by fax service or electronic service, print the fax number or electronic service address from which service was made.
4. List each document that you served. If you need more space, check the box in item 4, complete the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)), and attach it to form POS-040.
5. Provide the names, addresses, and other applicable information about the persons served. If more than one person was served, check the box on item 5, complete the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)), and attach it to form POS-040.
6. Check the box before the method of service that was used, and provide any additional information that is required. The law may require that documents be served in a particular manner (such as by personal delivery) for certain purposes. Service by fax or electronic transmission generally requires the prior agreement of the parties.

**You must sign and date the proof of service form. By signing, you are stating under penalty of perjury that the information that you have provided on form POS-040 is true and correct.**

| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO:<br>NAME:<br>FIRM NAME:<br>STREET ADDRESS:<br>CITY: STATE: ZIP CODE:<br>TELEPHONE NO.: FAX NO. :<br>E-MAIL ADDRESS:<br>ATTORNEY FOR (*name*): | *FOR COURT USE ONLY* |
|---|---|
| **SUPERIOR COURT OF CALIFORNIA, COUNTY OF**<br>STREET ADDRESS:<br>MAILING ADDRESS:<br>CITY AND ZIP CODE:<br>BRANCH NAME: | |
| Plaintiff/Petitioner:<br>Defendant/Respondent: | CASE NUMBER: |
| | JUDICIAL OFFICER: |
| **PROOF OF ELECTRONIC SERVICE** | DEPARTMENT: |

1. I am at least 18 years old.
   a. My residence or business address is *(specify):*

   b. My electronic service address is *(specify):*

2. I electronically served the following documents *(exact titles):*

   ☐ The documents served are listed in an attachment *(Form POS-050(D)/EFS-050(D) may be used for this purpose.)*

3. I electronically served the documents listed in 2 as follows:
   a. Name of person served:
      On behalf of *(name or names of parties represented, if person served is an attorney):*
   b. Electronic service address of person served :
   c. On *(date):*
   d. At *(time):*
      ☐ The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment. *(Form POS-050(P)/EFS-050(P) may be used for this purpose.)*

Date:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(TYPE OR PRINT NAME OF DECLARANT) ▶ (SIGNATURE OF DECLARANT)



Form Approved for Optional Use
Judicial Council of California
POS-050/EFS-050 [Rev. January 1, 2015]

**PROOF OF ELECTRONIC SERVICE**
**(Proof of Service/Electronic Filing and Service)**

Cal. Rules of Court, rule 2.251
*www.courts.ca.gov*

# SV-130 Private Postsecondary School Violence Restraining Order After Hearing

*Clerk stamps date here when form is filed.*

DRAFT

Not approved by the Judicial Council

*Fill in court name and street address:*

**Superior Court of California, County of**

*Court fills in case number when form is filed.*

**Case Number:**

## 1 Petitioner (Educational Institution Officer or Employee)

a. Name: ______________________

Lawyer for Petitioner *(if any, for this case):*

Name: ______________________ State Bar No.: __________

Firm Name: ______________________

b. Your Address *(If you have a lawyer, give your lawyer's information.):*

Address: ______________________

City: ______________ State: _____ Zip: _______

Telephone: ______________ Fax: ______________

E-Mail Address: ______________________

## 2 Student (Protected Person)

Full Name: ______________________

## 3 Respondent (Restrained Person)

Full Name: ______________________

Description:

Sex: ☐ M ☐ F Height: ________ Weight: ________ Date of Birth: ______________

Hair Color: ____________ Eye Color: ____________ Age: _____ Race: ______________

Home Address *(if known)*: ______________________

City: ______________________ State: _______ Zip: __________

Relationship to Protected Person: ______________________

## 4 ☐ Additional Protected Persons

In addition to the student, the following family or household members or other students are protected by the temporary orders indicated below:

| Full Name | Sex | Age | Household Member? | Relation to student |
|---|---|---|---|---|
| | | | ☐ Yes ☐ No | |
| | | | ☐ Yes ☐ No | |
| | | | ☐ Yes ☐ No | |

☐ Additional protected persons are listed at the end of this Order on Attachment 4.

## 5 Expiration Date

***This Order, except for any award of lawyer's fees, expires at:***

Date: ______________ Time: ______________ ☐ a.m. ☐ p.m.

If no expiration date is written here, this Order expires three years from the date of issuance.

**This is a Court Order.**

## 6 Hearing

a. There was a hearing on *(date):* ______________ at *(time):* __________ in Dept.:________ Room: _________
*(Name of judicial officer):* ___________________________________ made the orders at the hearing.

b. These people were at the hearing:

(1) ☐ The petitioner/school representative *(name):* _______________________________________________

(2) ☐ The lawyer for the petitioner/school *(name):* _________________________________

(3) ☐ The student (4) ☐ The lawyer for the student *(name):* _________________________________

(5) ☐ The respondent (6) ☐ The lawyer for the respondent *(name):* _______________________________

☐ Additional persons present are listed at the end of this Order on Attachment 6b.

c. ☐ The hearing is continued. The parties must return to court on *(date):* ______________ at *(time):* __________.

**To the Respondent:**

**The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.**

## 7 Personal Conduct Orders

a. You are ordered **not** do the following things to the student
☐ and to the other protected persons listed in (4):

(1) ☐ Harass, molest, strike, assault (sexually or otherwise), batter, abuse, destroy personal property of, or disturb the peace of the person.

(2) ☐ Commit acts of violence or make threats of violence against the person.

(3) ☐ Follow or stalk the person during school hours or to or from the school.

(4) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.

(5) ☐ Enter the person's school.

(6) ☐ Take any action to obtain the person's address or locations. If this item is not checked, the court has found good cause not to make this order.

(7) ☐ Other *(specify):*
☐ Other personal conduct orders are attached at the end of this Order on Attachment 7a(7).

______________________________________________________________________
______________________________________________________________________
______________________________________________________________________
______________________________________________________________________
______________________________________________________________________
______________________________________________________________________

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

**This is a Court Order.**

| Case Number: |
|---|
| |

**8** **Stay-Away Order**

a. You **must** stay at least ____________ yards away from *(check all that apply):*

(1) ☐ The student
(2) ☐ Each other protected person listed in (4)
(3) ☐ The school
(4) ☐ The student's home
(5) ☐ The student's job or workplace
(6) ☐ The student's children's school
(7) ☐ The student's children's place of child care
(8) ☐ The student's vehicle
(9) ☐ Other *(specify):*
______________________________
______________________________
______________________________
______________________________

b. This stay-away order does not prevent you from going to or from your home or place of employment.

**9** ☐ **No Guns or Other Firearms and Ammunition**

a. **You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.**

b. If you have not already done so, you must:

(1) Sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.

(2) File a receipt with the court within 48 hours of receiving this Order that proves that your guns have been turned in, sold, or stored. *(You may use Form SV-800,* Proof of Firearms Turned In, Sold, or Stored, *for the receipt.)*

c. ☐ The court has received information that you own or possess a firearm.

**10** ☐ **Costs**

You must pay the following amounts for costs to the petitioner:

| Item | Amount | Item | Amount |
|---|---|---|---|
| | $ | | $ |
| | $ | | $ |
| | $ | | $ |

☐ Additional amounts are attached at the end of this Order on Attachment 10.

**11** ☐ **Other Orders** *(specify):*

______________________________
______________________________
______________________________
______________________________
______________________________
______________________________
______________________________

☐ Additional orders are attached at the end of this Order on Attachment 11.

**This is a Court Order.**

Case Number:

**To the Person in 1:**

## 12 Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, the petitioner or the petitioner's lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

| Name of Law Enforcement Agency | Address *(City, State, Zip)* |
|---|---|
| | |
| | |

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 12.

## 13 Service of Order on Respondent

a. ☐ The respondent personally attended the hearing. No other proof of service is needed.

b. ☐ The respondent did not attend the hearing.

(1) ☐ Proof of service of Form SV-110, *Temporary Restraining Order,* was presented to the court. The judge's orders in this form are the same as in Form SV-110 except for the expiration date. The respondent must be served with this Order. Service may be by mail.

(2) ☐ The judge's orders in this form are different from the temporary restraining orders in Form SV-110. Someone—but not the petitioner or anyone protected by this order—must personally serve a copy of this Order on the respondent.

## 14 No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal will serve this Order without charge because the Order is based on a credible threat of violence or stalking.

## 15

Number of pages attached to this Order, if any: ______

The Order is based on actual violence, a credible threat of violence, or stalking.
The petitioner is entitled to a fee waiver.

Date: ______________________________

______________________________
*Judicial Officer*

**This is a Court Order.**

## Warning and Notice to the Respondent:

### You Cannot Have Guns or Firearms

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control as stated in item (9). The court will require you to prove that you did so.

## Instructions for Law Enforcement

### Enforcing the Restraining Order

This Order is enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Restraining and Protective Order System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the Order and then must enforce it. Violations of this Order are subject to criminal penalties.

### Start Date and End Date of Orders

This Order *starts* on the date next to the judge's signature on page 4 and *ends* on the expiration date in item (5) on page 1.

### Arrest Required If Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of this order and has disobeyed it, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

### Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the orders. Consider the restrained person served (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; *or*
- The restrained person was at the restraining order hearing or was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the order and then enforce it.

### If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this Order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

**This is a Court Order.**

## Conflicting Orders—Priorities for Enforcement

**If more than one restraining order has been issued, the orders must be enforced according to the following priorities:** (See Pen. Code, § 136.2, Fam. Code, §§ 6383(h)(2), 6405(b).)

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

*Clerk's Certificate*
*[seal]*

*(Clerk will fill out this part.)*

**—Clerk's Certificate—**

I certify that this *Private Postsecondary School Violence Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: ____________________ Clerk, by ________________________________ , Deputy

**This is a Court Order.**

# WV-130 Workplace Violence Restraining Order After Hearing

Clerk stamps date here when form is filed.

DRAFT

Not approved by the Judicial Council

Fill in court name and street address:

**Superior Court of California, County of**

Court fills in case number when form is filed.

**Case Number:**

## 1 Petitioner (Employer)

a. Name: ______

Lawyer for Petitioner *(if any, for this case):*

Name: ______ State Bar No.: ______

Firm Name: ______

b. Your Address *(If you have a lawyer, give your lawyer's information):*

Address: ______

City: ______ State: ____ Zip: ______

Telephone: ______ Fax: ______

E-Mail Address: ______

## 2 Employee (Protected Person)

Full Name: ______

## 3 Respondent (Restrained Person)

Full Name: ______

Description:

Sex: ☐ M ☐ F Height: ______ Weight: ______ Date of Birth: ______

Hair Color: ______ Eye Color: ______ Age: ____ Race: ______

Home Address *(if known)*:

City: ______ State: ____ Zip: ______

Relationship to Employee: ______

## 4 ☐ Additional Protected Persons

In addition to the employee, the following family or household members or other students are protected by the temporary orders indicated below:

| Full Name | Sex | Age | Household Member? | Relation to Employee |
|---|---|---|---|---|
| | | | ☐ Yes ☐ No | |
| | | | ☐ Yes ☐ No | |
| | | | ☐ Yes ☐ No | |

☐ Additional protected persons are listed at the end of this Order on Attachment 4.

## 5 Expiration Date

***This Order, except for any award of lawyer's fees, expires at:***

Date: ______ Time: ______ ☐ a.m. ☐ p.m.

If no expiration date is written here, this Order expires three years from the date of issuance.

**This is a Court Order.**

## (6) Hearing

a. There was a hearing on *(date):* ______________ at *(time):* ___________ in Dept.:________ Room: __________
*(Name of judicial officer):* ___________________________________ made the orders at the hearing.

b. These people were at the hearing:

(1) ☐ The petitioner/employer representative *(name):* ____________________________________________

(2) ☐ The lawyer for the petitioner/employer *(name):* _________________________________

(3) ☐ The employee (4) ☐ The lawyer for the employee *(name):* ________________________________

(5) ☐ The respondent (6) ☐ The lawyer for the respondent *(name):* _______________________________

☐ Additional persons present are listed at the end of this Order on Attachment 5.

c. ☐ The hearing is continued. The parties must return to court on *(date):* ______________ at *(time):* __________.

**To the Respondent:**

**The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to $1,000, or both.**

## (7) Personal Conduct Orders

a. You are ordered **not** do the following things to the employee
☐ and to the other protected persons listed in (4):

(1) ☐ Harass, molest, strike, assault (sexually or otherwise), batter, abuse, destroy personal property of, or disturb the peace of the person.

(2) ☐ Commit acts of violence or make threats of violence against the person.

(3) ☐ Follow or stalk the person during work hours or while going to or from the place of work.

(4) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.

(5) ☐ Enter the person's workplace.

(6) ☐ Take any action to obtain the person's address or locations. If this item is not checked, the court has found good cause not to make this order.

(7) ☐ Other *(specify):*
☐ Other personal conduct orders are attached at the end of this Order on Attachment 7a(7).

_______________________________________________________________________
_______________________________________________________________________
_______________________________________________________________________
_______________________________________________________________________
_______________________________________________________________________
_______________________________________________________________________

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

**This is a Court Order.**

Case Number:

## 8 Stay-Away Order

a. You **must** stay at least ___________ yards away from *(check all that apply):*

(1) ☐ The employee
(2) ☐ Each other protected person listed in (4)
(3) ☐ The employee's workplace
(4) ☐ The employee's home
(5) ☐ The employee's school
(6) ☐ The employee's children's school
(7) ☐ The employee's children's place of child care
(8) ☐ The employee's vehicle
(9) ☐ Other *(specify):*

_______________________________________________
_______________________________________________
_______________________________________________
_______________________________________________

b. This stay-away order does not prevent you from going to or from your home or place of employment.

## 9 ☐ No Guns or Other Firearms and Ammunition

a. **You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.**

b. If you have not already done so, you must:

(1) Sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.

(2) File a receipt with the court within 48 hours of receiving this Order that proves that your guns have been turned in, sold, or stored. *(You may use Form WV-800,* Proof of Firearms Turned In, Sold, or Stored *for the receipt.)*

c. ☐ The court has received information that you own or possess a firearm.

## 10 ☐ Costs

You must pay the following amounts for costs to the petitioner:

| Item | Amount | Item | Amount |
|---|---|---|---|
| | $ | | $ |
| | $ | | $ |
| | $ | | $ |

☐ Additional amounts are attached at the end of this Order on Attachment 10.

## 11 ☐ Other Orders *(specify):*

_______________________________________________
_______________________________________________
_______________________________________________
_______________________________________________
_______________________________________________
_______________________________________________
_______________________________________________

☐ Additional orders are attached at the end of this Order on Attachment 11.

**This is a Court Order.**

**To the Person in ①:**

## ⑫ Mandatory Entry of Order Into CARPOS Through CLETS

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.

b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.

c. ☐ By the close of business on the date that this Order is made, the petitioner or the petitioner's lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

| Name of Law Enforcement Agency | Address *(City, State, Zip)* |
|---|---|
| | |
| | |

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 12.

## ⑬ Service of Order on Respondent

a. ☐ The respondent personally attended the hearing. No other proof of service is needed.

b. ☐ The respondent did not attend the hearing.

(1) ☐ Proof of service of Form WV-110, *Temporary Restraining Order,* was presented to the court. The judge's orders in this form are the same as in Form WV-110 except for the expiration date. The respondent must be served with this Order. Service may be by mail.

(2) ☐ The judge's orders in this form are different from the temporary restraining orders in Form WV-110. Someone—but not the petitioner or anyone protected by this order—must personally serve a copy of this Order on the respondent.

## ⑭ No Fee to Serve (Notify) Restrained Person

The sheriff or marshal will serve this Order without charge because the Order is based on unlawful violence, a credible threat of violence, or stalking.

⑮ Number of pages attached to this Order, if any: ______

Date: ____________________

*Judicial Officer*

**This is a Court Order.**

## Warning and Notice to the Respondent:

### You Cannot Have Guns or Firearms

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a $1,000 fine. You must sell to or store with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control as stated in item (9). The court will require you to prove that you did so.

## Instructions for Law Enforcement

### Enforcing the Restraining Order

This Order is enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Restraining and Protective Order System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the Order and then must enforce it. Violations of this Order are subject to criminal penalties.

### Start Date and End Date of Orders

This Order *starts* on the date next to the judge's signature on page 4 and *ends* on the expiration date in item (5) on page 1.

### Arrest Required If Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of this order and has disobeyed it, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

### Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the orders. Consider the restrained person served (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; *or*
- The restrained person was at the restraining order hearing or was informed of the order by an officer.

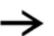
An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the order and then enforce it.

### If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this Order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

**This is a Court Order.**





Case Number:

## Conflicting Orders—Priorities for Enforcement

**If more than one restraining order has been issued, the orders must be enforced according to the following priorities:** (See Pen. Code, § 136.2, Fam. Code, §§ 6383(h)(2), 6405(b).)

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence over any other restraining or protective order.
3. *Criminal Order:* If none of the orders includes a no contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

*Clerk's Certificate*
*[seal]*

*(Clerk will fill out this part.)*

**—Clerk's Certificate—**

I certify that this *Workplace Violence Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: ____________________ Clerk, by ________________________________ , Deputy

**This is a Court Order.**

# Rules and Projects Committee

Proposals to approve for circulation for comment and recommend for Judicial Council action

JUDICIAL COUNCIL OF CALIFORNIA

RULES AND PROJECTS COMMITTEE

**April 16, 2014, 10:30 a.m. – 4:00 p.m.**

**Videoconference from San Francisco, Los Angeles, and Sacramento**
**1-800-644-1474**

# Minutes

**Members present:** Hon. Harry E. Hull, Jr. (chair), , Hon. Judith Ashmann-Gerst (vice-chair), Hon. Emilie H. Elias, Hon. Charles Wachob, Hon. Morris Jacobson, Hon. Brian McCabe, Hon. Dean Stout, and Ms. Mary Beth Todd.

**Members absent:** Ms. Angela Davis.

**Others present:** Ms. Heather Anderson, Mr. Arturo Castro, Ms. Audrey Fancy, Ms. Bonnie Hough, Hon. Raymond J. Ikola, Ms. Tracy Kenny, Ms. Susan McMullan, Mr. Douglas C. Miller, Mr. Patrick O'Donnell, Ms. Camilla Kieliger, Ms. Shelley LaBotte, Ms. Anne Ronan, Ms. Gabrielle Selden, Mr. Corby Sturges.

## *For Approval to Circulate for Public Comment*

### Criminal

Item 1 **Criminal Justice Realignment: Petitions for Revocation of Supervision** (revise form CR-300)

**Action:** The Rules and Projects Committee approved the proposal for circulation.

Item 2 **Criminal Justice Realignment: Petition and Order for Dismissal** (revise forms CR-180 and CR-181)

**Action:** The Rules and Projects Committee approved the proposal for circulation.

### Family and Juvenile Law

Item 3 **Family Law: Streamline Forms and Procedures in Actions Involving Same-Sex Marriages and Domestic Partnerships** (amend rule 5.76; revise forms FL-100, FL-115, FL-117, and FL-120; revoke forms FL-103, FL-107-INFO, and FL-123)

**Action:** The Rules and Projects Committee approved the proposal for circulation.

Item 4 **Family Law: Uniform Standards of Practice for Providers of Supervised Visitation** (amend Cal. Stds. Jud. Admin., std. 5.20; revise form FL-341(A))

**Action:** The Rules and Projects Committee approved the proposal for circulation.

Item 5 **Juvenile Dependency: Information Form for Parents** (revoke forms JV-050 and JV-055; approve new optional form JV-050-INFO)

**Action:** The Rules and Projects Committee approved the proposal for circulation.

Item 6 **Juvenile Law: Instructions to Seal Juvenile Records** (adopt forms JV-595-INFO and JV-595; revise forms JV-590 and JV-600; amend rule 5.830)

**Action:** The Rules and Projects Committee approved the proposal for circulation.

Item 7 **Juvenile Dependency: Attorney Training** (amend Cal. Rules of Court, rule 5.660)

**Action:** The Rules and Projects Committee approved the proposal for circulation.

Item 8 **Family and Juvenile Law: Parentage** (amend Cal. Rules of Court, rules 5.510, 5.635, 5.668, 5.695, 5.725; revise forms FL-210, FL-240

**Action:** The Rules and Projects Committee approved the proposal for circulation.

## Probate and Mental Health

Item 9 **Accounting Schedules for Gains and Losses on Sales of Assets in Guardianships and Conservatorships** (revise forms GC-400(B)/GC-405(B) and GC-400(D)/GC-405(D))

**Action:** The Rules and Projects Committee approved the proposal for circulation with the following modifications:

In the request for specific comments, change the first question to "Will the proposal incur costs or provide cost savings."

Item 10 **Waiver of Bond by Heirs or Beneficiaries of Decedents' Estates** (adopt form DE-142/DE-111(A-3d))

**Action:** The Rules and Projects Committee approved the proposal for circulation.

## Appellate

Item 11 **Appellate Procedure: Record on Appeal–Civil Cases** (revise forms APP-003, APP-010, APP-103, and form APP-110)

**Action:** The Rules and Projects Committee did not approve the proposal for circulation.

Item 12 **Appellate Procedure: Confidential Records** (amend the advisory committee comments to Cal. Rules of Court, rules 8.45, 8.47, 8.320, 8.336, 8.380, 8.384, 8.385, and 8.610)

**Action:** The Rules and Projects Committee approved the proposal for circulation.

Item 13 **Appellate Procedure: Appendixes** (amend Cal. Rules of Court, rule 8.124)

**Action:** The Rules and Projects Committee did not approve the proposal for circulation.

Item 14 **Appellate Procedure: Extensions of Time to File Briefs** (amend Cal. Rules of Court, rule 8.212; revise form APP-006; and approve new optional forms CR-126, JV-816, JV-817, APP-012, and APP-031)

**Action:** The Rules and Projects Committee approved the proposal for circulation with the following modifications:

Rule 8.212: Include language from the revised rule on sealed records regarding the labeling of sealed and conditionally sealed briefs.

Item 15 **Appellate Procedure: Prehearing Conferences** (amend Cal. Rules of Court, rule 8.248)

**Action:** The Rules and Projects Committee asked the Appellate Advisory Committee to further review the proposal and address whether a sentence should be added to 8.248(c)(2) to allow parties to waive the prohibition on a justice participating in or influencing the determination of the appeal if the justice participated in a prehearing conference at which settlement was addressed.

Item 16 **Appellate Procedure: Judicial Notice Requests** (amend Cal. Rules of Court, rule 8.252)

**Action:** The Rules and Projects Committee approved the proposal for circulation.

Item 17 **Appellate Procedure: Record in Juvenile Appeals** (amend Cal. Rules of Court, rules 5.661, 8.409, 8.410, and 8.416)

**Action:** The Rules and Projects Committee approved the proposal for circulation with the following modifications:

Rule 8.409(e)(2): Clarify that reference is to 5.661(e)

## Civil and Small Claims/Appellate

Item 18 **Fee Waivers: Payments Over Time and Fees Included in Initial Fee Waiver** (amend rules 3.50, 3.51, 3.52, 3.55 and 8.818 and revise forms FW-0001, FW-001-INFO, FW-003, FW-008, APP-001, and APP-015/FW-015-INFO)

**Action:** The Rules and Projects Committee approved the proposal for circulation.

Item 19 **Civil Practice and Procedure: Evidentiary Objections in Summary Judgment Proceedings** (amend Cal. Rules of Court, rules 3.1350 and 3.1354)

**Action:** The Rules and Projects Committee did not approve the proposal for circulation and requested that the advisory committee do further work including considering whether the proposed amendment is consistent with Code of Civil Procedure section 437c.

## Civil and Small Claims

Item 20 **Telephonic Appearances: Notice for Ex Parte Appearances and Notice Form** (amend rule 3.670(h) and revise form CIV-020)

**Action:** The Rules and Projects Committee approved the proposal for circulation.

## *For Approval and for Recommendation to the Judicial Council*

## California Civil Jury Instruction (CACI)

Item 21a **Civil Jury Instructions: Approve Publication of Minor Revisions**

**Action:** The Rules and Projects Committee approved the proposal for publication.

Item 21b **Civil Jury Instructions**

**Action:** The Rules and Projects Committee recommended approval on the Judicial Council's June 27, 2014, consent agenda.

## Judicial Administration

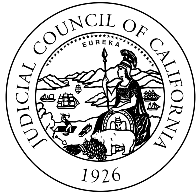
Item 22 **Subordinate Judicial Officers: Complaints and Notice Requirements** (amend Cal. Rules of Court, rule 10.703)

**Action:** The Rules and Projects Committee recommended approval on the Judicial Council's 27, 2014, discussion agenda.

## Other Business

Item 23 **RUPRO minutes** (Dec. 11, 2013, Jan. 14, 2014, Jan. 17, 2014, Jan. 29, 2014, Feb. 5, 2014, Feb. 10, 2014, Feb. 25, 2014, and March 21, 2014)

**Action:** The Rules and Projects Committee approved the minutes.




JUDICIAL COUNCIL
OF CALIFORNIA

# RULES AND PROJECTS COMMITTEE
# MEETING MINUTES

**DISTRIBUTED BY EMAIL, APRIL 30, 2014**
**APPROVED ON MAY 1, 2014**

**Committee members participating:** Hon. Harry E. Hull, Jr. (chair), Hon. Judith Ashmann-Gerst (vice-chair), Hon. Emilie H. Elias, Hon. Morris D. Jacobson, Hon. Brian L. McCabe, Hon. Dean T. Stout, Ms. Mary Beth Todd and Hon. Charles D. Wachob.

**Committee members not participating:** Ms. Angela J. Davis.

**RUPRO staff participating:** Ms. Susan McMullan, Mr. Patrick O'Donnell, and Ms. Camilla Kieliger.

**AOC staff participating:** Ms. Heather Anderson

1. **APPELLATE PROCEDURE: EXTENSIONS OF TIME TO FILE BRIEFS** (amend Cal. Rules of Court, rule 8.212; revise form APP-006; and approve new optional forms CR-126, JV-816, JV-817, APP-012, and APP-031)

   **ACTION:** The Rules and Projects Committee approved the proposal for circulation as it was originally proposed on April 16, 2014 (see agenda item 14).

JUDICIAL COUNCIL
OF CALIFORNIA

RULES AND PROJECTS
COMMITTEE

www.courts.ca.gov/rupromeetings.htm
rupromeetings@jud.ca.gov

# RULES AND PROJECTS COMMITTEE

## MINUTES OF OPEN MEETING

July 17, 2014
12:10 p.m.
Teleconference

| | |
|---|---|
| **Advisory Body Members Present:** | Hon. Harry E. Hull (chair), Hon. Judith Ashmann-Gerst (vice-chair), Hon. Morris D. Jacobson, Hon. Brian L. McCabe, Hon. Dean T. Stout, Ms. Mary Beth Todd, and Hon. Charles D. Wachob |
| **Advisory Body Members Absent:** | Ms. Angela J. Davis and Hon. Emilie H. Elias |
| **Others Present:** | Ms. Deborah Brown, Mr. Michael Giden, Ms. Camilla Kieliger, Ms. Susan McMullan, Hon. Douglas P. Miller, and Mr. Patrick O'Donnell |

## OPEN MEETING

**Call to Order and Roll Call**

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

## DISCUSSION AND ACTION ITEMS (ITEM 1)

**Judicial Branch Administration: Retirement of the Name "Administrative Office of the Courts" or "AOC" (Cal. Rules of Court, rules 10.1, 10.80, and 10.81)**

To implement the Chief Justice's June 27, 2014, direction to retire the name "Administrative Office of the Courts," the internal chairs recommend that the Judicial Council amend three rules of court in title 10 at this time and direct them to undertake further rules amendments in the future. The intent of these recommendations is to retire the use of the names "Administrative Office of the Courts" and "AOC," effective immediately, and to amend the rules of court to implement this policy decision.

***Action:*** The Rules and Projects Committee recommended approval on the Judicial Council's July 29, 2014, discussion agenda, for an effective date of July 29, 2014 with the following modifications:

Judicial Council report, page 3, last bullet, last line: Delete "other" before "party

Rule 10.80(d), 2nd line: Replace "of the" with "relating to"

## ADJOURNMENT

There being no further business, the meeting was adjourned at 12:27 p.m.

Approved by the advisory body on enter date.

# JUDICIAL COUNCIL OF CALIFORNIA

RULES AND PROJECTS COMMITTEE

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## RULES AND PROJECTS COMMITTEE

## MINUTES OF OPEN MEETING

August 15, 2014
Email

**Advisory Body Members Present:** Hon. Harry E. Hull (chair), Hon. Judith Ashmann-Gerst (vice-chair), Hon. Emilie H. Elias, Hon. Morris D. Jacobson, Hon. Brian L. McCabe, Hon. Dean T. Stout, Ms. Mary Beth Todd, and Hon. Charles D. Wachob

**Advisory Body Members Absent:** Ms. Angela J. Davis

**Others Present:** Ms. Camilla Kieliger, Ms. Susan McMullan, Mr. Patrick O'Donnell and Ms. Robin Seeley

## DISCUSSION AND ACTION ITEMS

**Item 1**

**Judicial Council of California Criminal Jury Instructions** (recommend Judicial Council action on proposed revisions)

***Action:*** The Rules and Projects Committee recommended approval on the Judicial Council's August 22, 2014, consent agenda.

## ADJOURNMENT

There being no further business, the meeting was adjourned.

Approved by the advisory body on enter date.